

2012 CarswellOnt 15878, 2012 ONSC 6326

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Lahrkamp v. Metropolitan Toronto **Condominium Corp.** No. 932

Michael Lahrkamp, Plaintiff (Appellant) and Metropolitan Toronto **Condominium Corporation** No. 932, Defendant  
(Respondent)

Ontario Superior Court of Justice (Divisional Court)

Lederer J.

Heard: November 6, 2012  
Judgment: November 6, 2012  
Docket: Toronto 222/11

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Counsel: Michael Miller, Michael Arbutina, for Plaintiff / Appellant

Jonathan H. Fine, for Defendant / Respondent

Subject: Civil Practice and Procedure; Property

Civil practice and procedure

Real property

**Lederer J., (Orally):**

1 The respondent is a **condominium corporation**. It is located in the City of Toronto. The appellant is the owner of a unit in a building operated by the corporation.

2 The appellant sought election as a candidate to the Board of Directors of the corporation. The appellant was not elected. Following the election, the appellant requested access to the proxies and ballots in order to validate the election results (see: *Condominium Act, 1988 S.O. 1998 c. 19* at s. 55(3)). The corporation refused to provide the appellant with access to the proxies and ballots that reflected the votes cast as part of the election. As a result, the appellant brought an action in the Small Claims Court for an order requiring their production (see: *Condominium Act, 1998, supra*, at s. 55 (10)).

3 A Small Claims Court trial was conducted over the course of three days. Justice Godfrey, the presiding judge, issued reasons and a judgment on October 29, 2010. The judge ordered that the proxies and ballots used in the election, as well as other records of the corporation be produced to the appellant.

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4 After the judgment was rendered and the appeal period had expired, the corporation brought a motion to vary the judgment. It sought to add a term that the proxies were to be redacted by deleting names and signatures of the owner, and the unit number from each proxy. Godfrey J. allowed the motion and varied the judgment accordingly.

5 The appellant appeals the variation and seeks to reinstate the judgment as originally issued. He seeks production of the proxies without redaction.

6 It was said on behalf of the corporation that this Court has no jurisdiction to consider this appeal. The *Courts of Justice Act*, R.S.O. 1990, c. C.43 provides for appeals from the Small Claims Court. Insofar as it is relevant here, it states:

An appeal lies to the Divisional Court from a final order of the Small Claims Court in an action,

(a) for the payment of money in excess of the prescribed amount, excluding costs,

...

(*Courts of Justice Act*, *supra*, s. 31)

7 It is agreed that, at the relevant time, the "prescribed amount" was \$500. The appellant relies on the \$500 awarded by the judge following the trial and adds prejudgment interest to say that the precondition is met and the court has jurisdiction. It is submitted that prejudgment interest is to be included within the "prescribed amount" as a result of the provision, in s. 31 of the *Courts of Justice Act*, where it is said that the prescribed amount excludes costs and no corresponding reference to prejudgment interest is made. It is submitted on behalf of the appellant that where interest is to be considered, it is referred to in the *Courts of Justice Act* (see: for example, s. 23(1)(a)).

8 The problem is that the original judgment is not the order from which an appeal is now being taken. The Notice of Appeal makes clear that the order being appealed is the one which varied the trial judgment to allow for the redaction of the proxies. This order makes no reference to any amount of money, other than costs, which are specifically excluded from any consideration of jurisdiction for an appeal.

9 The Small Claims Court is designed to be an expeditious and informal forum for the resolution of disputes. The idea is that the disputes it has jurisdiction to deal with are to be dealt with quickly, cheaply and with less reliance on formal rules. The limited right to appeal is consistent with this approach.

10 I shall deal with jurisdiction at the end of this Endorsement.

11 Quite apart from whether this Court has jurisdiction to consider an appeal, the position of the appellant is that the Small Claims Court judge had no jurisdiction to place any term or condition on any order requiring the production of records of the **condominium corporation**. The appellant referred to the *Condominium Act, 1998*, *supra*, s. 55(10), which says:

If a corporation without reasonable excuse does not permit an owner or an agent of an owner to examine records or to copy them under this section, the Small Claims Court may order the corporation to produce the records of examination.

12 Based on this, counsel for the appellant submitted that a Small Claims Court judge has only two options: he or she may (1) order or (2) deny production.

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13 This is too narrow a reading of the *Condominium Act, 1998*. It fails to account for the authority provided to the Small Claims Court judge, by the rules applicable to that court. Generally, like the *Rules of Civil Procedure*, the Rules of the Small Claims Court are to be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with s. 25 of the *Courts of Justice Act* (see: *Small Claims Court Rules*: Rule 1.03(1)).

14 The *Courts of Justice Act*, s. 25 provides the following direction:

The Small Claims Court shall hear and determine in a summary way all questions of law and fact and may make such order as is considered just and agreeable to good conscience.

15 Insofar as it applies here, substance is given to this direction by Rule 15.01(6) of the *Small Claims Court Rules* which provides that motions can be made after judgment has been signed. This is added to by Rule 1.04 of the *Small Claims Court Rules* which, contrary to the submissions of counsel on behalf of the appellant, makes clear that the Small Claims Court can impose conditions on the orders which it makes. Even if this were not so, Rule 1.03(2) provides that where the *Small Claims Court Rules* do not adequately cover a matter, if the court considers it appropriate, it may consider it by reference the *Rules of Civil Procedure*. This would include reference to Rule 59.06 of the *Rules of Civil Procedure* which deals with "amending, setting aside or varying" orders.

16 This being so, the Small Claims Court judge would have the jurisdiction to vary or clarify an order previously made. The difficulty is that the appellant says that this was not the clarification of an order but an appeal that was too late. The change was not a clarification but an amendment to the substance of the order.

17 It appears both from the history of this matter and the substance of the decision of the judge that this is not an accurate characterization of what took place. When the corporation came to act on the order it became concerned that it would have to redact the identity of the individual unit owners or be in breach of the *Condominium Act, 1998*, s. 55(4)(c). The appellant refused to accept the redaction and, within an email exchange, asked whether the corporation planned to bring a motion "for clarification". The judgment made with respect to the motion begins with the phrase: "the defendant has brought a motion for clarification ...". The reasons making the clarification accept the concern that the redaction would serve to protect the privacy rights of the other owners. There is nothing to suggest that this is not a valid consideration for a proper resolution to a problem with the order, that became apparent after it had been issued.

18 I find that this Court is without jurisdiction to deal with this appeal. The order appealed from is essentially a procedural matter meant to clarify the judgment which had been made and from which no appeal was taken.

19 In any event, I find that the Small Claims Court judge had the jurisdiction to clarify the order. There is no reason why the clarification should be set aside.

### Costs

20 For oral reasons delivered today, the appeal is dismissed. Costs are sought on a full indemnity scale in the amount of \$10,265.83. It is said the appeal was necessary and that the issue of jurisdiction was raised at the outset. Counsel for the appellant suggests that costs on a partial indemnity scale are more appropriated and that these should be reduced to account for the time this appeal should reasonably have taken.

21 On this basis costs would be \$5,432.38. As a matter of policy, the *Condominium Act, 1998* suggests that **condominium corporations** should not be put to unnecessary expense. In effect these applications are lawsuits among owners of, in part, a shared asset.

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22 On the other hand, disputes do arise and sometimes have to come to court. Costs to the respondent in the amount of \$7,932.38.

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