

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
OBD Developments Inc.	)	
	)	<i>Megan Mackey</i> , for the applicant
Applicant	)	
– and –	)	
	)	<i>Carol Dirks and Mohiminol Khandaker</i> ,
	)	for the respondent
Muskoka Standard Condominium	)	
Corporation No. 79	)	
Respondent	)	

Heard on January 23, 2026, at Bracebridge,
by video conference.

S.T. BALE J.

INTRODUCTION

[1] OBD Developments Inc. applies under s. 135 of the *Condominium Act, 1998* for relief from oppression, and in particular, an order requiring Muskoka Standard Condominium Corporation No. 79 to sign a “resort access licence agreement” with respect to the use of certain resort amenities by its unit owners.

[2] MSCC 79 is part of a subdivision on Oak Bay, in the Township of Georgian Bay. It was designed and sold as a resort community. The subdivision includes single family homes, several condominiums, a golf course, and other amenities. When completed, it will include a total of about 535 residential units.

[3] The original developer, Oak Bay Developments Limited, went into receivership in November 2014. In April 2015, while in receivership, it registered the MSCC 79 declaration and description.

[4] In August 2016, OBD Developments Inc. purchased the assets of Oak Bay Developments Limited from the receiver and has continued to develop the subdivision.

[5] The MSCC 79 declaration provided that it would enter into a resort access licence agreement that would entitle unit owners to use certain resort amenities and require MSCC 79 to pay for the use of those amenities by its unit owners.

[6] OBD has attempted to cause MSCC 79 to sign a resort access licence agreement. However, MSCC 79 argues that it has no obligation to do so and has refused to sign. In February 2024, it amended its declaration to remove the requirement for the signing of such an agreement.

[7] OBD argues that MSCC 79's refusal to sign the agreement presented to it for signature is oppressive, unfairly prejudicial and unfairly disregards OBD's interests.

[8] In response, MSCC 79 argues that OBD lacks standing to apply for an oppression remedy under the Act, and that in any event, its refusal to sign the licence agreement is not oppressive or unfairly prejudicial and does not unfairly disregard OBD's interests.

[9] For the reasons that follow, I find that MSCC 79's refusal to sign the licence agreement presented by OBD is not oppressive. It is obligated to sign a licence agreement (but not necessarily the agreement presented by OBD), and if the parties are unable to agree on the terms of the agreement, either may submit the disagreement to mediation and arbitration, under s. 132 of the Act.

BACKGROUND FACTS

[10] Romas Kartavicius is the president of Eden Oak Homes. Eden Oak began developing the Oak Bay subdivision in 2006 through a related corporation, Oak Bay Developments Inc. (not the applicant OBD), pursuant to a master subdivision agreement with the Township of Georgian Bay.

[11] The development was designed to be a resort community with a golf course and marina. Residents would have access to pools, saunas, tennis courts and pickleball courts, and a fire pit, among other amenities. The disclosure statements for all homes in the development provided that the resort amenities would be available to all residents and that all would pay a fee for the use and maintenance of the amenities either directly or through their condominium corporation.

[12] Before construction of MSCC 79, Oak Bay Developments built and sold single family homes on the site, and townhomes which became MSCC 64. MSCC 79 was the third phase of residences in the development.

[13] In November 2014, Oak Bay Developments went into receivership. Romas Kartavicius was the applicant in the receivership application. In April 2015, the receiver registered the MSCC 79 declaration and description, upon behalf of Oak Bay Developments.

[14] In 2016, Mr. Kartavicius incorporated OBD Developments Inc. He regained control of the development when OBD's offer to purchase was accepted by the receiver. Since that time, OBD has continued to develop the subdivision as a resort community. It accepted liability for prior building deficiencies and accepts that it is required to build the amenities promised to unit owners.

ANALYSIS

Issues

[15] The issues to be determined are:

- whether OBD has standing under s. 135 of the *Condominium Act, 1998*;
- whether MSCC 79 is required to sign a resort access licence agreement; and,
- whether MSCC 79's refusal to sign the licence agreement presented by OBD is oppressive or unfairly prejudicial to OBD or unfairly disregards OBD's interests, and if so, the appropriate remedy.

Relevant provisions of the disclosure statement and declaration

[16] The disclosure statement provides that the declarant will be constructing a boathouse and lodge and that purchasers of units in the project will be required to purchase and maintain a social membership entitling them to use and enjoy the facilities in the boathouse and lodge (collectively referred to as the "Oak Bay Club").

[17] The disclosure statement then provides that the condominium corporation will enter into an agreement with the declarant to pay social membership fees upon behalf of the unit owners which would then be collected from the owners as part of their common expenses.

[18] The disclosure statement goes on to provide that if the agreement between the declarant and the condominium corporation is not terminated under s. 112 of the *Condominium Act, 1998* during the first year after turnover of the condominium, that agreement will govern the use of the Oak Bay Club by the unit owners. Alternatively, if the agreement is terminated under s. 112, the agreements between the declarant and the unit owners will govern their use of the club.

[19] The declaration provides that it is a duty of the condominium corporation: "To enter into an agreement with the Declarant governing the use of the Oak Bay Club and the payment of fees by the Condominium for social membership in the Oak Bay Club by Owners of Units in the Condominium ... and to comply with the terms of that agreement."

[20] The declaration also provides that ownership of units in the condominium is restricted to members of the Oak Bay Club, and that membership will be achieved if there is an agreement between the condominium corporation and the "operator of the Oak Bay Club under which the corporation is paying membership fees upon behalf of the unit owners." It then goes on to provide that if there is no such agreement in good standing, each owner is required to enter into an agreement with the operator of the club.

Whether OBD has standing under s. 135 of the *Condominium Act, 1998*

[21] Under s. 135 of the *Condominium Act, 1998*, oppression remedies are made available to unit owners, condominium corporations, declarants and mortgagees of condominium units.

[22] Under s. 1(1) of the Act, a "declarant" is a person who owns the land described in the description and who registers a declaration and description under the Act, and includes a successor or assignee of that person.

[23] MSCC 79 argues that OBD is not a declarant in relation to MSCC 79 and therefore does not have standing to apply under s. 135. I disagree.

[24] The declaration and description were registered by the receiver upon behalf of Oak Bay Developments Limited in April 2015, and it was not until August 2016 that OBD was incorporated. MSCC 79 argues that OBD is therefore not a “successor declarant” because it never owned the land described in the description. However, for a successor or assignee of a declarant to be a declarant under s. 1(1), it is not necessary for it to have ever owned the land. It is only necessary that it be a successor or assignee of a person who owned the land at the time the declaration and description were registered.

[25] MSCC 79 also argues that OBD is not a successor or assignee of Oak Bay Developments Limited because there is nothing in either the receivership order or the agreement of purchase and sale under which OBD purchased the development which provides that OBD is to assume the rights and obligations of Oak Bay Developments as the declarant (other than OBD’s agreement to indemnify the receiver in relation to any obligations under the *Ontario New Home Warranty Plan Act* which would include honouring the statutory warranties that protect unit owners from construction defects). I disagree, and find that OBD is a successor to Oak Bay Developments and therefore is a “declarant” with standing to apply under s. 135 of the Act.

[26] In *Metropolitan Condominium Corporation No. 1250 v. The Mastercraft Group Inc.*, 2009 ONCA 584, at para. 23, the court said the following about the purpose of the “declarant concept”: “Fundamental to the purpose of the declarant concept is the objective of identifying the true owner or owners of the property at the time of registration of the declaration in order to place certain responsibilities on them as the property is converted to a condominium under the Act.”

[27] In the present case, the owner of the property at the time of registration was Oak Bay Developments Limited, and Oak Bay was therefore the declarant. The question is whether OBD is now the declarant as a successor or assignee of Oak Bay. I take from *Mastercraft* that it is fundamental to the declarant concept that there be a declarant, post registration, upon which to place the declarant’s responsibilities. This interpretation is in accord with the consumer protection nature of the Act.

[28] OBD has, as a matter of fact, stepped into the shoes of Oak Bay Developments Limited. It is continuing to develop the subdivision in accordance with the original concept and accepts that it has inherited Oak Bay’s responsibilities as the declarant, including the obligation to complete, and make available to MSCC 79, the amenities referred to in the disclosure statement. And, tellingly, under cross-examination, the president of MSCC 79, Jim Bodnaruk, testified that the condominium corporation “absolutely” expects OBD to build the remainder of the amenities.

[29] The *Condominium Act, 1998* is consumer protection legislation: *Chen v. Brookfield Residential (Ontario) Limited*, 2022 ONCA 887, at para. 13; *Harvey v. Talon International Inc.*, 2017 ONCA 267, 137 O.R. (3d) 184, at paras. 62-6. In the present case, the principals of the original declarant are continuing to develop the subdivision, post receivership, in the name of a new corporation. While in this case OBD accepts that it has the responsibility of a declarant, it would be contrary to the consumer protection nature of the Act to hold that they are not required to do so.

Whether OBD is entitled to require MSCC 79 to sign a resort access licence agreement

[30] MSCC 79 argues that it cannot be required to sign a resort access licence agreement more than one year after turnover, because the disclosure statement provided that any such agreement could be terminated under s. 112 of the Act. However, in *Lexington on the Green Inc. v. Toronto Standard Condominium Corp. No. 1930*, 2010 ONCA 751, 102 O.R. (3d) 737, the court held that s. 112 of the Act should not be interpreted to include the right of a board of directors to terminate obligations of the condominium corporation arising from the corporation's declaration.

[31] MSCC 79 attempts to distinguish *Lexington on the Green* on the basis that in the present case, unlike in *Lexington*, the disclosure statement suggests that a resort access licence agreement entered into by the corporation may be terminated under s. 112, and that in the event of termination, individual unit owners would be required to contract directly with the declarant for use of the amenities.

[32] However, notwithstanding the reference to s. 112 in the disclosure statement, the law, as it turns out, is that obligations contained in a declaration are not terminable under s. 112. Of note is the fact that the decision in *Lexington on the Green* was released on November 9, 2010 which was after the date of the MSCC 79 disclosure statement (May 22, 2010).

[33] Under cross-examination, Mr. Bodnaruk testified that he understood that the condominium corporation was required to sign a licence agreement, and that the reason for MSCC 79's refusal to sign the agreement presented by OBD was that the only amenity built to date is the pool adjacent to the condominium.

[34] MSCC 79 argues that OBD's claim is barred under the *Limitation Acts, 2002*. I disagree, and find that the clock did not begin to run until MSCC 79 refused to sign the licence agreement presented to it in June 2023. This application was issued on March 1, 2024.

Whether MSCC 79's refusal to sign the licence agreement presented by OBD is oppressive or unfairly prejudicial to OBD or unfairly disregards OBD's interests

[35] Section 135(2) of the *Condominium Act, 1998* provides that if the court finds that the conduct of a unit owner, the condominium corporation, the declarant, or a mortgagee of a unit "is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interest of the applicant, the court may make an order to rectify the matter."

[36] OBD argues that MSCC 79's refusal to sign the licence agreement presented by OBD is oppressive or unfairly prejudicial to OBD or unfairly disregards OBD's interests. I disagree, and find that MSCC 79's refusal to sign the agreement is not unreasonable.

[37] In *Noguera v. Muskoka Condominium Corporation No. 22*, 2020 ONCA 46, at para. 17, the court described a two-part test for oppression: first, the applicant must establish that there has been a breach of its reasonable expectations; and second, the respondent's conduct must be oppressive, unfairly prejudicial or unfairly disregards the interests of the applicant. The applicant's expectation must be reasonable "having regard to the facts of the specific case, the relationship at

issue, and the entire context, including the fact that there may be conflicting claims and expectations”.

[38] In the present case, it is reasonable for OBD to expect MSCC 79 to sign a licence agreement (but not necessarily the agreement presented by OBD). MSCC 79 was required by its declaration to do so. Residential units in the development were sold on the understanding that amenities would be built for the use of residents, that fees would be payable for that use, and that membership in the Oak Bay Club was a condition of unit ownership. As mentioned above, this understanding was confirmed by the president of MSCC 79. However, it was not reasonable for OBD to expect MSCC 79 to sign an agreement on terms solely dictated by it, without any input from MSCC 79. In the absence of any particular terms in the declaration, OBD ought to have invited MSCC 79 to negotiate the terms, and in the event that no agreement could be reached, to submit the disagreement to mediation and arbitration.

[39] In the disclosure statement, it was estimated that the yearly fees for use of the full suite of amenities would be approximately \$150 per unit per month. However, most of the promised amenities are yet to be built, and neither the disclosure statement nor the declaration provide any basis for calculating fees on an amenity by amenity basis, as they are built. The only amenity built to date is a pool (one of several that were promised), and there is no timeline for construction of the balance of the amenities. OBD has provided no basis for the calculation of the fee for use of the pool, and by signing the agreement as put forward by OBD, MSCC 79 would not only be agreeing to payment of the fee demanded for use of the pool, but also to paying whatever amounts OBD decided to charge in the future as further amenities are built.

[40] The proposed agreement permits OBD to set and re-set the licence fee from time to time, on a yearly basis, or when further amenities are made available. It also gives OBD the right to make reasonable rules, policies and regulations as in its judgment may be necessary or desirable.

[41] The proposed agreement provides that OBD may, in its sole discretion and without prior notice to MSCC 79, close or limit access to one or more facilities, remove or modify any particular facility, service or item, or substitute a particular facility, service or item with another facility, without limiting MSCC 79's obligation to pay the licence fee.

[42] Of note is that MSCC 64, the only other completed condominium in the development does not have a resort access licence agreement with OBD. Rather, its individual unit owners pay fees directly to OBD. Accordingly, there is no established agreement which could be used as a precedent for an agreement between MSCC 79 and OBD.

[43] The business judgment rule in the corporate law context applies to condominium corporations. The directors of these corporations are better placed to make judgments about their interests and to balance the competing interests than are the courts. If the directors have acted honestly and in good faith and exercised reasonable care, diligence and skill, their actions should be accorded deference: *3716724 Canada Inc. v. Carleton Condominium Corp. No 375*, at paras. 51-53. I find that to be the case here.

[44] Agreements between declarants and condominium corporations are deemed to include the mediation and arbitration provisions set out in s. 132 of the *Condominium Act, 1988*. If the parties

are unable to agree on the terms of their resort access licence agreement, either may submit the disagreement to mediation and arbitration in accordance with s. 132.

[45] For the reasons given, the application will be dismissed.

COSTS

[46] Success on this application has been divided. OBD was successful in arguing that it is a successor to Oak Bay Developments Limited and that MSCC 79 is required to enter into a resort access licence agreement. However, MSCC 79 was successful in arguing that its conduct was not oppressive and that the application should be dismissed. Neither side to the dispute made any effort to negotiate the terms of a licence agreement. In these circumstances, my preliminary view is that there should be no order as to costs. However, if the parties wish to make submissions as to costs, I will consider brief written argument, provided that it is delivered no later than July 10, 2026, by uploading to Case Center, with notice to my judicial assistant, at monica.mayer@ontario.ca.

“S.T. Bale J.”

Released: June 24, 2026

CITATION: OBD Developments Inc. v. Muskoka Standard
Condominium Corporation No. 79, 2026 ONSC 3705
COURT FILE NO. CV-24-00000041-0000
DATE: 20260624

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

OBD Developments Inc.

Applicant

– and –

Muskoka Standard Condominium Corporation No. 79

Respondent

REASONS FOR DECISION

S.T. Bale J.

Released: June 24, 2026