

2011 CarswellOnt 13731
Ontario Superior Court of Justice

Peel Common Element Condominium Corp. No. 739 v. K.S.M. Property Management Inc.

2011 CarswellOnt 13731, 210 A.C.W.S. (3d) 227

**Peel Common Element Condominium Corporation
No. 739 v. K.S.M. Property Management Inc. et al**

L.C. Snowie J.

Judgment: October 18, 2011

Docket: CV-11-3849-SR

Counsel: T. **Duggan**, for Plaintiff

C. Jaglowitz, for Defendant

Subject: Civil Practice and Procedure; Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Real property

[X](#) Condominiums

[X.6](#) Condominium corporation

[X.6.j](#) Miscellaneous

Remedies

[II](#) Injunctions

[II.2](#) Availability of injunctions

[II.2.d](#) Mandatory injunctions

[II.2.d.ii](#) Threshold test

[II.2.d.ii.D](#) Miscellaneous

Headnote

Remedies --- Injunctions — Availability of injunctions — Mandatory injunctions — Threshold test — Miscellaneous

Plaintiff was condominium corporation — Defendant KSM Inc. was property management company for condominium, and defendant L was KSM Inc.'s owner and condominium's property manager — Defendants were terminated by plaintiff — Plaintiff made numerous requests to defendants to turn over to it records and documents rightfully belonging to it, but defendants refused — Plaintiff brought motion for injunctive relief — Motion granted — Management agreement between parties specifically provided that plaintiff's property would be returned to it upon termination of KSM Inc. — Defendants were unlawfully withholding plaintiff's property and as such must return it immediately — Any right of possession by defendants to said property was terminated upon termination of defendants — Plaintiff was suffering undue prejudice as result of defendants' failure to return its property, especially in its day-to-day operation of condominium — Plaintiff did not know who had paid their common expenses, which was serious issue because there is statutory lien registration period for arrears of common expenses — Plaintiff stood to suffer greater harm than defendants from refusal to grant remedy — It was also very possible on balance of probabilities that plaintiff could suffer irreplaceable harm should prospective sales not proceed.

Real property --- Condominiums — Condominium corporation — Miscellaneous

Property management — Plaintiff was condominium corporation — Defendant KSM Inc. was property management company for condominium, and defendant L was KSM Inc.'s owner and condominium's property manager — Defendants were terminated by plaintiff — Plaintiff made numerous requests to defendants to turn over to it records and documents rightfully belonging to it, but defendants refused — Plaintiff brought motion for injunctive relief — Motion granted — Management agreement between parties specifically provided that plaintiff's property would be returned to it upon termination of KSM Inc. — Defendants were unlawfully withholding plaintiff's property and as such must return it immediately — Any right of possession by defendants to said property was terminated upon termination of defendants — Plaintiff was suffering undue prejudice as result of defendants' failure to return its property, especially in its day-to-day operation of condominium — Plaintiff did not know who had paid their common expenses, which was serious issue because there is statutory lien registration period for arrears of common expenses — Plaintiff stood to suffer greater harm than defendants from refusal to grant remedy — It was also very possible on balance of probabilities that plaintiff could suffer irreplaceable harm should prospective sales not proceed.

Table of Authorities**Statutes considered:**

Condominium Act, 1998, S.O. 1998, c. 19
s. 76(5) — referred to

MOTION by condominium corporation for injunctive relief requiring return of its documents by terminated property management company and property manager.

L.C. Snowie J.:

1 The Plaintiff is a Condominium Corporation and the Defendant was the Property Management Inc. for the said Condominium Corporation and Ms. Layne was the Property Manager for the Condominium Corporation and Defendant. The defendants were terminated by the Plaintiff on September 2, 2011. The Defendant, Ms. Layne is the owner of the Corporate Defendant (KSM). The Plaintiff has made numerous requests to the Defendants to turn over to the Plaintiff the records and documents rightfully belonging to the Corporate Plaintiff. The Defendants have refused. The Question is: Do the Defendants have any lawful right to withhold the Property of the Plaintiff? The short answer is "No". The Management Agreement between the parties specifically provides that the Condo's property will be returned to the Condo Corp. upon termination of the Property Management Corp. Having heard argument from both sides, an order shall go pursuant to paragraph 1 (a) + (b) of the Notice of Motion of the Plaintiff dated September 28, 2011. The test for an injunction is:

1. Is there a serious issue to be tried
2. Will the Applicant suffer irreplaceable harm if the order is not granted
3. Which party will suffer the greater harm from granting or refusing the remedy.

2 Also the following issues are raised:

1. Are the Defendant's entitled to the property- Are they owners of the property or entitled to possess it
2. Was the property unlawfully taken or retained by the defendants

3 I find that the Defendants are unlawfully withholding the Plaintiff's property and as such must return it immediately. Any right of possession by the Defendants to the said property was terminated upon the Defendant's job termination on September 2, 2011. There is absolutely no question that the property is owned by the Plaintiff.

4 I find that the Corporation (Plaintiff) is suffering undue prejudice as a result of the Defendants' failure to return their property. For example- The Plaintiff has received a request for a Status Certificate on a unit from a perspective purchaser. The Plaintiff is unable to respond within the prescribed time as their records are not available to them. If they fail to respond within the prescribed time there will be "deemed" presumptions that flow as a consequence. These presumptions may be incorrect. (See s. 76 (5) of the Condominium Act, 1998). Also the Plaintiff is suffering undue prejudice in its day to day operation of the Corporation. As the Corporation is not aware of any invoices that are due, and old accounts that are due. The Plaintiff does not know who has given post-dated cheques for their common costs and who has not. The Plaintiff does not know who has paid their common expenses. There is a statutory lien registration period for arrears of common expenses. Liens that are registered outside of the lien registration period will lose their statutory priority over the mortgage. It is clear to me that this is a serious issue and that the Plaintiff stands to suffer greater harm from the refusing to grant the remedy than the Defendants. Also it is very possible on the balance of probabilities that the Plaintiff could suffer irreplaceable harm i.e. prospective sales that do not proceed — There are presently 8 units on the Real Estate Market. For all of the above reasons the Plaintiff has succeeded

- Costs

- In this case the defendants have wrongfully withheld possession of the Plaintiff's property or as such substantial indemnity costs shall be awarded.

- The Defendant's shall pay to the Plaintiff their costs inclusive of HST in the amount of \$10,420.37 forthwith.

Motion granted.