

Legal: Condo Cases

Straight From The Source ***An Interview with Antoni Casalnuovo***

Peel Condominium Corp. No. 304 v. Hirsi - <http://canlii.ca/t/g2nh5>

1. What was this case about?

In short, the case began as a noise and nuisance matter. However, the situation escalated quickly, and within only six months since the complaints first began, the condominium corporation was required to bring an Application for an Order forcing the unit owner to sell their unit. While compliance issues surrounding noise are, to a degree, to be expected within condominiums, this case took an unexpected and rare twist with a double stabbing and a shooting in the unit.

The introduction of very serious dangerous activity forced the condominium corporation to revise its compliance strategy and expedite proceedings.

Court materials were already being drafted at the time that the stabbing and shooting incidents took place. Following these instances, the relief sought changed from seeking only a compliance order to seeking an order requiring the sale of the unit.

2. What required this case to go to Court?

This case was destined to be heard before the Courts. When the matter was simply regarding nuisance behaviour, it could have been resolved outside of the Courts – if the unit owner was even willing to meet with the Board. However, the unit owner completely ignored the efforts by the condominium corporation to seek voluntary compliance. With the addition of the violent behaviour, the situation spiralled out of control. Fast court intervention was absolutely necessary to protect the other unit owners in the community and to resolve the situation as efficiently as possible.

3. What were the main issues before the Court?

The main issues before the Court were: a) whether the unit owner's conduct was serious and persistent; b) whether the impact of the unit owner's misconduct was exceptional; c) whether the unit owner appeared to be unmanageable or incorrigible; and d) whether the unit owner showed no sign that they were willing or able to change. The earlier decision of *MTCC No. 747 v. Korolekh* established the criteria to evaluate whether a Court would consider making an Order to force a unit owner to vacate and sell her unit.

In light of the extreme and violent conduct by the unit owner and her guests, the Court quickly realized that the test established in the *MTCC 747 v. Korolekh* case was established.

While we were confident that a Court would grant the order forcing the sale of the unit, this is an exceptional remedy. Accordingly, in the alternative, we also sought a compliance order and damages.

4. What were the unique challenges of this case?

The unique challenge in this case was the timing. Existing precedent concerning the forced sale of a unit typically considers behaviour that has occurred over long periods of time. In this case, the challenge was to show that despite the relatively short duration of time over which the conduct occurred, it was so severe that any concern over the short duration should be overlooked.

5. What can condominiums learn from this case?

This case underscores the importance of a well-run condominium. In view of the short timeline, the condominium corporation had to bring together property management, the board of directors, individual unit owners, security, police, and legal counsel in order to advance this case in a convincing manner.

Property management did not ignore earlier breaches and sent the appropriate letters in a timely manner. Legal counsel was brought in to also send compliance letters. When the matter escalated, property management was able to coordinate between legal counsel, the police and security to ensure that trespass notices were given to all guests by the police and that security was given proper instruction to monitor and contact the police if any attempt by the individuals named in the trespass notice tried to breach same (which did occur).

As each member of the community played their roles appropriately, the situation was able to be resolved quickly and efficiently. Luckily, the situation was resolved before anyone got hurt. This is something to be grateful for, given the escalation of the violent conduct.

A well-managed condominium is an invaluable resource for legal counsel to best advantage (and succeed in) compliance-related litigation.

6. What was the outcome of this case?

The condominium corporation obtained an order requiring the unit owner to sell her unit within 2 months and the unit owner has subsequently complied – the unit has been sold. In addition, the condominium corporation was able to recover all of its costs associated with this ordeal, including costs associated with installing security cameras, which the court deemed were necessitated by virtue of the unit owner's conduct.

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