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Condo boards cannot ignore democratic process

A recent decision of the Superior Court of Justice in London, Ont., carries a powerful message about the consequences that can result when a condominium board refuses to comply with the democratic process set out in the legislation.

Middlesex Condominium Corporation 232 in London is governed by a five-member board of directors. Back in March, the board consulted an engineer to determine the work that was necessary to remedy outside water leaking into the building. The report recommended an expensive strategy, which the board decided to implement without seeking a second opinion.

In order to pay for the repairs, the board scheduled a general meeting of owners to seek their approval to borrow the necessary funds.

Many of the owners were unhappy that the board refused to get a second opinion. So, before the general meeting was held, these owners filed what the Condominium Act calls a requisition to call an owners' meeting for the specific purpose of voting on the removal of the existing board members.

The Condominium Act allows the owners of at least 15 per cent of the units to call a meeting to remove sitting directors. This is the equivalent of a non-confidence vote in the board members. Following the appropriate request, the board is required to call a meeting, failing which the members may schedule it themselves.

At the "requisitioned" meeting, one or more directors may be removed from office on approval of the owners of more than half of the units. Owners attending the meeting then elect new board members.

The board in the London condominium refused to schedule the requested owners' meeting. Instead, they began court proceedings to appoint an outside administrator to take over management of the building. The board also brought a court application for an injunction to prevent the owners from holding a meeting until after the court heard the application for the appointment of an administrator.

The matter came before Justice Alan W. Bryant in August. After hearing arguments on both sides, the judge ruled that the board's application for an injunction was "for the sole purpose of preventing the owners from exercising their rights to hold a requisition meeting to remove the board members from office and preventing their right to elect a new board."

Bryant ruled that the condominium was not in urgent financial circumstances and the members were entitled to exercise their statutory rights to hold a meeting . He declined to allow the board to appoint an administrator and gave the unit owners permission to hold their meeting "as soon as possible."

That meeting subsequently took place, and 60 per cent of the unit owners voted to remove and replace the board. Another judge has since turned down the old board's request to appoint an administrator.

Lawyer Joe Hoffer represented the unit owners in the case. The message of the court's decision, he says, is for condo boards and their lawyers to acknowledge that "a board does not have absolute power." Board members, he says, should be "alive to the risks of recommending that a board usurp the statutory scheme set up by the act in an effort to retain power."

"A condominium corporation," he added, "is ultimately a statutory, democratic institution and unit owners can stage a statutory 'coup' to depose autocratic governance."

Both sides of this unfortunate dispute have incurred significant legal expenses because the old board refused to acknowledge the legal rights of the unit owners to stage what amounts a hostile takeover.

The unit owners in this case have now asked the court to hold the old board members personally liable for the costs of the litigation, and the judge's ruling on costs is expected shortly. If the board members are held responsible to pay for their own lawyers and the lawyers for the unit owners, it could have a chilling effect on future condominium litigation.

Sometimes, serving on a condo board can be a thankless task, especially if its members ignore the wishes of the owners they are representing.

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