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CASE LAW UPDATE, APRIL 2007

Court Confirms Unapproved Improvements to Common Elements Are Illegal and Must Be Removed

March 30, 2007: *Peel Standard Condominium Corporation No. 721 v. Rita Derveni and Esat Derveni*, (Ontario Superior Court of Justice, Court File No. CV-07-0790-00), van Rensberg J. (unpublished decision)

FACTS

The Dervenis installed a concrete walkway in the common elements adjacent and connected to their unit within Peel Standard Condominium Plan No. 721. The Unit Owners claimed that the home builder had made statements based upon which they believed they had the right to install the walkway. The Court commented that the walkway was useful and was neither unsafe nor unattractive. However, approval from the condominium board of directors was never sought or given.

JUDGMENT

The Court determined that nothing in the condition or character of the walkway, or in the alleged statements of the builder, changes the rights of the parties in this case. The Court concluded, of the walkway, that "*it contravenes the Declaration and the Act and must be removed.*" The Dervenis were also required to "*restore the common elements to their original condition*" and to pay the condominium's costs in the amount of \$1500 inclusive of GST and disbursements.

APPLICATION

While it is possible the condominium corporation spent more on this litigation than is represented by the costs award, it is a good judgment for confirming the right of the condominium corporation to require the removal of unapproved changes to the common elements. It also will likely save the condominium the costs of litigating this kind of issue again in the future.

In this case, it is apparent that the safety, attractiveness or usefulness of the change to the common elements were not considered adequate defenses for making such change illegally, i.e., without board approval and compliance with the *Condominium Act, 1998*.

Michael H. Clifton (April 2007)

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