CITATION: Castle Hill Neighbourhood Association v. Morse, 2025 ONSC 4522
COURT FILE NO.: CV-25-00742522
DATE: 20250805

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Castle Hill Neighbourhood Association, Applicant

AND:

Jerome R. Morse, Respondent

BEFORE: Schabas J.

COUNSEL: *Tanya Walker*, *Dora Konomi and Jiayu Li*, for the Applicant

David Trafford, for the Respondent

HEARD: July 25, 2025

REASONS FOR JUDGMENT

Background

[1] The Applicant, Castle Hill Neighbourhood Association ("the Association"), is a corporation which manages the common interests of homeowners within the Castle Hill community in Toronto, including upholding restrictive covenants and architectural controls and ensuring that property owners in the community comply with the Association's By-laws.

[2] Castle Hill was developed in the late 1980s and consists of 93 townhouses located just south of Casa Loma. The townhouses are high quality, luxury homes, characterized by a uniform design and appearance from the street. They are all white, row housing, similar to elegant Edwardian row housing found in London, England. The By-laws and restrictive covenants are intended, in part, to ensure that the exterior appearance of the homes remains uniform.

[3] The Respondent, Jerome R. Morse ("Morse") owns one of the townhouses, which he purchased in 1990. For most of the past 35 years he has rented the property to tenants. His property, like all the townhouses in the community, has always been, and continues to be, subject to the Association's governing documents and restrictive covenants registered on title.

[4] However, Morse's house is one of five townhouses that is at the end of a row, such that the north side of his house has an exterior wall abutting a laneway and facing the rear of other townhomes in the community which back on to the laneway. When the house was built, eight windows were installed on the side wall.

[5] In April 2024, Morse's house was damaged by a fire and required substantial repairs and reconstruction. In July 2024, he obtained a permit from the City, which he provided to the Association in January 2025. The permit did not indicate that Morse intended to add any new windows. However, in March 2025, a neighbour observed that openings for new windows were being constructed on the north side of the house, in addition to the existing eight windows. Morse later confirmed, and photographs show, that he wishes to add eight additional windows to the north side of the house.

[6] The additional windows include 3 on the first floor in the living room, 3 on the second floor (one in a bedroom and two glazed windows in bathrooms), and 2 windows in the loft above the third floor.

[7] The Association informed Morse that he required approval of the Board of Directors of the Association (the "Board") to add new windows. Following discussions and correspondence in March and early April between Morse, the Association and the Association's counsel, on April 15, 2025, Morse submitted a formal request to the Association seeking permission to add the new windows. It appears that the previous day, on April 14, 2025, Morse received a building permit from the City allowing the additional windows.

[8] The Board met on April 24, 2025. It voted unanimously to deny consent to the new windows. Morse was informed of the Board's decision the following day in a letter from the Association's counsel. That letter stated, in part:

> The Board's decision is based on its obligation to uphold the governing documents of the Association, specifically section 15.01 of Bylaw 2 and section 3 of the Restrictive Covenants. The consistency of the townhomes' external appearance is fundamental to the community's design and is protected under the Association's governing documents. The Board has applied this standard uniformly, including in past decisions where similar requests have been declined. The matter turns solely on the legal requirements for uniformity and prior approval, which your proposed window openings fail to meet.

[9] The Association directed Morse to cease further work on the new windows and to reinstate the wall to its original design, failing which the Association would pursue legal remedies.

[10] On April 30, 2025, Morse responded, saying he would not comply with the Board's directions.

[11] The Association then commenced this application for, among other things, a declaration that the restrictive convenants and By-law No. 2 are valid and enforceable, that Morse is in breach of those documents, and for an order that he restore the exterior to its original design. The Association also moved *ex parte* for an injunction, which was issued by Koehnen J. on May 8, 2025, ordering Morse to stop any further work on the new windows or from making "any related exterior alterations of the Property."

[12] Following the exchange of evidence and cross-examinations, the application was heard by me on July 25, 2025.

Issues

[13] The application raises two issues:

(i) whether the restrictive covenants are binding; and

(ii) whether the Board's directive is reasonable and enforceable.

The restrictive covenants

[14] The restrictive covenants, relied on by the Association, which were created by the developer and registered in 1989, state in material part:

> *For the purpose of imposing a general scheme of development, enforcing uniformity, and preventing unreasonable interference with the use and enjoyment of each of the dwelling units and appurtenances* (each of which is herein called "part of the Lands") completed or to be completed on the Lands, and to the intent that the burden of this covenant shall run with the Lands and each and every part of the Lands, and to the intent that the benefit of this covenant shall be annexed to and run with each and every other part of the Lands, each purchaser, lessee or other disposes from time to time (herein referred to as the 'Owner") by accepting or registering a deed, lease or other document of entitlement to use and/or possession of any part of the Lands, covenants and agrees on behalf of himself, his heirs, executors, administrators, successors and assigns, with the Board of Directors of the Castle Hill Neighbourhood Association (herein referred to as the "CHNA Board"), and Owner from time to time of each and every other part of the Lands, *that the following covenants, restrictions and provisions are for the benefit of, and the use and enjoyment of each and every other part of the Lands and that the same will be observed, complied with and adhered to* and nothing shall be done, erected or placed upon any part of the Lands in breach, violations or contrary to the fair meaning of the following covenants, restrictions and provisions:
>
> …
>
> 2. *No change shall be made to the exterior of any existing building erected on the Lands* (change to include changing the colour of the exterior face of any walls or to rear exterior deck) and no additional parking area or alteration to any driveway shall be made *without consent of the CHNA Board first having been had and obtained, which consent may be unreasonably withheld*.
>
> …
>
> 11. Notwithstanding anything herein contained, no building, fence (including hedges) or erection of any kind shall be placed or constructed on the Lands unless the plans, dimensions, grade and ground elevations, specifications, exterior materials and colours, and the location thereof as indicated by a siting plan, shall have been first submitted….[Emphasis added.]

[15] By-law No. 2 sets out the duties of the Association in s. 12.01, which include:

> (j) the consistent and timely enforcement of the provisions of the By-Laws, rules and regulations of the Corporation;
>
> …
>
> (l) maintaining architectural and aesthetic control for the upkeep, maintenance, repairs and improvements to the exterior of the Townhomes, including without limitation, the landscaped areas, driveways, walkways and steps.

[16] Section 15.01 of By-law No. 2 states, in part:

> The occupation and use of the Townhome Lots shall be done in accordance with the Restrictive Covenants, the Court Order and the following rules, restrictions and stipulations:
>
> (a) Each Member shall comply and shall require all Members of his or her family, residents, tenants, guests and visitors to his or her Townhome Lot to comply with the By-Laws, rules and regulations from time to time enacted by the Corporation, and any Restrictive Covenants pertaining to the Townhome Lots;
>
> (b) *No changes alterations, additions or improvements shall be made to any portion of the exterior of the Townhomes* (change to include changing the colour of the exterior face of any walls or to rear exterior deck) including without limitation, to any landscaped areas of the Townhome Lots and to any exterior glass, window, door or screen of any Townhome except with the prior written approval of the Board. No additional parking area or alteration to any driveway shall be made. Each Member shall not cause anything to be affixed, attached to, hung, displayed or placed on the exterior walls, balconies, storm shutters, doors or windows of the Townhome. In the event the Board has established a written list of changes, alteration, additions or improvements ("List of Approved Work"), authority to make such changes, alterations, additions or improvements shall be deemed to be with the Board's written approval, provided all work is completed in strict compliance with the specifications set out in the "List of Approved Work…"[Emphasis added.]

[17] In *Shafron v. KRG Insurance Brokers (Western) Inc.*, 2009 SCC 6 (CanLII), [2009] 1 SCR 157 at para. 43, McLachlin CJC observed that "a restrictive covenant is *prima facie* unenforceable unless it is shown to be reasonable" and that "if the covenant is ambiguous, in the sense that what is prohibited is not clear as to activity, time, or geography, it is not possible to demonstrate that it is reasonable."

[18] Morse argues that the restrictive covenants are not valid or enforceable "because they are vague, uncertain, ill-defined and can be enforced on the Board's 'whim'." He submits that the covenants are ambiguous, lack any objective criteria, and therefore are unreasonable and unenforceable.

[19] The validity of a somewhat similar restrictive covenant was considered by R. Bell J. in *Chapadeau v. Devlin*, 2018 ONSC 6456. That decision was upheld by the Court of Appeal in brief reasons which stated that Bell J. "accurately identified the applicable legal principles, properly considered those authorities as they applied to this case, and did not, in our view, err in the manner in which she applied them to the facts before her": *Chapadeau v. Devlin*, 2019 ONCA 767.

[20] *Chapadeau* also dealt with a restrictive covenant relating to the exterior of houses, which stated:

> *Alterations to Exterior*. An Owner shall not make any alteration to the exterior of the Unit without the prior written approval of the Co-Tenancy Committee, unless such alteration is minor or cosmetic in nature, in which event such approval shall not be required. The Co-Tenancy Committee shall determine whether an alteration is minor or cosmetic and its decision shall be final and binding. Such alterations shall be subject to the requirements, if any, of the National Capital Commission.

[21] Bell J. held that the restrictive covenant was not ambiguous, vague or uncertain. She noted that the covenant was a "building scheme" that was designed to preserve the character of a neighbourhood or development. In that regard it differs from a developer's restrictive covenant which is directed to the benefit of the developer or just one property owner, as opposed to all owners. Bell J. described the differences in the following way at paras. 32 and 33:

> [32] A restrictive covenant involves a relationship where one property is subject to restrictions for the benefit of another property. As this relationship, by its very nature, interferes with the free use of land, restrictive covenants are strictly interpreted (*Girard (Re)*, [2007] O.J. No. 5216, 61 R.P.R. (4th) 288 (S.C.J.), at para. 34).
>
> [33] By contrast, under a building scheme, all owners share similar burdens and enjoy benefits relating to limitations on property use. In my view, the interpretation of a restrictive covenant that is part of a building scheme must take into account the building scheme's community of interests, recognizing the burdens imposed upon and the benefits shared by all owners in the community, and considering the building scheme as a whole (*Creston Moly Corp. v. Sattva Capital Corp.*, [2014] 2 S.C.R. 633, [2014] S.C.J. No. 53, 2014 SCC 53, at paras. 48-49 and 57; and *Paterson*, at para. 22).

[22] In *Chapadeau*, Bell J. noted that it was "common ground" that the covenant in issue was a "valid building scheme" observing at para. 28 that:

> (i) both the applicants and the respondents (or their predecessors in title) derived title under a common vendor;
>
> (ii) prior to selling the lands to which the applicants and the respondents are entitled, the vendor laid out his estate for sale in the lots subject to restrictions

> intended to be imposed on all lots and which, though varying in detail as to particular lots, are consistent and consistent only with some general scheme of development;
>
> (iii) the restrictions were intended by the common vendor to be and were for the benefit of all the lots intended to be sold, whether or not they were also intended to be and were for the benefit of other land retained by the vendor; and
>
> (iv) the applicants and respondents, or their predecessors in title, purchased their lots from the common vendor upon the footing that the restrictions subject to which the purchases were made were to enure for the benefit of the other lots included in the general scheme whether or not they were also to enure for the benefit of other lands retained by the vendor (*Berry v. Indian Park Assn.* (1999), 1999 CanLII 1294 (ON CA), 44 O.R. (3d) 301, [1999] O.J. No. 1419 (C.A.), at para. 16).

[23] Similar circumstances exist here. Morse and other original purchasers bought the townhouses from a common vendor, knowing of the restrictions and that they were for the common benefit of all owners, and with the expectation that these restrictions would be enforced. As Bell J. stated at para. 28:

> Reciprocity is the founding concept of a building scheme: benefits within a building scheme must accrue to and increase the value of all the lots, with each lot within the building scheme being both dominant and servient in respect of each of the other lots (*Mohawk Square Developments Ltd. v. Suncor Energy Inc*., [2007] O.J. No. 3552, 62 R.P.R. (4th) 100 (S.C.J.), at paras. 78-79). It is within this context of a community of interests, where a purchaser buys with full knowledge of restrictions, and often because those restrictions confer specific benefits on each owner within the building scheme, that s. 6.2 must be interpreted.

[24] Bell J. distinguished cases which did not involve "building schemes", where the covenant was for the benefit of the developer and was subject to "strict construction", such as *Dean Park Estates Community Assn. v. Wachal*, [2017] B.C.J. No. 1813, 2017 BCSC 1258. In contrast, as Bell J. observed, the British Columbia Court of Appeal stated in *Paterson v. Burgess*, 2017 BCCA 298 at para. 23, that a building scheme must "be construed according to ordinary rules of contractual interpretation." This requires considering the surrounding circumstances including the building scheme as a whole and the intentions of the parties, and the interpretation must "always grounded in the text and read in light of the entire contract": *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 57.

[25] In *Chapadeau* at para. 40, Bell J. rejected the submission that the restrictive covenant in issue required a list of objective criteria, and found the language to be "clear and unambiguous in giving the co-tenancy committee the authority to determine whether an alteration is minor or cosmetic." She also found the language to be "clear and unambiguous in providing that the co-tenancy committee's decision as to whether an alteration is minor, or cosmetic is final and binding." Further, she noted that there was "ample evidence" that

the provision was "capable of interpretation and has, in fact, been interpreted by successive co-tenancy committees."

[26] *Chapadeau* was followed recently in *Sunset Lakes Owners Association v. Gingras* et al., 2025 ONSC 467, which also distinguished building schemes from developer's restrictive covenants, and found a similar restriction on alterations to the exterior of buildings to be valid. Both *Chapadeau* and *Sunset Lakes* held that under a building scheme "all owners share similar burdens and enjoy benefits relating to limitations on property use" and that "[t]he interpretation of a restrictive covenant that forms part of a building scheme must reflect this community of interests." As a result, the absence of specific factors does not make a covenant unduly vague as decision-making is informed by the purpose of the covenant: *Sunset Lakes* at para. 43.

[27] I reach the same conclusion. In this case we are dealing with a building scheme. The cases relied on by Morse, such as *Dean Park Estates* and *Lone* Oak *v. Baillie*, 2019 ONSC 4667, are not building scheme cases and of little assistance.

[28] In my view the restrictive covenant does not require further criteria to be valid. A primary purpose of the restrictive covenants is to ensure that uniformity of the exteriors of the townhouses be preserved. This is set out at the outset, that it is "[f]or the purpose of imposing a general scheme of development [and] enforcing uniformity." Subsection 2 states, unequivocally, that "[n]o change shall be made to the exterior of any existing building erected on the Lands …without consent of the CHNA Board first having been had and obtained, which consent may be unreasonably withheld."

[29] There is no limitation or qualification of the term "exterior" in the restrictive covenants or By-law No. 2. It is not limited to the front or rear of the townhouses, nor is there any exception for the five houses which have exposed sidewalls. The exterior means all of the exterior. The right of the Board to "unreasonably" withhold consent is similar in effect to the "final and binding" words in *Chapadeau* – essentially creating a privative clause: see, e.g. *Yorkville North Development Ltd. v. North York (City)* (C.A.), 1988 CanLII 4701.

[30] The restrictive convenants and By-law No. 2, therefore, contain a clear and unambiguous statement that the exterior of the townhouses are to be preserved in their original form, giving power to the Association Board to enforce the covenant, even to the point of "unreasonably" withholding consent to changes.

[31] Accordingly, the first issue is resolved in favour of the Association. The restrictive covenants registered on title are not ambiguous, vague or uncertain. They are valid and binding on the townhouse owners, including Morse.

The Board's decision

[32] Perhaps because it bears the onus on this application, the Association has raised and addressed the issue of the reasonableness of its decision. However, its argument is essentially the same – that the restrictive covenant is valid, Morse agreed to it when he bought the townhouse, and his remedy, if any, is to vote to change the composition of the Board to try

to get a more favourable decision. The Association also submits that its interpretation and application of the covenant is reasonable and is entitled to deference.

[33] Morse, on the other hand, does not directly challenge the reasonableness of the decision in his factum, nor does he cite any law that would support the court overturning a decision in this context. Indeed, in his factum, Morse states that "[i]f the Restrictive Covenants are enforceable, Morse will comply with them." His argument, then, is based on whether the covenant is valid, which I have addressed. It is not necessary, therefore, to address the second issue.

[34] Nevertheless, much of Morse's argument complains of the unreasonableness of the decision, asserting among other things that there is no uniformity respecting the five townhouses that have exposed side walls, and therefore his changes will not impact on the uniformity of the front of the townhouses. The evidence shows that the exterior side walls of those five townhouses are not uniform. Some have windows, some do not. Several of Morse's proposed new windows are sky windows, which will only let in light as they are too high for people to look out, and thus also will not cause neighbours to feel they must avoid looking in or see people living in the house, or feel that they have lost privacy. Two windows are intended to be glazed.

[35] Morse complains that other owners have been allowed to make changes to the exterior of their homes – citing changes to windows and doors at the rear of some of the townhouses. He also takes issue with the various reasons given by the Association's Board for the decision, which expanded following the initial refusal, which Morse submits makes the decision "subjective and arbitrary." The original reason was the desire to maintain uniformity, but was supplemented with other concerns, including privacy and concerns about setting a precedent for other owners to seek changes.

[36] Even if it can be said that the reasonableness of the decision is challenged on this application, in my view the decision of the Board is owed a very high degree of deference. The covenant is a contract that Morse agreed to, which leaves decision-making to the Board, even unreasonable decision-making. The covenant is for the benefit of the Castle Hill community, and it cannot be said that the Board exceeded its jurisdiction or failed to consider the purpose of the covenant and the broader interests of the community in its decision. In these circumstances, any court intervention in the decision is unjustified.

Conclusion

[37] The application is allowed.

[38] The parties may provide me with written submissions on costs, not exceeding two pages, double-spaced, not including attachments, within 14 days of the release of these Reasons.

Paul B. Schabas J.

Date: August 5, 2025