

CITATION: *CCC No. 11 v. Paul Sprague et al.*, 2023 ONSC 4752
COURT FILE NO.: 22-90281
DATE: 2023/08/18

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: CARLETON CONDOMINIUM
CORPORATION NO. 11

Applicant

-and-

PAUL SPRAGUE and WILLIAM
SPRAGUE

Respondents

BEFORE: Madam Justice S. Corthorn

COUNSEL: Emily Deng, Counsel for the
applicant

Paul Sprague is self-represented

William Sprague is self-represented

HEARD: In writing

COSTS ENDORSEMENT

Introduction

[1] In June 2023, the court heard and determined a motion by the applicant corporation (“CCC No. 11”). The respondents are father and son. The father, Paul Sprague, is the owner of the subject unit. The son, William Sprague, resides in the subject unit as his father’s tenant.

[2] The motion was for an order requiring the respondents, primarily William Sprague, to comply with the *Condominium Act, 1998*, S.O. 1998, c. 19 (“the *Act*”) and with the Declaration, By-laws, and Rules and Regulations of CCC No. 11 (“the governing documents”).

[3] The court concluded that William Sprague, for more than two years, had repeatedly engaged in behaviour that was in breach of the *Act*: *CCC No. 11 v. Sprague*, 2023 ONSC 3704 (“the *Ruling*”), at paras. 26-32. The court ordered the respondents to comply with ss. 117 and 119 of the *Act* and with CCC No. 11’s Rules and Regulations (“the compliance order”). The compliance order requires the respondents to cease and desist from the types of behaviour in which William Sprague had engaged.

[4] The court found CCC No. 11 was successful on the motion and therefore presumptively entitled to its costs: the *Ruling*, at para. 52. The parties were given a timeline within which to deliver their respective costs submissions in the event they did not resolve the issue of costs of the motion. CCC No. 11 delivered written costs submissions within the deadline set by the court for them to do so. The respondents did not file any costs submissions.

[5] CCC No. 11 seeks its costs of the motion on the full indemnity scale. CCC No. 11 asks the court to order the respondents to pay costs in the total amount of \$16,190.87. That amount is broken down as follows:

| | |
|---------------------------|--------------|
| Fees | \$ 13,278.00 |
| HST on fees | \$ 1,726.14 |
| Disbursements (incl. HST) | \$ 1,186.73 |

[6] I will deal with entitlement to costs, the scale on which costs are to be paid, and the quantum of costs to be paid.

Analysis

a) Entitlement to Costs

[7] Based on its success on the motion, CCC No. 11 is presumptively entitled to its costs of the motion. The respondents did not file any responding materials. The presumption that CCC No. 11 is entitled to its costs of the motion has not been rebutted.

[8] There are, in any event, other reasons why CCC No. 11 is entitled to its costs of the motion.

[9] First, the *Act* prescribes a regime within which communal living in a condominium setting is to be managed and overseen, including by a condominium corporation. Pursuant to s. 134(3)(b)(ii), the court has the discretion to order that the costs incurred by CCC no. 11 to obtain a compliance order be paid by the respondents.

[10] Second, the governing documents entitle CCC No. 11 to recover its costs of the motion from the respondents: see Article XVI of the Declaration and Rule 27 of the Rules and Regulations.

[11] To the credit of CCC No. 11 and their counsel, the costs submissions include recognition that in response to the motion the respondents acted reasonably. In the *Ruling*, Paul Sprague was commended for his efforts on behalf of his son and for the responsibility taken over time to address costs incurred by CCC No. 11 as a result of his son's conduct. The fact that Paul Sprague has acted both reasonably and in good faith does not, however, detract from the entitlement of CCC No. 11 to its costs of the motion: see *MTCC No. 596 v. Best View Dining Ltd. et al.*, 2017 ONSC 5655, at para. 40.

[12] CCC No. 11 is entitled to its costs of the motion.

b) *The Scale Upon Which Costs are Payable*

[13] CCC No. 11 requests that its costs of the motion be paid on the full indemnity scale. In support of that request, CCC No. 11 relies on the governing documents and on several case authorities: see *Ottawa Standard Condominium Corporation No. 671 v. Anthony Friend and Henriette Friend*, 2019 ONSC 3899 [“*Friend*”], at para. 133 and *Metropolitan Toronto CC 671 Corporation No. 985 v. Vanduzer*, 2010 ONSC 900, at paras. 27-28.

[14] Once again, the concept of communal living in a condominium setting is important. Any costs incurred by CCC No. 11 to obtain the compliance order that are not paid by the respondents would be shared equally amongst all unit owners (including the respondent owner of the subject unit). That outcome is not what is intended for condominium owners: see *Friend*, at paras. 135, 137.

[15] The respondents shall pay CCC No. 11 its costs of the motion on the full indemnity scale.

c) *The Quantum of Costs Payable*

[16] CCC no. 11 is entitled to its reasonable costs of the motion on the full indemnity scale. I will first address fees and then disbursements.

i) *Fees*

[17] The amount claimed for fees is \$13,278, plus HST of \$1,726.14 – for a total of \$15,004.14. The fees claimed are for work done commencing on February 2, 2023 and continuing to June 30, 2023.

[18] The work begins with communication between the lawyer and client regarding William Sprague’s historical non-compliance with the *Act* and governing documents. The work includes preparing of an “amended notice of application”, an application record, and a factum. The work also includes preparing for and attending on the return of the application.¹

[19] The work continues beyond the return date of the hearing and release of the *Ruling*. The work during the period beyond the date on which the *Ruling* was released includes preparing, serving, and filing costs submissions. The work done regarding costs submissions is distinct from the work done to and including the date on which the *Ruling* was released. I will address costs of the costs submissions separate from costs of the motion.

¹ The application was converted to a motion for the reasons given at paras. 35-47 of the *Ruling*.

▪ ***Costs of the Motion***

[20] The fees were generated by three timekeepers: one senior counsel at an hourly rate of \$430; a second senior counsel at an hourly rate of \$410; and associate counsel at an hourly rate of \$230. The bill of costs does not identify the year of call for any of the timekeepers. Regardless of that lack of information, I find the hourly rates reasonable. They are in keeping with the hourly rates frequently seen in Ottawa matters.

[21] The number of hours docketed by the two senior counsel and by associate counsel are reasonable. The hours docketed are indicative of senior counsel supervising the work of associate counsel, but only to a small degree. The split in the hours between senior counsel and associate counsel does not suggest duplication of effort.

[22] There are, however, two reasons why I reduce the fees from the amount claimed.

[23] First, as already identified, the costs associated with the motion are distinct from the costs associated with preparing, serving, and filing costs submissions. The fees for the period from June 12, 2023 (the date on which the matter was heard) to June 30, 2023 (when costs submissions were filed) total \$1,667 (\$287 for senior counsel and \$1,380 for associate counsel).

[24] Senior counsel did not attend on the hearing. I infer that the fees for senior counsel's work on or after June 12, 2023 (\$287) is related to the costs submissions. Absent information as to how associate counsel's time was allocated from June 12 to 30, 2023, I allocate fifty per cent of her time (\$690 in fees) to the motion and fifty per cent of her time (\$690) to the costs submissions.

[25] The fees for the motion, as claimed, are reduced by \$977 (\$287 + \$690).

[26] Second, as explained at paras. 48-50 of the *Ruling*, it was not appropriate for CCC No. 11 to rely on the document they titled "amended notice of application". I find that approximately one hour of associate counsel's time was devoted to the preparation of that document and reduce the fees for the motion, as claimed, by a further \$230.

[27] In summary, I reduce the fees as claimed for the motion from \$13,278 by (\$1,207) to \$12,070 (rounded figure). The HST on that amount is \$1,569.10. I fix the fees for the motion, including HST, on the full indemnity scale at \$13,640 (\$12,070 + \$1,569.10, rounded to the nearest ten-dollar amount).

▪ ***Costs of the Costs Submissions***

[28] At para. 53 of the *Ruling*, the court addressed the costs to which CCC No. 11 was presumptively entitled:

I emphasize that the costs to which CCC No. 11 is entitled at this stage are the costs of the motion heard on June 12, 2023. In the context of the motion, CCC No. 11 is not entitled to costs associated with the application in writing, costs associated with the drafting, issuance, and service of the originating process, or other costs that are properly addressed in the context of the application proper.

[29] Costs of the costs submissions are not explicitly addressed in para. 53, quoted above. The costs incurred to address costs of the motion are, nonetheless, connected to the motion. It is cost-effective and efficient to fix costs of the costs submissions in this endorsement (i.e., as opposed to leaving costs of the costs submissions to be determined by the judge who presides over the application).

[30] The fees docketed for the period following the release of the *Ruling* total \$1,207. I find that amount to be reasonable for the preparation of the bill of costs and the written costs submissions.

[31] I fix the fees to be paid regarding costs submissions in the amount of \$1,207 plus HST of \$156.91 for a total of \$1,363.91.

ii) Disbursements

[32] The disbursements claimed total \$1,186.73 (inclusive of HST). The disbursements are broken down as follows:

| | |
|--|-----------|
| Courier charges (x 4) | \$ 54.24 |
| Printing fee (June 1, 2023) ² | |
| 668 pages at \$0.35/page | \$ 264.19 |
| Process server (June 1, 2023) | \$ 562.63 |
| Process server (June 2, 2023) | \$ 305.67 |

[33] The courier charges are not explained and are disallowed.

² This item is described in the bill of costs as for “Process Server” (without any reference to printing). It was only upon request for copies of the invoices related to the three “Process Server” entries that the true nature of the disbursement was identified.

[34] The invoice from the process server in the amount of \$562.63 includes copying charges for 622 pages at \$0.25 per page (\$155.50 plus HST). From Caselines, I was able to determine that the total number of pages for the supplementary application record, factum and book of authorities is slightly in excess of 300 pages. It is therefore unclear why the total number of copies made is 1,290. I understand that printing a copy of each of the documents for personal service on the respondents was required. It appears, however, that there was a duplication of effort in that regard.

[35] The charges incurred for copying total \$439.45 (\$264.19 + \$155.10 + HST on \$155.10). I divide that amount in half and allow \$220 (including HST) for copying.

[36] The affidavits of service filed identify that an unsuccessful attempt at service of the supplementary application record, factum, and book of authorities was made on June 1, 2023. The documents were served on June 2, 2023. The affidavits of service explain why there are two invoices for service of documents.

[37] In summary, I fix the disbursements payable on a full indemnity basis at \$912.58 which amount is comprised of the following disbursements:

| | |
|-------------------|-----------|
| Copying charges | \$ 220.00 |
| Attempted service | \$ 386.91 |
| Service | \$ 305.67 |

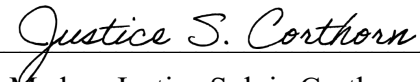
[38] The amounts listed in para. 37, above, are inclusive of HST.

Disposition

[39] The respondents shall pay to CCC No. 11 the costs of the motion and of the costs submissions, fixed on the full indemnity scale, in the total amount of \$15,916.49:

| | |
|--|--------------|
| Fees for motion (incl. HST) | \$ 13,640.00 |
| Fees for costs submissions (incl. HST) | \$ 1,363.91 |
| Disbursements | \$ 912.58 |

[40] Pursuant to s. 134(5) of the *Act*, CCC No. 11 shall be entitled to add the costs of \$15,916.49 to the common expenses for the subject unit.



Madam Justice Sylvia Corthorn

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Corthorn J.

Released: August 18, 2023