CITATION: Peel Condo Corp 166 v. Ohri, 2017 ONSC 6438
COURT FILE NO.: CV-16-3739-00
DATE: 2017-10-26

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	
PEEL CONDOMINIUM CORPORATION NO. 166	*Adam Jarvis*, for the Applicant
Applicant	
- and -	
NARENDER OHRI	*Harpreet Singh Makkar*, for the Respondent
Respondent	
	HEARD: February 22, 2017, at Brampton, Ontario

Price J.

Reasons For Order

OVERVIEW

The Application

[1] Peel Condominium Corporation No. 166 ("PCC 166", or "the Corporation") apply for a declaration that one of its unit owners, Narender Ohri, is in breach of the *Condominium Act*, 1998, S.O. 1998, c. 19, and of the Corporation's *Declaration, By-laws, and Rules*, and for an Order requiring him to comply with

those documents. The corporation acknowledges that it makes the Application for the purpose, among others, of allowing it to request an Order removing Mr. Ohri from the Condominium in the future should he breach the Order requested.

The Jurisdiction Issue

[2] At a hearing on October 14, 2016, Mr. Ohri raised a preliminary issue of the Court's jurisdiction to hear the Application. The hearing was adjourned from that date to February 22, 2017, to enable the parties to cross-examine each other on their respective affidavits.

[3] At the hearing on February 22, 2017, the Court granted Mr. Ohri a further adjournment to enable him to incorporate the evidence from the most recent transcript into his factum, as he had received it only the previous day.

[4] The parties agreed on February 22 that the Court could hear their argument that day on the issue of jurisdiction, which Mr. Ohri had raised on October 14, 2016. This issue could proceed despite the adjournment request as the decision on jurisdiction did not require reference to the cross-examination transcripts. After hearing the argument on jurisdiction, the court reserved its decision and adjourned the remainder of the hearing to October 25, 2017.

[5] The preliminary issue is whether the Court may hear the Application, on the basis that it concerns a breach of the Act, or whether PCC 166 has failed to comply with a pre-condition to the Court's jurisdiction in section 134(2) of the *Condominium Act*. This section requires that a party, including a condominium corporation, not apply to the Court until it has failed to obtain compliance through the mediation and arbitration processes described in section 132 of the Act.

[6] Mr. Ohri argues that the Application concerns a dispute over an election of officers to the Board, and therefore "concerns the Declaration, by-laws, or rules

of the corporation," within the meaning of s. 133 of the *Condominium Act*, and must be determined by mediation or arbitration. PCC 166 submits that the Application concerns a breach of the Act, as it arises from an alleged assault by Mr. Ohri on another unit owner, and that it is therefore not subject to the requirements of s. 134(2) of the Act.

BACKGROUND FACTS

[7] PCC 166 manages a 170 unit condominium building at 21 Knightsbridge Road in Brampton ("the Building"). The Building is managed by a Board of Directors who are elected by a majority vote of the members. The Directors are:

a) Parveen Khanna (Ms. Khana");

b) Manoharadas Manobhavan ("Dr. Manobhavan");

c) Upinder Sheri ("Mr. Sheri");

d) Malamurli Kalsi ("Mr. Kalsi"); and

e) Bhavdeep Kalsi ("Ms. Kalsi").

[8] Mr. and Ms. Kalsi are husband and wife. Parveen Khanna is the President of the Board.

[9] Mr. Ohri is a social worker in Toronto who owns and resides in a unit in the Building. Another unit-owner in the Building, Takay Shwar Singh, also known as Peter Singh, or Mr. Singh, was a part-time Superintendent of the Building until his dismissal in August 2015, based on a complaint by Mr. Manobhavan.

The Election

[10] During an election of members to the Board of Directors of the Corporation in February 2016, Mr. Singh campaigned for election and Mr. Ohri supported

him. The Board posted a notice implying that residents should not support Mr. Singh.

[11] Mr. Singh lost the election when 20 of the votes cast for him were disqualified based on Mr. Ohri's alleged intimidation of unit owners into providing proxies. Mr. Singh contested the invalidation of the votes.

The January 2016 Altercations

[12] On January 27, 2016, Mr. Ohri complained that a Board member, Ms. Khana, was illegally parked in the building's underground parking lot. The Board took no action on Mr. Ohri's complaint.

[13] On January 31, 2016, there was an altercation between Mr. Ohri and Ms. Khana and her spouse in the basement parking lot of the Building. Mr. Ohri reported the incident to the police as an unprovoked assault on him.

[14] Following the election, Mr. Singh sold his unit in the Building and moved out.

The Judicial Proceeding

[15] On August 23, 2016, PCC 166 applied for the following relief, among others:

a) A Declaration that the Respondent, Narender Ohri ("Ohri") is in breach of the *Condominium Act*, 1998, SO 1998 C 17;

b) A Declaration that the Respondent, Ohri, is in breach of the Declaration of PCC 166;

c) A Declaration that the Respondent, Ohri, is in breach of the Rule 8 of the rules of PCC 166;

e) An Order requiring the Respondent, Ohri, to comply with the *Condominium Act*, 1998, the Bylaws and the Rules of PCC 166;

[16] The grounds for the Application include the following, among others:

a) The Respondent's conduct is contract [sic] to the *Condominium Act*, 1998, the Declaration of PCC 166, and the Rules of PCC 166;

b) Sections 17(3), 119, 134, and 135 of the *Condominium Act*, 1998, SO 1998 C 17.

[17] The Court adjourned PCC 166's Application from October 14, 2016 to February 22, 2017, to enable the parties to cross-examine each other on their respective affidavits and incorporate the evidence from the transcripts into their factums. On the return of the Application on February 22, 2017, Mr. Ohri requested a further adjournment to enable him to incorporate the evidence from the last transcript, which he had received only the day before the hearing, into his factum.

[18] Following a brief hearing, the Court allowed Mr. Ohri's request for a further adjournment to October 25, 2017. Counsel agreed that in what remained of the time set aside for the hearing on February 22, 2017, they could address the issue of the Court's jurisdiction because the determination of this did not require reference to the evidence from the transcripts.

ISSUES

[19] The court must determine, as a preliminary issue, whether PCC 166 was required to engage in mediation or arbitration prior to making its Application, and whether its failure to engage in those processes precludes the Court from hearing the application.

PARTIES' POSITIONS

[20] In his factum, Mr. Ohri makes the following argument:

33. ***The pre-condition for grant of compliance order has not been met*** in this case. No explanation has been provided by PCC 166 for ***its refusal***

> ***to meet the pre-condition of engaging in mediation and arbitration***. [Emphasis added]

[21] In its amended factum, PCC 166 makes the following response:

> 50. The court has found that ***mediation under the Condominium Act is permissive rather than a mandatory requirement***. Furthermore, the court has found it reasonable for a condominium board to refrain from attempting mediation when the breach of the *Condominium Act* included the aggressive physical assault of others unit holders.
>
> 51. Notwithstanding the jurisprudence, and despite the offers by PCC 166 to adjourn this matter for mediation, ***Ohri has steadfastly refused to engage in mediation***.

ANALYSIS AND EVIDENCE

Legislative framework

[22] The *Condominium Act, 1998,* imposes a statutory duty on condominium corporations to control, manage and administer the common elements. Section 17 of the Act provides:

> **Objects**
>
> **17** (1) The objects of the corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners. 1998, c. 19, s. 17 (1).
>
> **Duties**
>
> (2) The corporation has a duty to control, manage and administer the common elements and the assets of the corporation. 1998, c. 19, s. 17 (2).
>
> **Ensuring compliance**
>
> (3) ***The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules***. 1998, c. 19, s. 17 (3). [Emphasis added]

[23] Sub-section 17(3), above, imposes a statutory obligation on the condominium corporation to take all reasonable steps to ensure that the members of the condominium comply with the Act, and with its Declaration, by-

laws, and rules. The Act imposes a corresponding obligation on the members of the condominium to comply with its terms. Section 119 provides:

> **Compliance with Act**
>
> **119** (1) ***A corporation***, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, ***an occupier of a unit*** and a person having an encumbrance against a unit and its appurtenant common interest ***shall comply with this Act, the declaration, the by-laws and the rules***. 1998, c. 19, s. 119 (1).
>
> **Right against owner**
>
> (3) A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require the owners and the occupiers of units to comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (3).

[24] Enforcement of the *Condominium Act*, and of a condominium's Declarations, By-laws, and Rules is governed by Part IX (sections 130 to 137) of the Act. Those sections provide that:

> a) Every Agreement between a condominium corporation and its members, and every Declaration, shall be deemed to contain a provision to submit a disagreement between the parties that concerns the Declaration, By-laws, or Rules, to mediation or arbitration.
>
> b) Where mediation or arbitration is available under s. 132, a party may not apply to the court until the person has failed to obtain compliance through using those processes.

[25] Sections 132, 134, and135 of the *Condominium Act, 1998,* provide as follows:

> **Mediation and arbitration**
>
> 132. (1) ***Every agreement mentioned in subsection (2) shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to,***

(a) mediation by a person selected by the parties unless the parties have previously submitted the disagreement to mediation; and

(b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration under the *Arbitration Act, 1991*,

(i) 60 days after the parties submit the disagreement to mediation, if the parties have not selected a mediator under clause (a), or

(ii) 30 days after the mediator selected under clause (a) delivers a notice stating that the mediation has failed. 1998, c. 19, s. 132 (1).

Application

(2) ***Subsection (1) applies to the following agreements***:

1. An agreement between a declarant and a corporation.

2. An agreement between two or more corporations.

3. ***An agreement described in clause 98 (1) (b) between a corporation and an owner***.

4. An agreement between a corporation and a person for the management of the property. 1998, c. 19, s. 132 (2).

Disagreements between corporation and owners

(4) ***Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively***. 1998, c. 19, s. 132 (4).

Compliance order

134. (1) Subject to subsection (2), an owner, an occupier of a proposed unit, ***a corporation***, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit ***may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of***

> ***any of the parties to the agreement***. 1998, c. 19, s. 134 (1); 2000, c. 26, Sched. B, s. 7 (7).
>
> **Pre-condition for application**
>
> (2) ***If the mediation and arbitration processes described in section 132 are available, a person is not entitled to apply for an order under subsection (1) until the person has failed to obtain compliance through using those processes***. 1998, c. 19, s. 134 (2).
>
> **Contents of order**
>
> (3) On an application, the court may, subject to subsection (4),
>
> (a) ***grant the order applied for***;
>
> (b) ***require the persons named in the order to pay***,
>
> (i) ***the damages incurred by the applicant as a result of the acts of non-compliance, and***
>
> (ii) ***the costs incurred by the applicant in obtaining the order***; or
>
> (c) grant such other relief as is fair and equitable in the circumstances. 1998, c. 19, s. 134 (3). [Emphasis added]

[26] The Act itself specifically prohibits certain conduct likely to damage property or cause injury to an individual. Section 117 provides:

> **117.** ***No person shall*** permit a condition to exist or ***carry on an activity in a unit or in the common elements if the condition or the activity is likely to*** damage the property or ***cause injury to an individual***. 1998, c. 19, s. 117.

Jurisprudence

[27] The interplay between s. 17 and s. 119 in the enforcement of the *Condominium Act* was described by Wood J. in *Muskoka Condominium Corporation No. 29 v. Kreutzweiser,* (2010). Justice Wood stated:

> ***Section 19(1) of the Condominium Act provides that all owners and occupiers of units must comply with the condominium corporation's declarations and rules. Section 17(3) of the Act requires a condominium corporation to enforce the declaration and rules. These provisions are***

> ***crucial to the orderly operation of condominiums and for the protection of condominium unit owners and occupiers***. The owner of a condominium unit does not have a classic freehold. He or she is not at liberty to deal with property in the same manner as the owner of a single family residential dwelling might be. ***The nature of a condominium is that in return for the advantages gained through common ownership of certain elements, some degree of control over what can be done with those common elements is given up. The details of what is given up are set out in the condominium declaration and its bylaws and rules. It is both the right and obligation of a unit owner or occupier to see that these are obeyed***. *Re Carleton Condominium Corporation N 279 v. Rochon et al* 1987 CanLII 4222 (ON CA), [1987] O.J. No. 417, Ont. C.A. Finlayson J.A., at para. 26.[1] [Emphasis added]

The obligation of the parties to seek a resolution through mediation or arbitration

[28] The mediation and arbitration processes provided for in section 132 are available only for disputes regarding the Declaration, By-laws, or Rules of a condominium corporation, not disputes regarding the Act itself. For this reason, the court has found that a party may apply to the Superior Court for enforcement of the Act without first attempting to achieve a resolution of the dispute through mediation or arbitration.

[29] In *McKinstry and Dempster v. York Condominium Corporation No. 472 and Verrier* (2003), Juriansz J. rejected a condominium corporation's argument that the court lacked jurisdiction over a former unit owner's claim against the corporation for damages for refusing him permission to complete renovations that he had undertaken, allegedly in violation of the Declaration. Jurianz J. stated:

> [19] The legislature's objective in enacting s. 132 is to enable the resolution of disputes arising within a condominium community through the more informal procedures of mediation and arbitration. To attain this objective, ***the phrase "with respect to the declaration, by-laws or rules" in s. 132(4), which applies to disagreements between owners and the condominium corporation, should be given a generous interpretation. It applies, in my view, to disagreements about the validity, interpretation, application, or non-application of the declaration, by-laws and rules. It must be noted that s. 132(4) does not require owners and condominium corporations to submit***

[1] *Muskoka Condominium Corporation No. 39 v. Kreutzweiser*, 2010 ONSC 2463 (CanLII), para. 8

> ***disagreements with respect to the Act to mediation and arbitration***.[2] [Emphasis added]

Determining whether the Application substantially concerns a violation of the Act.

[30] There are some applications that clearly concern a violation of the Act. In such cases, the court has assumed jurisdiction pursuant to s. 134 without requiring the parties to first engage in mediation or arbitration pursuant to s. 134(2). In *Peel Condominium Corp. No. 283 v. Genik*, (2007), the unit owner caused a satellite dish to be installed on her unit without the permission of the corporation, contrary to section 98 of the Act. The Court held that the satellite dish was installed in violation of the legislation and further stated that it was not a situation for which mediation or arbitration was required.[3]

[31] Similarly, in *Channa v. Carleton Condominium Corp. No. 429*, 2011 ONSC 7260 (CanLII), Polowin J. stated:

> [43] In my view ***there was no requirement for the Corporation to enter into mediation and arbitration prior to seeking a compliance order*** in the legislation. ***Section 134 of the Act*** states that a condominium corporation is entitled to commence an application for an order enforcing compliance with any provision of the Act, the Declaration, the By-Laws or the Rules of the corporation. Section 132 of the Act requires that some disputes between an owner and a corporation proceed by way of mediation and arbitration. It ***provides that disputes relating to the Declaration, By-Laws and Rules, or disputes relating to an existing agreement governing a modification to the common elements must form the subject of mediation and arbitration***. But surely, the issue of whether one must comply with the law itself, that is the requirement to seek approval and enter into an agreement with respect to the alterations to common elements, cannot be the subject of mediation or arbitration. ***The language of the sections 132 and 134 simply does not support the interpretation sought by Ms. Channa. The dispute herein relates to a direct breach of the Act***.[4]

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[2] *McKinstry and Dempster v. York Condominium Corporation No. 472 and Verrier* (2003), 2003 CanLII 22436 (ON SC), 68 O.R. (3d) 557 at para. 19 (S.C.J.)
[3] *Peel Condominium Corp. No. 283 v. Genik*, [2007] O.J. No. 2544
[4] *Channa v. Carleton Condominium Corp. No. 429*, 2011 ONSC 7260 (CanLII)

[32] In *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, (2010), Code J. states:

> [49] Two points are noteworthy about the statutory scheme. First, ***the right to bring court proceedings pursuant to s. 134 is broader than the duty to attempt mediation under s. 132***. An Application to this Court can be brought to enforce "compliance with any provision of this Act" ***whereas the duty to mediate applies only to lesser disputes concerning "the declaration, the by-laws, the rules or an agreement"***. Second, ***s. 134(2) contemplates the existence of circumstances where mediation is not attempted, prior to bringing court proceedings, as it begins with the conditional conjunction "if" in relation to the mediation that is available under s. 132***. As already noted, s. 132 has no application to breaches of *the Act*, itself.

[33] Justice Code concluded that the Application "substantially concerned" alleged breaches of s. 117, and therefore being, in essence, an Application to enforce the Act, did not require recourse to mediation or arbitration. Justice Code stated:

> [51] I am satisfied that the present Application substantially concerns alleged breaches of s. 117 of *the Act*, that the mandatory duty to attempt mediation under s. 132 does not apply and that it was reasonable for MTCC 747 to avoid mediation in this case. Ms. Korolekh's failure to respond to the Board's May 13, 2009 letter and her bald denials of all the allegations make it unlikely that further expenditures on mediation would be fruitful.[5]

[34] The court retains jurisdiction to determine whether an application is, in essence, to obtain compliance with the Act, or whether it concerns a disagreement over the Declaration, by-laws, or rules of the corporation. It is not the language used in an Application that determines the nature of the claim and, hence, whether or not the court has jurisdiction over it. The Supreme Court of Canada made this point in *Non-Marine Underwriters v. Scalera*, (2000), when setting down rules for interpreting a Statement of Claim against an insured for the

[5] *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448 (CanLII),

purposes of determining whether it triggered a duty to defend under an insurance contract. Justice Iacobucci stated:

> Determining whether or not a given claim could trigger indemnity is a three-step process. First, a court should determine which of the plaintiff's legal allegations are properly pleaded. In doing so, ***courts are not bound by the legal labels chosen by the plaintiff. A plaintiff cannot change an intentional tort into a negligent one simply by choice of words, or vice versa***. Therefore, when ascertaining the scope of the duty to defend, ***a court must look beyond the choice of labels, and examine the substance of the allegations contained in the pleadings***. This does not involve deciding whether the claims have any merit; all a court must do is decide, based on the pleadings, the true nature of the claims.[6] [Emphasis added]

[35] The Court adopts a similar approach. Courts are not bound by the legal label used by a condominium corporation, in determining whether an Application is, in essence, to enforce compliance with the Act, or is simply framed in that manner as a means of avoiding the obligation to submit the dispute to mediation or arbitration in accordance with s. 134(2). In *York Region Condominium Corporation No. 890 v. 1185010 Ontario Inc.*, (2007), Cullity J. found that mediation processes were "available" because the Application, ostensibly brought to enforce the Act, was, in reality, a dispute over the Declaration. Justice Cullity stated:

> **[12]** **….** Although section 134 (1) entitles the plaintiff to make application to the court to enforce compliance against O'Canada, section 134 (2) provides that any such application must be preceded by an unsuccessful attempt to obtain compliance through the mediation and arbitration processes in section 132 if they are "available". ***In my opinion they are available here as the essential purpose of the mediation and arbitration as between the plaintiff and 161 will be to determine whether O'Canada is complying with the Declaration and to enforce compliance if it is not***.7 [Emphasis added]

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[6] *Non-Marine Underwriters v. Scalera* (2000), 2000 SCC 24 (CanLII), 185 D.L.R. (4th) 1, [2000] S.C.J. No. 26, para. 50;

[7] *York Region Condominium Corporation No. 890 v. 1185010 Ontario Inc.*, 2007 ONSC 44832 (CanLII), para. 12

[36] Justice Corbett reached a similar conclusion in *Toronto Common Elements Condo. Corp. No. 2041 v. Toronto Standard Condo. Corp. No. 2051*, 2015 ONSC 4245 (CanLII). Justice Corbett stated:

> **Precondition for this Proceeding Is Not Satisfied**
>
> [25] ***This case is not really about non-payment of common expenses. It is about disputes over common expenses. Of course the owners must pay their share of common expenses. TSCC does not deny this, and is in a position to pay, but disputes liability for a host of reasons, all of which are properly addressed through the mediation and arbitration provisions of the Condominium Act. That process should have been followed in this case***.
>
> [26] Subsection 134(2) makes it a precondition for an application such as this one that the claimant "obtain compliance through … the mediation and arbitration processes described in section 132" if those process "are available". Subsection 132(4) provides:
>
> > Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1)(a) and (b) respectively.
>
> [27] This is, at heart, just such a dispute. The respondent challenges the applicant's failure to discharge its duties in respect to common expenses, and its delay in pursuing them. ***These duties arise under the declaration and by-laws***. The respondent claims that the applicant failed to provide the services for which the common expenses are sought, and seeks a set-off in respect to common expenses it has paid for itself. The respondent claims that the common expenses sought by the applicant were not arm's length and are inflated. It seems clear that the respondent is correct about some of the expenses being not at arm's length. It also seems clear that the respondent has paid for some items that should have been chargeable as common expenses, though the merits of a set-off claim in respect to those expenses are not clear given the respondents' rateable responsibility for these expenses in any event.
>
> [28] The primary dispute here is not over legal liability but the fair and reasonable adjustment of accounts. ***It is not primarily a dispute about the Condominium Act, but rather over the alleged failure of the applicant to discharge its obligations in connection with common expenses, as set out in detail in the declaration, by-laws and rules*** of TCECC. ***This is precisely the sort of mundane issue that ought to be sorted out in the less expensive***

> ***and faster process of mediation/arbitration, rather than through litigation in the Superior Court***.[8] [Citations omitted]

The unwillingness of a respondent to engage in mediation or arbitration

[37] Where a respondent is unwilling to engage in mediation or arbitration, the applicant is relieved of its obligation to engage in mediation, a voluntary process whose effectiveness may depend on the willingness of both parties to participate. It is not, however, relieved of its obligation to submit the dispute to arbitration.

[38] In *Metropolitan Condominium Corporation No. 1143 v. Peng*, (2008), Patillo J. interpreted the phrase "If the mediation and arbitration processes described in section 132 are available" to mean where the respondent to the Corporation's request for mediation refused to engage in the process. Justice Patillo states:

> Were the mediation and arbitration processes available to the Corporation?
>
> [20] The Corporation submits that as a result of Mr. Li's failure to respond to its solicitors' letters in February, March and April of 2007 proposing first mediation and then arbitration, it had no choice but to institute the application in order to obtain an order for compliance. ***It submits that as result of Mr. Li's actions (or rather inaction), neither mediation nor arbitration was available to it*** and accordingly s. 134 (2) is not applicable and it is entitled to proceed with the application.
>
> [21] ***While I agree that mediation was not available***, in my view arbitration was. It is clear from a review of the mandatory mediation and arbitration provisions in s. 132 of the Act that, notwithstanding Mr. Li's failure to respond to the solicitors' letters or to agree to mediation, the Corporation could still have proceeded with arbitration. Although it initiated the arbitration process, it chose to abandon it and bring the application instead. Accordingly, because arbitration was available but not utilized, s. 134 (2) of the Act is applicable.
>
> [24] Accordingly, in my view, ***while mediation was not available given Mr. Li's failure to respond,*** **arbitration clearly was.** To the extent that arbitration was unavailable, it was solely as a result of the Corporation's failure to

[8] *Toronto Common Elements Condo. Corp. No. 2041 v. Toronto Standard Condo. Corp. No. 2051*, 2015 ONSC 4245 (CanLII), paras.

> follow the procedure in s. 132 of the Act and the *Arbitration Act* and through no fault of Mr. Li.[9] [Emphasis added]

Applying the legal principles to the facts of this case

[39] I find, for the following reasons, that PCC's Application, in essence, concerns a dispute over its election of members to the Board of Directors. It is not about conduct by Mr. Ohri that is likely to cause injury to persons or damage to their property. I make this finding for the following reasons:

a) Mr. Ohri has no history of violence;

b) Mr. Ohri supported Mr. Singh's candidacy in the Board election, and members of the Board, who had dismissed Mr. Singh from his position as Property Manager, did not approve of Mr. Singh's candidacy;

c) All of the complaints against Mr. Ohri were made by Board members;

d) The Board employed the alleged intimidation by Mr. Ohri to invalidate proxies that unit owners gave to him or to Mr. Singh to vote for Mr. Singh in the Board election, which contributed to Mr. Singh's defeat in the election;

e) The police did not regard any of the incidents as justifying their charging Mr. Ohri with assault, or any other criminal offence;

f) The complainants themselves did not attend before a Justice of the Peace to lay a charge of assault, or of any other office, against Mr. Ohri;

[9] *Metropolitan Condominium Corporation No. 1143 v. Peng*, 2008 ONSC 1951 (CanLII), paras. 20 - 21

g) Having viewed the video footage of the two incidents from the surveillance camera, I find it to be, at best, ambiguous, as to who precipitated the altercation. In any event, it does not support a finding that Mr. Ohri committed an assault.

h) PCC 166's lawyer demanded a broad undertaking from Mr. Ohri to comply with the Declaration, By-Laws, and Rules of the Corporation, which the court itself would not order a unit owner to do.

i) PCC 166 acknowledges that it has brought the Application for the purpose, among others, of allowing the Board to request an Order removing Mr. Ohri from the Condominium in the future should he breach the court Order it obtains.

Mr. Ohri's prior history

[40] Mr. Ohri has resided in the condominium since February 2013. He resides in Unit 1709 with his nephew. He is employed as a social worker by a non-profit social service agency in Toronto. He leaves for work in the early morning and returns at night.

Mr. Ohri's support of Mr. Singh's candidacy in the Board election

[41] Mr. Ohri states that he supported Mr. Singh's candidacy in the election of two directors of the Board held in February 2016. He states that Dr. Manobavan and Ms. Khanna believe that he caused Mr. Singh to challenge the candidacy of Ms. Khanna, which he denies.

[42] Mr. Ohri has testified that he had spoken casually with Dr. Manobavan prior to December 31, 2015, because he lived close to him in the building, and because he owns a dog, and when Dr. Manobavan and his wife saw each other

in the elevator, they appeared neighbourly. Mr. Ohri first learned Mr. Manobavan's name on December 31, 2015, when he was with his girlfriend, canvassing for votes for his friend, Peter Singh. He asked Mr. Monobavan whether he was aware of the election and asked his name, and they shook hands. He did not yell, or make disparaging remarks about him.

[43] Mr. Ohri next met Dr. Manobavan on January 24, 2016. He gives his account of the exchange in paragraphs 19 to 24 of his affidavit sworn September 29, 2016. On that date, he was with Mr. Singh, canvassing for support in the election, when Dr. Manobavan and Ms. Khanna began following them, and seeking support for Ms. Khanna's election. Mr. Ohri, in his testimony, states that he "can't remember 100 per cent because it's been more than a year," and he thinks that Ms. Khanna and Dr. Manobavan may have been with another Board member. He acknowledges that, having seen a notice on a door that he thought defamed Mr. Singh, he commented to Ms. Khanna, when she and Dr. Manobavan passed, that it was wrong for the Corporation to use notices posted in the hallways to benefit her candidacy. He could not remember whether she replied or not, and he and Mr. Singh and Ms. Khanna and Dr. Manobavan went their separate ways.

[44] Mr. Ohri attaches a copy of the Notice in question to his affidavit. It reads:

> Peel Condominium Corporation #166, after considering all possible factors, has reluctantly decided to bring to the notice of the owners the reason why Mr. Takayshwar (alias "Peter") Singh, resident of unit 1808 was terminated from the position of cleaner/assistant superintendent from 21 Knightsbridge Road.
>
> It has been brought to the management's attention that Mr. Takayshwar (alias "Peter") Singh is getting a petition signed by claiming that he was wrongly terminated from Peel Condominium Corporation # 166.
>
> ***The Corporation had well-documented and valid good reasons to terminate Mr. Singh, including performance issues***. These matters are considered confidential and cannot be disclosed.

> ***Peel Condominium Corporation #166 or any of its agents will not take the responsibility of Mr. Takayshwar (alias "Peter") Singh's actions or on the rumors he is spreading lately***.
>
> ***We trust that owners will use their judgment in selecting candidates for the Board and will not condone an individual seeking to destabilize our community***. [Emphasis added]

[45] On January 27, 2016, the lawyers for PCC 166 sent a letter to Mr. Ohri, which stated, in part, "You have also been caught on camera removing Corporation notices from notice frames without authorization. Owners are not permitted to tamper with these notices."

[46] Following the Board election, 20 votes cast for Mr. Singh were disqualified. As a result, he lost by nine or ten votes. Mr. Singh challenged the disqualification of the votes cast for him, alleging that they were disqualified without cause.

[47] Mr. Ohri asserts that following the election, the Board, at the insistence of Dr. Manobavan and Ms. Khanna, harassed Mr. Ohri and Mr. Singh, ultimately causing Mr. Singh and his family to sell their unit and move out of the Building in August 2016.

[48] Whether or not Mr. Ohri's allegations regarding the motives of Dr. Monobavan and Ms. Khanna are correct, it is clear that the allegations against Mr. Ohri arose in the course of an acrimonious Board election, in which Mr. Ohri supported a candidate who challenged the candidacy of one or more of the complainants, and that the allegations against Mr. Ohri involved conduct that occurred in the course of canvassing.

The Complaints by Board Members

[49] The complainants identified in the Application are Ms. Khanna, who was the President of the Board, her husband, and Mr. Manobavan, who was a

member of the Board. While the letters from the lawyers for the Corporation refer to complaints by Unit owners, none are identified, either in the letters or in the affidavits filed in support of the Application.

[50] Mr. Ohri tendered supporting affidavits from Mr. Singh and from Bhavdeep S. Kalsi, who has resided with his wife and two children at the Condominium for the past nine years. Mr. Kalsi states that he witnessed Mr. Ohri being the victim of an unprovoked assault by Ms. Khanna and her husband while he was with his family at his parking spot in the underground parking. He states that he gave a statement to the police after Mr. Ohri called the police and reported the incident. Mr. Kalsi states that he never heard from any resident that Mr. Ohri threatened or harassed anyone to vote for his choice of candidate, and states that he found Mr. Ohri a very respectful and sincere person and has never seen him arguing or being disrespectful toward anyone in the building or breaching any rules of the condominium.

[51] Mr. Ohri additionally tendered a statement dated September 26, 2106, signed by 15 residents of the condominium, each providing his/her name, Unit number, and telephone number. They state the following:

> We have known Mr. Narinder Ohri for around 2 years as a fellow resident of the building. Mr. Ohri found to be a very respectful and social person.
>
> We have never seen him threatening or harassing anyone as he is being accused of in the court matter. Mr. Ohri was supporting a candidate in the board election held in February of 2016 along with many other residents of the building. But he never threatened anyone to vote for the candidate he was supportive of.
>
> We strongly believe Mr. Ohri is being targeted for his position in the last election by the board members and also silence his voice, which he raised for the welfare of the building.

[52] While the above statement was evidently prepared by Mr. Ohri, it is apparent that 15 of the residents were prepared to adopt its wording and attest to Mr. Ohri's reputation.

The use made of the complaints against Mr. Ohri in the Board election

[53] Ms. Khanna, in her affidavit sworn August 19, 2016, asserts that Mr. Ohri, "made intimidating comments to several unit owners of PCC 166 in an attempt to solicit proxy votes and removed PCC 166 notices from notice frames without authorization."

[54] On January 27, 2016, the lawyers for PCC 166 sent a letter to Mr. Ohri that stated, in part:

> We understand that you own suite 1709. We also understand that you are supporting Mr. Peter Singh's candidacy for election at the upcoming Annual General Meeting.
>
> ***We are also informed that several owners have complained about intimidation and misrepresentation in your solicitation for proxies***. Those owners have been advised to outline their concerns in writing and to either attend the AGM in person or issue new proxies. ***If there is proof, on a balance of probabilities, that proxies collected by you and/or Mr. Singh were obtained by intimidation, misrepresentation or duress, those proxies and any others where there is reason to believe the aforementioned behavior has occurred may be invalidated for use at the upcoming AGM***. [Emphasis added]

[55] The letter did not identify any unit owner who complained, or provide the specifics of such complaints.

[56] The use of proxies at elections of Board members is governed by By-law 1 of PCC 166. Paragraph 8 of the By-law provides that, "the voting for the election of directors shall be by ballot only." Paragraph 10 of the By-Law provides:

> 10. Proxies: Every member or first mortgagee entitled to vote at meetings of members may by instrument in writing appoint a proxy, who need not be a member or first mortgagee, to attend and act at the meeting in the same manner,

> to the same extent and with the same power as if the member or first mortgagee were present at the meeting. The instrument appointing a proxy shall be in writing signed by the appointor or his attorney authorized in writing. The instrument appointing a proxy shall be deposited with the Secretary of the meeting before any vote is cast under its authority.
> …
> 12. Votes to govern: At all meetings of members every question shall, unless otherwise required by the Act or the declaration or by-laws be decided by a majority of the votes as defied in Paragraph 7 of this Article, duly cast on the question.

[57] As noted above, 20 votes cast for Mr. Singh were invalidated, as a result of which he lost by nine or ten votes. Mr. Singh challenged the invalidation of the votes cast for him, alleging that they were invalidated without just cause.

The police response to the Board members' complaints

[58] Mr. Manobavan, in his affidavit sworn July 27, 2016, states that on January 24, 2016, Mr. Ohri physically assaulted him by pushing him and telling him he would "chase me out". I will address the video surveillance of this incident below. Mr. Manobavan further states that on January 31, 2016, Mr. Ohri again informed Mr. Manobavan that he was going to chase him out of the Property. Mr. Manobavan does not provide any context that would support an interpretation that, if such words were uttered, Mr. Ohri was referring to a physical chasing. A more likely interpretation, given the context of the election, might be that Mr. Ohri was threatening to vote him out of his office as director.

[59] In any event, Mr. Manobavan states that he was informed by Ms. Khanna that she had experienced similar conduct from Mr. Ohri, and so both she and Mr. Manobavan reported the matter to the police. He states:

> 8. …As such, both myself and Khanna attended at the Brampton Police Department to report Ohri's abuse.
>
> 9. I was informed by the police officer at the intake desk that I could take action against Ohri for his physical assault on January 24th.
> …

> 15. Following the incidents on June 7, 2016, I again attended at the Brampton Police Department to report the actions of Ohri. I was requested to record any further instances of abusive or foul language by Ohri, and was informed that it was still open to me to pursue charges for the January 24, 2016 incident.

[60] I infer from Mr. Manobavan's evidence that the Police declined to charge Mr. Ohri, but advised Mr. Manobavan of his right to appear before a Justice of the Peace to lay a private charge against him.

The Board members' failure to engage the criminal process themselves

[61] Neither Dr. Manobavan nor Ms. Khanna or her husband sought to lay a private charge against Mr. Ohri. Dr. Manobavan offers this explanation for not doing so:

> 10. I chose not to exercise my right to pursue my case against Ohri following the assault, because I believed that once I reported the incidents to the police, and Ohri was warned of same, Ohri would, in goodwill, cease his abusive behavior. Moreover, as a member of the Board of Directors of PCC 166, I feel I have a professional obligation to maintain a peaceful and conducive environment for all residents.

[62] Dr. Manobavan does not offer any explanation for why, after attending at the Police station the second time, he did not pursue charges against Mr. Ohri.

The Video Surveillance

[63] The video surveillance footage from January 24, 2017, in a document dated January 26, shows Mr. Ohri and Mr. Singh, with a clipboard, at a unit doorway on the left side of a hallway, speaking with the occupants of the unit. Ms. Khanna and Dr. Manobavan exit the elevator in the foreground of the video, walk past Mr. Ohri and Mr. Singh, one of whom turns momentarily toward them as they pass, and then turns back to the occupants of the unit. Ms. Khanna and Dr. Manobavan walk to the far end of the hallway, and appear to be talking to the

occupants of a unit there, as Mr. Ohri and Mr. Singh knock on the door of the unit on the opposite side of the hallway from where they were first canvassing, and speak to the occupants of the unit on the right side of the hallway. Ms. Khanna and Dr. Manobavan then begin walking in their direction, behind Mr. Ohri and Mr. Singh, who leave the unit where they were canvassing, and also walk toward the elevators, ahead of Ms. Khanna and Dr. Manobavan. As Ms. Khanna and Dr. Manobavan reach them, Mr. Ohri and Mr. Singh part and allow them to pass. After Ms. Khanna and Dr. Manobavan pass, Ms. Khanna looks over her shoulder and speaks to Mr. Ohri and Mr. Singh as she arrives at and enters the elevator. Mr. Ohri and Mr. Singh continue their canvassing in the hallway.

[64] There is no appearance of any physical contact, and no sign of any distress or hostility from any of the parties. It is clear from the surveillance footage that Mr. Ohri and Mr. Singh's attention was mainly on the occupants of the units they were canvassing, and the remarks that Ms. Khanna exchanges with them as she walks away from them and arrives at the elevator appear to be relaxed and casual.

[65] In the video surveillance of the altercation on January 31, 2017, Mr. Ohri is seen in the basement parking lot with his daughter and girlfriend and his dog. They all proceed to a car in the far corner of the parking lot where their car is apparently parked. Then Mr. Khanna appears and walks quickly towards their car, followed by his wife. Mr. Khanna, with his back to the security camera, appears to confront Mr. Ohri, who pushes him away. Mr. Ohri states that Mr. Khanna pushed him, and that he pushed back. While the exchange is in a dark corner and Mr. Khanna's back is to the camera, what is visible is not inconsistent with Mr. Ohri's interpretation, and it certainly appears that Mr. Khanna, whose car Mr. Ohri says was in its parking space on the opposite end of the parking garage,

walked quickly to where Mr. Ohri and his group were getting into their car and confronted him there.

[66] In the video surveillance of the incident on June 7, 2017, from inside an elevator, it appears only that Mr. Ohri entered the elevator, and Dr. Manobavan followed. They travelled to Dr. Manobavan's floor, and when the door opened, Dr. Manobavan lingered in the doorway of the elevator, whereupon Mr. Ohri gestured to him to continue out. Dr. Manobavan finally exits, and Mr. Ohri continues on to his floor. There was no physical contact between them, and the only untoward conduct appears to be Dr. Manobavan remaining in the open elevator doorway, preventing the door from closing.

The Board's Demand of an Undertaking

[67] Ms. Khanna, in her affidavit sworn August 19, 2016, states that on June 14, 2016, the Property Manager sent a letter to Mr. Ohri, attaching the Rules of the Condominium and asking him to sign a blanket undertaking which the Corporation expected him to abide by. The undertaking stated:

> I acknowledge receipt of the rules of Peel Condominium Corporation No. 166 (hereinafter the Corporation) and do hereby agree and undertake to comply with these rules.
>
> I further acknowledge the Corporation's obligation and duty to ensure its rules are complied with and am aware that if this personal undertaking is breached that the Corporation shall bring an application to the Superior Court of Justice without further notice to enforce compliance.

[68] Neither the letter nor the undertaking refers to violations of the *Condominium Act.* Both warn of an application to this court based on the breach of the Condominium's rules.

[69] PCC 166 asked Mr. Ohri to sign an undertaking to comply with the rules of the Corporation. Justice Polowin, in *Channa v. Carleton Condominium Corp. No.*

429, (2011), declined to make an order that would have had a similar effect to the undertaking that PCC 166 sought from Mr. Ohri. Justice Polowin stated:

> [47] The Corporation has sought a general and open ended Order that Ms. Channa comply with s. 98 of the *Act.* Obviously, Ms. Channa must comply with s. 98 of the *Act* should she seek in the future to make an addition, alteration or improvement to the common elements. That is the law. But ***judges don't generally baldly order people to comply with the law in the future with respect to some unknown situation. People are expected to follow the law***. That Ms. Channa would be well advised to do so in the future goes without saying. Otherwise, she will undoubtedly face compliance proceedings being brought against her with the cost consequences that would surely follow.[10] [Emphasis added]

The Board's objective in making the Application

[70] PCC 166's lawyers, in their letter dated January 27, 2016, reproduced Rules 4, prohibiting conduct which increases the risk of fire or the rate of fire insurance on any building, and Rule 8, prohibiting owners from creating noise or nuisance, stated:

> Legal Measures
>
> Please be advised that ***should you fail to comply with the Corporation's rules as provided herein***, **the Corporation shall be entitled to bring an application to the Superior Court of Justice**, without further notice, pursuant to ss. 134(1) of the Act which states:
>
> > Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Ontario Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

[71] The lawyers, in their letter, referred only to a failure to comply with the Corporation's rules, and not to violations of the Act (although they had also

10 *Channa v. Carleton Condominium Corp. No. 429*, 2011 ONSC 7260 (CanLII),

reproduced s. 117 of the Act. Furthermore, they omitted, in their reference to s. 134, the requirement of mediation or arbitration contained in s. 134(2). They additionally referred to the Corporation's right to full cost recovery. They state the following:

> Damages and Costs
>
> In the event you fail to cooperate and the Corporation is forced to pursue legal action, it would be entitled to seek damages and costs in accordance with ss. 134(3) of the Act, which states:
>
> > On an application, the court may, subject to subsection (4),
> >
> > (a) grant the order applied for;
> >
> > (b) require the person named in the order to pay,
> >
> > (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
> >
> > (ii) ***the costs incurred by the applicant in obtaining the order***; or
> >
> > (c) grant such other relief as is fair and equitable in the circumstances.
>
> ***Legal costs***
>
> ***Please note that the following paragraph of Corporation's Rules states***:
>
> 21. ***Any*** loss, ***cost*** or damages ***incurred by the corporation by reason of a breach of any rules and regulations*** in force from time to time by any owner, his family, guests, servants, agents or occupants of his unit ***shall be borne by such owner and may be recovered by the corporation against such owner in the same manner as common expenses***.
>
> ***And the following indemnification exists in the Corporation's declaration***:
>
> ***INDEMNIFICATION***
>
> ***Each owner shall indemnify and save harmless the Corporation from and against any*** loss, ***costs***, damage, injury or liability ***whatsoever which thee Corporation may suffer or incur resulting from or caused by an act or omission of such owner***, his family or any member thereof, any other resident of his unit or any guests, invitees or licensees of such owner or resident to or with respect to the common elements and/or all other units except for any loss, costs,

damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation.

All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and recoverable as such. [Emphasis added]

[72] Ms. Khanna, in her Affidavit sworn October 5, 2016, states:

33. …***The Order sought by the Board is sought for the following reasons***:

a. ***To discharge the Board's obligation which is to ensure compliance with the Rules***;

b. To deter Ohri from assaulting members of PCC 166;

c. To ensure a record that PCC 166 has done everything in its power to create a safe environment so that if Ohri assaults another unit hold [sic] of PCC 166, that PCC will not somehow be vicariously liable for his actions; and

d. ***To allow the Board to request an Order removing Ohri from the Condominium in the future should he breach the Court Order requested herein*** and assault another unit holder in the future.

[73] I find that the allegation that Mr. Ohri assaulted someone at the condominium to be a transparent effort by PCC 166 to avoid its obligation to address the dispute between certain Board members and Mr. Ohri over the Board election by mediation or arbitration. The letters that the Board caused the Corporation's lawyers, and later, its Property Manager, to send to Mr. Ohri disclose that the Board was planning to apply to this court on the basis of an alleged violation of the Rules by Mr. Ohri. When it finally brought its Application, it added its allegation of non-compliance with the Act which, had Mr. Ohri not raised the issue, would have justified its bringing the Application to the courts without first complying with the pre-condition of mediation or arbitration which s. 134(2) of the Act imposed.

The Issue of Waiver

[74] While PCC 166 asserts that Mr. Ohri "steadfastly refused to engage in mediation", I find no support for that assertion in the evidence, and Mr. Ohri's counsel denied the assertion at the hearing. At the very least, it is clear that PCC 166 did not take steps to have the dispute mediated or arbitrated prior to issuing its Application, as s. 134(2) requires.

[75] I find that Mr. Ohri did not waive his right to have this dispute mediated or arbitrated by reason of delay. In *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, (2010), Code J., stated:

> [52] I also note that the request to mediate ***was raised for the first time in the Respondent's factum*** dated July 22, 2010, that is, ***a mere four days before the hearing of this Application***. As already noted, ***the Application was brought over a year earlier***, on July 19, 2009. In these circumstances, the case is similar to *Nipissing Condominium Corporation No. 4 v. Kilfoyl et al,* [2009] O.J. No. 3718 at para. 3 (S.C.J.); aff'd. 160 O.A.C. 94 (C.A.), where Stong J. held:
>
> ***The Respondents have proceeded with cross-examinations*** in this Application, and have not brought a motion for a stay of the Application ***and therefore are deemed to have elected the method of process chosen by the Applicant and have waived their right to mediation and arbitration***.
>
> Similarly, in *McKinstry, supra* at para. 44, Juriansz J. held:
>
> > In this case, the Defendants must be taken to have waived the application of s. 132(4) as they raised it for the first time in their Amended Statement of Defence, amended February 2003, ***after all examinations for discovery had been completed***. That was too late for the Defendants to raise the issue.
>
> [53] If necessary, I would find that the Respondent waived any requirement to attempt mediation pursuant to s. 132 by delaying for over a year before raising the matter. It would be unfair to MTCC 747, after they have gone to all the expense of perfecting their Application, to now require that they revert to mediation.11 [Emphasis added]

[11] *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448 (CanLII)

[76] In *Ottawa-Carleton Standard Condominium Corporation No. 961 v Menzies*, (2016), Beaudoin J. stated:

> [33] Where a party fails to request arbitration at the first opportunity or has engaged in steps specific to the civil litigation process over and above the delivery of pleadings, that party may be found to have waived its right to arbitration. Similarly where a defendant takes significant steps in response to litigation and does not advance an objection to the Court's jurisdiction at the earliest opportunity may be deemed to have waived their right to arbitration. In the context of condominium matters, Justice Juriansz (as he then was) conclude that delays by party to request arbitration constitute a waiver of the application of 132(4) of the *Act.*[12] [Citations omitted]

[77] Mr. Ohri raised the jurisdictional issue at the October 2016 hearing, which was the first reasonable opportunity to do so. He raised it before cross-examinations had been conducted on the affidavits, although owing to the shortage of judicial resources, the parties elected not to argue the issue until after the examinations.

CONCLUSION AND ORDER

[78] For the reasons stated above, I find that the Application is, in essence, a dispute between the Board and Mr. Ohri over his efforts to assert his rights as a member of the corporation, especially in supporting Mr. Singh in his candidacy for election to the Board in February 2017. The court must be vigilant, especially in the context of a Board election in a condominium corporation, to ensure that its process is not manipulated by Board members who seek to maintain political control within the condominium by seeking a venue in which the condominium's superior legal resources, and the indemnification terms of its rules, give it a significant advantage in a contest with a Unit owner.

[79] In *Couture v. TSCC No. 2187*, (2015), Myers J. states:

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[12] *Ottawa-Carleton Standard Condominium Corporation No. 961 v. Menzies*, 2016 ONSC 7699 (CanLII)

> [27] Life would be much neater if all disputes could be terminated unilaterally. The board somehow satisfied itself that it did not need to comply with the condominium's mediation and arbitration bylaw or the provisions of section 132 of the Condominium Act, 1998 concerning mediation and arbitration. Rather than following the statutory prescription to attempt to resolve matters without resort to formal litigation and within the body of the condominium, the board was inviting a lawsuit against the condominium corporation.
>
> …
>
> [57] The condominium corporation offers no good faith explanation for its refusal to engage in mediation and arbitration as required by its bylaws and the statute. This matter could have been resolved before the end of 2012 had the parties sat down in good faith to work out their issues. So much of the escalated hostilities could have been avoided had the condominium corporation engaged in mediation I response to the applicant's notices. If mediation did not yield a settlement, arbitration could have quickly ensued. As with the administration fees/fines issue, this issue may be relevant to an assessment of the oppression remedy below.[13]

[80] In a footnote, Justice Myers notes:

> Perhaps the board had an eye toward subsection 134 (5) of the statute that entitles a condominium corporation to full indemnity costs in litigation against a unit owner in which the condominium corporation obtains any award of damages or costs. This subsection performs an important role to protect innocent unit owners from paying the price of unmeritorious litigation. **However, it also provides a skewed incentive to boards of directors and their advisors who can wield a heavy sword over the heads of unit owners.** In this case, for example, by rejecting the applicant's common area expense cheques, the board could have a high degree of certainty that it would be entitled to obtain a judgment at least in the amount of outstanding common expenses. Were that the case, it would then attach a lien to the applicant's unit for its full indemnity costs. This section unfortunately incentivizes recalcitrant, litigious behaviour by condominium boards of directors and their advisors whom may be so inclined.

[81] Based on the foregoing, it is ordered that:

1. The Application is dismissed based on the Applicant's failure to comply with s. 134(2) of the Act.

[13] *Couture v. TSCC No. 2187*, 2015 ONSC 7596 (CanLII)

2. If the parties are unable to agree on costs, they shall submit written arguments, not to exceed four pages, plus a costs outline, by November 15, 2017.

_____
Price J.

Released: October 26, 2017

CITATION: Peel Condo Corp 166 v. Ohri, 2017 ONSC 6438
COURT FILE NO.: CV-16-3739-00
DATE: 2017-10-26

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

PEEL CONDOMINIUM
CORPORATION NO. 166

Applicant

– and –

NARENDER OHRI

Respondent

REASONS FOR ORDER

Price J.

Released: October 26, 2017