

COURT OF APPEAL FOR ONTARIO

CITATION: Metropolitan Toronto Condominium Corporation No. 590 v. The
Registered Owners and Mortgagees of Metropolitan Toronto Condominium
Corporation No. 590, 2020 ONCA 749

DATE: 20201124

DOCKET: C67385

Fairburn A.C.J.O., Juriansz and Nordheimer JJ.A.

BETWEEN

Metropolitan Toronto Condominium Corporation No. 590

Applicant (Appellant)

and

The Registered Owners and Mortgagees of Metropolitan Toronto Condominium
Corporation No. 590

Respondents (Respondents)

Eli S. Lederman and Kelly Hayden, for the appellant

Mark H. Arnold, for the respondents

Heard: written submissions

On appeal from the judgment of Justice Andrew A. Sanfilippo of the Superior Court
of Justice dated July 25, 2019, with reasons reported at 2019 ONSC 4484.

ADDENDUM

[1] On July 21, 2020, we released our decision in this matter in which we
allowed the appeal, set aside the order below, and, in its place, granted an order
amending the Declaration in a manner to be agreed upon by the parties, consistent

with our reasons, or further order of the court. We suggested in our reasons specific wording to amend s. 22 of the Declaration to address the issue that was before us, but we left it to the parties to either accept that wording, agree on alternative wording, or make further submissions. The parties were unable to agree on the wording of any amendment to the Declaration, so they filed supplementary written submissions on the issue.

[2] The appellant is content with the wording of the proposed amendment to the Declaration that we set out in para. 32 of our reasons. The respondents are not. They suggest different wording and submit that s. 23 of the Declaration needs to be amended as well.

[3] We do not agree with the respondents' submissions. What the respondents are attempting to do is to reargue the issues that we decided through our reasons. In particular, the respondents fail to acknowledge that there is a difference between the duty to repair and maintain after damage, and the duty to repair and maintain after normal wear and tear. It is the difference between those two duties that underlay the dispute between the parties, and it was the difference between those two duties that was not clearly delineated in the Declaration. Our proposed amendment to the wording of s. 22 of the Declaration was intended to address that lack of clarity in order to resolve the respective responsibilities of the parties going forward. The amendments proposed by the respondents fail to achieve that fundamental goal.

[4] The respondents also say that para. 24 of the court's earlier reasons should be removed. They say that the determination about the cause of the damage and the failure of the chimney flues was not before this court on appeal. This is a new issue that is being raised by the respondents. It was not a matter upon which the court asked for further submissions nor did the respondents bring any separate motion for such relief. In any event, the wording of para. 24 does not rule on the issue as the respondents suggest that it does. There was no dispute, on the record before us, that the damage to the chimney flues was not caused by some singular event but, rather, arose from the passage of time. That is all that para. 24 of our earlier reasons records. Consequently, we do not entertain the respondents' request in this regard.

[5] The formal order of the court will reflect the amended wording to s. 22 of the Declaration as set out in para. 32 of the court's earlier reasons.

"Fairburn A.C.J.O."
"R.G. Juriansz J.A."
"I.V.B. Nordheimer J.A."