

CITATION: Niagara North Condominium Corporation No. 127 v. Chyplik, 2023 ONSC 4856
COURT FILE NO.: CV-23-00061245-0000
DATE: 2023-02-23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Niagara North Condominium Corporation No. 127, Plaintiff

AND:

Scott David Chyplik, Defendant

BEFORE: The Honourable Madam Justice L. E. Standryk

COUNSEL: D. Marks and F. Burnett, counsel for the Plaintiff

Self-represented Defendant

HEARD: Application heard in chambers, unopposed

ENDORSEMENT ON APPLICATION

- [1] The applicant, Niagara North Condominium Corporation No. 127 (the “Corporation”), brings this application for a compliance order pursuant to section 134 of the *Condominium Act*, 1998, S. O. 1998, c. 19 (the “Act”) for an declaration that the respondent, Scott David Chyplik (the “respondent”), is in breach of the Act and an order granting the Corporation temporary vacant possession of the respondent’s unit municipally known as 1201-15 Towering Heights Boulevard, St. Catharines, Ontario L2T 3G7 (the “Unit”) to, amongst other things, remediate the Unit and to alleviate risks to the Corporation’s property and to the health and safety of other unit owners and occupants of Towering Heights Boulevard.
- [2] The respondent has not filed responding materials although properly served with the application.

The Parties

- [3] The Corporation is an entity incorporated pursuant to the *Condominium Act* to govern the affairs of a high-rise, apartment-style, residential condominium consisting of 125 dwelling units and their appurtenant and jointly owned common elements, located at 15 Towering Heights Boulevard in St. Catharines, Ontario (the "Condominium Property").
- [4] The respondent is the registered owner of the Unit purchased on May 1, 2006.

Background and Issues of Non-Compliance

Inspection by St. Catharines Fire Services

- [5] On August 26, 2022, the Unit was the subject of an inspection by the St. Catharines Fire Services, pursuant to the provisions of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4.
- [6] On August 26, 2022, the St. Catharines Fire Services made an order against the applicant and the respondent bearing Inspection Order No.: 2022-110769 (the "Order"). The Order indicated that:
- a. There were excessive combustibles accumulated in the Unit.
 - b. The kitchen was completely inaccessible due to the volume of stored materials.
 - c. Difficulty to move through the Unit because of accumulation of materials stored and the way that they were piled.
 - d. Excess accumulation of combustible materials stored within dwelling units pose a risk of fire to the occupants in the building and could impede their timely evacuation.
 - e. Should a fire occur, the amount of materials stored and location of those materials would drastically increase the intensity of the fire and impede firefighters from entering and their ability to conduct rescue and suppression activities.
- [7] In addition, the fire inspection required the respondent to:
- a. Reduce the width of the piles to maintain a 1-meter (3 feet) clearance to all sources of ignition, including outlets, service equipment and appliances, etc.
 - b. Reduce the amount of stored materials in the unit so that it is accessible with an aisle wide of no less than 1-meter (3 feet) leading through all rooms in the unit including the kitchen.
- [8] Compliance was required no later than September 27, 2022.
- [9] On September 23, 2022, the Corporation applied to the Fire Marshal for a review of the Order as against the applicant.
- [10] On September 27, 2022, the Office of the Fire Marshal accepted the applicant's request for review and advised that the Order as against the Condominium is stayed pending the outcome of the review.
- [11] On September 29, 2022, the Corporation, through its legal counsel, wrote to the respondent regarding the compliance requirements of the Order and demanded compliance with the

Order immediately and, in any event, before September 30, 2022, when the St. Catharines Fire Service was scheduled to re-attend.

Inspections by the Applicant – Safety Concerns

- [12] The September 29, 2022 letter from the Corporation to the respondent informed that it had been made aware of potentially unsafe conditions in the Unit, including that the respondent had removed portions of the walls, cut grooves into the walls, exposed electrical wiring, removed an exhaust fan and otherwise kept the Unit in a potentially dangerous condition.
- [13] On September 7, 2022, and October 5, 2022, pursuant to notice and section 19 of the Act, the Corporation's engineer, Cion Corp. Engineers and Building Scientists ("Cion"), entered the Unit for the purposes of conducting an inspection.
- [14] Cion authored a report dated October 25, 2022 (the "Report"), which outlined a number of issues pertaining the Unit, including:
- a. No building permits were taken out with respect to the renovations/work and/or electrical work;
 - b. Excessive piles of belongings were stored throughout the unit, making access difficult;
 - c. The protective covering of the baseboard heaters have been removed, permitting the elements to be exposed to items;
 - d. Items were stored in close proximity to heaters, posing a fire hazard;
 - e. Electrical wiring in walls and ceiling penetrations had been removed without proper protection;
 - f. Missing and/or disconnected ceiling fixtures;
 - g. Removed interior concrete wall finishes, exposing wiring, and removed wiring; and,
 - h. Openings in the perimeter ceiling/walls exposing pipe chases and shafts resulting in smoke/odour migration.
- [15] On November 4, 2022, the Corporation informed the respondent by letter of the observations and conclusions of the Report, enclosing a copy for the respondent.
- [16] The applicant demanded that the respondent restore the Unit to its original condition and rectify the issues identified in the Report by November 18, 2022, with the work to be undertaken by qualified professionals and with appropriate permits.

- [17] On December 7, 2022, pursuant to notice and section 19 of the Act, agents of the Corporation entered the Unit for the purposes of inspecting its condition and found that no remediation efforts had been made.
- [18] On December 22, 2022, the Corporation advised the respondent that, as no effort at remediation had been made, the Corporation would be commencing this application with the intention to seek recovery of its costs and expenses on a full-indemnity basis from the respondent pursuant to the Corporation's governing documents.

Analysis

Dangerous Condition

- [19] A number of provisions of the Act come into play on this application.
- [20] Section 17 (3) of the Act requires the Corporation to take all reasonable steps to ensure that owners and occupiers of units comply with the Act, the declaration and the by-laws and the rules of the Corporation.
- [21] Section 19 of the Act allows the Corporation or its authorized designee to enter a unit on giving reasonable notice to perform the objects and duties of the Corporation.
- [22] Section 117 of the Act provides that "no person shall permit a condition to exist in a unit or carry on an activity in a unit if the condition or the activity is 'likely to damage the property or cause injury to an individual.'"
- [23] Section 119 of the Act provides that "the corporation...an owner...shall comply with the Act, the declaration, the by-laws and the rules."
- [24] Section 134 of the Act allows the Corporation and others to apply to the Superior Court of Justice for an order enforcing compliance with any provision of the Act, the declaration, by-laws or rules.
- [25] Section 21(a), at Part 5 of the Condominium's Declaration provides, inter alia:

No unit shall be occupied or used by any owner, or by anyone else, in such a manner as is likely to damage or injure any person or property (including any other units or any portion of the common elements), or in a manner that will unreasonably interfere with the use or enjoyment by other owners of the common elements or their respective units, nor in any manner which may affect the structural integrity of any unit and/or the common elements or that may result in the cancellation or threat of cancellation of any insurance policy referred to in this declaration, or that may increase any insurance premiums with respect thereto, or in such a manner as to lead to a breach by any owner or by the Corporation of any provision of this declaration ... [emphasis added].

- [26] Schedule “A” of By-law No. 1 of the Corporation at Rule 4 provides that no owner shall do or permit anything to be done in their unit or bring or keep anything therein which will in any way increase the risk of fire.
- [27] Schedule “A” of By-law No. 1 at Rule 7 provides that no owner shall create or permit the creation or continuation of any noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners.
- [28] Schedule “A” of By-law No. 1 at Rule 9 provides that owners shall not overload existing electrical circuits and plumbing facilities in their units. Unit owners shall be responsible for ensuring that all new plumbing and wiring is done to prevent damage or inconvenience to other unit owners.
- [29] Section 92(3) of the Act provides that if an owner fails to carry out an obligation under the Act within a reasonable time and if the risk presents a potential risk of damage... the corporation may do the work necessary to carry out the obligation.
- [30] The foregoing provisions permit the Corporation to enforce fire inspection orders within individual units of the corporation.
- [31] Having considered all the evidence before me, I am left with little doubt that the conditions in the respondent’s unit are likely to increase the risk of fire, hazard and risk of injury to others. The St. Catharines Fire Services has issued a fire inspection order against the unit. To allow the unit to continue in a state that violates the fire inspection order creates a serious hazard to the property and individual safety of other occupants of the Corporation.
- [32] The Corporation itself is potentially liable for many of those hazards if it does not take steps to remediate them. See section 26 of the Act and sections 1.2.1.1. and 1.4.1.2 of the Ontario Fire Code.
- [33] In providing remediation orders, courts have recognized a discretion to compel an owner to vacate and sell their unity if they do not comply with relevant safety orders. See *Davis v. Peel Condominium Corporation No. 22*, 2013 ONSC 3367, at para. 1; *York Condominium Corporation No. 82 v. Singh*, 2013 ONSC 2066, at para. 42; and *Metro Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448, at para. 80.
- [34] Based on all of the facts before this Court, and on the provisions of the Act and Declaration, I find that the respondent has breached their obligations under the constating documents of the Corporation as well as section 117 of the Act by permitting a dangerous condition to persist in the subject Unit.
- [35] Pursuant to the Act, and its constating documents, the Corporation has a duty to take all reasonable steps to ensure that all unit owners and occupants of units comply with the Act and declarations, by-laws and rules of the condominium. The Corporation is empowered to require the compliance of the owners, and the owners have a corresponding duty to comply.

[36] The respondent has further breached the obligation to bring the condition of the Unit into compliance with the action(s) required by the Order.

Costs of this Application

[37] The issues in this matter have continued from the fall of 2022 to the present with neglect, failure, or refusal by the respondent to resolve a dangerous condition and comply with the Order.

[38] Prior to bringing this application under section 134 of the Act, the Corporation retained legal counsel to attempt to resolve the matter in a non-litigious manner. There is no evidence before me that the respondent attempted to resolve the issues prior to or subsequent to the commencing of this proceeding.

[39] By letter dated December 22, 2022 the Respondent was advised that the Corporation would seek full indemnity costs if he continued to fail to take action as required with the Order and comply with the Act, declaration and rules of the Corporation.

[40] On an application under section 134(3)(b) of the Act, the court may order an owner to pay damages incurred by the applicant as a result of non-compliance and the costs incurred by the applicant in obtaining a non-compliance order on a complete indemnity basis. Pursuant to section 134(5), an award of damages or costs, together with any additional actual costs in obtaining the order, may be added to the common expenses of the unit.

[41] I am satisfied, in all the circumstances, that the applicant is entitled to its costs, both pre-litigation and litigation, on a full indemnity basis, and that in all the circumstances, to ensure compliance with this order, all costs are to be added to the common expenses attributable to the owner's Unit.

Orders

[42] Accordingly, this Court makes the following orders:

1. A declaration that the conditions in the respondent's unit at 1201-15 Towering Heights Boulevard, St. Catharines, Ontario L2T 3G7, and which unit is more particularly described in Schedule "A" attached hereto (the "Unit"), are likely to cause damage to the applicant's property or cause injury or illness to individuals in breach of section 117 of the Act.
2. The respondent shall deliver to the applicant vacant possession of the Unit, and the applicant shall be entitled to the issuance of a Writ of Possession with respect to the Unit.
3. The applicant is hereby authorized to engage contractors, pest control professionals, engineers, and related consultants to attend at the Unit and remediate the conditions posing risks to the condominium's property and to the health of unit owners and occupants at the condominium.

4. The applicant is hereby authorized to remove materials, including combustibles, from the Unit, in order to ensure that the accumulation of material does not exceed the normal loading of the structure and that it does not constrict egress from the respondent's Unit.
5. The applicant is hereby authorized to remove and place in appropriate storage facilities all chattels from the Unit which, in the sole discretion of the applicant, or its consultants, are reasonably necessary to remove in order to facilitate the remediation of the Unit.
6. The applicant is hereby authorized to dispose of any chattels or fixtures in the Unit which, in the sole opinion of the professionals and consultants retained by the applicant, constitute a danger to human health or the applicant's property.
7. All damages, costs and expenses incurred by the applicant in remediating the Unit shall be paid by the respondent, and that such damages, costs, and expenses may be added to the common expenses attributable to the Unit.
8. Upon the completion of remediation and upon the applicant receiving satisfactory evidence that the Unit has been fully remediated, and that all risks to the property and to the owners and occupants at the property have been alleviated, the applicant shall return possession of the Unit to the respondent.
9. The applicant is entitled to its costs and disbursements of the within application on a full indemnity basis pursuant to Part 9, Section 34 of the Condominium's Declaration, as amended, in the total amount of \$7,500.00, inclusive of HST.
10. Pursuant to section 134(5) of the Act, the costs, damages, disbursements, and expenses referred to in paragraphs 7 and 9 of this order shall be added to the common expenses for the Unit and payable forthwith.
11. This order bears interest at the rate of twenty-four percent (24%) per year from its date pursuant to the Condominium's By-law 1 (Instrument No. LT156635) at section 10.07(a) of Article X.

L. E. Standryk, J.

Date: February 23, 2023