CITATION: Toronto Standard Condominium Corporation No. 2490 v. Francis, 2025 ONSC 6605
COURT FILE NO.: CV-25-00736733-0000
DATE: 20251127

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Toronto Standard Condominium Corporation No. 2490

AND:

Victoria Francis

BEFORE: Merritt J.

COUNSEL: *Jonathan Fine*, for the Applicant

Clifford Singh, for the Respondent

READ: **November 27, 2024**

COSTS ENDORSEMENT

OVERVIEW

[1] On October 29, 2025 I found that Ms. Francis breached ss. 117 and 119 the *Condominium Act, 1998*, S.O. 1998, c. 19 as well as the Condominium's Declaration and Rules.

[2] I found that the Condominium Corporation was entitled to a compliance order but not a restraining order.

[3] I invited the parties to make written submissions if they could not agree on costs.

[4] The parties made written submission which I have reviewed .

DECISION

[5] I do not award costs to either party.

ANALYSIS

[6] The Condominium Corporation seeks its partial indemnity costs in the amount of $32,000 inclusive of HST and disbursements.

[7] Ms. Francis seeks costs payable to her on a substantial indemnity basis in the amount of $110,921.92

[8] Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990 c. C-43 provides that the costs of and incidental to a proceeding are in the discretion of the court and the court may determine by whom and to what extent the costs shall be paid.

[9] The purpose of awarding costs is:

1. to indemnify successful litigants for the costs of litigation, although not necessarily completely;

2. to facilitate access to justice, including access for impecunious litigants;

3. to discourage frivolous claims and defences;

4. to discourage and sanction inappropriate behaviour by litigants in their conduct of the proceedings; and

5. to encourage settlements. (*Harley v. Harley*, 2023 ONSC 4611 at para 22 and *Bender v. Dulovic*, 2023 ONSC 4753 at para 23, citations omitted)

[10] The factors to be considered in determining costs are set out in r. 57.01.

[11] Rule 57.01(4) gives the court broad jurisdiction to award costs on a full or substantial indemnity basis or award no costs for part of a proceeding:

> (4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under section 131 of the *Courts of Justice Act*,
>
> (a) to award or refuse costs in respect of a particular issue or part of a proceeding;
>
> (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding;
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> (c) to award all or part of the costs on a substantial indemnity basis;
>
> (d) to award costs in an amount that represents full indemnity; or
>
> (e) to award costs to a party acting in person.

[12] The awarding of costs is not an exact science. The overarching principle is that costs must be fair, reasonable and proportionate (*Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587; *Harley* at para 34-35; *Bender* at para 24-25).

[13] In *100 Bloor Street West Corporation v. Barry's Bootcamp Canada Inc.*, 2025 ONCA 447 at para 71 the court discussed reasonable expectations and objectively reasonable expectations:

> The reasonable expectation of the parties concerning the amount of the costs award is an important factor: *Sky Clean Energy Ltd. (Sky Solar (Canada) Ltd.) v. Economical Mutual Insurance Company*, 2020 ONCA 558, 152 O.R. (3d) 159, at para. 119. Not all expectations are reasonable. Therefore, the expectations of the parties should not "overwhelm the analysis of what is objectively reasonable in the circumstances of the case": *Apotex*, at para. 62. Otherwise, the deeper pockets of the more affluent would artificially inflate costs, causing a "chilling effect on access to justice for less wealthy parties": *Apotex*, at para. 62. This would be contrary to the fundamental objective of the costs system, which exists to facilitate access to justice: *Boucher*, at para. 37. "Although each costs assessment is a fact-driven exercise … the reasonableness of costs that represent an outlier must be objectively and carefully scrutinized, taking into account the chilling effect on litigation that this kind of award could have": *Apotex*, at para. 63, citing *Boucher*, at para. 37.

[14] In *Youkhana v. Pearson*, 2024 ONSC 3184 Trimble J. reviewed general principles when assessing costs:

> [6] In *Tri-S Investments Limited v. Vong*, [1991] O. J. No. 2292 (Gen. Div.), page 6, the Court said that the court's function when fixing costs is not to second guess successful counsel on the of time that should or could have been spent to achieve the same result, unless the time spent is so grossly excessive as to be obvious overkill.
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> [7] In making this assessment, the following legal principles apply:
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> a) Costs awards as between litigants have a number of purposes, including to a) indemnify (partly) successful litigants, b) encourage settlement, c) correct behaviour of the parties, and d) discourage frivolous or ill-founded litigation (see *394 Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238, at para. 10).
>
> b) Generally costs should follow the event (see *Bell v. Olympia & York Developments Ltd.*, (1994), 1994 CanLII 239 (ON CA), 17 O.R. (3d) 135 (C.A.)), be proportional to the issues in the action and the outcome, and be reasonable for the losing part to pay, all circumstances considered (see *Boucher*, *supra*, and *Moon v. Sher et al.*, 2004 CanLII 39005 (ON CA), [2004] OJ No 4651 (C.A.).
>
> c) Conduct of the parties is also relevant where it deserves sanction (see *Davies v. Clarington (2009)*, 2009 ONCA 722 (CanLII), 100 O.R. (3d) 66 (C.A.)). One party's playing "hardball" is a relevant factor to consider (see 394 *Lakeshore*, supra.).

d) Costs should be proportional to the issues in the action and amount awarded. Proportionality, however, should not override other considerations, and determining proportionality should not be a purely retrospective inquiry based on the award. It should not be used to undercompensate a litigant for costs legitimately incurred. In *Aacurate v. Tarasco*, 2015 ONSC 5980 (S.C.J.), McCarthy, J. said:

> I am mindful that the principle of proportionality calls upon the court to consider the amount claimed for costs in relation to the amount recovered in the judgment, as well as the reasonable expectation of the parties. In my view, however, proportionality cannot and should not be routinely invoked to save litigants from the actual costs of proceedings in circumstances where those litigants have put forth a wholly unmeritorious defence to a legitimate claim or have caused the proceeding to become unduly prolonged or complicated. The principle should be applied thoughtfully and in a balanced fashion along with the other factors set out in rule 57.01.

e) An undue focus on proportionality ignores principles of indemnity and access to justice (see Gardiner v. MacDonald, 2016 ONSC 2770 (S.C.J.) at para. 65). The trial judge must make an award that is fair and appropriate, overall.

[15] In *Apotex* the Court of Appeal held that after examining the factors the court must consider the overall fairness and reasonableness of the costs:

> A proper costs assessment requires a court to undertake a critical examination of the relevant factors as applied to the costs claimed and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable": *Restoule v. Canada (Attorney General)*, 2021 ONCA 779, 466 D.L.R. (4th) 2, at para. 356, citing *Boucher v. Public Accountants Council (Ontario) (2004)*, 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291 (C.A.), at para. 24. However, as this court recently reiterated in *Restoule*, at para. 357, referencing *Murano v. Bank of Montreal (1998)*, 1998 CanLII 5633 (ON CA), 163 D.L.R. (4th) 21 (Ont. C.A.), at para. 100, "this overall sense of what is reasonable 'cannot be a properly informed one before the parts are critically examined'": para. 60.

[16] Costs on an elevated scale may be warranted where they are explicitly authorized under r. 49 as a result of a failure to accept an offer to settle. Costs on an elevated scale may also be warranted where the unsuccessful party has engaged in behaviour worthy of sanction: *Clots v. Rennie*, 2024 ONSC 1012 at para 7

[17] Costs on a substantial indemnity scale may be warranted where the unsuccessful party has engaged in behavior that is reprehensible, scandalous, or outrageous, and worthy of sanction: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, at para. 28; *Young v. Young*, 1993 CanLII

34 (SCC), [1993] 4 S.C.R. 3, at p. 134. Substantial indemnity costs are to be awarded "in rare and exceptional cases to mark the court's disapproval of the conduct of the party in the litigation": *Hunt v. TD Securities Inc*. (2003), 2003 CanLII 3649 (ON CA), 66 O.R. (3d) 481 (Ont. C.A.), at para. 123.

[18] Conduct worthy of sanction may include the circumstances giving rise to the litigation as well as the conduct in the proceedings: *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, at para. 43 citing *Mortimer v. Cameron* (1994), 1994 CanLII 10998 (ON CA), 17 O.R. (3d) 1 (C.A.), at p. 23.

[19] A substantial indemnity costs award is justified if "the proceedings are clearly vexatious, frivolous, or an abuse of process". *100 Bloor Street West Corporation* at para 71 citing *Lewis v. Lewis*, 2019 ONCA 690, 49 E.T.R. (4th) 175, at para. 17; *1588444 Ontario Ltd. v. State Farm Fire and Casualty Company*, 2017 ONCA 42, 135 O.R. (3d) 681, at para. 53.

[20] There was divided success on the Application.

[21] The Application involved four basic heads of relief:

1. a conduct-based compliance order pursuant to s. 134 of the Condominium Act, 1998 (the "Act") based upon ss. 117(1) and 119(1) of the Act;

2. a conduct-based restraining order pursuant to s. 134 of the Act based upon ss. 117(1) and 119(1) Act;

3. a conduct-based compliance order pursuant to s. 134 of the Act with respect to various sections of the Applicant's declaration based upon ss. 117(1) and 119(1) of the Act; and,

4. a restraining order restraining the Respondent from residing at the condominium corporation based upon s. 117(1) of the Act and pursuant to s. 134 of the Act.

[22] The Condominium Corporation says that it was successful with respect to 75% of the issues i.e., items 1, 2 and 3 but not item 4.

[23] Ms. Francis says that she was the substantially successful party because the eviction order formed the heart of the Application and the Condominium Corporation was not successful in obtaining an eviction order.

[24] The Condominium submits that the eviction order was not at the heart of the Application but was ancillary to the primary compliance relief.

[25] Distributive costs awards have frequently been criticized by the Ontario Court of Appeal. Courts look at the overall outcome, not an issue-by-issue analysis of success: *Chippewas of Nawash Unceded First Nation v. Canada* (AG), 2023 ONCA 787, at para. 6; *Oakville Storage & Forwarders Lid v. Canadian National Railway* (1991), 5 O.R. (3d) 1 (C.A.); *Wesbell Networks*

Inc.. (Receiver of) v. Bell Canada, 2015 ONCA 33, at para. 21; *Skye v. Matthews* (1996), 87 O.A.C. 381 (C.A.); and *William Allan Real Estate Co. v. Robichaud* (1990), 72 O.R. (2d) 595 (H.C.).

[26] Courts may award costs or refuse costs in respect of a particular issue or part of a proceeding under r. 57.01(4)(a). Costs awarded to a successful plaintiff may be reduced to take into consideration the time spent on issues upon which the plaintiff was not successful: In *Mihaylov v. 1165996 Ontario Inc.*, 2017 ONCA 218 at para 8, *Ontario Realty Corporation v. P. Gabriele & Sons Limited*, 2009 CanLII 68828 (Ont. S.C.), at paras. 27-36; *Georgian Flooring Centre Ltd. v. Goslin & Goslin* 2018 ONSC 1189, at paras. 45 and 68; *Mclaughlin v. Ariston Realty Corp. et al.*, 2004 CanLII 18174 (Ont. S.C.), at para. 10; and *Adatia v. A Farber Ltd.* (2005), 8 C.B.R. (5th) 165 (Ont. S.C.), at paras. 10-15.

[27] Ms. Francis submits that she is entitled to an order for substantial indemnity costs because the Application was frivolous, unnecessary and abusive in nature.

[28] I do not agree that the Application was frivolous, unnecessary and abusive.

[29] I found that Ms. Francis engaged in many incidents of inappropriate conduct including insulting Mr. Gumaste, using profanity, personal attacks ,and insulting staff, using vulgar and abusive language, shouting at a staff member, pushing/shoving the computer/monitor on Ms. Rana's desk, and being intoxicated on the common elements.

[30] I did not find that the Condominium had proven the assaults involving the neighbors, the majority of the intoxication complaints or the noise complaints.

[31] Ms. Francis submits that the Application was frivolous as the Condominium's complaints regarding her conduct ought to have been addressed via more appropriate methods than litigation and the Application was unfair, unnecessary, and punitive.

[32] In this case the first warning which Ms. Francis received was on March 6, 2024. February 18, 2025 the Condominium issued the Notice of Application. The Condominium first pursued an *ex parte* Application which was denied, and then proceeded with this Application.

[33] After the warning letter, Ms. Francis did not engage in any further conduct similar to that described above. There was no evidence that Ms. Francis was verbally abusive, damaged property or interfered with other unit owners' use and enjoyment of the property by being intoxicated, shouting or using vulgar language after the warning letter of March 6, 2024. The only thing she did after the warning was annoy staff and neighbors by soliciting them in an attempt to obtain their support in this Application.

[34] After being served with the Application Ms. Francis proposed mediation. The Condominium declined to go to mediation. Mediation is not mandatory but it may have provided an opportunity for early resolution without litigation.

[35] Ms. Francis also submits that the Condominium's conduct was highly unreasonable. She says that the majority of her legal fees were necessary to defend against the Condominium's unreasonable pursuit of an eviction order.

[36] The Condominium has not engaged in any conduct worthy of sanction either in the circumstances giving rise to the litigation or in the conduct of the proceedings. Simply because a party is unsuccessful does not mean that the litigation was unreasonable or abusive. Under the *Condominium Act*, The Condominium has a statutory obligation to take all reasonable steps to enforce compliance with the *Condominium Act*, and the Condominium's declaration, by-laws and rules: s. 17(3).

[37] I am exercising my discretion not to award costs to either party. The Condominium was partially successful; however, the warning letter was almost entirely successful in achieving the objective of obtaining Ms. Francis' compliance with the *Condominium Act* and the Condominium's declaration, by-laws and rules.

Merritt J.

Date: November 27, 2025