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Condo board pays price for power play

Five former board members of a London, Ont., condominium corporation have been personally ordered to pay costs totalling \$36,300 as a result of two related lawsuits, after the old board ignored the wishes of a majority of unit owners. The old board had refused to recognize the results of a members' meeting in which a new board was elected.

It all began when the board of Middlesex Condominium Corporation 232 obtained an engineering study to determine the remedial work necessary to prevent water leakage into the building. The board called a general meeting of owners to approve the borrowing of \$600,000 to fund the repairs, which would have cost a total of \$755,000.

The meeting was eventually held and authorization for the borrowing was defeated.

Unhappy with the high cost of the proposed repairs, a group of owners got together and requested a members' meeting to replace the board of directors. Instead of calling the general meeting as they were required to do under the Condominium Act, the old board brought an injunction application to prevent the meeting from being held, as well as a second court application to appoint an outside administrator to assume management of the building.

Last August, Justice Alan Bryant 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."

In a separate hearing, Justice Thomas J. Carey turned down the board's request to appoint an administrator. A members' meeting was subsequently held and the old board was turfed out.

The new board then asked both judges to order court costs against the members of the old board personally. In a decision released last month, Justice Bryant found that the old board acted in bad faith when it brought an injunction application to prevent the owners from holding a meeting to replace the board members. Their application, he wrote, was "without merit."

The court ordered the five old board members to personally pay court costs of \$15,000 to the condominium corporation.

In a second decision released last month, Justice Carey noted that the former board members had instructed their lawyer to proceed with their application to appoint an administrator, even though they had been voted out of office. For a period of time last August, two separate groups were claiming to be the directors of the condominium.

The judge noted that the board was "not acting in good faith in pushing ahead with this unnecessary litigation." This conclusion, he wrote, prevented the old board members from being reimbursed from the condominium's bank accounts.

The behaviour of the old board, Justice Carey wrote, "was deliberate, egregious and requires sanction." The old board members were personally ordered to pay costs of \$21,300.52, in addition to the \$15,000 awarded by Justice Bryant.

That amounts to \$7,260 for each former board member — a high price for ignoring the wishes of a majority of unit owners and pursuing needless litigation.

London lawyer Joe Hoffer was counsel for the new board of directors. He e-mailed me to say that the Middlesex condominium cases present "a cautionary tale for condo boards and their legal counsel to exercise care in taking steps to use the legal process to prevent owners from exercising their statutory rights."

A number of lessons emerge from this case:

- Condominium board members are elected representatives of the unit owners. They carry out the wishes of the owners, and not their own agendas.
- Unit owners have a legal right to depose an autocratic board.
- Condominium litigation among neighbours is ugly and expensive. It should be avoided if at all possible.
- Condominium boards should operate in an open and transparent fashion. Secrecy is only appropriate in very limited circumstances.
- Hanging on to elected office when it's clear that a majority of unit owners are opposed to the existing board is a waste of time and money.

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