

COURT OF APPEAL FOR ONTARIO

CITATION: Metropolitan Toronto Condominium Corporation No. 1067 v. 1388020
Ontario Corp., 2025 ONCA 796
DATE: 20251124
DOCKET: COA-25-CV-0286

van Rensburg, Dawe and Madsen JJ.A.

BETWEEN

Metropolitan Toronto Condominium Corporation No. 1067

Plaintiff (Respondent)

and

1388020 Ontario Corp.

Defendant (Appellant)

Yan David Payne and Pratik Batta, for the appellant

Antoni Casalnuovo, for the respondent

Heard: November 10, 2025

On appeal from the order of Justice Loretta P. Merritt of the Superior Court of Justice, dated February 3, 2025, with amended reasons reported at 2025 ONSC 667.

REASONS FOR DECISION

[1] The appellant, 1388020 Ontario Corp., provides medical diagnostic services. Its principal is Dr. Birinder Singh Ahluwalia. We will follow the convention adopted by the parties and refer to the appellant as “BSA”, after Dr. Ahluwalia’s

initials. Since 2007, BSA has owned eight units in a commercial condominium development that is controlled, managed, and administered by the respondent, Metropolitan Toronto Condominium Corporation No. 1067 (“MTCC 1067”). BSA appeals from an order granting summary judgment in MTCC 1067’s favour in an action over alleged condominium common expense arrears.

A. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

[2] As the owner of multiple condominium units, BSA is required to make monthly payments of a proportional share of MTCC 1067’s common expenses, in accordance with the provisions of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “Act”) and the provisions of MTCC 1067’s Declaration and bylaws.

[3] In 2016, MTCC 1067 sued BSA over its failure to pay its share of the common expenses. This litigation was resolved in 2017 based on a partial settlement in which BSA acknowledged that it owed \$114,794.10 in common expense arrears, which Dr. Ahluwalia agreed to pay personally: *Metropolitan Toronto Condominium Corporation 1067 v. 1388020 Ontario Corp.*, 2017 ONSC 4793.

[4] In May 2024, MTCC 1067 registered a lien over BSA’s units pursuant to s. 85 of the Act, alleging that BSA had not paid its share of the condominium’s common expenses since January 2021. In June 2024, MTCC 1067 commenced an action against BSA seeking compensation under the oppression remedy in

s. 135 of the Act and vacant possession of BSA's units. BSA defended the action. According to BSA, MTCC 1067 had agreed to give BSA a 25 percent discount if it made its common expense payments in cash, which BSA claimed to have done.

[5] MTCC 1067 moved for summary judgment. The motion judge permitted Dr. Ahluwalia to represent BSA on the motion, and he filed a responding record and made submissions.

[6] The motion judge granted summary judgment to MTCC 1067 in the amount of \$495,888.39, plus prejudgment and postjudgment interest. She found that \$110,883.29 of the damages awarded, for common expenses from March 2024 to September 2024, was secured by the condominium lien, and that the remaining \$385,005.10 was unsecured. However, the motion judge made an order under ss. 135 and 136 of the Act declaring that the entire amount of the judgment would be secured by the condominium lien, along with the interest and MTCC 1067's costs. She also granted MTCC 1067 vacant possession of BSA's units.

B. ANALYSIS

1. Did the motion judge err by granting summary judgment?

[7] BSA's primary argument on appeal is that the motion judge erred by finding that this case was amenable to summary judgment, even though it raised issues of credibility.

[8] According to Dr. Ahluwalia, the parties had made a series of written agreements in which they agreed that BSA would receive a 25 percent discount if it made its common expense payments in cash. His evidence was that BSA made a series of cash payments to MTCC 1067, as well as some other payments by cheque. MTCC 1067's records do not show the cash payments, but Dr. Ahluwalia alleged that these records were falsified.

[9] MTCC 1067's property manager, Diana Young, denied that MTCC 1067 had ever agreed to give BSA a discount if it paid in cash. She also denied that MTCC 1067 had received any substantial cash payments from BSA, explaining that it had a policy of not accepting large payments in cash.

[10] MTCC 1067 and BSA both alleged that the other side was relying on falsified documents and attacked the credibility of the other side's witnesses. Dr. Ahluwalia alleged that Ms. Young had falsified MTCC 1067's financial records, and also sought to rely on documents from other court proceedings in which Ms. Young's former husband alleged that she had acted dishonestly. For her part, Ms. Young challenged the veracity of the agreements and receipts adduced by BSA, some of which she had purportedly signed, by denying that these documents bore her true signature.

[11] The motion judge concluded that she could use her enhanced fact-finding powers under r. 20.04(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

to fairly resolve the dispute between the parties. She proceeded to find that Dr. Ahluwalia's evidence was "not credible" for multiple reasons, and entirely rejected it. She concluded:

I find that MTCC 1067 and BSA did not enter into the Agreements, and BSA did not pay cash as alleged in the Receipts. Having resolved the credibility issues using the enhanced powers under r. 20.04(2.1) to weigh the evidence and evaluate the credibility of the deponents based on the evidence filed, I find that this matter is appropriate for summary judgment.

[12] BSA argues that the motion judge erred by deciding that she could fairly resolve the dispute between the parties without a full trial and *viva voce* evidence. BSA also argues that the motion judge made a further error by focusing entirely on the credibility and reliability of Dr. Ahluwalia's evidence, without applying equal scrutiny to Ms. Young's own credibility and reliability.

[13] On the first point, the fact-finding powers in r. 20.04(2.1) "are discretionary and are presumptively available; they may be exercised *unless* it is in the interest of justice for them to be exercised only at a trial": *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 45 (emphasis in original). We are not persuaded that the motion judge made any errors that would allow us to interfere with her discretionary decision that the interests of justice in this case did not require a trial. The motion judge correctly instructed herself about the inherent difficulties of resolving credibility issues on a paper record, but decided that she could

nevertheless fairly decide the case on the record before her using the powers under r. 20.04(2.1) to weigh the evidence and evaluate the credibility of the deponents. This was a discretionary determination that is entitled to appellate deference, and we see no basis for interfering with the motion judge's exercise of her discretion: *Hryniak*, at para. 83.

[14] On the second point, we are not persuaded that the motion judge made any palpable and overriding errors that would justify our interfering with her factual findings: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 1, 10-11. The motion judge gave extensive and detailed reasons for rejecting Dr. Ahluwalia's evidence that BSA had made extensive cash payments to MTCC 1067, and noted that this was BSA's only defence. She also found that there was "nothing to support Dr. [Ahluwalia's] bald allegation that [MTCC 1067's] Ledger is fraudulent." Read as a whole, her reasons adequately explain why she decided the case as she did: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at paras. 17-18.

2. Did the motion judge err by not addressing whether some of MTCC 1067's claim was limitations-barred?

[15] BSA's second ground of appeal, advanced in the alternative, is that the motion judge erred by not addressing whether part of MTCC 1067's claim for common expense arrears was barred by the two-year limitation period in s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

[16] It is well-settled that “[t]he expiry of a limitation period does not render a cause of action a nullity; rather, it is a defence and must be pleaded”: *Beardsley v. Ontario* (2001), 57 O.R. (3d) 1 (C.A.), at para. 21. As Laskin J.A. noted in *Metropolitan Toronto Condominium Corporation No. 1352 v. Newport Beach Development Inc.*, 2012 ONCA 850, 113 O.R. (3d) 673, at para. 116:

The rules call for a limitation defence to be pleaded in the statement of defence. A plaintiff is entitled to reply to a statement of defence and put before the court further facts, for example, on the question of the discoverability of the claim.

[17] In this case, BSA did not plead a limitation defence in its statement of defence. BSA raised the possibility that it might have a limitation defence in a single sentence in the factum it filed on the summary judgment motion, stating without elaboration that MTCC 1067 was “statutory [*sic*] barred from collecting monies back to 2017 and onwards.” However, Dr. Ahluwalia did not address this issue in his oral submissions, and instead focused on BSA’s position that it owed nothing because it had actually made full payment of its share of the common expenses.

[18] It is true that MTCC 1067’s counsel engaged with the limitations issue at the summary judgment motion, submitting in his factum and in oral argument that MTCC 1067’s claim was not limitation barred because it was governed by the ten-year limitation period in the *Real Property Limitations Act*, R.S.O. 1990, c. L.15. However, Dr. Ahluwalia never challenged MTCC 1067 on this issue. In these

circumstances we are not persuaded that it was an error for the motion judge not to expressly address the limitations issue in her reasons. Based on how BSA had pleaded its defence and how Dr. Ahluwalia argued the motion, she had no reason to think that this was a live issue she was being asked to decide.

[19] BSA now argues for the first time on appeal that MTCC 1067's claim for the unsecured portions of BSA's common expense arrears was governed by the shorter two-year limitation period in the *Limitations Act, 2002*, citing and relying on *Toronto Common Elements Condo. Corp. No. 2041 v. Toronto Standard Condo. Corp. No. 2051*, 2015 ONSC 4245, at para. 20.

[20] We are not satisfied that this is an appropriate case to depart from the "general rule ... that appellate courts will not entertain entirely new issues on appeal": *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130, at para. 18. Among other things, if BSA had pleaded a limitations defence and had squarely raised the limitations issue before the motion judge, MTCC 1067 might have responded by presenting additional evidence on the issue of discoverability, including on the question of when a reasonable person in its position would have concluded that it was appropriate to commence an action: *Limitations Act, 2002*, s. 5. In these circumstances it would be contrary to the interests of justice and unfair to MTCC 1067 to permit BSA to raise the limitations issue for the first time on appeal.

[21] We accordingly would not give effect to this ground of appeal.

3. Did the motion judge err by expanding the condominium lien to include the unsecured common expense arrears?

[22] BSA's final ground of appeal challenges the motion judge's decision to order "that the Unsecured Common Expenses be secured by the Condominium Lien".

[23] Section 85(1) of the Act provides:

If an owner defaults in the obligation to contribute to the common expenses payable for the owner's unit, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount.

[24] Section 85(2) further states that liens under s. 85(1) expire after three months unless a certificate of lien is properly registered by the condominium corporation. Once a certificate of lien is registered, it covers "the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate", as well as the amounts of any future defaults, plus interest, and reasonable legal costs and reasonable expenses: s. 85(3).

[25] Section 86(1) of the Act gives registered liens "priority over every registered and unregistered encumbrance even though the encumbrance existed before the lien arose", with the exception of the claims listed in ss. 86(1)(a) to (c).

[26] In this case, MTCC 1067 did not register its certificate of lien on BSA's units until May 16, 2024. Accordingly, pursuant to ss. 85(2) and (3), its registered certificate of lien only covered BSA's common expense arrears from February 16, 2024 onwards.

[27] The motion judge concluded that she could nevertheless expand MTCC 1067's lien to cover the unsecured common expense arrears by making an order under the oppression remedy provisions in ss. 135 and 136 of the Act. She explained that BSA's failure to pay its share of the common expenses "amounts to unfair prejudice and unfair disregard of the interests of MTCC 1067 and the other unit owners", and concluded:

Sections 135 and 136 of the *Act* give the court broad remedial jurisdiction to make any order the judge deems proper. The courts' power to fashion a remedy has been described as "awesome": *Irving Investments Ltd. v. York Condominium Corp. No. 21*, 2022 ONSC 5967, at para. 30, citing *McKinstry v. York Condominium Corp. #472* (2003), 68 O.R. (3d) 557, at para. 33. In order to ensure that MTCC 1067 can recover the Unsecured Common Expenses, and to ensure this burden is not borne by the other owners, I order that the Unsecured Common Expenses be secured by the Condominium Lien.

[28] The oppression remedy "is equitable in nature and seeks to ensure what is 'just and equitable'": *Noguera v. Muskoka Condominium Corporation No. 22*, 2020 ONCA 46, 10 R.P.R. (6th) 1, at para. 18. The question of "[w]hat is just and equitable is judged by the reasonable expectations of the stakeholders in the

context and in regard to the relationships at play”: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 59.

[29] In this case, the motion judge was also granting MTCC 1067 vacant possession of BSA’s units so it could sell them under power of sale. In this context, the practical effect of her order securing MTCC 1067’s unsecured judgment debt under its condominium lien was not to balance the equities between MTCC 1067 and BSA, but to give MTCC 1067 a priority claim over the sale proceeds that would rank ahead of any claims that might be advanced by creditors other than those listed in ss. 86(1)(a) to (c). In our view, it was not appropriate for the motion judge to use her oppression remedy powers to make an order that potentially prejudiced third parties, some of whom may have relied on the clear statutory limits on the condominium lien that MTCC 1067 had registered on title: see *Toronto Standard Condominium Corporation No. 1908 v. Stefcó Plumbing & Mechanical Contracting Inc.*, 2014 ONCA 696, 377 D.L.R. (4th) 369, at para 48. Using ss. 135 and 136 to revive expired lien rights also arguably undermines the internal coherence of the statutory scheme: *Stefco*, at para. 46.

[30] We would accordingly allow the appeal on this ground and would set aside the motion judge’s order directing that the entire amount of the judgment, plus prejudgment and postjudgment interest and costs, were secured by the registered condominium lien. While the amount of the judgment awarded in para. 1 of the motion judge’s order remains unchanged, the order is varied to direct that only

\$110,883.29, plus prejudgment and postjudgment interest on this amount, is secured by the condominium lien.

C. DISPOSITION

[31] In the result, the appeal is allowed to the extent of varying para. 1 of the motion judge's order as discussed above. In all other respects the appeal is dismissed.

[32] Although this is a case of mixed success, MTCC 1067 has been the more successful party and is entitled to its costs of the appeal and of a previous motion for a stay of the writ of possession that was brought by BSA but ultimately settled, which we fix at \$20,000 all inclusive.

“K. van Rensburg J.A.”
“J. Dawe J.A.”
“L. Madsen J.A.”