

CITATION: YCC No. 50 v. Demong, 2024 ONSC 6291
COURT FILE NO.: CV-24-00713588-0000
DATE: 20250109

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: York Condominium Corporation No. 50, Plaintiff / Moving Party

AND:

Joel Demong, Defendant / Respondent

BEFORE: Justice John Callaghan

COUNSEL: *Benjamin R. Rutherford*, for the Plaintiff / Moving Party

Joel Demong, Self-represented

HEARD: November 4, 2024

ENDORSEMENT

[1] The defendant, Joel Demong (“Joel” or “Defendant”), is the registered owner of a suite (the “Unit”) in the condominium located at 1350 York Mills Road, Toronto (the “Condominium”). The plaintiff is the Condominium corporation, being York Condominium Corporation No. 50 (“YCC 50”).

[2] YCC 50 brings this motion for summary judgment. YCC 50 seeks possession of the Unit to sell under power of sale based on a condominium lien issued pursuant to the *Condominium Act*, 1998, S.O. 1998, c. 19 (the “*Act*”), which was registered against the Unit in August 2022. The lien was initially registered because of the Defendant’s failure to pay monthly common expenses.

[3] The Defendant’s mother, Marietta (“Marietta”), purchased the Unit for her son and continues to deal with the finances related to the Unit. Marietta is largely responsible for the acts relevant to this litigation. She appeared with Joel at this hearing. I will collectively refer to them as the “Demongs”.

Overview

[4] For the reasons described later in these reasons, the Demongs failed to pay their monthly common expenses for the better part of 2 years. YCC 50 placed a lien on the Unit after three months of the Defendant’s failure to pay the monthly common expenses pursuant to s. 85 of the *Act*. Subsequent non-payments of the monthly common expenses, expenses relating to the lien and interest continued to accrue under the lien, pursuant to s. 85(3)(b) *Act*.

[5] During the period of non-payment, there was a leak emanating from the shut-off valve below the sink in the Unit. The leak required emergency plumbing services and caused damage to other units in the Condominium. YCC 50 invoiced the Defendant for these repair costs. As the invoice was not paid, this amount was added to the lien pursuant to s. 85(3)(b).

[6] In October 2024, in advance of this hearing, the Demongs paid the arrears of the monthly common expenses but have refused to pay the accrued interest on the arrears, expenses related to the lien, or the cost associated with the damage caused by the leak. The amount of the lien as of October 28, 2024, is \$39,763.58.

[7] YCC 50 seeks judgment for that amount and possession of the Unit in accordance with s. 85(6) of the *Act*. The Demongs object and assert they ought not to be responsible for the amounts claimed.

Issues

[8] There are two issues in this case:

- i) Is this case suitable for summary judgment; and
- ii) Is the plaintiff entitled to judgment.

i) **Is This Case Suitable for Summary Judgment?**

[9] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] S.C.R. 87, Karakatsanis J. explained, at para. 49, the type of cases suitable for summary judgment:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[10] This case is appropriately resolved by summary judgment. There are no factual issues that would be assisted by a trial. There are no credibility issues that require a trial. As seen below, the facts are straightforward. I am satisfied that I can apply the facts to the law. In doing so, I do not need to rely on the enhanced powers in rule 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Further, I am satisfied that I can reach a fair and just resolution of the matters in dispute based on the record before me. As a result, there is no genuine issue that requires a trial and there is no benefit to requiring the parties to endure the delays and costs of a trial.

ii) **Is the Plaintiff Entitled to Judgment?**

[11] In my view, YCC 50 is entitled to judgment for the amounts owing under the lien, including the interest and expenses owed, and the damage incurred because of the water leak. YCC 50 is

also entitled to an order for possession, which , by agreement, is to be stayed for 60 days to permit the Defendant time to pay all amounts owing under the lien.

Facts

[12] In or around May 2022, YCC 50 changed the process by which it collected monthly common expenses. Instead of paying the monthly common expenses directly to YCC 50, the unit owners were directed to pay the expenses to the property manager, Wilson Blanchard. This required the unit owners to change their pre-authorized payments so that the payee was now the property manager, rather than YCC 50. This required the unit owners to change their direct deposit instructions at their bank.

[13] In the first month of this new payment process, being May 2022, the Demongs say they did not change their deposit instructions. Accordingly, their pre-authorized payment direction to their bank was to continue depositing the common expenses to YCC 50's account. In May, that money was returned to the Demongs' bank account with a notation, "Misc Payment Wilson Blanchard". As the payment was directed to YCC 50, not Wilson Blanchard, Marietta was not clear as to why the money was returned or why the notation referred to Wilson Blanchard. However, the monthly common expenses payment for May was clearly not received by either Wilson Blanchard or YCC 50. When notified that the payment was not received, Joel brought a cheque for the May monthly common expenses to the office at YCC 50.

[14] As a result of what happened with the May direct deposit, Marietta was leery of the instructions to pay the common expenses to the property manager. She continued, as she always had, and made the June payment to YCC 50 . The money was again returned to her account. This time her statement showed money was returned from "YCC #50", rather than YCC 50.

[15] During the period between May-August, the property manager and YCC 50 asked that the Demongs rectify the situation and have the monthly common expenses deposited to the property manager as required. For reasons that are not entirely clear, this was never done. Marietta says she was dealing with her bank which could not explain why payments were not being received by YCC 50. Marietta had some heated exchanges with staff at YCC 50 as she was concerned that her payments were being misdirected. However, it is clear that payments for the monthly common expenses from June-August were never received by YCC 50.

[16] The Demongs knew that the payments for their monthly common expenses were not being received by either YCC 50 or the property manager for the period from June-August but, unlike in May, they did not provide a cheque to YCC 50 or otherwise take steps to ensure payment of their monthly common expenses.

[17] Because of the legislative requirements in s. 85(2) of the Act, in August 2022, YCC 50 provided notice to the Defendant of a lien on the Unit for non-payment of the common expenses.

[18] The Demongs made no further attempt to either pay the arrears or the monthly common expenses as they became due. Indeed, they made no payments for more than 2 years. There is no good explanation why the common monthly expenses were not paid for this extended period.

[19] On or about October 3, 2024, with this hearing fast approaching, the Demongs paid the sum of \$20,471 by way of a bank draft payable to YCC 50's lawyer. This amount addressed the arrears of monthly common expenses but not the interest or the ancillary expenses. There remains interest on the unpaid common expense, at 18% per annum, compounded monthly (as per Article 11.05 of YCC 50's by-law no. 5) of \$12,421 and other accrued expenses of \$4,171 that have yet to be paid.

[20] In addition to the arrears of monthly common expenses, the lien included the costs and expenses incurred by YCC 50 in remediating water damage caused by a leak in March 2022 that originated in the Unit. YCC 50 incurred expenses of \$23,176.30 addressing the repair to the shut-off valve and associated damage caused by the leak. YCC 50 has invoiced the Defendant for these expenses but has not been paid. The Demongs dispute that the leak emanated from the shut-off valve under the sink in the Unit but, if it did, they say they are not responsible for the damage.

Analysis

[21] In respect of the common expenses, the Demongs acknowledge that all unit owners in the Condominium must pay their common expenses. This is specifically provided for in s. 84(1) of the *Act*. They assert that they were always ready, willing, and able to pay the common expenses. However, because of the issues that arose in the summer of 2022 with the deposits, they had doubts as to whether the common expenses were being received by YCC 50. They suggest it was reasonable for them not to pay the monthly common expenses as the confusion was caused by the shift in payment instructions. Under the circumstances, they argue that they ought not to be responsible for either the interest or expenses relating to the lien.

[22] There is no adequate explanation as to why the Demongs did not pay the monthly common expense for over two years. Whatever problem there was in transmitting the money from June onward, the Demongs could easily have paid YCC 50, as they did in May, by handing over a cheque to YCC 50 or the property manager. After June, there was no attempt by the Demongs to pay any monthly common expenses for over two years. It was not until October 2024, effectively on the eve of this hearing, that they acknowledged that they owed this amount and made a payment for the common expenses but not the interest or the other expenses relating to the lien.

[23] As acknowledged by the Demongs, living in a condominium requires each unit owner to pay their share. Under s. 17(3) of the *Act*, YCC 50 had a positive statutory duty to take all reasonable steps to ensure that the Defendant complied with his obligations under the *Act*, Declaration and By-laws of YCC 50 which included paying the common expenses. Where amounts are not paid by unit owners, the condominium corporation is entitled to the reasonable legal and other expenses to enforce the lien and for interest on the overdue amounts: s. 85 (1) of the *Act*. There is good reason that the *Act* ensures delinquent unit owners pay both the interest and costs. If it were otherwise the remaining unit owners would be subsidising the actions of the delinquent unit owners.

[24] The Demongs' failure to pay their share of the monthly expenses has caused YCC 50 to incur costs in enforcing the lien and for interest in covering the Demongs' share of the expenses.

The amounts claimed by YCC 50 are expenses that it is entitled to be reimbursed pursuant s. 85(1) : *Channa v. Carleton Condominium Corp. No. 429*, 2011 ONSC 7260, at para 29. There is no reason why the Defendant ought not to pay the interest and expenses.

[25] There was no objection to the calculation of the interest. The interest rate is prescribed in YCC 50's by-law no. 5, Article XI, section 11.05 at 18%. There was also no objection to the amounts incurred and claimed by YCC 50 as expenses in enforcing the lien (see amounts in para 43 below).

[26] Accordingly, I find that the defendant is in arrears for the interest on the common expenses and expenses to enforce the lien in the amount of \$16,592.

[27] There is also the claim for the expenses and repairs incurred by YCC 50 because of the leak in the Unit. The Defendant states that he ought not to be responsible for these expenses.

[28] On March 2, 2023, YCC 50 became aware of a leak that was causing water damage. An emergency plumber was called. The evidence from the plumber was that he attended at the Unit and the valve under the sink in the Unit was leaking. The plumber included pictures of the leak in his affidavit. There is an invoice from the plumber.

[29] Emergency repairs were required. First Choice Interior attended at the Condominium to address emergency repairs caused by the water damage. The first invoice specifically refers to an emergency visit on March 2, 2023 to address damage to the common elements and other units due to a leak. First Choice Interior returned over the next few weeks to do follow up repairs.

[30] The total cost incurred and paid by YCC 50 to the plumber and First Choice Interiors was \$23,176.30. These amounts are referred to by YCC 50 as "Chargebacks". Under the condominium's By-Law No. 7, the Demongs agree that Joel, as the unit owner is obligated to reimburse YCC 50 for the cost of repairs where damage occurs to other units, or the common elements, where the origin of the damage is from the Unit, regardless of fault, so long as the damage is not as a result of an act or omission on the part of YCC 50, its directors, officers, or agents.

[31] The Demongs submit that either the water damage was caused by riser valves belonging to YCC 50, and not from the shut-off valve under the sink in the Unit, or, alternatively, that the shut off valve under the sink is the responsibility of YCC 50 and not the Defendant.

[32] In respect of the first argument, the Demongs point to a letter from YCC 50 dated March 21, 2023 to unit owners referring to water damage caused by faulty riser valves which caused damage to the building's common areas. That letter does not identify what common areas were damaged or when. Rather the purpose of the letter was to advise unit owners that inspection and repair work was about to be undertaken in the Condominium. There is no issue that the riser valves are distinct from the shut off valve under the sink in the Unit which was identified by the plumber as the cause of the March 2, 2023 leak.

[33] The Demongs suggest that the water damage and repair costs being claimed are due to the events described in the March 21 letter relating to the riser valves and not the March 2 leak. The Demongs' argument is conjecture. The March 21 letter does not establish that the water damage of March 2 was caused by the riser valves. Moreover, it is contrary to the evidence of the plumber. The plumber clearly identified the leak of March 2 as emanating from the shut-off valve in the Unit. The invoices for the remedial expenses claimed identify the leak of March 2 and refer to repairs being required to specific units in direct proximity to the Unit.

[34] I am satisfied that the water damage associated with the plumber's invoice and the First Choice Interior invoices was a result of the malfunctioning shut off valve in the Unit and not with the riser valves or what is described in the March 21, 2023 letter.

[35] As for their second argument, the Demongs argue that the shut off valves are not the responsibility of the unit owners. They point to a renovation notice from YCC 50 which states that unit owners are not to replace shut off valves and that shut-off valves belong to YCC 50 (the "Renovation Notice"). The Renovation Notice was directed at unit owners doing renovations and cautioned them to deal with the management of YCC 50 when dealing with the shut-off valves in the units. The Demongs found the Renovation Notice after the leak on March 2, 2023. It is not clear when the Renovation Notice was provided to unit owners.

[36] However, the Demongs also received a legal opinion dated October 12, 2021 given to unit owners by YCC 50 (the "2021 Opinion"). The 2021 Opinion addresses, among other things, whether the unit owners are responsible for the shut off valves under bathroom sinks within the units.

[37] The 2021 Opinion reviews YCC 50's Declaration. The Declaration is the document issued pursuant to the *Act*, which creates the corporation for the Condominium. The Declaration sets out the respective responsibilities of the unit owners and condominium corporation and is, "in every respect, the Constitution that governs the operation of the condominium": *Metropolitan Toronto Condominium Corporation No. 590 v. Registered Owners*, 2019 ONSC 4484 at para 2.

[38] The 2021 Opinion advises that unit owners are responsible for the activities inside the walls of their units. Unit owners are responsible for repairs and any damage caused to other units or common areas arising from the failure to maintain any part of the unit. YCC 50 is responsible for the piping which is within the walls and not accessible inside the Unit. The 2021 Opinion opined that where leaks occur because of the malfunction or disrepair of accessible shut off valves under sinks, any damage is the responsibility of the unit owner, not YCC 50.

[39] In my view, the 2021 Opinion accurately sets out the terms of the Declaration and the responsibility of unit owners: see *Metropolitan Toronto Condominium Corporation No. 590 v. Registered Owners*, at paras 43-47 for a discussion on the responsibility of unit owners and condominium corporations.

[40] The failure in this case, as identified by the plumber, was the malfunction of the shut-off valve under the kitchen sink in the Unit. The shut-off valve is inside the Unit and therefore any

maintenance and/or damage caused by the shut-off valve's failure is the responsibility of the unit owner.

[41] The Renovation Notice does not govern or oust the responsibility of unit owners as set out in the Declaration or By-laws. The Declaration and By-laws are the governing documents and both the unit owners, and the corporation rely upon those documents to set their respective responsibilities and expectations: *Metropolitan Toronto Condominium Corporation No. 590 v. Registered Owners*, at paras. 49-50. There are specific requirements for amending these constituting documents. The Renovation Notice cannot amend the responsibilities set out in the Declaration and By-laws. It was conceded by counsel for YCC 50 that the Renovation Notice is not correct. I agree. It is unfortunate that it was issued. However, the Renovation Notice was not relied upon by the Demongs to their detriment as they located it after the leak and, in any event, they had the 2021 Opinion addressing the very scenario that took place on March 2.

[42] I conclude that the water damage arose because of the faulty shut-off valve in the Unit. As result, the Demongs are responsible for the repair costs of \$23,176.30. This amount is properly added to the lien.

Conclusion

[43] The Defendant owes the Plaintiff, as of October 28, 2024, \$39,763.58, excluding legal costs associated with this action under the Lien, which sum is comprised of the following amounts:

- i. Chargebacks related to the broken kitchen shut off valve: \$23,176.30;
- ii. Interest on the unpaid monthly common expense: \$12,421.51;
- iii. Costs incurred (inclusive of disbursements and HST) in the collection or attempted collection of the unpaid amounts: \$417.50;
- iv. Legal fees incurred (inclusive of disbursements and HST) in the collection or attempted collection of the unpaid amounts including, but not limited to the cost of preparing and registering the certificate of lien and a discharge of it: \$1,402.83;
- v. Legal fees incurred (inclusive of disbursements and HST) in the preparation and issuance of the Notice of Sale: \$1,419.24; and
- vi. Preparation of Discharge Statement x 2: \$926.60.

[44] The Plaintiff is entitled to a judgment in the amount of \$39,763.58, being the amount of the lien as of October 28, 2024, plus interest going forward at the rate of 18% per annum.

[45] The Plaintiff is entitled to an order for possession. The Defendant requested that any entitlement to possession be stayed for 60 days to allow the Defendant time to pay any arrears subject to the lien and ordered by this judgment. YCC 50 has agreed to permit the Defendant 60 days to pay the outstanding lien. Accordingly, the order for possession will be stayed for 60 days

to permit the Defendant an opportunity to pay the amount outstanding on the lien. If the amount is paid, then the order for possession shall be vacated.

Costs

[46] The plaintiff is entitled to its costs of this action which are not included in the above calculation.

[47] YCC 50's By-law no. 5 provides that YCC 50 is entitled to substantial indemnity costs where it is required to take enforcement proceedings. The By-law reflects the agreement among unit owners that where legal costs for enforcement are incurred by YCC 50 that those costs should be borne by those unit owners who are responsible for the need for enforcement and not the remaining unit owners. The unit owners have also agreed that such costs should be assessed using the substantial indemnity scale for calculating costs. In this case, there is no reason why YCC 50 ought not to receive its substantial indemnity costs: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 SCR 601, at para. 41.

[48] The plaintiff seeks the all-inclusive amount of \$33,000 in substantial indemnity costs of which \$25,000 is on account of fees. I have reviewed both the hourly rates and the time expended. I find both to be reasonable. I am still obliged to look at the costs in relation to the totality of the matters in issue and having regard to what a losing party ought to expect to pay on a substantial indemnity basis to determine if the amount is reasonable: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ON CA), at para. 42. Given the complexity of this matter and the matters issue, I find the requested costs to be reasonable and within an amount a losing party should expect to pay for a proceeding such as this. I order the defendant to pay \$33,000 in substantial indemnity costs.

[49] The plaintiff's counsel may submit a draft order in respect of the decision above for my review by emailing my judicial assistant who transmitted these reasons and copying the defendant.

Callaghan J.

Date: January 9, 2025