Case Name:

Bahadoor v. York Condominium Corporation No. 82

Between
Bridge Bahadoor, and
York Condominium Corporation No. 82

[2005] O.J. No. 1413
Court File No. 04-CV-264294CM2

Ontario Superior Court of Justice
M.R. Dambrot J.

February 11, 2005.
(19 paras.)

Counsel:

Jan Weir, for the Applicant/Responding Party

Marko Djurdjevac, for the Respondent/Moving Party

ENDORSEMENT

¶ 1 **M.R. DAMBROT J.** (endorsement):— Prior to March of 2004, York Condominium Corporation No. 82 was a condominium in crisis. It had a dysfunctional board of directors. It had been without a property management corporation since August of 2003. Its finances were in disarray. It had debts of approximately one million dollars. There were outstanding work orders on the buildings comprising the condominium, and on-going breaches of the fire code. As a result, on March 1, 2004, upon the application of Bridge Bahadoor, one of the unit owners, Hoilett J. ordered the immediate appointment of Fengate Property Management Ltd. as administrator over the condominium property pursuant to s. 131 of the Condominium Act until further order of the Court. He described this case as "a textbook case for invoking s. 131(1)."

¶ 2 Pursuant to the order of Hoilett J., Fengate is to exercise all of the powers and discharge all of the duties of the Board of Directors and the property manager of the condominium. Among the many other orders made by Hoilett J. is an obligation imposed on Fengate to, as soon as possible, carry out a review of the physical condition of the property and the assets of the Condominium Corporation, and, if it sees fit, levy a special assessment and/or deliver a revised budget for the purpose of obtaining funds for the

proper operation of the Condominium Corporation and for the maintenance and repair of its property and assets.

¶ 3 The administrator determined that $3 million was required to fund the most pressing repairs required by the work orders. Although the order of Hoilett J. authorized the administrator to levy a special assessment to obtain funding for the operation, maintenance and repair of the assets of the Condominium Corporation, the administrator attempted to raise the money by way of loan, because it would be less financially burdensome on the owners. Because of the resistance of many unit owners to a loan and demands by the City for compliance with the work orders, the administrator levied a special assessment in the amount of $3,000,000 payable over a twelve-month period. The administrator proposed to have a vote on the borrowing by-law at an Annual General Meeting of the Condominium Corporation on November 24, 2004, and informed the owners that if it were approved, the special assessment would immediately be cancelled.

¶ 4 On July 15, 2004, the administrator submitted a report to the Court as required by the Order of Hoilett J.

¶ 5 On November 22, 2004, Mr. Bahadoor brought an emergency motion for interim and interlocutory injunctions to restrain the Administrator from enforcing the special assessment levied against the owners, and from signing any contracts for construction relating to City of Toronto work orders issued against the Condominium Corporation, and an order rescinding the order of Hoilett J. and terminating the administration of Fengate.

¶ 6 Upon hearing the motion, Cameron J. ordered that the borrowing by-law be placed before the meeting of condominium owners on November 24, 2004 for the purpose of bringing the reserve funds to a specified level, and for the purpose of funding specified repairs required by the work orders. In his order, Cameron J. also specified when the work was to be done. Certain work was to be done forthwith; certain work was to be done within four months; and certain work was to be done within six months. Cameron J. also ordered both parties to use reasonable best efforts to obtain approval of the by-law. He further ordered that the administrator was to file a second, updated report of its activities by January 21, 2005, and bring a motion for approval of both reports returnable on February 4, 2005. 45 minutes were reserved for the motion, which was to be extended to two hours if any opposition was filed.

¶ 7 Cameron J. did not grant any of the relief sought by the moving party.

¶ 8 The borrowing by-law was passed at the meeting of November 24, 2004.

¶ 9 On January 21, 2005, the administrator filed its motion for an order approving its two reports. That same day, and prior to being served with the administrator's motion, Mr. Bahadoor served a motion once again seeking an order terminating the

administration of Fengate and rescinding the order of Hoilett J., and also directing that a meeting of the Condominium Corporation be held to elect a board of directors.

¶ 10 Counsel for the administrator communicated to counsel for Mr. Bahadoor that he wished to cross-examine and file an expert report on Mr. Bahadoor's motion, that he thought that the matter would require a full day for hearing, and that he considered it to be inappropriate to use the time set aside for the administrator's motion for Mr. Bahadoor's motion. Nonetheless, Mr. Bahadoor persisted with his motion. Before me, counsel for Mr. Bahadoor argued, despite the fact that his motion was served first, that the motion was by way of opposition to the administrator's motion for confirmation of his reports, was contemplated by the order of Cameron J. and was properly before me. I did not agree.

¶ 11 In my view, the motion by Mr. Bahadoor was not contemplated by the order of Cameron J. Indeed, there is much to be said for the argument that it is a collateral attack on his order, but I need not decide that issue today. It is sufficient to say that I considered the motion brought by Mr. Bahadoor to be an effort to usurp the time scheduled for the administrator's motion, albeit in good faith, and I adjourned it to a date to be fixed by the registrar.

¶ 12 I turn next to the merits of the administrator's motion. There is nothing before me to suggest that the administrator is doing anything other than making good faith efforts to comply with its court ordered mandate, and that its decisions have been reasonable and sound. Fengate's pursuit of the repairs of the condominium assets and the restoration of the financial stability of the condominium corporation has been both responsible and prudent. Mr. Bahadoor, however, to his opposition to the motion, did raised several matters that I will comment on briefly.

¶ 13 First, he says that the administrator has not always shown sufficient sensitivity in its communications with the unit owners, particularly given the volatility of the situation. Counsel for the administrator strongly disagrees. I need not pass judgment on the issue. It is sufficient to say that I see nothing in the conduct of the administrator in its communications with the unit holders that even remotely suggests that its reports should not be approved.

¶ 14 Second, Mr. Bahadoor argued that the administrator should not have proceeded to sign contracts and commence the work on the premises in advance of this motion. I see no merit to this position. In view of the outstanding work orders, the scope of the administrator's authority under the order of Hoilett J. and the Condominium Act, the obligation on the Corporation to repair and maintain the common elements found in s. 89 and s. 90 of the Act and the clear direction of Cameron J., the administrator could hardly have done otherwise.

¶ 15 Third, Mr. Bahadoor raised a concern that the bank loan being negotiated by the

administrator may include a term requiring the corporation to enforce any arrears in the common element fees by way of lien. This, it is argued, could have the effect of forcing low-income owners out of their homes. The fact is, however, that the condominium corporation has a lien against a unit when an owner defaults in its obligation to contribute to common expenses by operation of s. 85(1) of the Act, and the lien has priority over other registered encumbrances by virtue of s. 86(1). I note as well that the mortgagee of a defaulting unit holder has the right to pay any unpaid contributions to the common expenses under s. 88(1). I see nothing in the potential term of the loan that increases the jeopardy of an impecunious unit holder.

¶ 16 Finally, and most importantly, Mr. Bahadoor informed the administrator for the first time through the vehicle of this motion that some of the unit holders favour the immediate sale of the condominium property to a developer who would tear down the building. They note that many of the unit owners have fairly low incomes, and argue that it makes no sense to repair a building that might then be torn down. The administrator said that he is not opposed to a sale, and would gladly begin pursuing that matter. He noted, however, that selling a condominium is a complex matter, requiring, by virtue of s. 124(2) of the Act the approval of 80% of the unit owners and 80% of those with registered claims against the property being sold. Dissenters have a right to mediation under s. 125. The repairs cannot be put on hold pending entirely uncertain efforts to sell the property.

¶ 17 I agree with the administrator. It is unfortunate that the owners did not consider the option of selling long ago. But for now, the repairs must proceed. They cannot be put on hold pending the possible sale of the property, particularly in light of the enormous practical and legal obstacles standing in the way of an immediate sale.

¶ 18 Accordingly, I grant the administrators motion and approve its two reports. In addition, I make the following order:

(a) the administrator is to expeditiously examine the possibility of selling the property and take steps to put a process in place to effect a sale if appropriate; and
(b) the administrator is to make a further report to the Court with respect to his activities from January 1, 2005 to May 31, 2005, and bring a motion returnable in mid-July 2005 for the approval of the report.

¶ 19 I make no order as to costs.

M.R. DAMBROT J.

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