



Sonja Hodis
Barrister, Solicitor & Notary
www.hodislaw.com
sonja@hodislaw.com

The High Price of Bullying in Condos

It is common to hear reports of bullying in our schools or in the workplace. However, in light of some recent court decisions, the concept of bullying is garnering attention in the condominium context especially in light of recent cost awards being granted by Judges in Ontario.

Bullying, which can be defined as forcing one's way through aggressive behavior or intimidation, is really about a struggle for control. Bullies tend to use intimidation as opposed to effective communication to get control of a situation for their advantage. In the condominium context, a strong community with the help of experienced condominium professionals may be your best weapon against a bully.

Two recent cases are illustrations of owners and Boards successfully standing up for themselves against a bully. In both *Middlesex Condominium Corporation No. 232* and *GSCC No. 50 v. GSCC No. 46*, the courts have sent a clear message that bully tactics will not be allowed in condominiums and the bullies will be paying a hefty price for their actions.

In *Middlesex Condominium Corporation No. 232*, the condominium was faced with repairs to the building envelope and balconies which required the corporation to either borrow money for the repairs or have the unit owners specially assessed. The Board ("old Board") held an information meeting about the proposed repairs and put forth a borrowing bylaw to be voted on by the owners at the AGM. Prior to the AGM a group of owners, who were concerned about the costs and other aspects of the repairs, requested copies of the documents and engineer's report and some time to review them. The owners also asked the old Board to suspend negotiations for the contract work for a short period of time and asked permission to post a notice regarding the plans in the condominium. The Court found that the communications the owners wanted to post were not misleading or contributing to a poisoned atmosphere. It also found that the request by the owners group was met with "condescension and dismissiveness". Although the Board gave the owner's group some supervised access to some documents they refused all other requests. In response, the owners requisitioned a meeting pursuant to s. 46 of the Condominium Act to be held at the same time as the AGM. They requested that the vote on the borrowing bylaw be deferred and if necessary the existing Board be removed and replaced with a new one. At the AGM, the borrowing bylaw was defeated. The old Board ended the AGM prior to the owners' requisition motion to remove the Board. The Court found that the old Board "pre-orchestrated" the termination of the AGM when they lost the vote for the borrowing bylaw and were faced with a removal vote. The old Board then commenced a court application seeking an



Sonja Hodis
Barrister, Solicitor & Notary
www.hodislaw.com
sonja@hodislaw.com

order to appoint an administrator and an injunction to prevent the owners' requisition meeting from taking place until the court decided the old Board's application.

The Court found the old Board's actions suspended the operation of democracy in the condominium. The Court found that the injunction application was brought "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." The injunction application was denied and a new Board was elected. The Court found that the requisition meeting was validly held.

The Court reviewed sections 89, 91 and 123 of the Condominium Act. The Court held that "while it is open to boards to make expensive decisions about what they regard as pursuant to their obligations to repair without several quotes and full disclosure to owners and without a voted mandate, they do so at the risk that the response will be exactly as it was here." The Court further added that "while repair decisions may be generally left to the board to decide, there is nothing that prohibits their wide consultation and input seeking from owners." The Court also stated that s. 46 of the Condominium Act provides residents with a remedy for situations where boards say to unit owners "this is our decision and that decision is final". The Courts held that this is "a significant remedy for unit holders convinced that they are being governed arbitrarily, their money is being spent unwisely or are otherwise dissatisfied." The Court also held that the power to appoint an administrator is to be used as a last resort for condominiums and not to be used "to allow a board which has lost the confidence of the majority of owners to get their way regardless of the democratic will of the owners."

The Court found, when deciding the issue of costs, that the old Board was not acting in good faith in pushing ahead with unnecessary litigation and preventing owners from exercising their statutory rights to remove and replace directors. The Court also found that the old Board tried to maintain its position as directors when they no longer represented the majority of unit holders. As such, the old Board could not rely on the indemnification provisions in s. 38(2) of the Condominium Act. The Court also found that it would be unfair to have the majority of residents, who opposed the arbitrary measures of the old Board, pay for the costs incurred by corporation as a result of the old Board's actions. The Court did not allow the old Board members to hide behind the shield of the corporation to avoid personal cost consequences of their action. The court ordered costs to be paid jointly by all the old Board members personally in the amount of \$21,300.52. This order to pay costs was in addition to another order in which the old Board had to pay costs personally in the amount of \$15,000.00 for the injunction application. The high cost of bullying in this case cost the old



Sonja Hodis
Barrister, Solicitor & Notary
www.hodislaw.com
sonja@hodislaw.com

Board \$36,330.52 personally¹. Effective communication strategies and the following of democratic principles which the Court emphasized as a fundamental principle in condominiums would likely have saved the old Board the costs awards against them personally. This case clearly illustrates that it does not pay to be a bully.

GSCC No. 50 v. GSCC No. 46 involved a dispute between two condominiums over shared facilities.² Several parties to the shared facilities agreement wanted changes to be made to the shared facilities agreement. Unfortunately, the parties to the shared facilities agreement were unable to reach a consensus. The shared facilities agreement stipulated that any disputes would be resolved by way of mediation and/or arbitration. Instead of properly commencing mediation and arbitration proceedings, GSCC No. 46 threatened to shut off the air conditioning to the units of GSCC No. 50 in the middle of summer months if an agreement could not be reached with respect to the changes requested by GSCC No. 46. In addition, GSCC No. 46 also commenced a separate court action against GSCC No. 50 and other parties.

In response to GSCC No. 46 threats, GSCC No. 50 attempted to persuade GSCC No. 46, prior to commencing their court application, to withdraw their threat to turn off the air conditioning. Unfortunately, GSCC No. 46 would not retreat from their threats and as such GSCC No. 50 commenced an application and obtained an order for an injunction prohibiting GSCC No. 46 from shutting off the air conditioning to the units in GSCC No. 50. GSCC 50 sought full indemnity costs against GSCC 46 as a result of the injunction application. The court ordered GSCC No. 46 to pay GSCC No. 50's full legal costs in the amount of \$14,902.09. The Court found that the injunction application brought by GSCC No. 50 was necessary and very important to GSCC No. 50 as GSCC No. 46 would not retreat from its threats to shut off air conditioning in the middle of the summer, at the height of tourist season, which would have rendered the units in GSCC No. 50 unrentable and would have caused the owners in GSCC No. 50 to suffer an economic loss, a loss of reputation and could have exposed the owners to potential law suits. The court held also held that the same principles that apply between disputes between an owner and a corporation should also apply in the context of shared facilities where multiple condominium corporations co-exist as neighbours. The Court found that it would be "unfair for No. 50 (and its unit owners) as an innocent neighbor to bear the consequences of the costs

¹ The old Board has filed a motion for leave to appeal the costs decisions.

² The shared facilities and the shared facilities agreement also involved several other condominium corporations as well; however they were not party to the court application brought by GSCC 50 against GSCC 46.



Sonja Hodis
Barrister, Solicitor & Notary
www.hodislaw.com
sonja@hodislaw.com

incurred as a result of the unnecessary and unreasonable actions taken by No. 46”.

Lessons learned from these cases are clear. If you are a bully, you may want to think twice before you start your bullying campaign as it may hit you hard in your pocketbook. If you are being bullied, don't be afraid to stand up for your rights as it appears that you have the power of the courts behind you.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. Sonja was litigation counsel to GSCC No. 50. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Other areas of practice include estate administration and disputes, property law disputes and employment law issues. Sonja can be reached sonja@hodislaw.com or you can visit her website at www.hodislaw.com.

NOTE: This article is provided as an information service and is a summary of current legal issues. The article is not meant as legal opinions and readers are cautioned to not act on the information provided without seeking legal advice with respect to their specific unique circumstances. Sonja Hodis, 2013, All Rights Reserved.