

CITATION: Middlesex Condominium v. Middlesex Condominium Corp. (Owners and Mortgagees of), 2012 ONSC 4620
COURT FILE NO.: 6738-12
DATE: 2012/08/10

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: MIDDLESEX CONDOMINIUM CORPORATION NO. 232 –and–
MIDDLESEX CONDOMINIUM CORPORATION NO. 232 (OWNERS
AND MORTGAGEES OF)

BEFORE: JUSTICE A. W. BRYANT

COUNSEL: Robert W. Dowhan, for the Applicant

Joe Hoffer, for the Respondents

HEARD: August 3, 2012

ENDORSEMENT


[1] The Board's application for an injunction is dismissed for the following reasons:

1. The Condominium Corporation No. 232 ("MCC 232") is governed by a five member Board of Directors.
2. On March 30, 2012, the Board sent a notice to unit owners that a vote on borrowing monies to fund the repairs that are needed to prevent further infiltration of water would be held at the Annual General Meeting scheduled for April 16, 2012.
3. On or about April 5, 2012, the Respondents filed a requisition to call an owners' meeting to vote on the removal of the Board members because they wished to obtain a second opinion on the costs of repair for the building. The Respondents represent the majority of the owners.
4. At the April 16, 2012 Annual General Meeting, owners voted in favour of a motion to delay voting on the loan. The Board aborted the AGM. The Board subsequently commenced proceedings in the

Superior Court to appoint an administrator to manage the affairs of MCC 232.

5. The Board brings this motion for an injunction to restrain the Respondents from exercising their statutory rights to hold a Requisition Meeting until after its application for the appointment of an administrator has been heard and adjudicated.
6. I do not accept the submissions of counsel for the Board that: (1) a small group of owners is frustrating the work of the Board; (2) the requisition meeting, if allowed to continue, will increase instability and conflict amongst the owners; (3) the Board elected by owners at a Requisition Meeting would jeopardize the safety of the occupants of the building (4) the building will deteriorate; and (5) the new Board would cancel any plans to undertake repairs.
7. The Court finds that the Board's motion is 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.
8. The Respondents acknowledge that there is a need to make repairs to the building. The Court finds that MCC 232 is not in urgent financial circumstances and the owners are entitled to exercise their statutory right to hold a Requisition Meeting.
9. I do not accept counsel for the Board's submission that the state of affairs which exist at MCC 232 are similar to the state of affairs at *York Condominium Corp. 414*, *Metro Toronto Condominium Corp. 710* and *Persuad* as reported in the case law.
10. I find:
 - (1) There is no urgency to appoint an administrator in the present circumstances which will result in incurring additional unnecessary legal costs;
 - (2) There is no evidence of irreparable harm; and,
 - (3) The balance of convenience favours allowing the Requisition Meeting to be held as soon as possible.

[2] If counsel are unable to resolve the issue of costs within 10 days of the release of this endorsement, the Respondent will file costs submissions on or before August 30, 2012 and the applicant shall file costs submissions on or before September 10, 2012. The submissions are to be two pages in length plus appendices.


Justice A. W. Bryant

Date: August 10, 2012