

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
2811230 Ontario Limited)
) Alisa Chaly, self-represented, for the
Applicant) Applicant
)
– and –)
)
The Corporation of the City of Niagara) Andre Dobrogeanu, for the Respondents
Falls, James Diodati and Brian Sparks)
)
Respondents)
)
)
)
) **HEARD: In Person, on January 14, 2025**

2025 ONSC 588 (CanLII)

REASONS FOR JUDGMENT

JUSTICE L. SHEARD

- [1] The Applicant, 2811230 Ontario Limited (“281Ont”), is an Ontario Corporation. Its sole director, officer, and owner is Alisa Chaly. 281Ont is the registered owner of a single-family dwelling at 5759 Robinson Street, Niagara Falls (the “Property”).
- [2] 281Ont was not represented by counsel on this Application as Ms. Chaly had been granted leave to represent 281Ont.¹
- [3] On February 2, 2022, Ms. Chaly purchased the Property and directed that title be registered in the name of 281Ont. Ms. Chaly then undertook renovations to the Property. No building permit was applied for or obtained.
- [4] The renovations came to the attention of the Respondent, City of Niagara Falls (the “City”) and on June 22, 2022, the City issued an Order to Comply under s. 8(1) of the *Building Code Act* (the “Act”) No. ORB-2022-0045 (the “OTC”). Briefly, the OTC stated that there

¹ Endorsement, Associate Justice Rappos, November 21, 2024.

had been a failure to comply with s. 36(1)(b) of the *Act*, and that 281Ont was to take certain steps to comply with the *Act*.

- [5] 281Ont did not appeal, nor seek a review of the OTC. On August 31, 2022, the City registered the OTC on title to the Property.
- [6] On this application, 281Ont seeks an order deleting the registration of the OTC from title to the Property. According to 281Ont, the presence of the OTC on title had made it impossible to sell or remortgage the Property.
- [7] The City opposes the deletion of the OTC from title. The City's position is that registration of the OTC is intended to provide the public with notice that construction work was undertaken on the Property without a building permit.

Adjournment request

Foreclosure Action

- [8] At the outset of this application, Ms. Chaly advised the court about proceedings commenced in the Ontario Superior Court of Justice at St. Catharines, Ct. File No. CV-24-62347 by Jay Patel, to whom 281Ont had granted a first Charge over the Property (the "Chargee").
- [9] Ms. Chaly advised that on December 3, 2024, the Chargee obtained a judgment of foreclosure on the Property, together with an orders for payment of the debt from 281Ont and from Ms. Chaly, as guarantor, possession of the Property and a writ of possession (the "Foreclosure Judgment") (*Patel v. 2811230 Ontario Ltd.*, 2024 ONSC 6731).
- [10] The Foreclosure Judgment did not dismiss the cross-claims made by 281Ont and Ms. Chaly as against the City and others, which, I understand, will be determined at a later date (the "Cross-Claims").
- [11] Ms. Chaly advised this court that the Chargee enforced the Foreclosure Judgment and, assisted by the Sheriff, took possession of the Property on Friday, January 10, 2025.
- [12] None of this information had been disclosed to the court prior to the commencement of this application. Ms. Chaly asserted that, as the Chargee had taken possession of the Property, 281Ont was no longer the owner on title and, as such, no longer had any standing to proceed with this application.
- [13] The City disagreed with Ms. Chaly's submission that the effect of the Foreclosure Judgment was to remove 281Ont from title to the Property. Over the morning break, Ms. Chaly obtained an up-to-date statement of the Property Parcel Register, marked as Exhibit #1 on this Application, which confirms that 281Ont remains on title and is listed as the owner of the Property.
- [14] At or about noon, Ms. Chaly indicated that she did not wish to proceed with this Application for various reasons including that:

- (1) she and 281Ont filed a Notice of Appeal from the Foreclosure Judgment, and unless and until that appeal is determined in their favour, Ms. Chaly did not wish to potentially benefit the Chargee by proceeding with this application, which, if successful, could result in the removal of the registration of the OTC from title to the Property;
 - (2) this Application ought to be transferred to St. Catharines to be heard at or after the hearing of the Cross-Claims; and
 - (3) 281Ont is currently defending a charge under the *Provincial Offences Act* of failing to comply with the OTC and the trial is still ongoing. Ms. Chaly advised that the trial may have commenced in May 2024 and is scheduled to resume in February 2025. She now wishes to file the transcript of the evidence given by Mr. Sparks in that proceeding in support of 281Ont's Application.
- [15] The City opposes an adjournment and states that this Application was ready to be heard in June or July 2024. It was adjourned to allow Ms. Chaly to move for an order permitting her to represent 281Ont on this application. That motion was heard and, as noted above, the order granted in November, 2024.
- [16] In response to a potential concern that an order made in this Application could conflict with an order made in the disposition of the Cross-Claims, the City was prepared to proceed with this Application, without prejudice to the positions taken by the parties in the Cross-Claims.
- [17] Alternatively, were the court inclined to grant a stay of this Application pending the disposition of the appeal of the Foreclosure Judgment, the City would seek its costs thrown away of this application, which counsel estimated at approximately \$2,100.
- [18] Ms. Chaly indicated that she has no funds to pay costs, and that any costs award should await the outcome of this application.

Analysis and Disposition of Adjournment Request

- [19] After hearing submissions, I concluded that the Foreclosure Judgment did not affect 281Ont's standing. As such, neither the Foreclosure Judgment, nor an appeal from it was a basis for an adjournment.
- [20] I also found that Ms. Chaly's request for an adjournment until the completion of the Provincial Offences trial was without merit: as she made clear in submissions, this Application is not an appeal of the OTC and this court is not being asked to determine the validity of the OTC. The Provincial Offences proceeding concerns whether a building permit was required, and, if so, whether in failing to obtain one, the Applicant breached the *Act*. Those issues are not before this court.
- [21] I also considered that Ms. Chaly has had Mr. Sparks' affidavit since May or June 2024 and chose not to cross-examine him. It is difficult to reconcile Ms. Chaly's assertion that she

did not cross-examine Mr. Sparks because she could not afford the expense, with her assertion that she requires an adjournment of this Application until the completion of the Provincial Offences trial so that she can order the transcript of Mr. Sparks' testimony: there would be a cost for that transcript.

- [22] As to Ms. Chaly's request, made for the first time today, that this Application be transferred to St. Catharines, I note that no such motion has been brought, despite the fact that the foreclosure proceedings were brought last year. Also, I accept the City's submissions that this Application could be heard without prejudice to the positions taken by the parties on the Cross-Claims. For that reason, this ground for an adjournment request also, has no merit.
- [23] For the above reasons, I denied the Applicant's request for an adjournment and determined that Application would proceed today, which it did.

The Facts

- [24] On June 9, 2022, the City received a complaint that renovations to the Property were taking place without a permit: that the interior of the Property had been taken to the studs and the basement was being dug out.
- [25] On June 20, 2022, Brian Sparks, a municipal enforcement officer with the Municipal Enforcement Services Department of the City attended at the Property. He observed new windows, doors, and siding installed in the front and side elevations of the Property and that work requiring a permit was being done to the exterior and interior of the Property. The City had no record of permit on file.
- [26] On June 22, 2022, Mr. Sparks posted the OTC on the Property. The OTC stated that there had been violations under the *Act*, namely, that a building was being constructed, renovated or altered on the Property without a permit issued by the Chief Building Official, and ordered that all construction cease.
- [27] The OTC also directed 281Ont to comply with the following timetable:
- (i) No later than July 11, 2022, to submit detail drawings and apply for a Building Permit to the Chief Building Official;
 - (ii) No later than July 25, 2022, to obtain a Building Permit, and Applicable Law approvals; and
 - (iii) If the above items were not complied within the specified time all no approved construction to be removed by August 8, 2022.
(sic)
- [28] The OTC also stated that:

An Order may be appealed to the Superior Court of Justice. [*Building Code Act, 1992 s. 25*]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [*Building Code Act, 1992 s. 24*]

Failure to comply with this Order could result in a Stop Work Order. [*Building Code Act, 1992 s. 14*]

Failure to comply with an Order is an offence which could result in a fine. [*Building Code Act, 1992 s.36*]

No construction affected by this Order is to be covered or enclosed until inspected and approved. [*Building Code Act, 1992 s. 13.1*]

[29] 281Ont did not comply with the OTC.

No appeal of OTC

[30] 281Ont has not appealed the OTC to the Ontario Superior Court of Justice, nor to the Building Code Commission. The time for bringing an appeal to the Court expired on August 11, 2022 [20 days after the issuance of the OTC].

[31] Throughout this hearing, Ms. Chaly confirmed that 281Ont was not asking this court to determine the validity of the OTC and that the scope of this Application was limited to whether an order should be made directing the City to remove the registration of the OTC from title to the Property.

[32] Despite that, in her submissions, Ms. Chaly often addressed the merits of the OTC and argued that the work that she did on the Property did not require a building permit and that the City had failed to identify the work she did for which a building permit was required.

[33] While I allowed those submissions to be made, I made it clear to Ms. Chaly that any and all submissions would be considered only with respect to whether an order should be made removing the OTC from title to the Property.

Registration of the PTC and Prosecution under the Provincial Offences Act

[34] On August 26, 2022, the City learned that the Property was being used as an Airbnb and an inspection on that date showed that the renovations on the Property appeared finished.

[35] On August 31, 2022, the City registered the OTC on title to the Property, as permitted by s. 12(5)(b) of the *Act*.

[36] On September 8, 2022, the City submitted the matter for prosecution under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. That prosecution remains ongoing.

[37] A City inspection on December 1, 2022 showed that the front porch of the Property had been removed without a permit.

The City's Evidence

[38] 281Ont objects to this court receiving or considering certain evidence put forth by the City on this Application on the basis that it is hearsay and inadmissible (the “Challenged Evidence”). In particular, 281Ont submits that the hearsay evidence may not be used to establish that a building permit was required for the renovations done to the Property.

[39] The City submits that this evidence is not to show that the renovations performed on the Property required a building permit. It submits that the City bears no onus to establish that the OTC was properly issued: the OTC has not been appealed and the time for an appeal has long-since expired.

[40] The City submits that the challenged evidence is intended only to establish that the City was acting in good faith when it registered the OTC on title to the Property and that it is still acting in good faith in refusing to remove the registration from title.

The Challenged Evidence

[41] On March 2, 2023, Jana Mills, a Municipal Enforcement Officer with the City, received information from an electrical contractor who had worked on the renovations to the Property that the following work had been performed:

- (a) a bathroom was added to the basement;
- (b) the ceiling on the top floor was turned into a cathedral ceiling.
- (c) the main floor ceiling was bowing, and the ceiling was structurally re-supported;
- (d) all ceilings were removed down to the rafters;
- (e) an upper-level washer and dryer were added with no exhausts;
- (f) the staircase was changed;
- (g) spray foam was put in the foundation; and
- (h) a hot water tank was installed, and new lines were run.

[42] Photographs of the Property were found on internet real estate listings for the Property posted before 281Ont purchased the Property and after its purchase, when 281Ont listed the Property for sale. The photographs appear to show the interior and exterior of the Property were significantly changed after 281Ont's purchase and importantly, from the City's perspective, that the work done was “markedly different” from what Ms. Chaly had represented to the City.

- [43] Ms. Chaly submitted that the City could not establish that a building permit was required for the renovations to the Property, as the City had not been given entry to the Property. In Ms. Chaly's submissions, she also appeared to ask the court to find fault with the wording of the OTC, alleging that it fails to identify what renovation work required a permit.
- [44] As Ms. Chaly has clearly stated that 281Ont is not challenging the validity of the OTC these submissions have no bearing on this Application.
- [45] Ms. Chaly was outspoken in her objection to any mention being made of the information the City was able to obtain respecting the Property through third party sources, such as the contractor who had worked on the Property and the publicly posted photographs of the Property when it was listed for sale prior to its purchase by 281Ont and when it was listed for sale by 281Ont, after the renovations were completed. Ms. Chaly asserted that the information from the contractor and the photographs were hearsay.
- [46] Ms. Chaly's arguments are untenable: she criticizes the City for failing to identify what work she did to the Property for which a permit was required, and yet refuses to disclose to the City the work that was performed, nor will she give the City access to the Property. On that latter point, Ms. Chaly was clear that she did not wish to allow the City to inspect the Property, as she was concerned that an inspection would only confirm that a permit was required.

Disposition: Challenged Evidence is admissible

- [47] This court is not being asked to determine the validity of the OTC, which has not been challenged. The only issue before this court is whether the registration of the OTC should be deleted from title to the Property.
- [48] The City's position is that the Challenged Evidence may be used, not for the truth of its contents, but to establish that the City was acting within its jurisdiction and in good faith when it registered the OTC on title, and in maintaining that registration, as permitted under s. 12(5)(b) of the *Act*.
- [49] Under the *Act*, the OTC remains in effect unless its requirements have been satisfied. When that happens, s.12(7) of the *Act* provides that "the chief building official shall register a certificate that such requirements have been satisfied, which shall operate as a discharge of the order."
- [50] The City puts forth the Challenged Evidence to establish that, based on what is known to the City, the requirements of the OTC have not been satisfied.
- [51] I accept the City's submission that the Challenged Evidence is properly admissible for the purposes described.

Law and Analysis: Merits of the Application

[52] For reasons given, the validity or appropriateness of the OTC is not before this court. The only issue to be decided is whether the registration of the OTC against the Property should be deleted. On that issue, we look at ss. 12 (5), (6) and (7) of the *Act*, which read:

Posting and making information available

(5) A copy of an order made under subsection (2) may be,

(a) posted on the site of the construction or demolition in a location visible to the public;

(b) made available to the public by,

(i) posting the copy of the order on the website of the principal authority,
or

(ii) allowing members of the public, during normal business hours, to inspect and copy the order at their own expense; and registered in the proper land registry office.

Registration

(6) If an order made under subsection (2) is registered in the proper land registry office, any person acquiring any interest in the land subsequent to the registration of the order shall be deemed to have been served with the order on the day on which the order was served.

Discharge

(7) When the requirements of an order described in subsection (6) have been satisfied, the chief building official shall register in the proper land registry office a certificate that such requirements have been satisfied, which shall operate as a discharge of the order.

[53] Ms. Chaly referred this court to two decisions: 1) *Kritz v City of Guelph*, 2016 ONSC 6877 (CanLII) (“*Kritz*”); and 2) *R. v. Lemieux*, 2009 ONCJ 676 (CanLII) (“*Lemieux*”).

[54] *Kritz* was an appeal brought pursuant to section 25 of the *Act*, in which the validity of an Order to Comply was in dispute; the focus of the decision was on whether a building permit was required for the work performed by the appellant. I find that *Kritz* is distinguishable from this Application: in *Kritz* the court was asked to consider the work performed and to determine if it required a building permit; in this case, 281Ont has been careful not to

disclose the work performed on the interior of the Property or to allow the City access to the Property.

- [55] *Lemieux* is a 2009 decision of Justice of the Peace R. Brian Mackey who, in part, was required to decide if the City of Ottawa had established that work performed required a building permit in the context of a prosecution under the *Provincial Offences Act* of a breach of the *Act*.
- [56] While the facts and issues in *Lemieux* are distinguishable, I agree with and adopt the statement of the court in *Kritz*, citing *Lemieux*, “that that the purpose of the building code legislation is to provide a “set of minimum provisions respecting the safety of buildings with reference to public health, fire protection and structural sufficiency””: at para. 57.
- [57] Neither party referred this court to any decision in which a court was asked to discharge the registration of an order to comply. That is hardly surprising as s.12(7) provides a mechanism for the discharge of such an order, when the requirements of the order have been satisfied.
- [58] On the facts here, 281Ont is seeking the discharge of the OTC, while it is still in effect and valid. I conclude that the Applicant’s objective in bringing this Application is to hide the existence of the OTC from public view so that 281Ont may more easily sell or refinance the Property.
- [59] I find that the result sought by 281Ont would run counter to the very purpose for which the OTC was registered, namely, to give notice to a buyer or mortgagee that renovations had been completed on the Property without a building permit and without the City inspections that accompany that process, which is “intended primarily for consumer protection from shoddy and incompetent work and to ensure safety”: *Lemieux*, at para. 28.

Disposition

- [60] For the reasons given, this Application is dismissed.
- [61] On consent, the dismissal of this Application is without prejudice to the positions the parties may wish to take in Cross-Claims.

Costs:

- [62] As the successful party, the City is presumptively entitled to its costs of this Application.
- [63] The parties are urged to attempt to reach an agreement on costs. If they are unable to do so, written costs submissions may be made as follows:
1. The parties’ written costs submissions are not to exceed three pages, double-spaced, together with draft bills of costs, evidence of docketed time, and copies of any relevant offers to settle.

2. Within 21 days of the date of the release of this decision, the City shall deliver its written costs submissions,
3. Within 14 days of service of the City's costs submissions, the Applicant is to deliver its responding submissions,
4. Within 7 days of service of the Applicant's responding submissions, the City may deliver its reply submissions, if any, not exceeding one page in length.
5. If no submissions are received within 35 days of the date of the release of these reasons, the parties shall be deemed to have resolved the issue of the costs and no decision shall be made by this court.

Justice L. Sheard

Released: January 29, 2025

CITATION: 2811230 Ontario Limited v. City of Niagara Falls, et al., 2015 ONSC 588
COURT FILE NO.: CV-24-84955
DATE: 2025/01/29

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SUPERIOR COURT OF JUSTICE

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Applicant

-and-

The Corporation of the City of Niagara Fall, James
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Respondents

REASONS FOR JUDGMENT

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