CITATION: Laxmi Real Estates Inc. v. Toronto Standard Condominium Corporation No. 2470, 2025 ONSC 3417
COURT FILE NO.: 23-00710262-0000
DATE: 20250610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
LAXMI REALESTATES INC., 10221821 CANADA INC., 2405125 ONTARIO CORPORATION, and A.J. MEDICAL CENTRE INC.	)	*Jonathan Wright* and *Megan Molloy*, for the Applicants
Applicants	)	
	)	
– and –	)	
	)	
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2470	)	*John De Vellis*, for the Respondent
Respondent	)	
	)	
	)	**HEARD:** June 4, 2025

PAPAGEORGIOU J.

Overview

[1] The Applicants are owners of condominium units located in the condominium building managed by the Respondent, the Toronto Standard Corporation No. 2470 ("TSCC2470" or the "Corporation").

[2] The building is a commercial condominium. There are 23 units.

[3] There are three different types of businesses operated at this building: restaurants; salons; and medical clinics. The Applicants all operate medical clinics, while the Board members and others own units that operate as restaurants and salons.

[4] On August 30, 2024, the Applicants brought a motion for the appointment of an Administrator, pursuant to s. 131 of the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended. The main reasons for the application were alleged issues with corporate governance, poor financial management, a failure to comply with the *Condominium Act*, and a distrust of the current Board to implement the repairs and other items set out in a recently passed Reserve Fund Study.

[5] On September 17, 2024, I dismissed the motion without prejudice to the Applicants returning to Court on an expedited basis if the Corporation had not made sufficient progress towards addressing the matters that led to this application, by January 1, 2025.

[6] I was satisfied that the Applicants had established that the current Board had not effectively managed TSCC2470, and that this mismanagement was substantial, including the failure to comply with the Act. The Applicants had shown that the current Board had failed to conduct required AGM's, failed to provide unit holders with financial statements as required, auditors had noted noncompliance with the *Condominium Act*, the Corporation had been insufficiently funded since its inception, the Reserve Fund was underfunded, the Corporation had failed to pay invoices as required, had failed to keep the premises sufficiently clean, had failed to effect needed repairs, and had failed to comply with the provisions of the *Condominium Act* with respect to the completion of a Reserve Fund study.

[7] However, after the Application was commenced the Board did take steps towards establishing a new budget. It raised common expenses and levied a Special Assessment to be paid over 12 months that would be sufficient to conduct the required repairs based upon the costs set out in the existing Reserve Fund Study. The Board said that it was committed to effecting repairs, passing annual budgets, and following the recommendations of the new property manager who had particular experience taking over corporations in trouble.

[8] The cost of an Administrator could be significant relative to the size of the Corporation, and the Applicants had not provided sufficient evidence regarding what the potential costs could be. Given the steps that the Corporation had taken recently and the retention of a new and skilled property manager, I was not persuaded that the appointment of an Administrator was the only reasonable prospect of bringing order to the affairs of the Corporation at that time or that the current situation justified the appointment of an Administrator when there were potential unforeseen costs related to the cost of an Administrator that could severely damage the businesses of all unit holders. This was particularly so, given how small the building is. I was particularly attuned to the potential disparate finances of these parties and the impact of such costs on the restaurant and salon owners whose finances might not be the same as the medical clinics.

[9] In all the circumstances I was not satisfied that it was just and convenient, as well as in the best interests of the unit owners, that an Administrator be appointed at that time.

[10] I concluded that the Board should be given a chance to continue with the progress it had made but that if the Applicants continued to have concerns because of insufficient progress as of January 1, 2025, they could return to court to seek the appointment of an Administrator on an expedited basis before me and/or for any other relief that they may be entitled to at law. I concluded that this approach balanced the interests of all the parties, ensured that the parties did not incur the unpredictable cost of an Administrator unnecessarily, and ensured that the appointment of an Administrator would truly be a last resort, in accordance with the legal test.

[11] The Applicants then took the position that the Board had not taken adequate steps and as per my Order, returned to court seeking the appointment of an Administrator.

Decision

[12] I grant the order sought and appoint an Administrator over the affairs of the Corporation.

Issue

[13] Have the Applicants demonstrated that it is just and convenient, as well as in the best interests of the unit owners, that an Administrator be appointed?

Analysis

The Law

[14] The *Condominium Act* vests in the unit owners the power to manage the affairs of the corporation through an elected board. Self-governance is the norm: *Bahadoor v. York Condominium Corporation No. 82* (2006), 53 R.P.R. (4th) 281 (Ont. S.C.), at para. 26.

[15] Nevertheless, the Act recognizes that there are circumstances where a corporation must be overseen by an outside party, at least for a time. Section 131 of the Act permits the Court to appoint an Administrator, if the appointment would be just or convenient in regard to the scheme and intent of the Act, and if determined to be in the best interests of the unit owners. Courts take into account a variety of circumstances when considering whether an Administrator should be appointed: *York Condominium Corporation No. 42 v. Hashmi*, 2011 ONSC 2478, at para. 6; *Skyline Executive Properties Inc. v. Metropolitan Toronto Condominium Corporation No. 1385* (2002), 17 R.P.R. (4th) 152 (Ont. S.C.), at para. 26; and *Bahadoor*, at para. 28. The case law establishes the following factors:

- a demonstrated inability of the board to manage the corporation.
- the existence of substantial misconduct or mismanagement or both.
- the necessity of bringing order to the affairs of the corporation.
- whether the Board has formulated an operating and project expenditure plan that presents a reasonable prospect of achieving the orderly management of the affairs of the corporation.
- the existence of a struggle within the corporation amongst competing groups which impedes or prevents proper governance of the corporation.
- whether only the appointment of an administrator has any reasonable prospect of bringing order to the affairs of the corporation.

[16] These factors must be balanced against the cost of appointing an Administrator: *Bahadoor*, at para. 28.

[17] Further, the power to appoint an Administrator under s. 131 should only be invoked as a last resort. In that regard, when a court is considering this issue, there must be a good reason for why the unit owners should not manage their corporation's affairs through an elected board: *York*, at para. 7; *Bahadoor*, at para. 26.

Events Since September 17, 2024

[18] In paragraphs 84 and 85 of my decision dated September 17, 2024, I set out the work that would likely have to be done including updating the Reserve Fund Study to ensure that it correctly sets out funds that need to be raised, and if they are not, that they raise additional funds; retaining experts to conduct necessary repairs; arranging for a building audit; reviewing the various operating matters and addressing fairness issues in respect of garbage collection, cleanliness, as well as other concerns raised by the Applicants, which I set out in the decision. I noted that I expected the parties to work together towards addressing their common interests so that the expenses of an Administrator would not be necessary.

[19] To a large extent, most of this has not been accomplished and the Corporation had not made sufficient progress as of January 1, 2025, or even as of this hearing.

Communications Among the Parties

[20] In general, and as admitted by the property manager, the Corporation has not communicated with the Applicants regarding progress or to work through the issues the parties have and that were raised in the previous Application. This would have been advisable so that the parties could have worked toward their common goals and so that the Corporation could have better understood the Applicants' perspective.

[21] While the Corporation makes much of the fact that the Applicants sought a date for a hearing before the January 1, 2025 deadline, sometime in late December, this was because the Corporation had had no communications with the Applicants about any progress and the Applicants considered that there had been none. Because of court delays, the Applicants wanted to ensure that they reached out to the court as soon as possible to obtain a date if one was necessary.

Delay in Getting Started

[22] The Board did not meet until October 30, 2024, (43 days after the court decision) to discuss issues that had to be addressed. It offered the excuse that a Board member was out of the country and did not want to meet via zoom.

[23] At this meeting, the Board did approve a resolution to retain Athulux Building Science Inc. ("Athulux") to conduct a condition assessment of the building envelope and other common elements. The Corporation says that it had sought the Athulux quote immediately after my decision

and then was waiting until the October 30, 2024 board meeting to approve it. However, in my view, given the circumstances, the failure to meet earlier to approve the retention of Athulux shows a failure to take the court decision seriously.

[24] The minutes do not show any discussions pertaining to the court decision, the needs and complaints of the Applicants.

[25] At this meeting the Board also showed a continuing pattern of deferring important matters related to lights, catch basins and rain collars. The Board also showed that it was still not following the property manager's recommendations which I had referenced in my decision. In that regard, the property manager had stressed that the installation of new rain collars should be completed before cold weather and snow ensues and the total cost was only $874 including HST. Nevertheless, the Board indicated that it would revisit this issue at a future meeting.

[26] There is only one other set of minutes the Corporation produced dated February 12, 2025 and these minutes do not detail much other than to say that the Athulux Assessment had been reviewed and that they directed the Corporation to obtain a priority list based on urgency.

Cleanliness

[27] As well, at the October 30 Board meeting there was discussion about choosing the cleaning service. There were considerable concerns about the cleaning that had been done at the last hearing and reflected in my decision. Nevertheless, the Board had two quotes one for $1,627 from a new cleaner and a quote for $1,243 from the previous cleaner and decided to continue with the same cleaning service stating in the Minutes that they had previously provided reliable cleaning services in the past.

[28] I disagree that the Corporation's efforts related to garbage are sufficient. All it has done is increase the number of days of garbage pickup from three to four days, installed a CCTV camera to determine who is improperly disposing of garbage and sent notices to owners relating to garbage. It says it has begun taking more enforcement measures against those who violate garbage disposal procedures and took steps to address unexpected overflows but its efforts have been insufficient because problems still exist.

[29] There are photos that show the state of the garbage room at times in December 2024 which is unacceptable. On occasion the Applicants could not even open the door to the garbage room due to the pile up of garbage. One affiant testified that the entrance was very slippery with water and oil. Additionally, the cleaners do not even have access to hot water facilities to properly mop the premises.

[30] This is not merely an issue of the garbage being visible, there is a stench of garbage and food waste that the medical clients are exposed to.

[31] As noted, the Corporation did add an additional garbage pick-up day but this was not until January 31, 2025, after the Applicants had already sought to schedule this hearing. As well it

appears that it did so because there were two new restaurants and not because of the Applicants' concerns.

[32] The Corporation's other response to this is that they have seen the Applicants leave the door to the garbage room open and that they should not bring clients in through the hallway but rather through the front door. The Corporation is basically suggesting that the Applicants not use the common area hallway instead of the Corporation addressing the issue. This solution is also unworkable because in the winter, entering the medical units through a front door would create a blast of cold.

[33] Finally, I reject the proposition that the Applicants' pictures are selective because the Corporation has submitted photographs for the period from January 15 to February 15 2025 that do not show the same kinds of problems as the pictures submitted by the Applicants. These photographs are time stamped and taken at one point each day, and not even the same time of day which would be more persuasive. The production of some pictures at certain varied times of the day that show no problems in the garbage room does not displace the evidence of times when there are problems. The fact that one of the Applicants agreed when cross examined that the situation is "a little" better is not an admission that the problems have been fixed.

[34] The experienced property manager agreed that the problem was that there is no full-time contractor for cleaning and no fulltime garbage collection that contributes to problems. The onsite property manager also wrote to one of the Applicants on January 10, 2025 saying that the problem may be that there needs to be a full time cleaner to address the issue and that he would bring it up and recommend reviewing the situation but it does not appear that this has been done.

[35] This continues to be a health and safety issue for the Applicants.

The Athulux Assessment

[36] The new Athulux Building Condition Assessment (the "Assessment") was completed on January 31, 2025 and identified many defects. It has increased the anticipated costs of repair to $610,437. I note that this was one of the concerns raised previously by the Applicants, that the study commissioned by the Corporation needed to be updated and that the Special Assessment levied to address concerns would likely not be sufficient to address outstanding issues. They were correct.

[37] The Assessment outlined recommendations. The Estimated Cost was set out in a table with the heading indicating that this was the estimated cost for repairs carried out for priority 1, 2 and 3 in one phase with all items carried out together. The engineer indicated that the items were important and should be done as soon as possible to prevent further items and that it believed that the "repairs to the above items cannot be postponed or eliminated."

[38] The engineer also set out repairs based upon three phases being completed consecutively, one in 2025, then in 2026 and 2027. This is somewhat inconsistent with the engineer's first position but I note that in the February minutes the Board stated that they had indicated that the Board

intended to obtain a priority list based upon urgency. It may be that the engineer already had the Board's position in this regard and so set out the phases in the report notwithstanding the engineer's first position that all repairs should be carried out at the same time and right away. I also note here that the engineer would likely not have been privy to all the issues plaguing this building and concerns raised by the Applicants which is the context for the required repairs.

[39] I reject the Corporation's argument that pursuing these repairs in phases in all the circumstances is sufficient progress.

[40] Notwithstanding that the problems and issues have been present for ten years and are significant, notwithstanding the Applicants' concerns and notwithstanding the engineer's first recommendation to do all repairs at the same time, the Board has determined that it will do repairs based upon phases such that the repairs will not be completed until sometime in 2027.

[41] The fact that the Corporation may have commenced addressing issues and done some things is insufficient in the context of the past application and my previous decision.

[42] I add that proceeding by way of a phased approach has increased the overall costs to unit holders by $40,000 which makes little business sense apart from showing a lack of urgency.

The Reserve Fund

[43] Phase 1 costs of $361,215 will wipe out the Reserve Fund. The Board has not yet taken any steps to raise the revenue required to address all needed repairs and there is no mention in the Minutes regarding this.

[44] There is now a deficit in the Reserve Fund of approximately $400,000. There is no financial plan to fund the Reserve Fund and so the Corporation is back to where it started when it sought to regularize these financial issues when the matter first occurred before me. Although the Corporation says that they have an updated Reserve Fund being prepared, there is no copy of any proposal or draft or invoice for it.

[45] The Applicants and other unit holders should not be in the position where there are perpetual special assessments. This does not provide certainty as to what their costs will be. It also impacts the value of their units since special assessments go on a Status Certificate and makes it difficult to sell a condominium particularly where there have been issues with an underfunded Reserve Fund.

Operating Plan and Project Expenditure Plan

[46] There is an insufficient operating plan and project expenditure plan. Even though there is a new building assessment, there is insufficient evidence in the Respondent's record that would indicate that the work has been contracted for, tendered or scheduled.

Repairs and Maintenance of Matters that the Corporation Already Knew About.

[47] There were repairs outlined in the Athulux Assessment, but there were many needed repairs that the Corporation was aware of before this Assessment and which it could have begun.

[48] Overall, the Board has demonstrated a disturbing lack of urgency to fix matters that were raised in the previous Application. As of January 1, 2025, and even as of this hearing, the Corporation has failed to conduct the repair and maintenance of many aspects of the common elements which the property manager had promised would be resolved in the 2024 calendar year at the last application.

[49] The new property manager admitted that this building is in worse condition than many condominiums that are 40 to 50 years old.

Snow Removal

[50] There had been insufficient attention to snow removal. The businesses open at 8:30 but often the snow does not get removed until the late afternoon. On several occasions the snow piled up in the front of the doors and prevented staff and patients from opening them. They had to call the unit owners and wait until the owners came with a shovel to clear the snow. Many of the Applicants' clients are elderly and this is an unacceptable situation.

[51] The new property manager admitted that the snow removal contract needed to be revisited.

Parking

[52] Parking is still an issue.

The New Property Manager

[53] One of the reasons that I did not order the appointment of the Administrator was the Corporation's assertions related to a new and experienced property manager. However, he only spends ten hours a month on the Corporation which he says he visits on his way home from other corporations that he manages. The onsite work is done by others and the new property manager is not the one directing the matters that need to be done.

[54] Despite the promise that the new property manager has experience with addressing corporations in difficulty, the evidence supports the conclusion, on a balance of probabilities that he is not fully engaged in this work. When cross examined, he was unaware of facts related to several issues.

Failure to Address Fairness Among Unit Owners

[55] There continues to be a struggle within the Corporation among competing groups, in particular the owners of medical units and owners of units with restaurants and salons. It has insufficiently sought to address the Applicants' needs and balance them against the needs of the other unit holders.

[56] As submitted by the Corporation, it is evident that the Applicants do not trust the current Board. There are legitimate reasons for this and I reject the argument that this Application is only about mistrust as opposed to numerous problems that the Board has failed to sufficiently address or have a plan to address.

[57] I agree that the evidence supports the conclusion on a balance of probabilities that the Board has failed to support one of the principal objects of the *Condominium Act* which is to achieve fairness among the unit owners, their tenants and the corporation: *York Condominium Corp. 42 v. Hashmi*, 2011 ONSC 2478, at para. 40; *Bahadoor v. York Condominium Corporation No. 82*, 2006 CanLII 40487 (ON SC) at para. 27.

Conclusion

[58] I gave the Board a deadline of January 1, 2025 to demonstrate that it was working towards the issues set out therein and that it was making sufficient progress.

[59] While it has made minor progress and addressed some issues, overall, it has failed to make sufficient progress given the gravity of the situation. It has failed to show that it has a satisfactory plan to address the issues both in terms of doing the work and having a financial plan to be able to do so.

[60] The evidence also demonstrates on a balance of probabilities that the Board does not take any significant steps to address many issues until the Applicants take or threaten to take it to court.

[61] The Applicants cannot be forced to continually come to court so that the Board finally takes steps to address issues.

[62] The Applicants have obtained a quotation from the proposed Administrator which reflects a cost of $7,000 which is reassuring. The Applicants are so concerned that they have also offered to pay for this themselves but I am not making that a term of this order.

[63] I am satisfied based upon the above that the Board has demonstrated an inability to manage the Corporation, there is a need to bring order to the affairs of the Corporation, there is a clear struggle between the unit owners because the Board is composed of individuals who run restaurants and salons who have different needs than the Applicants who are medical clinics and the Board is not taking into account the needs of the Applicants. Given what has happened, and the Board's failure to address matters after the hearing in August 2024, I am satisfied that the appointment of the Administrator has the only reasonable prospect of bringing order to the affairs of the Corporation.

[64] As well, the parties have a competing vision of the reasonable way of managing the building given the different needs of the unit owners. They have not been able to figure out how to work and live together. The Administrator will be able to bring an even handed and objective approach to some of the disputes that the parties have been having over their differing needs.

[65] In all the circumstances, it is just and convenient, as well as in the best interests of the unit owners, that an Administrator be appointed.

Costs

[66] Pursuant to s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, costs are in the discretion of the court. Rule 57 of the *Rules* sets out the factors which courts should have regard to when awarding costs. The overall objective is "to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant": *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26; *Clarington (Municipality) v. Blue Circle Canada Inc.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 52; and *G.C. v. Ontario (Attorney General)*, 2014 ONSC 1191, at para. 5.

[67] The Applicant seeks costs on a substantial indemnity basis in the amount of $60,821 or alternatively on a partial indemnity basis in the amount of $46,173.72.

[68] I agree there is no basis for a substantial indemnity award which is rare. The Respondents reference an offer that they made to settle where the current Board president offered to resign, someone from the Applicants could be appointed and the new property manager was replaced. They say that the Applicants should receive lower costs because had they accepted this offer, the problems would have been addressed. However, the Applicants submitted that this would have fixed nothing since the Board has three members and the other two Board members have been making decisions that the Applicants are dissatisfied with. They could simply outvote the Applicant representative every time.

[69] The Respondents partial indemnity costs are $37,268 which are comparable to the Applicants'.

[70] I have reviewed the rates and time spent. Given the importance of the matter to all parties and its complexity which was medium, and in all the circumstances, the fair and reasonable costs award for this matter that the Respondent could expect to pay is $40,000.

Papageorgiou

Released: June 10, 2025

CITATION: Laxmi Real Estates Inc. v. Toronto Standard Condominium Corporation No. 2470, 2025 ONSC 3417
COURT FILE NO.: 23-00710262-0000
DATE: 20250610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

LAXMI REALESTATES INC., 10221821 CANADA INC., 2405125 ONTARIO CORPORATION, and A.J. MEDICAL CENTRE INC.

Applicants

– and –

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2470

Respondent

REASONS FOR JUDGMENT

Papageorgiou J.

Released: June 10, 2025