



Year-end Case Summaries

By Jason Rivait

Patterson v. York Condominium Corporation No. 70, 2018 ONSC 3735

In this case, the court considered whether to grant a series of orders mandating certain actions from the board of York Condominium Corporation No. 70 (“YCC 70”). The applicant, Patricia Patterson, alleged the board had mismanaged YCC 70 by failing to implement the recommendations of experts on how to alleviate financial difficulties. These recommendations included increasing maintenance fees and repairing several common elements, including the parking garage and townhouse roofs.



Ms. Patterson, a resident of YCC 70 and a former member of the board, sought several orders that would have forced the board to implement the

recommendations. Her application also had a personal tone, going beyond these requests to include allegations of impropriety, improper motivation and harassment against the board and a particular board member. The court declined to focus on these additional allegations, and centred their discussion around the actual orders sought.

The board lead evidence disputing the allegation that they were mismanaging YCC 70. They had retained a new management company and had developed a new budget. In this vein, they argued that there was no financial crisis and no need to raise common expenses or implement the other expert recommendations as Ms. Patterson demanded.

The court agreed with YCC 70 and declined to grant the requested orders. They noted that the board had been elected to manage the affairs of YCC

70, and was properly doing so. The court went on to note that the business judgment rule applied, and that the board was in a much better position to make decisions affecting YCC 70 than the court. As such, there was no need for the court to substitute its own judgment for that of the board by granting the requested order. In this regard, and similar to a string of other cases, deference was provided to the reasonable decision-making of the board.

Metropolitan Toronto Condominium Corporation No. 596 v. Best View Dining Ltd. and 2465031 Ontario Limited 2018 ONSC 5058

In 2015, Best View Dining Ltd. (“Best View”) entered into a 10-year commercial lease with the owner of the unit (being 2465031 Ontario Limited). Best View opened and operated a restaurant, spending hundreds

of thousands of dollars on renovations in the process. Metropolitan Toronto Condominium Corporation No. 596 (“MTCC 596”) was a mixed-use condominium corporation with both commercial and residential units.

The restaurant was noisy, and the residents of other units complained that the restaurant was violating the declaration and rules, which prohibited owners/occupants from creating noise.

MTCC 596 took enforcement steps and obtained an order requiring Best View (the tenant) and the owner of the unit to abate the noise transmission.

Despite the court order, the noise, and the complaints continued. In turn, MTCC 596 brought a contempt motion against Best View and the owner on the basis that they were breaching the prior court order. The court did not award the contempt order, but did require Best View and the owner to take further remedial steps to reduce the noise transmission. In the interim, the contempt motion was adjourned.

The issue in the case was how to deal with the legal costs MTCC 596 had

incurred in pursuing the two orders. It was understood that the legal costs associated with obtaining the original compliance order were collectible against the owner as common expenses under s. 134(5) of the *Condominium Act*, 1998 (the “Act”), as these were costs incurred to obtain the order.

Because Best View had failed to pay these costs (which were added to the common expenses for the unit), MTCC 596 registered a lien against the unit.

The legal fees MTCC 596 had paid in pursuing the contempt order were more contentious. The court found that these costs did not fall under s. 134(5) of the Act because they were not costs associated with obtaining the order, in keeping with the strict text of the statute. As such, they could not be recovered as common expenses under s. 134(5) of the Act. However, MTCC 596 could collect the contempt order expenses under s. 85(1) of the Act, which permits condominium corporations to claim legal costs incurred in connection with the collection or attempted collection of unpaid common expenses.

On this basis, the court concluded that MTCC 596 had properly registered a lien against the owner for legal expenses incurred to obtain the compliance order and pursue the contempt motion.

Peel Standard Condominium Corporation No. 984 v. 8645361 Canada Limited 2018 ONSC 4339

In this case, the court made a rare order requiring a unit owner, Mr. Ahmed, to vacate and sell his unit.

Peel Standard Condominium Corporation No. 984 (“PSCC 984”) sought the order because of Mr. Ahmed’s bad behaviour. Mr. Ahmed had been a disruptive resident – yelling and cursing in common areas, and being verbally offensive and abusive to condominium staff, the board, occupants and guests. In a particularly notable incident, Mr. Ahmed had disrupted PSCC 984’s annual general meeting and assaulted the president of the condominium corporation when he threw a water bottle at him.

As this behaviour progressed, PSCC 984 obtained court orders against Mr. Ahmed on three different occasions. Mr. Ahmed blatantly ignored the court orders, and indeed, they seemed to cause his behaviour to escalate. For example, the court made an order that stated Mr. Ahmed was prohibited from contacting, communicating, harassing, or coming within 25 feet of the condominium personnel. He subsequently approached a married resident, tried to take her hand and asked her to be his girlfriend. The occupant called the police. Mr. Ahmed returned to her later that day, causing the police to be called again.

Overall, Mr. Ahmed’s behaviour made the board, property management and staff afraid to come to work. Occupants consistently complained about his inappropriate conduct.

In light of these facts, the court ordered Mr. Ahmed to sell and vacate the unit. They also issued a permanent injunction against him, preventing him from contacting, communicating, harassing or coming within 25 feet of the condominium personnel. ■

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