**CITATION:** Carleton Condominium Corp. No. 56 v. Chreim, 2022 ONSC 4654
**COURT FILE NO.:** CV-21-87904
**DATE:** 11/08/2022

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **BETWEEN:** | |
| CARLETON CONDOMINIUM CORPORATION NO. 56<br>Plaintiff/Moving Party | Lauren Benoit for Plaintiff/Moving Party |
| **– and –** | |
| SAHAR CHREIM<br>Defendant/Responding Party | Stéphane Hutt and Simon Regimbald for Defendant/Responding Party |
| | **HEARD:** February 14, 2022 |

## REASONS FOR JUDGMENT

**Justice Sally Gomery**

1. Carleton Condominium Corporation No. 56 ("CCC No 56" or the "Corporation") seeks a summary judgment on its lien enforcement action against Sahar Chreim, the owner of one of its units. Among other things, CCC No 56 claims over $34,000 in costs spent in defending a Small Claims Court action by Ms. Chreim, and full recovery of over $50,000 in costs of this action. It also seeks orders allowing it to sell Ms. Chreim's unit pursuant to a notice of sale it served last year.

2. The origin of this action is a disagreement between Ms. Chreim and CCC No 56 about who should pay a $330 plumbing bill and a $698 water bill invoiced to Ms. Chreim as common

expenses in mid-2018.[1] Before this dispute, Ms. Chreim did not routinely fail to pay amounts owed to the Corporation or have any ongoing disagreements or disputes with either CCC No 56 or her neighbours. She apparently believed that she had resolved the issue of the outstanding water bill by increasing her monthly payments to the Corporation beginning July 1st, 2018. In December 2018, however, CCC No 56's lawyers registered a lien against Ms. Chreim's unit for $2,241 for the outstanding expenses, interest, and legal administrative fees. The legal fees were stated to be $650, much more than CCC No 56 was later billed for the work done to this point.

3. Ms. Chreim paid the amount stated in the notice of lien by cheque on January 27, 2019. On receipt of the cheque, even though the Corporation's legal costs with respect to the lien remained below the amount Ms. Chreim had already paid for them, the Corporation's lawyers told her that she would have to pay an additional $1,340 for the legal expenses, including those that would be incurred to obtain a discharge. Ms. Chreim sent a second cheque for this amount on January 31, 2019. Despite this, CCC No 56 refused to remove the lien, because Ms. Chreim had sued its property management company in Small Claims Court a few days earlier. In her lawsuit, she sought damages consisting of the amounts she had paid to CCC No 56 for the disputed common expenses, plus punitive damages. CCC No 56's lawyers told Ms. Chreim that, unless she abandoned her claim against the property management company, the lien would remain in place and she would be liable for many thousands of dollars for its cost to defend the Small Claims Court action.

4. Ms. Chreim did not abandon her lawsuit. CCC No 56 kept the lien in place. It did not return the money that Ms. Chreim had sent to cover the costs of obtaining a discharge or credit the payments to Ms. Chreim's ledger with CCC No 56. As a result, the ledger reflected that Ms. Chreim continued to accumulate arrears and interest on those arrears. In the meantime, CCC No 56's lawyers retained the payments made to offset the Corporation's defence costs in the Small Claims Court action.

5. Ms. Chreim lost her Small Claims Court lawsuit in May 2021. By that time, CCC No 56 had been added as a defendant. In its cost submissions to the Deputy Judge, CCC No 56 sought

[1] I have rounded all money amounts to the nearest dollar.

recovery of over $22,000 in costs, arguing that the provisions of the *Condominium Act, 1998*, S.O. 1998, c.19 (the "Condominium Act") and provisions in the Corporation's Declaration and By-Laws gave it a right to full indemnification. The Deputy Judge agreed that Ms. Chreim had acted unreasonably in refusing to settle the lawsuit but limited costs to CCC No 56 to $4,524, or 30% of the total damages she claimed.

6. Ms. Chreim has since tendered payment for the costs awarded by the Deputy Judge, conditional on the lien being discharged and a release granted in her favour. CCC No 56 did not accept these conditions and the costs remain unpaid.

7. CCC No 56 began this lien enforcement action in November 2021 after serving Ms. Chreim with a Notice of Sale under Lien. In its summary judgment motion, it seeks arrears of $34,561 in common expenses' arrears allegedly covered by the lien against Ms. Chreim's unit.[2] This amount consists of its defence costs in the Small Claims Court action, including those ordered payable by the Deputy Judge, and interest on those costs calculated at 12% a year. The Corporation also seeks full recovery of $52,613 in legal fees and disbursements in this action, a declaration that the lien against Ms. Chreim's unit and the Notice of Sale are valid, an order for vacant possession, and other related relief.

8. Ms. Chreim agrees that this is an appropriate case for summary judgment, but contends that the action should be dismissed, the lien should be discharged, and costs should be ordered in her favour. She contends that CCC No 56 was obligated to discharge the lien when she paid all amounts it claimed in late January 2019. Since the lien is invalid, so too is the Notice of Sale, and CCC No 56 has no claim for any relief against her.

9. A lawyer for the first mortgagee on the unit, James Butson, made oral submissions at the hearing, without objection from the other parties. The mortgagee has an interest in the litigation because, pursuant to s. 86(1) of the Condominium Act, the Corporation's lien has priority over its mortgage. Mr. Butson expressed the view that CCC No 56's legal costs in the Small Claims Court action were not related to the collection of common expenses and so are not covered by the lien

[2] This is the figure stated by CCC No 56's lawyers at the hearing, as opposed to the amount of $56,190 set out in their factum.

pursuant to s. 85 of the Condominium Act. He also argued that the legal costs claimed are grossly disproportionate to the amount in dispute.

10. For the reasons that follow, I grant judgment in Ms. Chreim's favour. I declare the lien against her unit and the Notice of Sale to be invalid and dismiss CCC No 56's claim for possession and sale of the unit, its claim for all amounts claimed in relation to the lien, and its claim for full costs in this action.



**Issues on this motion**

11. The parties addressed four issues in argument on the motion:

(1) Is this an appropriate case for summary judgment?

(2) If so, is the lien registered against Ms. Chreim's property valid?

(3) Is CCC No 56 entitled to all its defence costs in the Small Claims Court action?

(4) If I grant judgment in favour of CCC No 56, is it entitled to recover all its legal costs in this action?

**Facts giving rise to the action**

12. In August 2014, Ms. Chreim bought her condominium at 2112 Eric Crescent in Ottawa, an 81-unit development managed by CCC No 56. CCC No 56's day-to-day management was handled by Apollo Property Management ("Apollo"). Ms. Chreim was charged monthly condominium fees of $359 per month as of January 1st, 2018, which she paid through a pre-authorized debit of her bank account.

13. Under CCC No 56's By-Law No. 3, each unit owner is required to pay their share of common expenses, including their metered share of water and sewage charges. Any unpaid common expenses are subject to interest at 12% per year, compounded monthly.

14. Apollo's ledger for Ms. Chreim's unit indicates that a pre-authorized payment for $263 in water charges was refused by her bank on January 18, 2018, due to insufficient funds. Apollo

cashed a cheque from Ms. Chreim for the outstanding amount on February 9, 2018. This left a balance of $25 on her ledger, representing a fee charged by CCC No 56 for the NSF cheque. Aside from this modest unpaid charge, there is no evidence that Ms. Chreim had a history of failing to pay common expenses imputed to her. There is also no evidence that she had any ongoing disputes with her neighbours, CCC No 56, or Apollo.

15. On May 15, 2018, Ms. Chreim was invoiced $698 for her water consumption for the first four months of the year. This was more than double the bill for the four-month period. Ms. Chreim contacted Apollo to arrange to increase her monthly pre-authorized payments to CCC No 56 by $75 beginning July 1st, 2018. Based on her later correspondence with Apollo and the Corporation's lawyers at Gowling WLG LLP ("Gowlings"), Ms. Chreim believed that the Corporation had agreed, by accepting this increase, that she would pay off the balance arising from the large water bill over time. The ledger in fact shows that the arrears did decline from $648 on July 1st to $498 as of September 1st, 2018.

16. Debbie McEwen, an Apollo employee, sent Ms. Chreim an email on July 31, 2018, saying that the high water charges were due to a leak inside Ms. Chreim's unit that should be fixed. Ms. McEwen wrote: "I will arrange for a plumber to attend at your unit to fix this issue with your permission. The condo will pay for the inspection but you will have to pay for the repairs". Ms. Chreim responded that she thought there was a problem with her water meter. She nonetheless agreed that Apollo could send a plumber to check the plumbing in her unit, adding: "If I'm responsible for the problem I will repair if not you will pay for it".

17. A plumber hired by Apollo visited Ms. Chreim's unit twice in August 2018. During the first visit on August 7, he inspected the unit and found that water was running in a toilet. On the second visit six days later, he fixed the problem by replacing the toilet's flapper. Ms. Chreim was apparently not at home when the plumber returned to fix the toilet. Her adult son let him into the unit. There is no evidence that Ms. Chreim was provided with an advance estimate of the fee that the plumber would charge for the repair or that she was even made aware that he would reattend to fix the leak on August 13.

18. The plumber's total bill was $329.91. This included $127.50 for his time plus a $12.00 fuel charge for the first visit; an identical service charge and fuel charge for the second visit; $12.95 for the new toilet flapper; and $37.95 in HST.

19. On September 18, 2018, Ms. McEwen sent Ms. Chreim the plumber's bill and demanded payment by October 1st. She wrote: "As explained to you - if an issue was discovered then the bill would be sent to you for this visit. The issue was your running toilet, which caused you to receive high water bills".

20. Despite Ms. McEwen's July 31 email saying that CCC No 56 would pay for the inspection, she sent the entire plumber's bill to Ms. Chreim for payment. Ms. Chreim denied that she was responsible for any portion of it. In response, Ms. McEwen warned her that, if she did not pay the bill in full, it would be forwarded to a lawyer and "that will cost you more".

21. On September 21, 2018, CCC No 56 formally invoiced Ms. Chreim for the entire plumbing bill. When she failed to pay the invoice, it sent her a notice on October 19, 2018, stating that her outstanding common expense arrears now amounted to $1,342. The total consisted of the August plumbing bill, the remaining $498 balance from the May water bill (taking into account the extra $75 that Ms. Chreim had been paying each month since July 1st), and a new water bill in the amount of $589. The notice warned that if Ms. Chreim did not pay the full invoice by October 29, 2018, CCC No 56 would register a lien on her unit. The notice also stated that all costs associated with the collection would be added to the lien.

22. Ms. Chreim did not pay the outstanding arrears by October 29, 2018. On December 13, 2018, she received a letter from Gowlings. The attached notice of lien stated that she now owed CCC No 56 $2,241. This included arrears now amounting to $1,362,[3] a $25 administrative fee, $120 of interest on the arrears, and legal costs of $650. Mr. Duquette, the lawyer with carriage of the file at Gowlings, warned Ms. Chreim that, if she did not pay this amount by December 27, 2018, a lien would be registered against her unit.

[3] This new total reflects another water bill issued to Ms. Chreim for $195, minus the two additional payments of $75 dollars by her on November 1 and December 1.

23. On December 18, 2018, Ms. Chreim emailed Mr. Duquette. She told him that she had arranged with Ms. McEwen to pay the May 2018 water bill over time, and that she had not authorized the plumber to repair the toilet. She also contended that some of the charges predated her purchase of the condominium in 2014. In Mr. Duquette's response, he raised the issue of the unpaid $25 fee for the NSF cheque almost a year earlier and said that CCC No 56 was not obliged to agree for repayment of the May 2018 water bill over time. He contended that Ms. Chreim had authorized the plumber to enter her unit in her email in reply to Ms. McEwen's July 31 message, and that the Corporation in any event had the right to require repairs if the owner refused to proceed with them and then charge the cost back to the unit holder.

24. In her response, Ms. Chreim pointed out that she had only agreed that the plumber could inspect her unit, and that neither the plumber nor the Corporation had asked for her permission to repair the toilet. She also pointed out that the plumber had charged $330 to replace a part that cost $10. Mr. Duquette did not address these arguments, but simply sent Ms. Chreim a further letter reiterating the December 27 deadline for payment. Ms. Chreim sent a further letter on December 28 that did not elicit any response.

25. Ms. Chreim repeatedly asked Mr. Duquette to communicate with her in French because she had a limited understanding of English. Mr. Duquette took the position that he was not required to accommodate Ms. Chreim's preference, but occasionally, when prompted, sent her French summaries of his correspondence. Gowlings' bills do not indicate any time charged by a translator, from which I infer that Mr. Duquette was comfortable drafting in either language.

26. Not having received the demanded payment, Gowlings registered a lien for $2,241 against Ms. Chreim's condominium on December 28, 2018. On the registration on title, Ms. McEwen certified, on behalf of CCC No 56, that the amount constituted arrears for which the unit holder was liable, and that "[u]pon payment of the amounts described above, the Condominium Corporation shall prepare and register a discharge of this certificate of lien… ."

27. On the same day he registered the lien, Mr. Duquette sent a letter to the mortgagee represented by Mr. Butson. He invited the mortgage company to pay the amount secured by the lien and add it to the mortgage debt, as provided at s. 88 of the Condominium Act.

28. On January 18, 2019, Ms. Chreim delivered a cheque for $2,241 to Gowlings, accompanied by a letter stating that she reserved her right to contest the amount claimed. On January 23, 2019, Mr. Duquette acknowledged receipt of the cheque but told Ms. Chreim that she must pay an additional $1,340 for legal costs to discharge the lien. No breakdown of these legal costs was provided. Mr. Duquette's January 17, 2019, letter warned Ms. Chreim that, if Gowlings did not receive a second cheque on or before January 31, 2019, she could be subject to further costs.

29. On January 24, 2019, Ms. Chreim began an action in Small Claims Court against Apollo in Court file no. 19-SC-152387. She claimed damages equivalent to the amounts she had paid ($2,241) or been asked to pay to CCC No 56 ($1,340), and $8,000 in punitive and aggravated damages.

30. On January 29, 2019, Gowlings received a second cheque from Ms. Chreim for $1,340. Mr. Duquette acknowledged receipt of the cheque on January 31, 2019. He now advised Ms. Chreim, however, that CCC No 56 was "not in a position to discharge the lien" because she had sued Apollo. He denied that she had any valid cause of action and warned that any legal costs incurred by CCC No 56 in defending the action would be claimed against Ms. Chreim's unit on a full indemnity basis on the grounds that these would be costs incurred in connection with the collection of arrears that she owed to CCC No 56. He told her that, if she continued her lawsuit, it could cost her "many thousands of dollars (potentially more than $10,000)". Mr. Duquette told Ms. Chreim that the lien would be discharged only if she accepted the Corporation's offer to abandon the lawsuit, on a no-cost basis, by February 4, 2019.

31. On February 2, 2019, Ms. Chreim sent an email to Gowlings asserting that the lien should be discharged as she had paid all amounts due, and that she was suing Apollo, not CCC No 56. There was no response from Gowlings indicating that she owed any further money at that point.

32. On February 13, 2019, Gowlings filed a defence to the Small Claims Court action on Apollo's behalf. The defence asserted that Apollo acted as CCC No 56's agent and denied the merits of Ms. Chreim's claim. When Ms. Chreim was served with a copy of the defence, she e-mailed Gowlings asking whether the lien on her condominium unit had been lifted. Gowlings reiterated that the lien would remain in place so long as her action against Apollo was not resolved.

There was again no reference, in Gowlings' response, to any further accumulated arrears allegedly owed by Ms. Chreim as of that date.

33. Unsuccessful settlement conferences took place in May and November 2019. In the interim, CCC No 56 was added as a defendant. In June 2019, it proposed to reimburse Ms. Chreim for the $330 plumber's bill if she dropped the lawsuit and paid another $3,213 in legal costs. Ms. Chreim did not accept this offer. In November 2019, she asked for a copy of Gowlings' invoices to CCC No 56. This was a logical request given its repeated warnings to her that these costs would be added to the lien against her property. The lawyer who had taken over the file at Gowlings, David Plotkin, responded by saying that the defence costs were not a subject of litigation in the Small Claims Court action and that CCC No 56 therefore had no obligation to provide her with the invoices. Citing a commitment to good faith and transparency, he nonetheless provided Ms. Chreim with a redacted copy of invoices sent in April and July 2019 and advised her that defence costs to date now totaled over $7000.

34. A trial took place on February 18, 2020, and April 30, 2021. On May 11, 2021, Deputy Judge Leclaire dismissed Ms. Chreim's action. He held that there was no proof whatsoever in the court record that could in any way support her allegations. He urged the parties attempt to settle costs, noting Ms. Chreim's limited understanding of English, her difficult situation, and her inability to afford a lawyer.

35. In written argument submitted to the Deputy Judge, despite Mr. Plotkin's earlier assertion that the Corporation's legal costs were not a subject of litigation in the action, CCC No 56 sought full indemnification for its defence costs of over $22,000 or, alternatively, partial indemnity costs of $15,000. It relied on s. 85 of the Condominium Act and section X of CCC No 56's Declaration, which states that an owner ""shall indemnify and save harmless the corporation from and against any loss, costs, damage, injury or liability whatsoever which the corporation may suffer or incur resulting from or caused by an act or omission of such owner". The Corporation's lawyers contended that, although s. 29 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 says that a cost award in a Small Claims proceeding shall ordinarily not exceed 15% of the value of the claim, it permits the Court to exceed this amount if it "considers it necessary in the interests of justice to penalize a party for its unreasonable behaviour in a proceeding." CCC No 56's lawyers argued that

full costs should be awarded because condominium litigation is different from other forms of civil litigation.

36. The Deputy Judge awarded CCC No 56 $4,524, or 30% of the damages claimed in the action. In a brief endorsement, the Deputy Judge held that Ms. Chreim had behaved unreasonably in refusing to accept CCC No 56's settlement offers. He did not explicitly address the Corporation's arguments about its entitlement to full costs.

37. On September 14, 2021, CCC No 56 served a Notice of Sale under Lien. According to the notice, the total amount covered by the lien stood at $44,644, made up of $33,700 in common expense arrears (the legal costs of the defence of the Small Claims action), $3,435 in interest, and $7,500 in other legal costs.

38. On October 15, 2021, lawyers retained by Ms. Chreim made a written offer to CCC No 56 to pay the costs ordered by Deputy Judge Leclaire ($4,524), provided that the lien was removed and the sale proceedings abandoned. CCC No 56 refused this offer. Ms. Chreim's lawyer continues to hold the tendered amount of $4,524 in a trust account accumulating interest.

39. After the deadline for payment in the notice of sale lapsed, CCC No 56 began this action.

**(1) Is this an appropriate case for summary judgment?**

39. Although the parties agree that this is an appropriate case for summary judgment, I must nonetheless consider whether there is a genuine issue requiring a trial.

40. The facts set out above are based on an agreed statement of facts and a joint book of documents filed by the parties, as well as some additional documents later filed by each party. The additional documents were not supported by affidavits, but neither party challenges their authenticity. I therefore have a reliable record of the communications between the parties and their representatives setting out their position at various times, the Small Claims Court proceedings, and the fees and costs recorded and invoiced by Gowlings.

41. The resolution of the parties' dispute requires an interpretation of statutory provisions and case law, the documents filed in the record, and the application of the law to the agreed facts. I do not need to evaluate the credibility of a deponent or weigh the evidence.

42. In the circumstances of this case, I find that resolution of this proceeding by summary judgment is appropriate. A full trial is not necessary to adjudicate the issues fairly. Moreover, in a case where tens of thousands of dollars have already been spent on a dispute over a frankly trivial amount, it is clearly not in the interests of justice or the parties to require a trial of the action.

**(2) Is the lien registered against Ms. Chreim's property valid?**

43. The Corporation indisputably had the right to register a lien against Ms. Chreim's condominium unit on December 28, 2018. The question is whether it had the right to refuse to remove the lien after Ms. Chreim paid all amounts owed as well as the anticipated legal fees for the removal. I conclude that it did not.

44. Section 85(1) of the Condominium Act gives a condominium corporation a lien against an owner's unit for unpaid common expenses, as well as "all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount". The lien may be enforced in the same manner as a mortgage (s. 85(6)). A registered certificate of lien secures not only the amount owed by the unitholder at the time of registration, but further amounts that the corporation may claim after this date, as specified in s. 85(3):

> A certificate of lien when registered covers,
>
> > (a) the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate;
> >
> > (b) the amount by which the owner defaults in the obligation to contribute to the common expenses payable for the owner's unit after the registration of the certificate; and
> >
> > (c) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b),

> including the costs of preparing and registering the certificate of lien and a discharge of it.

45. In the case at bar, article IV of CCC No 56's By-Law 3 provides for the assessment and collection of water charges as common expenses, using language that tracks s. 85(3):

> [A]ny amounts owing to CCC No 56 pursuant to this By-law and not paid when due, including any costs relating to the collection or attempted collection of any such amount, shall be added to the common expenses of the unit and shall be collectible from the unit owner in the same manner as common expenses, including by way of condominium lien. Such amounts shall bear interest at the rate of 12% per annum calculated and compounded monthly, on such amount as from time to time remain unpaid.

46. The discharge of a lien is governed by s. 85(7), which states:

> Upon payment of the amounts described in subsection (3), the corporation shall prepare and register a discharge of the certificate of lien in the form prescribed by the Minister and shall advise the owner in writing of the particulars of the registration.

47. As of January 29, 2019, Ms. Chreim had paid CCC No 56 the amount originally secured by the lien, as well as all interest and legal fees that CCC No 56's lawyers had advised had been incurred in connection with the collection of the unpaid common expenses, including the costs of registering the lien and the anticipated cost of discharging it. On the plain, unequivocal, and imperative language of s. 85(7), CCC No 56 was required to prepare and register a discharge of the lien on receipt of Ms. Chreim's second cheque.

48. There was no indication, in Mr. Duquette's January 31, 2019 letter, or in his further email to Ms. Chreim a few days later, that any further legal costs had been incurred, up to that point, in connection with her lawsuit against Apollo or that she owed any further arrears. In fact, he implied the opposite, that is, that CCC No 56 would continue to accumulate legal costs only if it was forced to defend to the Small Claims Court action. That was the ostensible basis on which Gowlings extended the offer of a without costs dismissal.

49. CCC No 56 now says that further legal costs had been incurred when Mr. Duquette made the offer, pointing to time records that show work done by Gowlings between January 29 and

January 31, 2019. As I will set out in further detail below, however, Ms. Chreim had already significantly overpaid for Gowlings' work to register the lien, based on the fees that Gowlings ultimately billed to its client for this same work. She owed the Corporation nothing and had prepaid Gowlings' own estimate of the legal costs of discharging the lien.

50. Despite this, the Corporation contends that it had the right to maintain the lien because it had to defend Ms. Chreim's Small Claims Court action, and the prospective costs of defending this lawsuit are costs captured by s. 85(3)(c) and article IV of CCC No 56's By-Law 3 as costs "that the corporation incurs in connection with the collection or attempted collection". It relies on other cases where courts have found that costs incurred by condominium corporations in litigating common expenses disputes fall within s. 85(3) of the Condominium Act. These include *Carleton Condominium Corporation No 396 v. Burdet*, 2015 ONSC 1361 ("*Burdet*"), *Metropolitan Toronto Condominium Corp. No. 868 v. Pang*, 2021 ONSC 2737 ("*Pang*"), and *Ottawa-Carleton Standard Condominium Corporation No. 671 v. Friend*, 2022 ONSC 47 ("*Friend*"). In its cost submissions in the Small Claims Court action, it also cited *Peel Condominium Corporation No. 452 v. Jaworowski*, 2010 ONSC 3850 and 2010 ONSC 4567 ("*Jawarowski"*).

51. I begin by observing that s. 85 does not, on my reading, contemplate a situation where a lien might be maintained even though all common expenses and legal expenses in relation to their collection have been paid. There is one allowance, in the language for the anticipated costs. Pursuant to s. 85(3), a lien secures "all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection", which explicitly includes the costs of discharging the lien. It makes sense, from a practical perspective, that a corporation would seek payment in advance of the costs of discharge before actually discharging a lien, and s. 85(3) is consistent with this practical reality. Beyond this, however, the language of s. 85 does not support the theory that a corporation could keep a lien in place to defend a legal challenge to the billing of amounts already fully paid by a unit holder.

52. None of these cases relied on by CCC No 56 involve a condominium corporation keeping a lien in place after all arrears had been paid. The unit holders in each of these cases instead withheld common expenses claimed by the condominium corporation while litigation was ongoing. In *Pang*, Davies J. implied that the unit holder's refusal to pay arrears justified a cost

award against her, noting at para. 18 that "Ms. Pang chose to withhold her common expense payments and vigorously defend against the Condominium's claim". In *Sennek v. Carleton Corporation No. 116*, 2018 ONSC 1921, at para. 9, Justice L. Sheard similarly commented that a unit holder's payment of the lien amount would have discharged it.

53. CCC No 56 justifies keeping the lien in place on the theory that Ms. Chreim's Small Claims Court action was obviously bound to fail, as evidenced in hindsight by the Deputy Judge's dismissal of the action.

54. I reject the premise of this argument as a justification for CCC No 56's refusal to discharge the lien. If Ms. Chreim had waited until Gowlings had discharged the lien and then started her Small Claims Court action, the Corporation would not have been able to register a new lien to secure the anticipated defence costs. Ms. McEwen could not have certified, following receipt of the two cheques from Ms. Chreim, that she owed CCC No 56 any amounts within the ambit of s. 85.

55. Furthermore, without in any way questioning the Deputy Judge's judgment after hearing the evidence and arguments at trial two years later, I reject CCC No 56's contention that it was obvious, from the outset, that Ms. Chreim's lawsuit was bound to fail.

56. On the evidence on this motion, Ms. Chreim had a reasonable basis to contest her obligation to pay for some or all of the plumber's bill that gave rise to the parties' dispute. First, on a plain reading of Ms. McEwen's July 31, 2018, email, CCC No 56 undertook to pay for the plumber's inspection of Ms. Chreim's unit in early August 2018, whether or not he found that the problem originated within the unit. The inspection was nearly half the cost of the plumbing bill. Second, in Ms. Chreim's responding email to Ms. McEwen, she arguably undertook to do any required repair herself, or at least hire her own contractor, if the problem found by the plumber was internal to her unit.[4] Finally, Ms. Chreim alleged that she and Apollo had agreed that she could pay off the

[4] In its statement of defence to the Small Claims action, CCC No 56 took the position that it had the right to send a plumber in to repair the toilet pursuant to Art. VI of the Corporation's Declaration, which empowers it to make repairs in a unit if the owner fails to do so "within a reasonable time". A week passed between the date Apollo's plumber found the cause of the water leak and the date he returned to do the repair. There is no evidence that Apollo communicated with Ms. Chreim in the interim or gave her any opportunity to fix the toilet herself or to hire someone else to do it.

arrears arising from the unexpectedly large water bill in May 2018 through monthly payments of $75. These payments were in fact accepted by CCC No 56 as of July 1st, 2018.

57. For reasons that are unclear to me, none of this evidence is mentioned in the Deputy Judge's decision dismissing Ms. Chreim's claim. According to his reasons, at trial Ms. Chreim alleged only that the former owner of her condominium unit had an outstanding balance of common expenses when she purchased it in 2014; that the water meter for her unit was defective; and that Apollo personnel filed to warn her of a water leakage in her unit when the plumber first advised them of it in April 2018. The Deputy Judge did not find any evidence to support these particular allegations. He did not refer to Ms. Chreim's correspondence with Ms. McEwen in mid-2018 or the payment plan put in place at the time nor did he address any arguments based on this evidence.

58. The Deputy Judge's decision is final and not open to challenge except on appeal. In my view, however, Ms. Chreim's lawsuit was not obviously frivolous.

59. This case bears some resemblance to *Royal Bank of Canada v. Metropolitan Toronto CC no. 1226*, 2012 ONSC 5906 ("*RBC v Metropolitan Toronto*"). In that case, the plaintiff RBC, as mortgagee, applied for the discharge of a lien registered against a condominium unit by the respondent corporation. It had paid all amounts owed when the lien was registered, as well as an additional amount for legal costs associated with registration. Whitten J. observed that s. 85(3) does not give a corporation *carte blanche* to use the lien mechanism to require payment of any legal cost or expense. In his words, at para. 8, "the statutory language limits those costs above and beyond the actual common expense deficiency to those which are both reasonable and causally connected to the collection of the common expenses deficiency". Section 85 must be "interpreted with the principle of fairness to the innocent unit holders in mind", but the delineation of the scope of costs allowable is "a jurisdictional necessity' to avoid opening "a portal to a claim for unrelated costs": *RBC v. Metropolitan Toronto*, at paras. 15-16.

60. Whitten J. ultimately concluded that the respondent corporation had not incurred any reasonable costs causally connected to the collection of common expenses after the date that RBC paid the amount covered by the lien. The lien should therefore have been discharged at that point. The legal costs incurred by the corporation thereafter were not the result of a unit-holder's failure

to pay its share of common expenses, but of a misguided and unfounded legal strategy on the part of the corporation's law firm upset that its bills were questioned.

61. I likewise find that the lien on Ms. Chreim's unit was maintained without justification after she paid all arrears owed. The costs of defending Ms. Chreim's action were not costs incurred "in connection with the collection or attempted collection" of her share of common expenses. They could not have been, because all common expenses, including the costs of registration and discharge, had already been fully collected.

62. As other courts have observed, s. 85 is vital to the functioning of condominiums in Ontario. It gives condominium corporations the ability to collect each unit holder's fair share of common expenses so that it can finance ongoing operations, and it protects innocent unit holders from having to pay a disproportionate share of costs resulting from the unreasonable conduct of any single owner. These are important policy goals that inform the interpretation and application of s. 85.

63. The flip side of this is that s. 85 gives condominium corporations enormous leverage. Pursuant to s. 85(6), a lien may be enforced in the same manner as a mortgage, over which it takes priority further to s. 86(1). As a result, a unit holder who does not pay a lien may lose their home. Pursuant to s. 85(3), the amount secured by a lien is always greater than the amount at issue at registration, because the lien covers the costs of discharge. No statutory requirement requires the corporation to keep a unit holder advised of the total amount secured on an ongoing basis once the lien is in place, or to prove that it has actually incurred the legal costs it claims.

64. In the circumstances of this case, the legitimate policy goals of s. 85 are not undermined by a determination that CCC No 56 was required to discharge the lien against Ms. Chreim's unit after she paid all arrears demanded on January 29, 2019. The Corporation could have safeguarded its interests, and those of other unit holders, by defending the Small Claims Court action in a reasonable and proportionate way, and then by registering a lien on the unit if Ms. Chreim did not pay a cost award. Ms. Chreim did not jeopardize the Corporation's operation by withholding common expenses. She had the right to challenge the common expenses levied by the Corporation and an arguable basis to do so in the circumstances. The tens of thousands of dollars of legal costs

incurred by CCC No 56 in the Small Claims Court action were not the result of unreasonable action on her part. They flowed instead from the Corporation's decision to weaponize the lien to attempt to get Ms. Chreim to abandon her lawsuit, and its decision to run up huge and unreasonable legal fees in defence of a modest claim, a point on which I will expand below.

65. I conclude that the lien is not valid because it should have been discharged after Ms. Chreim paid all outstanding amounts on January 29, 2019.

**(3) Is CCC No 56 entitled to all its defence costs in the Small Claims Court action?**

66. Since I have already found that the lien did not cover the anticipated legal costs of CCC No 56's defence of Ms. Chreim's Small Claims Court action and should have been discharged more than three years ago, the Corporation's claim for recovery of the balance of these costs pursuant to s. 85 must fail. My findings on this issue are nonetheless relevant, as an analysis of the evidence shows that the costs incurred by the Corporation were not reasonable and do not meet the criteria for recovery set out in *RBC v. Metropolitan Toronto*. I further conclude that CCC No 56 is foreclosed from claiming costs above and beyond the Deputy Judge's award. As a result, even if the lien were valid, I would deny CCC No 56's claim for defence costs and interest on those costs.

***The costs are unreasonable***

67. Having reviewed Gowlings' billing records, I find that the legal fees and expenses claimed by CCC No 56 for the defence of the Small Claims Court action are unreasonable. Further, the Corporation's claim includes interest that never should have been charged.

68. First, the amount that Gowlings demanded and received from Ms. Chreim to compensate CCC No 56 for the legal costs to register the lien significantly overstated the costs that the Corporation paid for this work.

69. On December 13, 2018, when Mr. Duquette advised Ms. Chreim that she owed legal costs of $650, the fees billed to the Corporation for work done as of that date amounted to $95.[5] When he told her on January 23, 2019 that she would have to pay an additional $1,340 to cover additional legal costs as well as the costs to discharge the lien, the fees later billed to CCC No 56, for work to that date, amounted to $444 —more than $200 less than Ms. Chreim had already paid with the first cheque.[6]

70. The extent of the overreach is apparent on a review of the invoice sent by Gowlings to CCC No 56 at the end of April 2016. The total fees and disbursements charged to the Corporation for work in connection with the file at that point amounted to $2,075, or just slightly more than Ms. Chreim had paid via the two cheques sent to Gowlings 16 months earlier.

71. The money delivered by Ms. Chreim for outstanding common expenses in January 2019 were furthermore not credited to her ledger with CCC No 56. As a result, the ledger shows no decrease in arrears despite her payment of the full amount demanded by the Corporation. This money was instead apparently kept in trust for CCC No 56's anticipated legal expenses in defending Ms. Chreim's lawsuit. Ms. Chreim, in the meantime, was charged interest at 12% yearly compounded monthly.

72. All of this is deeply concerning. As the Deputy Judge noted in his decision, Ms. Chreim is a person of limited financial means, self-represented at the time, and with a poor grasp of the English language. As already mentioned, s. 85 gives a condominium corporation significant power and limited accountability. CCC No 56, with Gowlings' assistance, appears to have taken advantage of the situation. Ms. Chreim was induced to pay what was for her a significant amount of money to cover legal costs that had not been incurred and that she accordingly did not owe. The Corporation, meanwhile, obtained pre-payment of its legal bills for over a year at her expense.

[5] The April 30, 2019 Gowlings invoice shows that no fewer than four legal professionals recorded time on the file in the first four days after it was opened. Their total effort amounted to 1.7 hours, but most of the work was done by a G. Macpherson whose time was billed at $70/hour for CCC No 56.

[6] Five legal professionals at Gowlings had by this time recorded just over 5 hours of time. There was also a $75 disbursement to register the lien.

73. Gowlings' billings on the file contain another unexplained anomaly. The hourly rates charged on the bills beginning July 30, 2019, are roughly triple those in the bill on April 30, 2019.[7] This either reflects the end of a discount previously given to the client, or a policy of charging full rates when it is assumed that costs will be payable by a unit holder as opposed to the condominium corporation. Either way, in the absence of any explanation for the increased rates, it is impossible to find that fees based on them were reasonable.

74. Finally, the total fees that CCC No 56 says it incurred in defence of the claim are grossly disproportionate to the amount in dispute. This was, at its origin, a disagreement about a $330 plumbing bill and a $700 water bill. The Corporation claims $34,561 in legal costs, or about $30,000 more than it was awarded by the Deputy Judge.

75. As observed by Justice Quigley, s. 85 does not give a condominium corporation's lawyers "license to spend the client's money with impunity": *York Condominium Corporation No. 345 v. Qi*, 2013 ONSC 4592, at para. 9. Citing *Jaworowski* and other caselaw, he limited a corporation's recovery to partial indemnity costs, in part because full indemnity costs were grossly disproportionate to the amount originally in dispute.

76. In *Wexler v. Carleton Condominium Corporation No. 28*, 2017 ONSC 5697, the Divisional Court concluded that a Small Claims Court judge erred in awarding a defendant condominium corporation $20,000 in costs for the defence of a $2,500 damages claim by a unit holder. The deputy judge who made the award recognized that the plaintiff was self-represented and had a poor grasp of the rules of the court. He nonetheless awarded full costs principally because "it would be unfair that the unit owners should bear all the costs of this litigation when the condominium corporation is unnecessarily sued" (*Wexler*, at para. 14). The Divisional Court held that the Condominium Declaration did not apply and that the costs awarded were disproportionate. It substituted a cost award of 15% of the value of the corporation's claim.

77. Taking into account the excessive fees demanded by Gowlings and paid by Ms. Chreim in January 2019; CCC No 56's retention of these payments for its future legal costs and failure to attribute these payments to Ms. Chreim's account; the significant and unexplained tripling of rates

[7] Mr. Escayola's billed rate goes from $142 to $420, and Mr. Macpherson's from $70 to $210.

by lawyers working on the file in mid-2019, after the amount paid by Ms. Chreim had been exhausted; and the gross disproportionality between the legal fees claimed and the amount at issue; I conclude that the legal fees claimed by CCC No 56 are unreasonable.

***CCC No 56 is foreclosed from claiming the balance of costs***

78. I further find that CCC No 56 is foreclosed from recovering costs that it failed to recover in the Small Claims Court action.

79. Courts have awarded condominium corporations their full costs in connection with a s. 85 enforcement action in cases such as *Burdet*, *Pang* and *Friend*. In *Pang* and *Friend*, however, the corporations' entitlement to costs had not already been litigated before another court or in another case involving the same parties. In *Burdet*, the corporation had obtained a partial indemnity award at an earlier hearing, but its right to seek the balance of its costs had been specifically reserved to it in the reasons for that award. In *Jaworowski*, the corporation obtained a partial recovery of the balance of legal costs of defending a Small Claims Court action, but Bielby J. found that the action related to the issue of unpaid arrears and that the condominium corporation's defence to it was therefore "part of the collection process" (*Jaworowski*, 2010 ONSC 3850, at para. 15).

80. In its cost submissions in the Small Claims Court action, CCC No 56 made the same arguments for full cost recovery that it now makes before this court. It argued that it was entitled to full recovery under s. 85 of the Condominium Act, and that s. 29 of the *Courts of Justice Act* did not preclude such recovery. Although the Deputy Judge did not explain why he rejected this argument in his cost award, I must assume he considered it before limiting CCC No 56's recoverable costs to just over $4,500.

81. The Corporation says that I am not precluded from revisiting this issue because the Deputy Judge did not, in fact, have the jurisdiction to make the award that Gowlings unsuccessfully urged him to make. I reject this argument for two reasons.

82. First, there is no clear authority for the proposition that the Deputy Judge lacked the power to grant CCC No 56 its full costs in the Small Claims Court action. The Corporation relies on *Wu v. Carleton Corporation Condominium*, 2016 CanLII 30096, in which Deputy Judge Whitehall

denied full recovery of a condominium corporation's costs. He contrasted his discretion to grant costs under s. 29 of the *Courts of Justice Act* with the jurisdiction conferred to Superior Court judges pursuant to s. 131. Ultimately, however, Whitehall DJ did not conclude that he could not award full cost recovery, but simply that this could only occur if, to use the language of s. 29, it was "necessary in the interests of justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding" (*Wu*, at para. 16).

83. Second, in my view it would condone an abuse of process to permit CCC No 56 to re-argue an issue that was fully argued and adjudicated before another court in a proceeding between the same parties. It is especially offensive that the Corporation would have run up legal costs by making arguments in the Small Claims Court action and forcing Ms. Chreim to expend time and effort to respond to it, and then disavow its earlier position in order to argue again for those very same costs.

84. For these reasons, CCC No 56 is not entitled to any further costs in connection with the Small Claims Court action.

**(4) Is CCC No 56 entitled to be indemnified for its full legal costs of this action?**

85. Since CCC No 56 has not obtained any of the relief sought in its action, it is not entitled to be fully indemnified for its costs.

**DISPOSITION**

86. The action is dismissed. The lien registered by CCC No 56 against Ms. Chreim's unit on December 29, 2018, as Instrument No. OC2067514, and the Notice of Sale under Lien dated September 14, 2021, are declared invalid. CCC No 56 is entitled to the $4,524.10 in costs awarded to it by Deputy Judge Leclaire on August 5, 2021, plus interest at the rate in the *Courts of Justice Act*. No order from this court is required to enable the Corporation to take steps to collect this amount.

87. If the parties are unable to agree on costs, Ms. Chreim shall serve and file a cost outline of no more than three pages in length within the next ten days, to which a draft bill of costs and other

relevant documents may be attached. The Corporation shall have ten days from receipt of these materials to serve and file its cost outline of up to three pages, with any relevant documents not already filed.

Justice Sally Gomery

**Released:** August 11, 2022

**CITATION:** Carleton Condominium Corp. No. 56 v. Chreim, 2022 ONSC Number 4654
**COURT FILE NO.:** CV-21-87904
**DATE:** 11/08/2022



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

CARLETON CONDOMINIUM CORPORATION NO. 56

Plaintiff

**-and-**

SAHAR CHREIM

Defendants

**REASONS FOR JUDGMENT**

Judge

**Released:** August 11, 2022