

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
)
 SANDRA SYMONIK)
 Plaintiff) *Carol A. Dirks* for the Plaintiff
)
 - and -)
)
)
 METROPOLITAN TORONTO)
 CONDOMINIUM CORPORATION NO.)
 572) *Timothy M. Duggan* for the Defendant
 Defendant)
)
) **HEARD:** In Writing

PERELL, J.

REASONS FOR DECISION - COSTS

[1] The Plaintiff, former Applicant, Sandra Symonik owns a unit in a residential condominium apartment building in Toronto, Ontario. In an application that was converted into an action, she sues the Defendant, former Respondent, Metropolitan Toronto Condominium Corporation No. 572 (“MTCC 572”).

[2] The proceeding has a long and very convoluted history. Ms. Symonik has, amongst other things, unresolved oppression remedy claims and claims for damages.

[3] During the course of the proceedings, she sought a mandatory interlocutory injunction.

[4] Based on the MTCC 572’s undertaking to provide alternative accommodation for Ms. Symonik while her apartment is remediated and repaired, I dismissed her motion for a mandatory interlocutory injunction, and I vacated an Order made by Justice Pinto dated October 19, 2020.¹

[5] In my Reasons for Decision, I addressed the matter of costs as follows:

109. If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with Ms. Symonik’s submissions within twenty days from the release of these Reasons for Decision, followed by MTCC 572’s submissions within a further twenty days.

110. Although MTCC 572 was the successful party on this motion, I am asking for Ms. Symonik’s costs submissions first. I do this because my present inclination is to award her some costs,

¹ *Symonik v. Metropolitan Toronto Condominium Corp. No. 572*, 2021 ONSC 2494.

notwithstanding that she was technically the unsuccessful party. My present inclination is to make the balance of the costs of the interlocutory motion to be costs in the cause of her action.

111. If the parties cannot resolve the matter of costs, I will explain my present inclination at greater length. For present purposes, I will just say that my review of the record is that: (a) there is some divided success; (b) there is some conduct by the parties that neither party should be proud of; and (c) Ms. Symonik's request for interlocutory relief (or her request for a final judgment for that matter) has been a moving target and unlike most litigation, the case at bar has been more about what has happened since the commencement of the proceeding than what caused the proceeding to be commenced in the first place.

[6] Ms. Symonik seeks partial indemnity costs of **\$29,070.94**, all inclusive.

[7] Although she arguably was the unsuccessful party on the motion, Ms. Symonik advances four reasons for her claim for costs. First, she submits that the motion was precipitated by the Defendant's failure to obtain the opinion referred to in Justice Pinto's Order. Second, she says she should receive costs because the Defendant's undertaking to pay \$100 a day did not come about until the court hearing. Third, she submits that MTCC 572's conduct during the proceeding caused her to unnecessarily incur more legal costs. Forth, she submits that she should receive costs because she served an offer to settle that in essence was the same as the undertaking given by MTCC 572 to the Court.

[8] MTCC 572 disputes that Ms. Symonik should receive any costs. As the successful party on the interlocutory motion, MTCC 572 seeks costs of **\$13,915.61**. It submits that the motion was unnecessary and would have been avoided had Ms. Symonik acted reasonably and cooperatively in response to MTCC 572's efforts to remediate her dwelling unit.

[9] In the alternative, MTCC 572 submits that the parties should bear their own costs.

[10] In the further alternative, MTCC 572 submits that the quantum of any costs awarded to Ms. Symonik should be reduced from her claim of \$29,070.94, all inclusive. MTCC 572 submits that an appropriate amount would be \$2,500.00 all-inclusive, with the balance of the costs made payable in the cause.

[11] For the reasons that follow, I award Ms. Symonik costs of **\$25,000**, all inclusive.

[12] Although perhaps technically MTCC 572 was the successful party in the sense that Ms. Symonik's interlocutory motion was dismissed, it is debatable whether this outcome was even a technical success given that: (a) the dismissal was on terms; and (b) the ingredients for the interlocutory motion came in large part from Justice Pinto's Order, which imposed numerous burdens on MTCC 572, and which partially consent order was at least a substantial tactical success for Ms. Symonik.

[13] Given the prior history, it is simply not possible to extract the motion that I decided from the long history of acrimony and distrust between the parties to say that the motion was unnecessary and that MTCC 572 was the successful party. At this juncture, I am unable to say that the intertwined Application brought by Ms. Symonik, the motion adjourned by Justice Pinto on terms and the motion that I heard were unnecessary or avoidable.

[14] In any event, even if MTCC 572 was technically the successful party, it does not follow, as submitted by MTCC 572, that the court must award the successful party costs. Section 131(1)

of the *Courts of Justice Act*² provides that “[s]ubject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.”

[15] The fact that a party is successful in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case.³ However, courts will award costs against a successful party only in exceptional cases, which may include cases where there was misconduct by the successful party or cases of public interest litigation.⁴

[16] Having regard to the ongoing litigation, which it should be recalled alleges oppressive conduct and breaches of the *Condominium Act, 1994*⁵ by MTCC 572, it is neither possible nor appropriate to make any finding about whether MTCC 572 misconducted itself, but, in my opinion, this is an appropriate case to award the costs of an interlocutory motion against MTCC, which is a perhaps technically successful party.

[17] While there may be some traction to some of Ms. Symonik’s submissions as to why she should recover costs, I make no findings in that regard. I find instead that she is entitled to costs because it was reasonable for her to turn to the court for access to justice in her dispute with MTCC 572 and if she is ultimately not successful the costs of her action will be determined by the trial judge. However, in so far as the interlocutory relief is concerned, intertwined as it was with Justice Pinto’s Order, the better argument is that Ms. Symonik not MTCC 572 is the successful party that is entitled to costs.

[18] A very significant factor in the exercise of the court’s discretion with respect to costs and an overriding principle that is acknowledged in rule 57.01(1) is that the amount of costs be reasonable and fair. Rather than reflecting with mathematical precision the actual costs incurred by the successful litigant, the amount of costs should be fair and reasonable in all the circumstances, which may be determined, in part, by considering the reasonable expectations of the parties, most particularly the unsuccessful party.⁶

[19] Having considered the Bills of Costs of both parties, in my opinion, the appropriate award to Ms. Symonik in the immediate case is **\$25,000**, all inclusive.

[20] Order accordingly.

Perell, J.

Released: May 18, 2021

² R.S.O. 1990, c. C.43.

³ Rule 57.01(2).

⁴ *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.* (2008), 93 O.R. (3d) 257 (C.A.).

⁵ S.O. 1998, c. 19.

⁶ *Coldmatic Refrigeration of Canada Ltd. v. Leveltek Processing LLC* (2005), 75 O.R. (3d) 638 (C.A.); *Boucher v. Public Accountants Council for the Province of Ontario*, (2004), 71 O.R. (3d) 291 (C.A.); *Moon v. Sher*, [2004] O.J. No. 4651 (C.A.); *Zesta Engineering Ltd. v. David Cloutier*, [2002] O.J. No. 4495 (C.A.).

CITATION: Symonik v. Metropolitan Toronto Condominium Corp. No. 572, 2021 ONSC 3626
COURT FILE NO.: CV-20-635266
DATE: 20210518

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SANDRA SYMONIK

Plaintiff

- and -

**METROPOLITAN TORONTO CONDOMINIUM
CORPORATION NO. 572**

Defendant

REASONS FOR DECISION – COSTS

PERELL J.

Released: May 18, 2021