

CITATION: Toronto Standard Condominium Corporation No. 1724 v. Evdassin,
2021 ONSC 6271

COURT FILE NO.: CV-19-00624020

DATE: 20210922

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Evgeni Evdassin)	<i>Jonathan Shulman</i> , for the Applicant
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- and -)	
)	
Toronto Standard Condominium Corp. No. 1724)	<i>John De Vellis and Inderpreet Suri</i> , for the Respondent
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)	HEARD: July 6, 2021

DAVIES J.

REASONS FOR DECISION

A. Overview

[1] Mr. Evdassin owns and lives in a unit in the condominium building operated by Toronto Standard Corporation No. 1724 (“the Condominium”).

[2] In 2017, the Condominium discovered that the building was constructed using Kitec pipes, which are known to fail. The Condominium passed a resolution requiring owners to replace the Kitec pipes in their units. Unit owners were responsible for the cost of replacing their pipes but the Condominium coordinated the engineers and contractors to complete the work.

[3] Mr. Evdassin refused to let the Condominium’s contractors into his unit and refused to replace the pipes himself.

[4] The Condominium eventually brought an application under s. 134 of the *Condominium Act*, 1998, S.O. 1998, c.19 for a compliance order to force Mr. Evdassin to replace the pipes in his unit. The Condominium sought various other orders to prohibit Mr. Evdassin from abusing, harassing, threatening or intimidating anyone employed by the Condominium. I heard the Condominium’s application in February 2020. I granted the

application in part. I ordered Mr. Evdassin to allow the Condominium's contractors to enter his unit to replace the Kitec pipes and to pay the cost of replacing the pipes. I found that Mr. Evdassin was verbally abusive to Condominium staff and contractors. But I declined to make any compliance orders other than those necessary to ensure the Kitec pipes were replaced because there was no evidence that Mr. Evdassin's abusive and disruptive behaviour was continuing (*Toronto Standard Condominium Corp. No. 1724 v. Evdassin*, 2020 ONSC 1520).

[5] In a separate ruling, I ordered Mr. Evdassin to pay \$11,446.82 in costs on the Condominium's compliance order application.

[6] On June 29, 2020, the Condominium sent Mr. Evdassin a letter demanding \$29,572.90 in costs. The Condominium issued a Notice of Lien on July 7, 2020. Mr. Evdassin did not pay the amount demanded in the Notice so the Condominium registered a lien on his unit.

[7] Mr. Evdassin now seeks a declaration that the lien is invalid. Mr. Evdassin argues that the Condominium is not entitled to any costs beyond the \$11,446.82 I ordered him to pay. In the alternative, Mr. Evdassin argues that the costs claimed by the Condominium are unreasonable for two reasons. First, Mr. Evdassin argues that some of the costs claimed were not incurred by the Condominium to obtain the compliance order and should not have been included in the amount of the lien. Second, Mr. Evdassin argues he has already paid close to \$7,500 in costs for which he has not received credit.

[8] I find that the Condominium was entitled to recover its full costs from Mr. Evdassin and the lien is valid. I also find that payments made by Mr. Evdassin are for matters unrelated to the Condominium's lien. Mr. Evdassin's application is, therefore, dismissed.

B. Procedural Irregularities

[9] Before addressing the merits of Mr. Evdassin's application, I wish to address two procedural irregularities in this case.

[10] First, Mr. Evdassin's request to set aside the lien was not properly constituted. Mr. Evdassin commenced this matter as a motion within the Condominium's application for a compliance order under s. 135 of the *Condominium Act*. Mr. Evdassin did file a Notice of Application seeking a declaration that the lien is invalid but his Notice of Application was never issued.

[11] Mr. Evdassin's request to set aside the lien should not have been brought as a motion within the Condominium's application. The Condominium's application was fully and finally decided in March 2020. The registration of the lien is a separate legal matter. Mr. Evdassin's request to remove the lien should have been commenced as an application under Rule 14.

[12] The Condominium did not object to Mr. Evdassin's matter proceeding despite the procedural irregularity. I am satisfied that it is in the interests of justice to decide Mr. Evdassin's matter even though it was not properly constituted to avoid further delay and expense.

[13] Second, Mr. Shulman was not licensed to practice law when he appeared before me on Mr. Evdassin's application to set aside the lien on July 6, 2021. The Law Society of Ontario administratively suspended Mr. Shulman at the end of June 2021. I first learned about Mr. Shulman's suspension two days after the hearing of Mr. Evdassin's application to set aside the lien. I convened a hearing on September 3, 2021 to receive submissions on the impact of Mr. Shulman's suspension on my jurisdiction to rule on Mr. Evdassin's application. After hearing from the parties, including Mr. Evdassin, I found that I have jurisdiction to rule on Mr. Evdassin's application even though Mr. Shulman was not licensed to practice law at the time and Mr. Evdassin was not present for the hearing. I also found that it is in the interests of justice for me to rule on Mr. Evdassin's application (*TSCC No. 1724 v. Evdassin*, 2021 ONSC 5982).

[14] In my reasons on the impact of Mr. Schulman's suspension on my jurisdiction to rule on Mr. Evdassin's application, I was critical of how Mr. Shulman handled the issue of his suspension. I was also critical of Mr. Shulman's failure to respond to inquiries from the Court in a timely manner. I even ordered Mr. Shulman to pay the costs of that hearing personally. While Mr. Shulman's conduct since July 6, 2021 is troubling, it has had no impact on my decision on the merits of Mr. Evdassin's request to remove the lien from his condominium.

C. Is the Condominium entitled to recover its full costs?

[15] The Condominium sought costs on a full indemnity basis on the compliance order application I heard in February 2020. I did not accede to the Condominium's request for full indemnity costs. Rather, I ordered Mr. Evdassin to pay costs on a partial indemnity basis in the amount of \$11,446.82. Mr. Evdassin now argues that the Condominium is not entitled to recover any costs beyond what I ordered him to pay. I disagree. The Condominium is entitled to recover its full costs notwithstanding the limited costs order I made.

[16] In my reasons for ordering costs on a partial indemnity basis I noted that, notwithstanding my order, the Condominium could recover its actual costs under either s. 134(5) of the *Condominium Act* or section 2.2 of its Declaration if it wanted to do so (*Toronto Standard Condominium Corp. No. 1724 v. Evdassin*, 2020 ONSC 2673).

[17] Section 134(5) of the *Condominium Act* says that if a Condominium is awarded costs as part of a compliance order against a unit owner, the Condominium can add those costs to the common expenses for the unit "together with any additional actual costs to the corporation in obtaining the order." The Condominium was granted a compliance order under s. 134 of the *Condominium Act* so the pipes in Mr. Evdassin's unit could

finally be replaced without further interference and disruption. So long as the costs added to Mr. Evdassin's common expenses were incurred by the Condominium to obtain the compliance order I made, they are appropriate under s. 134(5) of the *Act* even if they exceed what I ordered in costs: *Skyline*, para. 45.

[18] If s. 134(5) of the *Condominium Act* was the only basis for assessing the Condominium's lien, the Condominium would have to establish the costs added to Mr. Evdassin's common expenses were incurred to obtain the compliance order I made and were not incurred in relation to the broader compliance order the Condominium sought but was denied. However, the Condominium's Declaration provides the Condominium with an alternate mechanism to recover its actual costs.

[19] Section 2.2 of the Declaration says that Mr. Evdassin is responsible to pay "any losses, costs or damages" incurred by the Condominium if he breached the Condominium's Declaration, By-laws or Rules. In my ruling on the Condominium's application for a compliance order, I found that Mr. Evdassin violated the *Condominium Act* by refusing to replace the Kitec pipes in his unit and refusing to allow the Condominium to complete the work. I also found that Mr. Evdassin's rude, abusive, uncooperative, disruptive behaviour violated the Condominium's Declaration and the rules. I was not satisfied that Mr. Evdassin's conduct was sufficiently persistent or intransigent to warrant a compliance order. But I found he had violated the Condominium's Declaration and rules. The Condominium is, therefore, also entitled to recover any costs incurred as a result of Mr. Evdassin's abusive, disruptive conduct under section 2.2 of the Declaration.

[20] I find that the Condominium was entitled to recover its actual costs of obtaining the compliance order and any costs it incurred as a result of Mr. Evdassin's abusive, disruptive conduct from Mr. Evdassin. The Condominium was entitled to add its actual costs to his common expenses. When Mr. Evdassin failed to pay those common expenses, the Condominium was entitled to register a lien on his unit for the amount outstanding plus interest: *Condominium Act*, s. 85(1).

D. Does the lien reflect the Condominium's costs for obtaining the compliance order or addressing Mr. Evdassin's abusive conduct?

[21] Mr. Evdassin argues that the lien includes costs that are not related to the compliance order granted or his breach of the Condominium's Declaration and by-laws. Mr. Evdassin also argues that the Condominium was not entitled to claim any costs incurred after the compliance order was made. I disagree.

[22] In my costs decision on the Condominium's compliance act application, I found that most of the legal fees claimed by the Condominium were for the narrow compliance order I granted related to the replacement of the Kitec pipes. The majority of the record related to the Condominium's efforts to replace the pipes in Mr. Evdassin's unit. The

arguments at the hearing focussed on that issue. Only a small portion of the record and the argument focussed on Mr. Evdassin's rude and abusive conduct.

[23] The bill of costs submitted by the Condominium on its compliance order application was not detailed enough for me to determine precisely how much time was spent on each issue. I reduced the fees claimed by 20 percent to account for the fact that I did not grant the Condominium all the relief sought.

[24] Detailed legal accounts were filed as part of the record on this application. The Condominium's actual fees were \$36,966.13. The Condominium applied the same 20 percent reduction to all of its accounts and added only \$29,572.90 to Mr. Evdassin's common expenses.

[25] When Mr. Evdassin failed to pay the common expenses, the Condominium registered a lien in the amount of \$30,689.59 (\$29,572.90 plus \$681.64 in interest and \$435.05 in legal costs associated with obtaining the lien).

[26] Mr. Evdassin identified only one entry in the Condominium's accounts that is not related to the Condominium's application for a compliance order or the Condominium's response to his abusive behaviour – a July 24, 2019 docket for 0.2 hours spent addressing a problem with Mr. Evdassin's air conditioning. The Condominium agrees the July 24, 2019 docket should not have been included in the account for the purpose of calculating Mr. Evdassin's common expenses and the lien. The fee associated with the July 24, 2019 docket is \$190.

[27] Mr. Evdassin argues that if the lien is for even one dollar more than the Condominium is entitled to, it is invalid and should be removed. I disagree.

[28] The amount of a registered lien does not have to be accurate in the same way a notice of sale does under the *Mortgages Act*, R.S.O. 1990 c. M. 40: *York Condominium Corporation No. 482 v. Christiansen*, 2003 CanLII 11152 (ON SC) at para. 49. The Condominium's lien would have expired if it was not registered within three months of Mr. Evdassin's failure to pay his common expenses: *Condominium Act*, s. 85(2). If the lien is set aside now because the amount is not accurate, the Condominium will lose its lien rights altogether for Mr. Evdassin's unpaid common expenses. It would be unfair for the Condominium to lose its lien rights just because the amount registered is not exactly the amount he owes. Registering a lien is one of the early steps towards enforcing a debt secured by property: *Christiansen*, at para. 49. The precise amount owing by Mr. Evdassin will be determined if a notice of sale is issued in the future.

[29] If, however, the amount of a lien is clearly incorrect or excessive, it can also be corrected without invalidating the lien: *Metropolitan Toronto Condominium Corporation No. 744 v. Bazilinsky*, 2012 ONSC 1187 at para. 23. In this case, the lien registered on Mr. Evdassin's unit is actually for less than the total amount the Condominium was entitled to recover from him. The Condominium could have demanded its full legal fees (minus

the unrelated July 24, 2019 docket) under s. 2.2 of its Declaration, including costs incurred after my decisions was released. However, the Condominium decided to reduce its fees by 20 percent, or \$7,393.23, to reflect my earlier finding that 80 percent of counsel's time was likely spent on the Kitec pipes issue. I do not need to review the Condominium's accounts line-by-line or reduce the value of the lien as Mr. Evdassin suggests because the lien is for less than the total amount the Condominium was entitled to recover.

E. Should Mr. Evdassin receive credit for payments already made?

[30] Mr. Evdassin argues that he paid \$7,480.86 towards the Condominium's legal fees but has not been given credit for his payments. Mr. Evdassin produced a money order dated November 14, 2018 for \$4,910.01. Mr. Evdassin also produced two cashed cheques for \$107.45 and \$2,463.40 dated May 3, 2019. The Condominium agrees that it received three payments from Mr. Evdassin totalling \$7,480.86 but argues those payments relate to other matters.

[31] Mr. Evdassin received notice on October 30, 2018 that a lien would be registered on his unit unless he paid \$4,910.01 in unpaid common expenses by November 9, 2018. The unpaid common expenses related to a flood in Mr. Evdassin's unit in June 2018. Mr. Evdassin gave the Condominium a \$4,910.01 money order to pay the outstanding common expenses in full. That payment pre-dates my costs order. It also pre-dates any demand for costs related to the Kitec pipe replacement or the Condominium's application for a compliance order. Mr. Evdassin is not entitled to credit for that payment in this matter.

[32] The \$2,463.40 payment made by Mr. Evdassin in May 2019 was for legal fees related to the replacement of the Kitec pipes but those legal fees were not included in the amount of the lien. In a letter dated March 8, 2019, the Condominium requested payment of \$2,463.40 for legal fees related to the Condominium's failed attempts to have Mr. Evdassin replace the pipes in his unit. The Condominium requested payment by March 31, 2019. On April 29, 2019, the Condominium sent Mr. Evdassin a letter saying \$2,463.40 had been added to his common expenses. Mr. Evdassin finally paid the \$2,463.40 outstanding on May 3, 2019.

[33] The legal fees that form the basis of the lien in question on this application post-date the Condominium's demand for \$2,463.40 in legal fees on March 8, 2019. The legal fees that form the basis of the lien are detailed in accounts from March 15, 2019 to May 13, 2020. I find that the \$2,463.40 in legal fees Mr. Evdassin paid in May 2019 are not included in the amount of the current lien and Mr. Evdassin is not entitled to credit for the \$2,463.40 payment in this matter.

[34] The \$107.45 payment is not related to the Condominium's legal fees. The contractors retained by the Condominium to replace the Kitec pipes throughout the building made two attempts to access Mr. Evdassin's unit. Mr. Evdassin refused to let them in each time. The contractors charged the Condominium \$1,000 plus HST for each failed attempt to get into Mr. Evdassin's unit. The contractors also charged the

Condominium \$500 to amend its building permit application to remove Mr. Evdassin's unit from the scope of work planned. The Condominium passed the charges from the contractor, which total \$2,825, on to Mr. Evdassin. Mr. Evdassin had already given the Condominium a \$2,717.55 deposit towards the cost of replacing the Kitec pipes. After applying the \$2,717.55 deposit to the \$2,825 in contractor charges, Mr. Evdassin still owed \$107.45. The May 3, 2019 cheque for \$107.45 was to pay off the contractor's charges. The contractor charges are not included in the amount of the current lien and Mr. Evdassin is not entitled to credit for the \$107.45 payment in this matter.

[35] I find that the \$7,480.86 in payments made by Mr. Evdassin to the Condominium are not related to the legal fees that form the basis for the lien. Mr. Evdassin is not entitled to credit for those payments in this matter.

F. Conclusion

[36] The Condominium was entitled to add its actual costs for obtaining the compliance order against Mr. Evdassin to his common expenses. The Condominium was also entitled to recover any costs it incurred because of Mr. Evdassin's rude, uncooperative and disruptive behaviour, which breached the Condominium's Declaration and by-laws. The Condominium was entitled to add those costs to Mr. Evdassin's common expenses. When Mr. Evdassin failed to pay his common expenses, the Condominium was entitled to register a lien on his unit. Although the Condominium's legal accounts include one docket that is not related to the compliance order or Mr. Evdassin's breach of the Declaration, the value of the lien is less than what the Condominium was rightfully entitled to recover.

[37] The payments made by Mr. Evdassin in November 2018 and May 2019 are not related to the legal costs added to his common expenses in July 2020 that form the basis of the lien.

[38] The lien registered on Mr. Evdassin's unit is valid and Mr. Evdassin's application is dismissed.

[39] I strongly encourage the parties to settle the issue of costs. I remind Mr. Evdassin that under the *Condominium Act* and the Condominium's Declaration the Condominium is likely entitled to recover all its legal costs on this application notwithstanding any costs order I might make. If Mr. Evdassin continues to litigate these issues and the Condominium continues to incur legal fees, the Condominium will likely continue to add its costs to his common expenses and register liens on his property. I encourage the parties to reach a final agreement on how the costs of this matter will be treated to avoid never-ending litigate over the issue of costs.

[40] If the parties cannot resolve the issue of costs, the Condominium can serve and file written submissions of no more than five pages by October 8, 2021. Mr. Evdassin can file responding submissions on the issue of costs of no more than five pages no later than

October 15, 2021. All cost submissions are to be submitted through CaseLines and are not to be sent to my assistant directly.

Davies J.

Released: September 22, 2021

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**ONTARIO
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Evgeni Evdassin
Applicant

– and –

Toronto Standard Condominium Corp. No. 1724
Respondent

REASONS FOR JUDGMENT

Davies J.

Released: September 22, 2021