



Peel Standard Condominium Corp. No. 984 v. 8645361 Canada Ltd.,
[2018] O.J. No. 3726

Ontario Judgments

Ontario Superior Court of Justice

B.T. Glustein J.

Heard: July 11, 2018.

Judgment: July 13, 2018.

Court File No.: CV-17-581222

[2018] O.J. No. 3726 | 2018 ONSC 4339

RE: Peel Standard Condominium Corporation No. 984, Applicant, and 8645361 Canada Limited and Mirza Ahmed, Respondents

(46 paras.)

Case Summary

Civil litigation — Civil procedure — Contempt of court — What constitutes — Judgments and orders — Disobedience of or non-compliance with — Injunctions — Circumstances when granted — Permanent injunctions — Application by Peel Standard Condominium Corp No 984 for a permanent injunction and a finding of contempt allowed — The applicant was a non-profit commercial condominium corporation — The corporate respondent owned a commercial unit and the respondent Ahmed was the president of the corporate respondent — On an interim basis, Ahmed had been prohibited from contacting, harassing, or coming within 25 feet of the applicant's personnel — Ahmed had engaged in harassment and threatening conduct for two years — He had also blatantly ignored court orders — The respondents were to vacate their unit and list it for sale.

Real property law — Condominiums — Unit holders — Application by Peel Standard Condominium Corp No 984 for a permanent injunction and a finding of contempt allowed — The applicant was a non-profit commercial condominium corporation — The corporate respondent owned a commercial unit and the respondent Ahmed was the president of the corporate respondent — On an interim basis, Ahmed had been prohibited from contacting, harassing, or coming within 25 feet of the applicant's personnel — Ahmed had engaged in harassment and threatening conduct for two years — He had also blatantly ignored court orders — The respondents were to vacate their unit and list it for sale.

Statutes, Regulations and Rules Cited:

Condominium Act, 1998, S.O. 1998, c. 19, s. 134

Counsel

Fatima Vieira, for the Applicant.

Mirza Ahmed, self-represented.

REASONS FOR DECISION

B.T. GLUSTEIN J.

Background and overview

1 The applicant, Peel Standard Condominium Corporation No. 984 ("PSCC 984"), is a non-profit commercial condominium corporation located municipally at 7205/7215 Goreway Drive in Mississauga, Ontario, and is commercially referred to as the "Westwood Mall".

2 The respondent, 8645361 Canada Limited, is the registered owner of commercial condominium Unit 81, Level 1, within PSCC 984 and is known municipally as Suite 1C19, 7215 Goreway Drive, Mississauga, Ontario, L4T 0B4 (the "Unit"). The respondent, Mirza Ahmed ("Ahmed"), is the President of 8645361 Canada Limited. The respondents¹ also rent other units within PSCC 984 where they operate various businesses.

3 There have been three prior orders of this Court which have addressed Ahmed's conduct towards employees, managers, agents, or members of the board of directors of PSCC 984 (collectively, "PSCC 984 Personnel").

4 By order dated October 13, 2017, on an interim basis pending the hearing of the application, Justice Diamond prohibited Ahmed from, amongst other things, contacting, communicating, harassing, or coming within 25 feet of PSCC 984 Personnel. Ahmed did not appear at that hearing. Justice Diamond fixed costs of that hearing on a partial indemnity basis at \$5,000 inclusive of fees, taxes, and disbursements.

5 On December 6, 2017, the application was returned before Justice Allen for an order that the interim relief ordered by Justice Diamond be made permanent. Ahmed attended at that hearing and requested an adjournment based on his alleged medical condition (with no documentary support for his condition). Justice Allen adjourned the application on a peremptory basis to the respondents, to the fixed date of March 29, 2018, based on Ahmed's alleged medical condition.

6 Justice Allen maintained the interim relief ordered by Justice Diamond, set a timetable for the delivery of materials, fixed costs "thrown away" of that hearing at \$500, and ordered that the respondents could not file responding material in the application until payment of the costs ordered by Justice Diamond and by Justice Allen.

7 On March 29, 2018, the application was returned before Justice Cavanagh for an order that the interim relief ordered by Justice Diamond and by Justice Allen be made permanent. Ahmed attended at that hearing and requested an adjournment based on his alleged medical condition (with no documentary support for his condition). Justice Cavanagh adjourned the application on a peremptory basis to the respondents, to a fixed date of July 11, 2018, based on Ahmed's alleged medical condition.

8 Justice Cavanagh maintained the interim relief ordered by Justice Diamond and maintained by Justice Allen, set a new timetable for the delivery of materials, fixed costs of that appearance at \$500, and ordered that the respondents could not file responding material in the application until payment of the costs ordered by Justice Diamond, by Justice Allen, and by Justice Cavanagh.

9 On June 29, 2018, PSCC 984 appeared before me to seek a finding of contempt against the respondents² on the

basis that Ahmed continued to breach the terms of the interim orders of all of the prior courts by amongst other things, contacting, communicating, harassing, or coming within 25 feet of PSCC 984 Personnel. At that attendance, PSCC 984 also sought to argue the permanent application which was scheduled for July 11, 2018, with additional relief (set out in the factum but not in an amended notice of application) that the respondents sell the Unit and vacate all premises occupied by them at the commercial condominium.

10 Ahmed did not attend that hearing. I adjourned the contempt motion to be heard before me on July 11, 2018 together with the return of the application for a permanent order. PSCC 984 then served Ahmed with an amended notice of application returnable July 11, 2018 that set out the additional relief sought.

11 For the reasons I discuss below, I grant the relief sought by PSCC 984 against the respondents. I order, amongst other things:

- (i) Ahmed is permanently prohibited from contacting, communicating, harassing, or coming within 25 feet of PSCC 984 Personnel; and
- (ii) The respondents shall forthwith vacate the Unit and all other units of the Westwood Mall, and shall remove all belongings and possessions from all units. The respondents shall also cause the Unit to be listed for sale by August 17, 2018, accepting any reasonable offer of sale and transfer the Unit to a *bona fide* purchaser for value by October 12, 2018.³ If the respondents do not comply with any of these terms, PSCC 984 may apply for an order of possession of the Unit and sell it.

12 I also grant PSCC 984's motion for contempt of court against Ahmed for his alleged breaches of past court orders which have prohibited him from contacting, communicating, harassing, or coming within 25 feet of PSCC 984 Personnel. Given that my order requires the respondents to sell the Unit, vacate their premises and pay significant costs related to this litigation, I make no further order to sanction Ahmed's contempt of court.

The adjournment request

13 Ahmed attended at the present hearing in person and requested an adjournment based on a letter from a doctor. The full content of the letter is:

To Whom It May Concern

Re: Mirza khalid Ahmed 58 year old

The above named is not well. He is going through difficult time. He needs rest and avoid stressful situation like court appearance for a period of 2 to 3 months.

Thank you for consideration. [All typographical and grammatical errors in original text.]

14 I do not accept the request for an adjournment. Ahmed appeared three times before this court. Each time, he sought an adjournment based on health reasons. At his first two appearances, the court provided an indulgence for the requested adjournment without medical evidence. Justice Allen granted the adjournment to a fixed date of March 29, 2018, by order dated December 6, 2017. Justice Cavanagh granted an adjournment to a fixed date of July 11, 2018, by order dated March 29, 2018. Both adjournments were made peremptory on the respondents to proceed with or without legal counsel.

15 When Ahmed appeared before me, he sought a third adjournment. The letter states that "[Ahmed] needs rest and avoid stressful situation like court appearance for a period of 2 to 3 months". This letter is not sufficient to grant a third adjournment. There is no specific information as to the reasons why Ahmed is "not well", is having a "difficult time" or why he "needs rest" and to "avoid stressful situation like court appearance for a period of 2 to 3 months".

16 The court cannot rely on Ahmed's unsubstantiated assertions that he has a heart condition that prevents him from appearing in court. Further, while Ahmed asked (and was granted permission) to remain seated at the hearing,

he had no difficulty explaining to the court, at length over the course of several hours, all of the reasons why he believed that the substantive relief sought by PSCC 984 was improper.

17 Before both Justice Allen and Justice Cavanagh, Ahmed raised unsubstantiated assertions as to his heart condition and claimed that he was unable to attend at court. Ahmed continued to do so before this court. On the basis of the letter provided to the court, I am not satisfied that the twice-adjournd peremptory hearing should be adjourned again.

The merits of the application and contempt motion

Issue 1: It is just to conduct the application without responding evidence

18 On the merits of the application, Ahmed was prohibited from filing responding material unless he paid the outstanding costs orders. That term was put in place by Justice Allen and maintained by Justice Cavanagh. Ahmed submits that it is not just for the court to conduct the hearing of the application without permitting him to file responding evidence.

19 Ahmed submits before this court that the order prohibiting him from filing responding material until costs are paid was surreptitiously put in place by Justice Allen either by her or as a result of the conduct of Mr. Chaplick, PSCC 984's counsel at the time. I do not accept that submission.

20 There is no transcript of the hearing before Justice Allen. However, the application record contains handwritten terms of the proposed adjournment that were before Justice Allen. Those handwritten terms were provided and reviewed with Justice Allen at the hearing, as the court made changes to the proposed terms, including fixing the quantum of costs. The terms before Justice Allen included "The Respondents shall not be permitted to file Responding Materials until this costs award and the costs award of Mr. Justice Diamond dated Oct. 13, 2017 have been paid". That term was incorporated into the typed version of the order which was issued and entered. Consequently, there is no basis to support Ahmed's submission.⁴

21 Even if Ahmed believed that the term was surreptitiously included or was inappropriate, he could have appealed that order but he did not.

22 Further, in the transcript of the hearing before Justice Cavanagh, Ahmed was repeatedly told of the risks that the court would proceed on July 11, 2018 without evidence from him if he did not comply with the requirement to pay outstanding cost orders. Ahmed replied to Justice Cavanagh that "Of course I will not [pay] them" since Ahmed submitted that the cost orders were "based on lies" from Mr. Chaplick.

23 Ahmed repeated his position before the court at the present hearing that the cost orders were based on "lies".

24 Ahmed also advised Justice Cavanagh that Ahmed could only repay any costs (if he decided to do so) by refinancing the Unit, but could not do so because PSCC 984 had a lien on the Unit. Mr. Chaplick at that hearing made it clear to Ahmed and to the court that the lien would not be removed.

25 At the present hearing, Ahmed made similar complaints about PSCC 984's refusal to lift the lien to allow him to refinance. Given Ahmed's views that the prior court orders were based on "lies", I find that he would not have paid the outstanding cost orders even if the lien was lifted. Further, PSCC 984 is not required to lift the lien causing PSCC 984 to fall further behind on collecting outstanding amounts by having a lower priority than the refinancing party.

26 Justice Cavanagh provided Ahmed with a thorough explanation of the risks of proceeding without paying his outstanding costs awards. Ahmed chose to appear on this basis. Consequently, I reject Ahmed's submission that it is unfair to proceed without responding evidence.

Issue 2: The application for a permanent order and the contempt relief sought

27 I address these two issues together, as they are based on the same set of facts.

28 The uncontested evidence on the record before the court is that as of June 2016:

- (i) Ahmed yelled and cursed in the common areas of the Westwood Mall in a manner that was disturbing to other owners;
- (ii) Ahmed was verbally offensive and abusive to PSCC 984 Personnel and to PSCC 984's other unit owners and towards total strangers he encountered on the property;
- (iii) Ahmed threatened to remove PSCC 984 Personnel from the management office by force and made them feel unsafe;
- (iv) Ahmed entered the management office after being cautioned to have no direct contact with PSCC 984 Personnel and then began yelling at PSCC 984 Personnel; and
- (v) Ahmed disrupted the PSCC 984 Annual General Meeting using abusive and offensive language⁵ and assaulted the President of PSCC 984 by throwing a water bottle at him which led to the police being called.

29 The affidavits filed in support of the initial hearing before Justice Diamond set out detailed examples of threatening incidents and abusive conduct, including affidavits directly from some of the people involved in the incidents.

30 In affidavits filed after the hearing before Justice Diamond, and prior to the hearing before Justice Cavanagh, PSCC 984 led supplementary evidence that:

- (i) provided cell phone footage of earlier incidents,
- (ii) described new incidents of harassing and abusive conduct in violation of those orders, and
- (iii) set out disturbing correspondence from Ahmed to Mr. Chaplick which included comments such as a "final warning to behave like a gentleman", telling Mr. Chaplick to "stop your DIRTY tricks and shut up", describing Mr. Chaplick as an "illegal law practitioner" and advising him to "shut his big mouth". [Emphasis in original text.]

31 At the hearing before Justice Cavanagh, PSCC 984 maintained the original relief it sought of a permanent injunction prohibiting the conduct of Ahmed.

32 However, even after Justice Cavanagh's order, which was the third court order prohibiting Ahmed's conduct, Ahmed continued to blatantly ignore court orders. It was at that point that PSCC 984 (i) sought an order that Ahmed was in contempt of court and (ii) after the June 29, 2018 appearance before me, amended its notice of application to seek an order that the respondents sell the Unit and vacate the premises. The additional conduct after Justice Cavanagh's order can be summarized as follows:

- (i) On April 7, 2018, Ahmed approached a married tenant who operates a clothing and jewellery business in the mall. Ahmed "tried to take [her] hand and asked [her] to be his girlfriend and said I will buy you a big shop". The tenant called the police. Ahmed returned later that day and then refused to leave. At that point, the tenant called the police again who arrived and "told [Ahmed] to stay away from [her unit] otherwise [Ahmed] would be charged";

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- (ii) On April 11, 2018, Ahmed approached a unit owner who had provided a prior witness statement in support of an affidavit and asked him to change his mind and retract his statement about a threatening incident;
- (iii) On June 5, 2018, Ahmed entered the property management office and asked that the manager add Ahmed's resumé to the Annual General Meeting package, as Ahmed wanted to run for a director position;
- (iv) On June 12, 2018, Ahmed again entered the property management office asking that the Annual General Meeting be postponed; and
- (v) On June 21, 2018, Ahmed entered the property management office. He yelled and swore at the President and others at the meeting, telling the office administrator to "call the police on these two bastards" and "nobody leave the office!" Ahmed yelled at and pointed to the President during this encounter, stating "I will see you bastard. You will see what I going to do to you." Ahmed yelled at all of the people at the meeting "You crooks, I know what you're doing".

33 As a result of this escalating conduct, the President and property management staff are afraid to come to work and unsure if they can continue working due to what they perceive as a highly unsafe environment. Owners and tenants have pleaded with the President of PSCC 984 to address Ahmed's behaviour because he creates a negative business environment for owners and their customers.

34 On the basis of the above evidence, I grant the permanent injunction prohibiting Ahmed from, amongst other things, contacting, communicating, harassing, or coming within 25 feet of PSCC 984 Personnel. Such relief is appropriate based on the uncontested evidence of harassment, abuse, and threatening conduct engaged in by Ahmed for the past two years. I also grant the ancillary relief related to this prohibition as sought in the amended notice of application.

35 On the basis of the above evidence, I find that Ahmed is in contempt of court. His continued breach of the three prior court orders meets the settled test for finding contempt:

- (i) the order that was breached stated clearly and unequivocally what should and should not be done;
- (ii) the party who disobeyed the order did so deliberately and willfully; and
- (iii) the evidence establishes contempt beyond a reasonable doubt (*Prescott-Russell Services for Children and Adults v. G. (N.)*, 2006 CanLII 81792 (ONCA), at para. 27).

36 On the basis of the above evidence, I find that it is appropriate to order the additional relief that the respondents (i) sell the Unit and (ii) forthwith vacate all units in which they operate their businesses. I also order that PSCC 984 may apply for an order of possession of the Unit, and the appointment of a receiver and manager to effect sale of the Unit pursuant to this order, if the respondents do not comply with these orders.

37 In *Metropolitan Toronto Condominium Corporation No. 747 v. Koroleh*, 2010 ONSC 4448, at paras. 87-88, Code J. ordered the respondent to sell her unit when the "misconduct is serious and persistent, where its impact on a small community has been exceptional and where the Respondent appears to be incorrigible or unmanageable". Justice Code relied on the remedial powers available to the court under s. 134 of the *Condominium Act*, 1998, S.O. 1998, c. 19.

38 In *Waterloo North Condominium Corp. No. 186 v. Webb*, [2011] O.J. No. 2195 (SCJ), at para. 10, the court made the "drastic" order to require the respondent to vacate and sell his unit, when the respondent had prevented the other occupants in the building from "basic security and the quiet enjoyment of their premises ... for years, and it is unlikely that he is going to stop voluntarily".

39 Similarly, in *Strata Plan LMS 2768 v. Jordison*, 2013 BCCA 484, at para. 27, the Court of Appeal upheld the

decision of the lower court to order the respondent to sell his condominium, concluding:

In an extreme case, which this is, where the subjects of the order have demonstrated an unwillingness to comply with an injunction, the court must have the ability to go to the terminal remedy of sale in order to fashion an effective remedy for the other strata owners. The appellants have repudiated the cooperative foundation of strata living and their intolerable behaviour has brought about the forced sale. There was ample evidence before the judge that only a sale would resolve the problem. In my opinion, he was correct in interpreting subsection (c) as authorizing such an order.

40 Based on the above case law, I order that the respondents shall forthwith vacate the Unit and all other units of the Westwood Mall, and remove all belongings and possessions from all units. The respondents shall also cause the Unit to be listed for sale by August 17, 2018, accepting any reasonable offer of sale and transfer the Unit to a *bona fide* purchaser for value by October 12, 2018. If the respondents do not comply with any of these terms, PSCC 984 may apply for an order of possession of the Unit and sell it.⁶ I also grant the ancillary relief related to these orders as sought in the amended notice of application.

41 Given my findings that the Unit is to be sold and the respondents are to vacate the premises, as well as pay significant costs as I discuss below, I order no further sanctions for Ahmed's contempt of court.

Order and costs

42 I grant PSCC 984's application and the motion for a contempt order. Counsel for PSCC 984 shall provide the court with a revised draft order incorporating these Reasons. I dispense with the requirement for the respondents to approve the form and content of the order.

43 As for costs, PSCC 984 seeks approximately \$40,000 in partial indemnity costs (inclusive of fees, disbursements, and HST). However, I note that the bill of costs includes time docketed for (i) the appearances before Justice Diamond, who ordered \$5,000 in costs based on the material before him, as well as (ii) the appearances before Justices Allen and Cavanagh, who each ordered \$500 as costs thrown away because of the adjournments.

44 I find that a significant portion of the preparation was done prior to the appearance before Justice Diamond, who fixed the costs as of that date.

45 I have reviewed the costs claimed from the date of Justice Diamond's order. Those fees total, on a partial indemnity basis, approximately \$14,000. Taking into account these additional fees, and the additional costs of (i) attendance before me at the hearing, (ii) disbursements, and (iii) applicable HST, I fix total additional partial indemnity costs (inclusive of fees, disbursements, and HST) at \$19,000, which I find to be the amount an unsuccessful party would reasonably expect to pay for the additional application material and contempt motion.

46 I note that the total amount of costs from all courts with respect to the various appearances for the application and contempt motion is \$25,000 (inclusive of HST and disbursements).⁷ I find that amount is reasonable given that the issues in the present matter were not complex, there were no responding materials or cross-examination, and no responding factum or brief of authorities was filed, although I note that numerous (generally brief) affidavits were required to set out Ahmed's impugned conduct.

B.T. GLUSTEIN J.

¹ I make no distinction as to which of the respondents own or rent units for the purposes of my reasons. The relief sought against the parties with respect to the units is against the respondents on a collective basis.

- 2 The contempt order is only properly sought against Ahmed as he was the party subject to the interim relief ordered by Justice Diamond and maintained by Justice Allen and Justice Cavanagh.
- 3 These are different dates from those sought in the draft order provided by PSCC 984 to the court. However, I find that the very short deadlines sought by PSCC 984 would not provide the respondents with sufficient time to list the Unit for sale or provide a reasonable time to seek to obtain a fair market price for the Unit.
- 4 Present counsel to PSCC 984 also advised the court that she had spoken with Mr. Chaplick, who advised her that the full list of proposed terms was reviewed at the hearing before Justice Allen. While I do not accept such submissions as evidence, I note that the submissions are consistent with the conclusion I have reached based on the evidence before the court.
- 5 (consistent with the language used by Ahmed in the hearing before Justice Cavanagh)
- 6 As I discuss at footnote 3 above, I changed the dates proposed in the draft order provided by PSCC 984's counsel at the hearing, to ensure that the respondents have sufficient time to comply with my order and seek a reasonable price for the Unit.
- 7 (comprised of \$5,000 in costs ordered by Justice Diamond, \$500 in costs ordered by each of Justices Allen and Cavanagh, and \$19,000 in costs pursuant to my order)

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