

CITATION: MTCC No. 580 v. Mills, 2021ONSC 3440
COURT FILE NO.: CV-19-622785
DATE: 20210510

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
METROPOLITAN TORONTO)	
CONDOMINIUM CORPORATION)	
NO. 580)	
)	
Applicant)	<i>Jordan Cowman</i> , for the applicant
- and -)	
)	
CHRISTOPHER MILLS)	
)	
Respondent)	<i>Jimmie Z. Chen</i> , for the
)	respondent ¹
)	
)	
)	
)	HEARD: April 6, 2021

F.L. Myers J

COSTS ENDORSEMENT

[1] By Reasons dated April 8, 2021, reported at 2021 ONSC 2616, I granted relief to the applicant based on the oppression and compliance provisions of the *Condominium Act, 1998*.

¹ I have listed both counsel in the Title of Proceeding because the respondent now has counsel who can redact any information that Mr. Mills may wish to have kept from him.

- [2] The applicant now seeks \$155,000 in costs on a full indemnity basis. The seemingly substantial quantum of costs was principally caused by Mr. Mills' extreme demands for accommodation for his disabilities. He is apparently driven by his disabilities to send an extreme volume of emails and to make exceptional demands of others - often threatening or seeking to invoke legal remedies against others whom he perceives to be causing him distress.
- [3] Mr. Mills (and many of his consultants and health care professionals) made demands for accommodation from others without apparent thought to the implications for the recipients of his demands. One obvious area of concern would have been the cost implications of repeatedly asserting legal rights with multiple emails and often threats against the applicant, its officers, directors, volunteers, employees, and/or contractors.
- [4] Upon reading the supporting letters from Mr. Mills' consultants and doctors, I was struck with the prevalence of the view or expectation that others were required to take fairly extreme steps to avoid "triggering" Mr. Mills. The problem is that (a) since "triggering" is a subjective reaction by Mr. Mills to external stimuli, one cannot know in advance what conduct might trigger him; and (b) Mr. Mills asserted demands that others must avoid causing him to receive external stimuli altogether. For example, he asserted that others be responsible to ensure that he did not see them or see their names written despite their legitimate need to be in places or to communicate. In this way, Mr. Mills prevented needed maintenance on the condominium by making threats, police complaints, and regulatory complaints against contractors on site to perform work under contract with the applicant, but whose presence, was triggering to Mr. Mills.
- [5] Neither Mr. Mills, nor many of his consultants, seemed to consider whether Mr. Mills might be responsible to try to exercise greater control over his responses to stimuli. I saw only one doctor's note suggesting that perhaps Mr. Mills should consider removing himself from situations in which he found it difficult to manage his emotions. The rest of the consultants seemed to support the notion that Mr. Mills entitlement to accommodation could be brandished as a sword to control others' entitlement to do their duties, their entitlement to exercise their freedoms, and to allow Mr. Mills to control the management of the condominium.

- [6] Mr. Mills and his consultants apparently did not consider any costs implications in doing so either.
- [7] Management of the affairs of the condominium is vested in the board of directors and management. It is not subject to veto by Mr. Mills. His conduct far exceeded any proper notion of accommodation and readily expanded into undue hardship as I found previously.
- [8] In this application, at times, Mr. Mills and his consultants demanded that Mr. Mills be spared the distress of litigating without regard to the applicant's legal rights, or the rights of the 14 other unit owners, their unit occupants, and others who all comprise the condominium community. Mr. Mills did not accept that the applicant had a right to resolution of its grievances because he found the process triggering. He also, at times, required accommodation to free him from all time limits for delivery of materials despite scheduling orders that had been agreed to by legal counsel acting on his behalf. Mr. Mills required entitlement to deliver materials in any format that he desired.
- [9] As I mentioned in a previous endorsement, doctors and others retained by Mr. Mills were duty-bound to think only of his best interest. They should be aware however, that in legal proceedings, there are two or more parties in a dispute and each is entitled to vindicate their legal rights.
- [10] The court cannot simply address the needs of one party alone. Accommodations sought in legal proceedings take into account that there are other people whose rights are affected. Mr. Mills is facing a very substantial costs claim largely due to his failure to appreciate that his demands, and, more particularly, the manner by which he chose to assert them, caused assessable costs to be incurred by the applicant.
- [11] It took a very long time to get this matter heard. In the interim, costs were being incurred dealing with the constant demands by Mr. Mills.
- [12] As the hearing date approached, I heard Mr. Mills' accommodation requests related to the hearing itself and made endorsements providing for as many of his required accommodations as possible without unduly interfering with the applicant's right to be heard in a fair process. When confronted with boundaries on acceptable behaviour, Mr. Mills then retained a lawyer to make a proper, timely motion for adjournment on

some notice and evidence. He participated fully in the hearing process with help from others as set out in the accommodation plan endorsements. He then retained another lawyer to make proper and timely costs submissions.

[13] Mr. Mills' counsel makes the following submission:

10. The Respondent acted in good faith throughout as he felt that he was not accommodated for his disability in and around his own home. The Cost award as requested by the Applicant's counsel would not only cause significant financial hardship to the Respondent, but also, in essence punish the Respondent in attempting to request what he believes to be fair accommodation for his disability.

[14] Mr. Mills continues to assert that his belief and feelings of what constitutes fair accommodation relieves him from responsibility for his behaviour no matter how egregious. I expect it likely that at least some of the seven or eight counsel retained by Mr. Mills throughout might have had a different view of his responsibility. While everyone involved in this proceeding devoted extensive time and effort to accommodate participation by Mr. Mills - with a high degree of success ultimately - both the law of costs and the provisions of the *Condominium Act, 1998* protect others from the externalization of responsibility for Mr. Mills' conduct.

[15] The fixing of costs is a discretionary decision under section 131 of the *Courts of Justice Act*. That discretion is generally to be exercised in accordance with the factors listed in Rule 57.01 of the *Rules of Civil Procedure*. These include the principle of indemnity for the successful party (57.01(1)(0.a)), the expectations of the unsuccessful party (57.01(1)(0.b)), the amount claimed and recovered (57.01(1)(a)), and the complexity of the issues (57.01(1)(c)). Overall, the court is required to consider what is "fair and reasonable" in fixing costs, and is to do so with a view to balancing compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)*, 2004 CanLII 14579 (ON CA), (2004), 71 O.R. (3d) 291, at paras 26, 37.

- [16] It is difficult to assess the reasonable expectations of a litigant facing this application. First, s. 134 (5) of the *Condominium Act, 1998* makes the unit owner liable for all costs incurred by the condominium corporation unless I rule some of the costs to be unreasonably charged (and hence unlawful). So, if they are found to have committed wrongdoing, condominium unit owners should expect to be fully liable for all of the corporation's costs as a matter of law.
- [17] Second, a litigant's reasonable expectations must to some degree depend on his or her own behaviour in the litigation. A litigant who vows to be cooperative in limiting the time required to resolve the dispute will have a different expectation than one who is intent upon making demands that tend to increase the amount of time and effort involved in the dispute. A litigant's reasonable expectation therefore may turn on whether the litigant is a reasonable litigant.
- [18] Courts weigh reasonable expectations to protect and enhance access to justice. Unexpected, massive costs risks, that are disproportionate to the nature and scope of a dispute, are a disincentive to people suing to vindicate important rights. But dissuading unreasonable litigation conduct does not impair access to justice. To the contrary, dissuading unreasonable litigation conduct promotes access to justice by protecting the all parties' ability to sue without a disproportionate, nasty costs risk.
- [19] I am considering only the amount of costs that ought to be borne by Mr. Mills as partial indemnity for the costs of the successful applicant. I wish to make very clear that I am not finding any costs charged by counsel to the applicant unreasonable as between them. The amount that Mr. Mills will be called upon to pay under s. 134 (5) is not before me and nothing I say is intended to affect that quantum.
- [20] In my view, a litigant facing a summary application that takes the better part of two years to come to a hearing with numerous new issues arising throughout and near daily contact between the parties, ought reasonably expect to face a substantial costs award.
- [21] I am not prepared to order costs on an elevated scale however. The applicant did not beat its offers as I did allow some continued communication between the parties. In that circumstance, I also do not necessarily view a compromise on a possible future, discretionary costs award with no compromise on the substance of the claim to be sufficient

to attract an automatic entitlement to enhanced costs. I do not think that this matters at the end of the day because the applicant will have its rights under s. 134 (5). Absent that subsection, the question of the scale of costs would have been more difficult.

- [22] There is no evidence that paying a costs award would cause significant hardship to Mr. Mills. In fact, his ownership of his condominium unit provides an ability to pay in the ordinary course – hence the lien in the statute.
- [23] In my view, it is fair and reasonable to require the respondent to pay \$75,000 as partial indemnity toward the applicant’s costs. I find nothing in the applicant’s Costs Outline unreasonable. I reduce the amount sought by 50% to reflect partial indemnity (to 60%) and to give some recognition of some element of increased costs (another 10%) that might be reasonably attributable to the difficulties inherent in litigating with a person with special needs or disabilities. It is not undue hardship to expect a litigant opposite to bear some small increased costs risk to accommodate the needs of a party under disability. By recognizing the reasonableness of all of the hours billed, I reflect the unreasonable efforts caused by Mr. Mill’s litigation behaviour.

FL Myers J

Released: May 10, 2021

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– and –

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Respondent

REASONS FOR JUDGMENT

FL Myers J

Released: May 10, 2021