

**CITATION:** Toronto Standard Condominium Corp. No. 2581 v. Paterno, 2023 ONSC 4343  
**COURT FILE NO.:** CV-22-00685149-0000  
**DATE:** 20230726

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
**TORONTO STANDARD** )  
**CONDOMINIUM CORPORATION NO.** ) *Lazar Ilic* for the Applicant  
**2581** )  
Applicant )  
)  
**- and -** )  
) *H.C. Goddard* for the Respondent  
**GIOVANNI PATERNO** )  
)  
Respondent )  
)  
APPLICATION under Rules 14.05(2) and )  
14.05(3)(g) of the *Rules of Civil Procedure* )  
and sections 117, 119, 134, and 136 of the ) **HEARD:** July 17, 2023  
*Condominium Act, 1998*, S.O. 1998, c. 19, )  
as amended )

**PERELL, J.**

**REASONS FOR DECISION**

**A. Introduction**

[1] Giovanni Paterno owns a condominium unit in Toronto Standard Condominium Corporation No. 2581 (“TSCC 2581”). Pursuant to the *Condominium Act, 1998*,<sup>1</sup> the Condominium Corporation brings an application against Mr. Paterno for a lengthy list of relief. TSCC 2581 seeks:

- a. an Order declaring that Mr. Paterno is in breach of ss. 117 and 119(1) of the *Condominium Act, 1998*;
- b. an Order declaring Mr. Paterno is in breach of Part 3, Section 15 of the condominium declaration as well as the Rules of TSCC 2581;
- c. an Order declaring that Mr. Paterno is in breach of workplace violence and harassment policies created pursuant to the *Occupational Health and Safety Act*<sup>2</sup> to

<sup>1</sup> S.O. 1998, c. 19.

<sup>2</sup> R.S.O. 1990, c. O.1.

protect staff working at TSCC 2581;

- d. an Order requiring Mr. Paterno to vacate his residential unit municipally known as Suite 1113, 830 Lawrence Avenue West, Toronto, Ontario, M6A 0B6 within sixty days;
- e. an Order requiring Mr. Paterno to sell the Unit, by the registration of a transfer in favour of a person who is not related to him within one hundred and twenty days;
- f. an Order requiring Mr. Paterno forthwith to comply with the Act, the declaration and Rules of TSCC 2581 as well as the workplace violence and harassment policies;
- g. an Order prohibiting Mr. Paterno from initiating any direct or indirect contact or communication with any resident, visitor or attendee at the Condominium's property, municipally known as 830 Lawrence Avenue West in Toronto, Ontario;
- h. an Order prohibiting Mr. Paterno from initiating any direct or indirect contact with the property manager, security personnel, or any other employee of TSCC 2581, other than by way of written communication delivered electronically or by mail to the attention of the property manager for TSCC 2581;
- i. an Order prohibiting Mr. Paterno from coming within ten feet of any resident, visitor, attendee or employee insofar as the physical configuration of the Condominium property permits or otherwise keeping the maximum distance reasonably possible;
- j. an Order prohibiting Mr. Paterno from disturbing the comfort and quiet enjoyment of other residents of their units and/or the common elements;
- k. an Order that Mr. Paterno pay to TSCC 2581 its costs of this Application on a full indemnity basis;
- l. an Order that Mr. Paterno pay TSCC 2581 its costs incurred on account of enforcement with the Act and the Declaration before the commencement of this Application on a full indemnity basis;
- m. an Order that TSCC 2581 may on two days' notice to Mr. Paterno move for further relief in the event of non-compliance with any order of this court;
- n. such further and other relief as is fair and equitable in the circumstances and as to this Honourable Court may seem just.

[2] For the reasons that follow, TSCC 2581's application is granted - but not on the terms as requested. Rather, the application is granted on the following terms:

- a. It is declared that: (a) Mr. Paterno is in breach of ss. 117 and 119 of the *Condominium Act, 1998*; (b) Mr. Paterno is in breach of Part 3, Section 15 of the condominium declaration and the Rules of TSCC 2581; (c) Mr. Paterno is in breach of workplace violence and harassment policies created pursuant to the *Occupational Health and Safety Act* to protect staff working at TSCC 2581.
- b. It is ordered that Mr. Paterno shall not disturb the comfort and quiet enjoyment of other residents of their units and/or the common elements of TSCC 2581.
- c. It is ordered that Mr. Paterno forthwith comply with the Act, the declaration, the

Rules of TSCC 2581, and the *Occupational Health and Safety Act* policies.

d. It is ordered that Mr. Paterno shall not initiate any direct or indirect contact with the property manager, security personnel, or any other employee of TSCC 2581, other than by way of written communication delivered electronically or by mail to the attention of the property manager for TSCC 2581.

e. It is ordered that within 100 days of the release of the Reasons for Decision, Mr. Paterno shall pay TSCC 2581 \$2,602.16 for the damage he caused at the concierge desk.

f. It is ordered that within 100 days of the release of the Reasons for Decision, Mr. Paterno shall pay TSCC 2581, \$35,000 for its costs on account of obtaining the compliance order pursuant to the *Condominium Act, 1998*, all inclusive, including the costs of this application on a full indemnity basis.

g. It is ordered that upon proof by TSCC 2581 on a motion made on seven days' notice that Mr. Paterno has breached any of terms (b) – (f), set out above, then:

- i. Mr. Paterno shall forthwith vacate his residential unit at TSCC 2581; and
- ii. Mr. Paterno shall within 120 days sell his residential unit by the registration of a transfer in favour of a person who is not a relative.

[3] As I shall explain further below, Mr. Paterno has lived at the condominium since 2016 without incident until 2021 when his unacceptable misbehaviour began. He, however, has a serious long-standing substance abuse illness and beginning in 2021 he lapsed in managing his problem. While under the influence of alcohol or drugs, he breached his responsibilities to the employees of the condominium corporation and his communal responsibilities to his fellow residents of the condominium. For some of his misdeeds, he has been punished in criminal proceedings. He is remorseful for his wrongdoing. He has made efforts to seek assistance for his alcoholism and substance abuse problems. He wishes to remain a member of the condominium community. He promises not to repeat his bad behaviour.

[4] However, recent events indicate that he has been only partially successful in rehabilitating himself and in becoming a responsible member of the community. TSCC 2581 was more than justified and indeed was statutorily obliged to enforce and to protect the rights of the residents of the condominium to not be disturbed by Mr. Paterno's misbehaviour.

[5] Mr. Paterno has breached the *Condominium Act*, the condominium's declaration and its rules and regulations. However, an immediate eviction order and an immediate order for him to sell his condominium unit is too harsh a remedy for his wrongdoing. What the circumstances require is an order that Mr. Paterno make reparations and a conditional order that should Mr. Paterno breach his communal obligations in the future, then he shall be evicted and shall be forced to sell his condominium unit. Mr. Paterno requires the behaviour management of a conditional order the breach of which: (a) could find him in contempt of a court order and (b) in any future event of misbehaviour would require him to sell his condominium unit.

## **B. Legal Background**

[6] For present purposes, the relevant provisions of the *Condominium Act, 1998* are sections 17, 27(1), 117, 119, 134, and 136 which state:

### *Objects*

17 (1) The objects of the corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners.

### *Duties*

(2) The corporation has a duty to control, manage and administer the common elements and the assets of the corporation.

### *Ensuring compliance*

(3) The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[...]

### *Board of directors*

27 (1) A board of directors shall manage the affairs of the corporation.

[...]

### *Prohibited conditions and activities*

117 (1) No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

### *Same*

(2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[...]

### *Compliance with Act*

119 (1) A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

*Responsibility for occupier*

(2) An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

*Enforcing compliance*

(3) A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require that a person who is required to comply with this Act, the declaration, the by-laws and the rules shall do so.

[...]

*Compliance order*

134 (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

*Pre-condition for application*

(2) If the mediation and arbitration processes described in section 132 are required, a person is not entitled to apply for an order under subsection (1) until the person has failed to obtain compliance through using those processes.

[...]

*Contents of order*

(3) On an application, the court may, subject to subsection (4),

- (a) grant the order applied for;
- (b) require the persons named in the order to pay,
  - (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
  - (ii) the costs incurred by the applicant in obtaining the order; or
  - (iii) grant such other relief as is fair and equitable in the circumstances.

[...]

*Addition to common expenses*

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit.

[...]

*Other remedies*

136 Unless this Act specifically provides the contrary, nothing in this Act restricts the remedies otherwise available to a person for the failure of another to perform a duty imposed by this Act.

[7] Also relevant to the exercise of the court's discretion under s. 134 of the *Condominium Act, 1998* is the enacted but not yet in force s. 135.1(1) of the Act,<sup>3</sup> which states:

*Order for permanent removal of person*

135.1 (1) Despite subsections 134 (3) and 135 (3), the court shall not, under either of those subsections, make an order that requires a person to vacate a property permanently unless the court is satisfied that,

- (a) the person is in contravention of subsection 117 (1) and poses a serious risk,
  - (i) to the health and safety of an individual, or
  - (ii) of damage to the property or the assets, if any, of the corporation;
- (b) in respect of an order under subsection 134 (3), on the basis of the person's acts of non-compliance,
  - (i) the person is unsuited for the communal occupation of the property or the communal use of the property, and
  - (ii) no other order will be adequate to enforce compliance; or
- (c) in respect of an order under subsection 135 (3), on the basis of the person's conduct,
  - (i) the person is unsuited for the communal occupation of the property or the communal use of the property, and
  - (ii) no other order will be adequate to prohibit the conduct. 2015, c. 28, Sched. 1, s. 118.

[...]

[8] The governance of the *Condominium Act, 1998*, the declaration, by-laws and rules of the condominium are vital to the integrity of the ownership acquired by the unit owners, and people who move into a condominium must live by the rules of the community and the co-operative lifestyle there are joining and they must behave themselves with due respect and consideration for their neighbours and fellow residents with whom they will be living in close proximity.<sup>4</sup>

[9] Section 17(3) of the *Condominium Act, 1998* imposes a positive duty on the condominium corporation to take all reasonable steps to ensure that all unit owners comply with the *Act*, and with the declaration, by-laws and rules of the condominium corporation. Pursuant to the

<sup>3</sup> See: 2015, c. 28, Sched. 1, s. 118.

<sup>4</sup> *York Condominium Corporation No. 137 v. Hayes*, 2022 ONSC 4599; *Frontenac Condominium Corp. No. 6 v. McCauley*, 2021 ONSC 8181; *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *Metropolitan Toronto Condominium Corp. No. 1025 v. Hui*, 2021 ONSC 5839; *Metropolitan Toronto Condominium Corp. No. 933 v. Lyn*, 2020 ONSC 196; *Toronto Standard Condominium Corp. No. 2395 v. Wong*, 2016 ONSC 8000; *Muskoka Condominium Corp. No. 39 v. Kreuzweiser*, 2010 ONSC 2463; *Shaw Cablesystems Ltd. v. Concord Pacific Group Inc.*, 2007 BCSC 1711; *Ciddio v. York Regional Condominium Corp. No. 730*, [2002] O.J. No. 553 (S.C.J.); *Condominium Corp. No. 279 v. Rochon et al* (1987), 59 O.R. (2d) 545 at p. 552 (C.A.).

*Occupational Health and Safety Act*,<sup>5</sup> a condominium corporation has ongoing obligations to ensure that its work environment is safe and free from harassment.<sup>6</sup>

[10] Section 117 of the *Condominium Act, 1998* provides that no person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual. Injury includes both physical and psychological harm.<sup>7</sup>

[11] Section 119 of the *Condominium Act, 1998* imposes a legal duty on unit owners to comply with the Act, the declarations, and the rules of the condominium corporation.

[12] Pursuant to s. 134 of the *Condominium Act, 1998*, a condominium corporation may apply to the court for a compliance order, and the court may make an order enforcing compliance with any provision of the Act, the declaration, by-laws, or the rules of the condominium corporation.<sup>8</sup>

[13] Where the court is asked to enforce the declaration or the rules and regulations of a condominium corporation, it is not the court's role to substitute its views of what is reasonable and if the board of directors of the condominium corporation have acted reasonably and not capriciously, the court should defer and not interfere with the decision of the board of directors.<sup>9</sup>

[14] The Court's authority to make a compliance order is discretionary, and the Court may

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<sup>5</sup> R.S.O. 1990, c. O.1.

<sup>6</sup> *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899.

<sup>7</sup> *York Condominium Corporation No. 188 v. Chaudhry*, 2021 ONSC 7027; *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *Metropolitan Toronto Condominium Corp. No. 1025 v. Hui*, 2021 ONSC 5839; *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899; *Metropolitan Toronto Condominium Corporation 747 v. Korolekh*, 2010 ONSC 4448.

<sup>8</sup> 2022 MTCC No. 1260 v. *Singh*, 2022 ONSC 1606; *Frontenac Condominium Corp. No. 6 v. McCauley*, 2021 ONSC 8181; *Peel Condominium Corp. No. 12 v. Gill* 2021 ONSC 7529; *York Condominium Corporation No. 188 v. Chaudhry*, 2021 ONSC 7027; *Metropolitan Toronto Condominium Corp. No. 1025 v. Hui*, 2021 ONSC 5839; *Halton Condominium Corp. No. 77 v. Mitrovic*, 2021 ONSC 2017; *TSCC No. 1724 v. Evdassin*, 2020 ONSC 1520; *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899; *Toronto Standard Condominium Corp. No. 2395 v. Wong*, 2016 ONSC 8000; *Carleton Condominium Corp. No. 348 v. Chevalier*, 2014 ONSC 3859; *York Condominium Corp. No. 301 v. James (Litigation guardian of)*, 2014 ONSC 2638; *Wentworth Condominium Corp. No. 34 v. Taylor*, 2014 ONSC 59; *Peel Condominium Corp. No. 98 v. Pereira*, 2013 ONSC 7340; *York Condominium Corp. No. 82 v. Singh*, 2013 ONSC 2066; *York Condominium Corporation No. 137 v. Hayes*, 2012 ONSC 4590; *Waterloo North Condominium v. Webb*, 2011 ONSC 2365; *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, [2010] O.J. No. 3491 (S.C.J.); *Muskoka Condominium Corp. No. 39 v. Kreuzweiser*, 2010 ONSC 2463; *Metropolitan Toronto Condominium Corp. No. 946 v. J.V.M. (Public Guardian and Trustee of)*, [2008] O.J. No. 5412 (S.C.J.); *York Condominium Corp. No. 136 v. Roth*, [2006] O.J. No. 3417 (S.C.J.); *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, [2002] O.J. No. 5117 (S.C.J.), aff'd [2003] O.J. No. 5116 (C.A.); *Marafioti v. Metropolitan Toronto Condominium Corp. No. 775*, [1997] O.R. No. 1899 (C.A.); *Peel Condominium Corp. No. 499 v. Hogg*, [1997] O.J. 623 (Gen. Div.); *Metropolitan Toronto Condominium Corp. No. 776 v. Gifford* (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.); *Re Carleton Condominium Corp. No. 279 and Rochon* (1987), 59 O.R. (2d) 545 (C.A.); *Re Peel Condominium Corp. No. 78 and Harthen* (1978), 20 O.R. (2d) 225 (Co. Ct.).

<sup>9</sup> *Halton Condominium Corp. No. 77 v. Mitrovic*, 2021 ONSC 2017; *Toronto Standard Condominium Corporation 1704 v. Fraser*, 2020 ONSC 5430, *Muskoka Condominium Corp. No. 39 v. Kreuzweiser*, 2010 ONSC 2463; *York Condominium Corporation No. 382 v. Dvorchik* [1997] O.J. No. 378 at para. 5 (C.A.).

consider the quality of the evidence in exercising its discretion.<sup>10</sup>

[15] The court may grant injunctive and declaratory relief as part of a compliance order and has a broad ameliorative authority to enforce compliance with the *Condominium Act, 1998* and the rules and regulations of a condominium.<sup>11</sup>

[16] Where the condominium corporation demonstrates that the behaviour of the person residing in a condominium is antisocial, disruptive, unacceptable, unsuitable, disrespectful, or ungovernable for communal living, the court may grant the condominium corporation the extraordinary remedy of an eviction or vacating order and a forced sale of his or her condominium unit.<sup>12</sup>

[17] When an owner of a condominium unit causes the condominium corporation to incur legal costs to obtain a compliance order, the financial burden of those legal costs should not be imposed on the innocent unit owners and pursuant to the *Condominium Act, 1998*, the condominium corporation may recover a full indemnity for the legal costs it incurred so long as the costs incurred are associated with obtaining compliance and the compliance order and are reasonable and not excessive.<sup>13</sup>

### **C. Procedural and Evidentiary Background**

[18] On August 8, 2022, TSCC 2581 commenced this application. It supported the application with the affidavits dated April 17, 2023 and June 12, 2023 of Mohammed Bouaddi. Mr. Bouaddi is the Manager of Operations and Client Relations for Elite Residential Concierge Services Inc., which provides security guard services for TSCC 2581.

<sup>10</sup> *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *York Condominium Corp. No. 136 v. Roth*, [2006] O.J. No. 3417 (S.C.J.); *Carleton Condominium Corp. No. 279 and Rochon* (1987), 59 O.R. (2d) 545 (C.A.); *Re Peel Condominium Corp. No. 73 and Rogers* (1978), 21 O.R. (2d) 521 (C.A.).

<sup>11</sup> *Frontenac Condominium Corp. No. 6 v. McCauley*, 2021 ONSC 8181; *Peel Condominium Corp. No. 12 v. Gill* 2021 ONSC 7529; *York Condominium Corporation No. 188 v. Chaudhry*, 2021 ONSC 7027; *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899; *Toronto Standard Condominium Corp. No. 2395 v. Wong*, 2016 ONSC 8000; *Davis v. Peel Condominium Corp. No. 22*, 2013 ONSC 3367; *York Condominium Corporation No. 137 v. Hayes*, 2012 ONSC 4590.

<sup>12</sup> *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *Carleton Condominium Corp. No. 348 v. Chevalier*, 2014 ONSC 3859; *York Condominium Corp. No. 301 v. James (Litigation guardian of)*, 2014 ONSC 2638; *York Condominium Corp. No. 82 v. Singh*, 2013 ONSC 2066; *Waterloo North Condominium v. Webb*, 2011 ONSC 2365; *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, [2010] O.J. No. 3491 (S.C.J.); *Metropolitan Toronto Condominium Corp. No. 946 v. J.V.M. (Public Guardian and Trustee of)*, [2008] O.J. No. 5412 (S.C.J.); *Peel Condominium Corp. No. 148 and Patrick*, July 18, 1997, court file no. A5053/97 (Gen. Div., Webber, J.); *York Condominium Corp. No. 202 and Redican*, June 3, 1994, court file no. RE3905/94 (Gen. Div., O'Brien, J.).

<sup>13</sup> *Peel Condominium Corp. No. 12 v. Gill*, 2021 ONSC 7529; *York Condominium Corporation No. 188 v. Chaudhry*, 2021 ONSC 7027; *York Region Standard Condominium Corp. No. 972 v. Lee*, 2021 ONSC 3877; *Metropolitan Toronto Condominium Corp. No. 868 v. Pang*, 2021 ONSC 2737; *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899; *York Region Standard Condominium Corp. No. 1253 v. Hashemi*, 2017 ONCA 557; *Simcoe Condominium Corp. No. 89 v. Dominelli*, 2015 ONSC 4474; *Peel Condominium Corporation No 304 v Hirsl*, 2014 ONSC 346; *Wentworth Condominium Corp. No. 34 v. Taylor*, 2014 ONSC 59; *Grey Standard Condominium Corp. No. 50 v. Grey Standard Condominium Corp. No. 46*, 2013 ONSC 1145; *Chan v. Toronto Standard Condominium Corp. No. 1834*, 2011 ONSC 108; *Muskoka Condominium Corp. No. 39 v. Kreuzweiser*, 2010 ONSC 2463; *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, [2005] O.J. No. 1604 (C.A.).



[19] Mr. Paterno responded to the application with his affidavit dated **May 30, 2023**.

[20] On **June 15, 2023**, Mr. Paterno was cross-examined on his affidavit.

[21] On **June 19, 2023**, Mr. Bouaddi was cross-examined on his affidavits.

[22] Mr. Paterno challenged the quality of the evidence of Mr. Bouaddi who no longer had a regular shift at the condominium and who in any event was largely relying on the incident reports and the records of the condominium corporation.

[23] There was no merit to this challenge. In his affidavit and in his cross-examination, Mr. Paterno admitted and corroborated the evidence set out in the documentary record. He admitted his wrongdoing although he tried to minimize or normalize the events. However, many of the incidents were filmed on security cameras and the videos and the photographs were part of the evidentiary record. Although it was not mentioned in argument, much of the hearsay evidence was admissible pursuant to common law exceptions to hearsay evidence, including the exception for business records made in the ordinary course of business at the time of the occurrence of the events by a person obliged to record the information<sup>14</sup> or by the general hearsay exception based on reliability or necessity.<sup>15</sup>

#### **D. Facts**

[24] TSCC 2581 is a condominium corporation under the *Condominium Act, 1998*. It is located at 830 Lawrence Avenue West, Toronto, Ontario. The objectives of TSCC 2581 are to manage the corporation's assets and the property on behalf of the unit owners and to enforce compliance with the Act, declaration, by-laws and Rules. The Board of Directors of TSCC 2581 are required to direct the pursuit of the corporation's objectives and the performance of its duties in accordance with the Act, declaration, by-laws and Rules.

[25] TSCC 2581's property manager is Duka Property Management ("Duka").

[26] Elite Residential Concierge Services Inc. ("Elite") provides TSCC 2581 with a concierge and security guard service.

[27] Pursuant to the *Occupational Health and Safety Act*, both Duka and Elite have enacted workplace violence and harassment policies ("OHS Policies"), to protect the employees and their staff working at the condominium. As a unit owner, Mr. Paterno is obliged to comply with these policies in his dealings with Duka's and Elite's employees.

[28] Part 5, Section 22(b), of TSCC 2581's Rules requires all owners and residents to comply with the Act, Declaration, By-laws and Rules. Rule 5 of the TSCC 2581's Rules and Regulations provides that owners shall not create any noise or nuisance which disturbs the comfort or quiet enjoyment of other persons on the Property. TSCC 2581's Pet Policy requires pet owners to leash their dogs and not to disturb the comfort or quiet enjoyment of persons on the Property.

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<sup>14</sup> *Ares v. Venner*, [1970] S.C.R. 608.

<sup>15</sup> *R. v. Khelawon*, 2006 SCC 57; *R. v. Mapara*, [2005] 1 S.C.R. 358; *R. v. Starr*, 2000 SCC 40; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740; *R. v. Smith*, [1992] 1 S.C.R. 915; *R. v. Khan*, [1990] 2 S.C.R. 531. As for necessity, it was mentioned during argument that the residents of the condominium corporation might be frightened to testify in fear of reprisals from Mr. Paterno, but I do not rely on that submission.

[29] Mr. Paterno owns and resides in Unit 13 on Level 11 of the condominium. He moved into his unit in **2016**. He is a forty-two-year-old single man. He is a plumber by occupation. He is the owner of two American Bullies, which are large dogs that resemble Pit Bull Terriers, from which they are derived. But the dogs are recognized as a different breed. They are banned dogs in many jurisdictions in North America but not in Ontario. In appearance, both Mr. Paterno and his pets are intimidating.

[30] Mr. Paterno purchased and moved into his unit in 2016. He suffers from a substance abuse problem. He managed his illness until early 2021. He lived in his unit in the condominium from 2016 to early 2021 without incident although he had some complaints, which he is, of course, entitled to properly make and to have properly dealt with. There were no significant problems for approximately five years.

[31] Beginning in early **2021**, Mr. Paterno's substance abuse problem, which he had under control, returned. His behaviour became offensive. There is a record of numerous incidents, particularly with the employees and independent contractors retained by TSCC 2581. His behaviour was aggressive, rude, profane, and disrespectful. He was asked in writing to cease harassing and verbally abusing the staff of Duka and Elite. Despite requests to stop and warnings of consequences if his misbehaviour continued, Mr. Paterno persisted in his offensive behaviour, including sexually explicit rude emails to female employees. As a result of the discomfort caused by encounters with Mr. Paterno, several Elite and Duka employees requested and were granted reassignments to other properties.

[32] An incident report and a CCTV video shows that on **July 2, 2021**, an intoxicated Mr. Paterno approached the concierge desk and made rude gestures and then entered the elevator where he pulled his shirt up and his pants down to display his genitals to the camera.

[33] A **July 5, 2021** incident report relates that Mr. Paterno belligerently approached the concierge desk and complained about the Covid-19 pandemic restrictions on the use of the condominiums amenities. He told the security guards that "if the Terrace doesn't opens by the end of the day he will use a Sledgehammer and break the Fucking Door down!"

[34] On **September 10, 2022**, during Covid-19 restrictions, there is an incident report of Mr. Paterno using the condominium's pool without permission and of gaining access to the pool by damaging a door from the gymnasium adjoining the pool.

[35] An incident report recounts that on **September 12, 2021**, there was a shouting and screaming in the elevator lobby between Mr. Paterno and another resident of the condominium. The resident indicated that Mr. Paterno had followed him to his unit and made a death threat. The incident was investigated by the police who attended at the condominium to take statements.

[36] An incident report and a confirming CCTV video shows that on **March 1, 2022**, Mr. Paterno removed the Covid-19 directions (face mask poster) that were posted on the wall of the elevator.

[37] There are incident reports of inappropriate, inebriated, disorderly, aggressive, rude, profane, or threatening behaviour by Mr. Paterno for **September 13, 2021, November 29, 2021, January 12, 2022, March 24, 2022, April 8, 2022, April 14, 2022, April 16, 2022, April 20, 2022, April 26, 2022, May 6, 2022, May 7, 2022, May 11, 2022, May 16, 2022, May 30, 2022, June 1, 2022, April 13, 2023, April 16, 2023, April 30, 2023, June 4, 2023, and June 6, 2023**.

[38] On **April 15, 2022**, CCTV video footage shows a shirtless Mr. Paterno entering elevator

No. 5 and there are a series of discomfiting, offensive, profane, and erratic behaviour by Mr. Paterno with other residents using the elevator as set out in an incident report of that date.

[39] On **April 22, 2022**, the regional manager of TSCC 2581 wrote to Mr. Paterno on behalf of the Board of Directors regarding incidents that occurred during March and April 2022 when Mr. Paterno harassed and threatened management's personnel. The purpose of the correspondence was to advise Mr. Paterno that his actions were work and sexual harassment that would not be tolerated and that any similar threatening and harassing behaviour towards any corporation's personnel would immediately be met with legal action.

[40] On **May 1, 2022**, there was an incident involving Mr. Paterno and another resident of the condominium. Mr. Paterno admits that he damaged the locker of another unit owner. Mr. Paterno attributes the incident to his substance abuse problem and is remorseful for it. He paid the unit holder almost two thousand dollars to repair the damages to the locker.

[41] An incident report reveals that on **May 11, 2022**, Mr. Paterno accosted a window cleaner who was on high-rise scaffolding and also the Elite employee who intervened in a futile attempt to deescalate the situation.

[42] On **July 29, 2022**, there was a serious incident involving Mr. Paterno. The incident was recorded on TSCC 2581's CCTV security camera. Mr. Paterno enters the lobby. He approaches the concierge desk, where unprovoked, he shouts at Bhagwant Singh, the Elite employee working at the desk. Mr. Paterno punches and shatters the plexiglass shield surrounding the desk. He verbally and physically assaults Mr. Singh. When Mr. Singh attempts to call 911, Mr. Paterno rips the phone out of Mr. Singh's hands and throws the phone at the security desk computer, shattering its screen. TSCC 2581 claims damages of \$2,602.16 for the destroyed property.

[43] As a result of the locker incident of May 1, 2022 and the assault of Mr. Singh and destruction of property Mr. Paterno was charged in criminal proceedings in the Ontario Court of Justice.

[44] On **November 28, 2022**, Mr. Paterno pled guilty to three counts of mischief, one count of uttering a death threat, and one count of breach of probation. Mr. Paterno received a suspended sentence and a two-year adult probation order.

[45] Mr. Paterno deposed that he is remorseful for his conduct. He says that he has successfully been treated for his substance abuse problem and is committed to good behaviour in the future.

[46] Unfortunately, Mr. Paterno continues to suffer from his substance abuse illness. On **April 16, 2023**, Mr. Paterno entered into the lobby elevator with his two unleashed dogs. He was asked to leash the animals by others in the elevator. He refused to do so. The situation escalated. Mr. Paterno grabbed a resident's phone and stomped and damaged it.

[47] Unit owners avoid getting on the elevator with Mr. Paterno.

[48] Beginning in **April 2023** and continuing thereafter, Mr. Paterno has taken to appearing on the balcony of his eleventh-floor residence screaming and threatening to commit suicide. Some of these incidents have been video recorded. Mr. Paterno appears intoxicated or under the influence of drugs or alcohol. There have been attendances by police officers.

[49] On **April 30, 2023**, there was a follow up incident involving Mr. Paterno and the person with whom he had an altercation in the elevator on April 16, 2023. Police assistance was required

to resolve the incident.

[50] On **June 6, 2023**, police officers entered Mr. Paterno's unit and escorted him from the property after another incident of disturbing behaviour on his balcony.

[51] Mr. Paterno admits that he allows his dogs to roam unleashed and to defoul the common elements of the condominium corporation's property including the elevators. There are numerous incident reports and complaints about the unleashed Pit Bull-resembling dogs being in the lobby, the elevator, and the interior and exterior common areas of the condominium.

### **E. Discussion and Analysis**

[52] I conclude that - while under the influence of his substance abuse problem Mr. Paterno has violated sections 117(1) and s. 119(1) of the *Condominium Act, 1998* - numerous times. While under the influence of intoxicants he is antisocial, ungovernable, and unsuited for communal living.

[53] The evidence on this application proves that Mr. Paterno's behaviour has damaged the property of the condominium corporation and the property of his fellow owners and residents of the condominium. The evidence shows that unless he gets his substance abuse problem under control, he is likely to cause damage to the property of the condominium corporation or to the property or persons of other residents of the condominium community in the future.

[54] The evidence on this application proves that Mr. Paterno's failure to manage his dogs in accordance with the rules and regulations of the condominium corporation has disturbed the quiet enjoyment of the condominium's property by its residents. The evidence on this application establishes that Mr. Paterno's care and management of his American Bullies has been irresponsible and insensitive to the discomfort caused by two formidable canines roaming unleashed and unmuzzled.

[55] The evidence on this application establishes that Mr. Paterno's activities in the common areas and from the balcony of his unit have constituted an unreasonable nuisance, annoyance, or disruption of the quiet enjoyment of his neighbours. His behaviour to the staff and agents of the condominium corporation has been reprehensible and contrary to the anti-harassment policies of the condominium corporation.

[56] But for the facts that Mr. Paterno: (a) is remorseful for his conduct; (b) has promised to abide by the rules and regulations of TSCC 2581 in the future; and (c) has shown in the past an ability to manage what is an illness with antisocial symptoms, it would be appropriate to exercise the court's discretion to make an order evicting him from the condominium community and to order him to sell his unit.

[57] However, I am not persuaded that a less harsh order would be inadequate: (a) to enforce compliance with the *Condominium Act, 1998* and (b) to restore Mr. Paterno as a responsible member of the condominium community. As I foreshadowed in the introduction to these Reasons for Decision, an immediate eviction order and an immediate order for him to sell his condominium unit is too harsh.

[58] What the circumstances require is a conditional zero-tolerance eviction. Order. Mr. Paterno requires the behaviour management of a conditional order the breach of which: (a) could find him in contempt of a court order and (b) in any future event of misbehaviour would require him to sell

his condominium unit.

[59] This is the proverbial carrot and stick of the rule of law. Mr. Paterno has an incentive to behave as responsible member of his community. He can avoid eviction and the sale of his unit by paying for the full legal costs that the condominium corporation has incurred to obtain his compliance with his everyday responsibilities as a member of the condominium's community and by him keeping his promise of good behaviour.

[60] Rather than immediately being ordered to sell his unit, this lesser order will suffice, and Mr. Paterno should be given a last chance opportunity to demonstrate that he is capable of complying with the rules governing the condominium.<sup>16</sup>

## **F. Conclusion**

[61] For the above reasons, I make the Order set out in the Introduction of these Reasons for Decision.

[62] By way of explanation for the costs order, I conclude that the costs claimed of \$46,634.03 are excessive and that there was some modest over-lawyering of the file, and I have reduced the costs to \$35,000 all inclusive.

Perell, J.

Released: July 26, 2023

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<sup>16</sup> 2022 *MTCC No. 1260 v. Singh*, 2022 ONSC 1606; *Peel Condominium Corp. No. 98 v. Pereira*, 2013 ONSC 7340; *York Condominium Corporation No. 137 v. Hayes*, 2012 ONSC 4590; *York Condominium Corp. No. 136 v. Roth*, [2006] O.J. No. 3417 (S.C.J.).

**CITATION:** Toronto Standard Condominium Corp. No. 2581 v. Paterno, 2023 ONSC 4343  
**COURT FILE NO.:** CV-22-00685149-0000  
**DATE:** 20230726

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**TORONTO STANDARD CONDOMINIUM  
CORPORATION NO. 2581**

Applicant

**- and -**

**GIOVANNI PATERNO**

Respondent

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**REASONS FOR DECISION**

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PERELL J.

**Released:** July 26, 2023