

COURT OF APPEAL

CITATION: The Neighbourhoods of Winfields Limited Partnership v. Death, 2009  
ONCA 277

DATE: 20090402

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COURT OF APPEAL FOR ONTARIO

MacPherson, Sharpe and Rouleau J.J.A.

BETWEEN:

The Neighbourhoods of Winfields Limited Partnership,  
The Corporation of the City of Oshawa

Applicants (Respondents)

and

Ronald Death, Julie Rowland, Michael Death, Jessica Seiffert, Jeffrey Hiltz, Jeremy Hopson, Jennifer Hopson, Eugene Lei, Justin St. Onge, Guangjian Bai, Xiaomei Wen, Jacky Chan, Vinod Dodhia, Chandrakala Dodhia, Paras Dodhia, Emily Frac, Magdalene Leung, Nicky Wong, Andrea Lewin, Orville Lewin, Michael McGiverty, Ralton Myers, Brahm Datt Selhi, Malti Selhi, Richard Shea, Steven Smith, Dennis Symes, Jeanne Symes, David Takeda, Frances Hung, Harold Tomlinson, Rebecca Tomlinson, Sanath Walaliyadde, Lokahita Walaliyadde, Lei Yang, Cyril Smith, Ernestine Smith, Lawrence Greco, Marian Greco, Di Lu, Qing Wang, Peter Dewsbury, Nicole Dewsbury, Shirley Wong

Respondents (Appellants)

Jacky Chan, appellant appearing in person, and for the appellants Shirley Wong, Magdalene Leung and Nicky Wong

Signe Leisk and Nicole Auty, for the appellants Harold Tomlinson, Rebecca Tomlinson, Dennis Symes, Jeanne Symes, Nicole Dewsbury, Peter Dewsbury, Vinod Dodhia, Paras Dodhia, Chandrakala Dodhia, Lawrence Greco, Marian Greco, Cyril Smith, Ernestine Smith

Alan Patton, for the appellants Ronald Death, Julie Rowland, Michael Death, Jessica Seiffert, Jennifer Hopson, Jeremy Hopson, Eugene Lei, Jeffrey Hiltz and Justin St. Onge

Jonathan C. Lisus and Paul Fruitman, for the respondent The Neighbourhoods of Windfields Limited Partnership

David J. Potts, for the respondent City of Oshawa

Heard and released orally: March 31, 2009

On appeal from the judgment of Justice Peter H. Howden of the Superior Court of Justice, dated August 26, 2008.

### ENDORSEMENT

[1] The appellants, three groups of landlords in Oshawa, appeal the judgment of Howden J. dated August 26, 2008, allowing the application by the respondents, the developer Windfields LP and the City of Oshawa, and ordering the appellants to cease using their properties as lodging houses. The appellants contend that their properties are, and operate as, single dwelling establishments for various groups of tenants, mostly students attending the nearby University of Ontario Institute of Technology. Accordingly, the current use of the 28 subject houses is a permitted use.

[2] We disagree. Essentially, this was a fact-driven application. The application judge had to draw a line between two types of accommodation, single dwelling establishment and lodging house as defined in by-law 60-94 of the Corporation of the City of Oshawa. He identified a broad range of factors to consider in relation to the definitions of the two categories of houses and then applied those factors individually to the 30 houses in question.

[3] While there were some differences in the facts relating to the different landlords and their houses, the application judge found that generally the appellants purchased their houses for the purpose of renting out bedrooms on a room-by-room and a short-term basis to individual tenants, added extra rental bedrooms without building permits or with building permits that misrepresented use, and insured the properties as “rooming houses” and “student housing”. He found that the essence of the relationship between the appellants and their renters was one of “lodger” and “proprietor” as defined in the by-law. He essentially found that there was no relationship between the renters other than their use and occupation of single rooms rented for short-term accommodation.

[4] We see no legal error in the application judge’s treatment of the relevant statutory provisions and case law. In particular, we reject the submission that s. 35(2) of the *Planning Act* which prohibits “distinguishing persons who are related and persons who are unrelated in respect of the occupancy or use of a building” barred the application judge from considering as a relevant factor how the renters related amongst themselves when determining whether they constituted a “single housekeeping establishment”. Moreover, his assessment of the factual situations with respect to 30 different houses and his application of the law to those houses is a matter of mixed fact and law and, therefore, is subject to review on a reasonableness standard.

[5] In our view, the application judge’s conclusions are far removed from any fair invocation of the label ‘unreasonable’. His factual findings are solidly grounded in the record and his legal analysis of the relevant statutory provisions and case law is sound.

[6] The appellant Jacky Chan appeals the costs order of approximately \$22,000 made against him in relation to the four houses owned by him and members of his family. We see no basis for interfering with this component of the application judge’s costs order.

[7] On consent, the operation of Howden J.’s order is amended from April 30, 2009 to June 30, 2009.

[8] In all other respects the appeal is dismissed. If the parties cannot reach an agreement as to costs, they are to make submissions one page in length, no later than April 8, 2009.

“J.C. MacPherson J.A.” “Robert J. Sharpe J.A.” “Paul Rouleau J.A.”