CITATION: Metropolitan Toronto Condominium Corporation No. 961 v. Pereira, 2024 ONSC 4635
COURT FILE NO.: CV-24-715921
DATE: 2024-08-20

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 961	*Victor J. Yee*, for the Applicant
Applicant	
– and –	
SHELLYANN LEE PEREIRA	*Delaram Mehdizadehjafari*, for the Respondent
Respondent	
	HEARD: June 7, 2024

PARGHI J.

REASONS FOR DECISION

[1] The Applicant condominium corporation seeks a compliance order against the Respondent, who owns and occupies one of its condominium units, together with a parking unit and storage unit. The Applicant seeks this relief pursuant to s. 134 of the *Condominium Act, 1998* S.O. 1998, c. 19 (the "*Condominium Act*" or the "*Act*"), which enables a condominium corporation to apply to this Court for an order requiring a unit owner to comply with any provision of the *Act*. The authority of the court to issue such a compliance order under the *Act* is discretionary (*Re Peel Condominium Corp. No. 73 and Rogers*, (1978) 1978 CanLII 1480 (ON CA), 21 O.R. (2d) 521 (C.A.); *York Condominium Corp. No. 135 v. Roth*, [2006] O.J. No. 3417 (S.C.), at para. 13).

[2] The Applicant submits that the Respondent engages in "hoarding" activity, with the result that her unit is cluttered and unsafe; that she has wrongfully denied entry to her unit to service personnel engaged by the Applicant to maintain and service the condominium units; and that she has a "derelict" dust-covered vehicle parked in her parking spot that has not been used in three years.

[3] The Applicant seeks a compliance order providing as follows:

a. that it may enter the Respondent's unit for any non-emergent reason upon giving 48 hours' notice, and in case of emergency without any notice;

b. that the Respondent must not interfere with the Applicant exercising its right of entry into her unit, and, if she does, the Applicant may use a professional locksmith to access her unit at her cost;

c. that if during such an entry the Applicant finds a fire hazard or other hazard or other nuisance in the Respondent's unit, the Respondent must rectify the hazard within ten days, failing which the Applicant may enter the unit with 48 hours' notice to do so;

d. that the Respondent must maintain and repair the plumbing in her unit, failing which the Applicant may enter her unit with 48 hours' notice to do so at her cost;

e. that the Respondent must remove her car from the parking spot or restore it and maintain it in a driveable condition within ten days, failing which the Applicant may tow the vehicle with 48 hours' notice at her cost;

f. that if the Applicant incurs any costs to implement the terms of the order, those costs may be charged to the common expenses owed by the Respondent's unit;

g. that if the Respondent breaches any term of the order, the Applicant may seek a further order to compel the Respondent to permanently vacate her unit; and

h. that the Respondent must pay for the Applicant's costs of this Application on a full indemnity basis, failing which the costs may be added to the common expenses owed by the unit.

[4] The Respondent's position is that a compliance order is unnecessary and inappropriate and that the Applicant's conduct toward her is abusive and in bad faith. The Respondent submits that her unit, while untidy, has become tidier and much less cluttered during recent weeks, and has never been unsafe; that she has only ever denied entry to service providers for work- or health-related reasons, and in exercise of the option, given to her by the Applicant, to arrange (and pay for) certain maintenance services on her own; and that her car is not "derelict". She submits that costs should not be granted to the Applicant on a full indemnity basis.

[5] For the reasons outlined below, I grant the compliance order sought by the Applicant in part, with longer notice and compliance periods than those proposed by the Applicant, and with an added obligation on the part of the Applicant's personnel and service personnel to take reasonable steps to accommodate the Respondent's health concerns. The order is granted without prejudice to the Applicant to bring an application for a further order should circumstances warrant it. I do not award costs of this Application to either party.

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Procedural History

[6] This Application was commenced on March 1, 2024.

[7] On March 20, 2024, the Applicant obtained an order from this Court indicating that the Respondent agreed to the Applicant entering her unit for the purpose of conducting an inspection on 72 hours' notice. On March 21, 2024, the Respondent and her counsel were given advance notice of an entry into the unit to inspect it to take place four days later. That entry took place and is discussed below.

[8] On June 7, 2024, the parties appeared before me on this Application. Shortly before the hearing, the Respondent provided the Applicant with evidence of her efforts to declutter, clean, and improve the state of repair of her unit. In light of the new evidence, the Applicant proposed, and circulated during the hearing, a revised compliance order, narrower in scope from the original. This ruling pertains to that second proposed compliance order.

[9] The hearing could not be concluded during the allocated time. I directed the parties to provide me with written submissions on the revised compliance order and the Applicant's request that the Respondent reimburse it in full for any prior costs associated with compliance and enforcement. I further directed the parties to provide brief cost submissions. My direction made clear that no additional evidence was to be filed.

[10] The parties did not heed my direction. The Respondent attempted to provide additional evidence in the form of attachments to her written submissions. The Applicant attempted to provide additional evidence in the form of a reply affidavit. Those materials should not have been provided. I have disregarded them.

The Parties' Positions and the Evidence

Condition of the Respondent's Unit

[11] The Applicant submits that the Respondent engages in "hoarding" behaviour, with the result that her unit is excessively cluttered, unsanitary, and unsafe. It states that, through this behaviour, the Respondent has breached several of her legal obligations, including:

a. her obligation under the *Condominium Act* to not cause a condition in her unit that is likely to cause property damage or personal injury or illness (s. 117);

b. her obligation to maintain her unit, pursuant to the *Condominium Act* (s. 90) and the Applicant's Declaration with the Land Registry Office of Ontario ("the Declaration"), one of its constituting documents; and

c. her obligation to not keep anything in her unit that "will in any way increase the risk of fire," pursuant to the Applicant's General Rules and Regulations (the "Rules").

[12] In making this claim, the Applicant relies on photographic and affidavit evidence from its employees and service providers regarding the state of the Respondent's unit. The most recent such evidence comes from a March 2024 visit to the unit by Applicant staff, made with notice and pursuant to an order of this Court. During this visit, the unit was found to be extremely cluttered and messy, with little available floor space to walk on, garbage and food containers on the floor, a cluttered kitchen stove top and sink, a bathtub that was unusable because it was filled with "hoarded" items, and a noticeable odour. Affidavit evidence from the Senior Condominium Manager from a few months earlier, in August 2023, also describes excessive clutter and "debris and boxes … piled up to the ceiling."

[13] The Respondent acknowledges that her condominium is disorganized, cluttered, and untidy. She submits that this is due to her mental and physical condition; she is immunocompromised and asthmatic, and seldom leaves her home for fear of exposure to others. The Respondent states that she is not "hoarding" and that the state of her unit has never created a risk to the safety of others or to the property or created any fire or other hazard. There is no professional report from a fire marshal or fire department substantiating the claim that she has created a fire hazard in her unit. Nor was she ever provided with a specific notice identifying any particular fire safety breaches or directions for resolution of specific fire concerns.

[14] The Respondent states that she has made many efforts to tidy, declutter, and improve the condition of her unit recently. Counsel for the Applicant acknowledged these efforts during the hearing before me.

Denials of Entry to Service Personnel

[15] The Applicant submits that, since at least April 2022, the Respondent has interfered with and prevented the Applicant and its agents from exercising their lawful right of entry into her unit. This right of entry with reasonable notice is articulated in the Declaration and in s. 19 of the *Condominium Act,* which provides:

> On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or a part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation.

[16] The Applicant submits that even though it has provided the Respondent with reasonable notice in respect of all service personnel visits, she has repeatedly refused to grant entry to them. The Applicant details at least a dozen occasions in 2022 and 2023 on which it says the Respondent denied entry to condominium staff or service providers or postponed or cancelled their visits. The Respondent denies some of these allegations outright and responds to others. Because of the importance of this issue, I have reviewed the evidence about these alleged denials of entry in some detail here.

[17] I have concerns about some of the Applicant's evidence about the Respondent's denials of entry. It comes in the form of hearsay in an affidavit from the Senior Condominium

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Manager. Under the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, in an application, hearsay evidence is admissible only in respect of non-contentious facts and only if the source of the hearsay is identified. The Senior Condominium Manager has offered hearsay evidence about several alleged denials of entry at which she was not herself present. She has not identified the source of her information and belief about those incidents; she merely states at the start of her affidavit that "information and advice" were provided to her "by third parties" whom she does not identify. Importantly, some of these alleged denials of entry are contentious: the Respondent denies that they happened as alleged or at all. I have therefore disregarded any of the Senior Condominium Manager's affidavit evidence on contentious matters that is based on hearsay. The summary below is taken only from the admissible evidence before me.

[18] In February and March 2023, the Respondent denied entry to pest control service personnel. The Respondent's evidence is that she denied them entry "due to serious illness." She submits that she had no problem with ants in her unit and that the Applicant left bait traps for her at her door, which she placed in her unit in accordance with instructions provided to her. When a further service call was planned to apply pesticide gel in each of the units, she advised the Applicant that she was still sick and asked that the gel be left outside her door with instructions on where to apply it. The Applicant replied that only the service provider could apply the gel. The pest control service asked the Respondent, via the Applicant, what steps they could take to accommodate the Respondent's health concerns. The Respondent replied that they could come to her unit when she was well again and that she would advise when she was better.

[19] In April 2023, the Respondent denied entry to fan coil service personnel because she believed the fan coil servicing would be dangerous to her health. The Applicant asked what specific accommodations she required for the fan coil servicing to proceed. She advised that she would not permit entry while she was sick.

[20] In May 2023, the Applicant advised that it could not delay the work any longer and the service appointment would take place in five days. The Applicant stated that the service personnel would wear proper masks and self-screen for COVID-19 symptoms and that the Respondent was free to vacate her unit during their visit. It reminded the Respondent that, by law, it has the right to enter a unit at any reasonable time upon giving reasonable notice. It advised that, if the Respondent denied the service personnel entry into her unit, the Applicant would charge back to her the legal fees it had incurred and was incurring in handling her non-compliance.

[21] The Respondent wrote back, advising that her furnace did not need servicing, that the disinfectant spray that would be used by the service personnel was harmful to her, and that she would not be letting the service personnel in. She referred to the service notice issued by the Applicant, which stated, "If we don't have access to your suite this time, ... Please contact the management office and you will be provided with a phone number to contact the contractor directly, organize the date for inspection and pay them directly for the visit." She stated that the notice gave her "a choice" about whether to have the work done by the

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Applicant’s service personnel, or to get it done on her own. She asked for the service provider’s telephone number. The Applicant provided it to her.

[22] When the service personnel attempted to enter her unit on the scheduled date, she did not allow them to enter. The Applicant’s evidence is that the Respondent “yelled” at the service personnel and Applicant staff to “get out.” The Respondent’s evidence is that she found it “inappropriate and invasive” that representatives of the Applicant appeared at her door despite her earlier email exchanges with them, and after they raised no objection to her plan to arrange the work directly with the service provider. She therefore “asked” the Applicant’s staff and service personnel “to go away.” She says that this interaction gave rise to a series of “untrue” allegations of harassment by the Applicant, which she considers fabricated and a product of the property manager’s “power trips.”

[23] In June 2023, the Applicant wrote to the Respondent again, describing the May 2023 denial of entry and stating that when the Applicant’s staff last entered the Respondent’s unit, in August 2017, they had “noted signs of excessive hoarding.” The Applicant suggested that the Respondent’s “repeated demands” that service personnel not enter her unit since June 2022 “appear to be an effort to prevent the [Applicant] from discovering the condition of” her unit. The Applicant advised that service personnel would enter her unit in five days to perform the fan coil servicing and to “investigate hoarding,” and that the Respondent would be required to reimburse the Applicant for the costs it was incurring to secure her compliance.

[24] The Respondent wrote back, saying that she was “angry,” that she was being “treated like a criminal,” and that she was not available on the proposed date due to work commitments but would allow service personnel to enter on a specific date in July 2023. The Applicant agreed to postpone the visit to the date proposed by the Respondent.

[25] The Respondent later contacted the service provider directly to postpone the service call to a still later date. She then postponed it a second time. She then cancelled it outright.

[26] In August 2023, she allowed entry into her unit for fan coil servicing, but not for a “hoarding” inspection.

[27] These interactions eroded any remaining relationship between the parties. The Applicant charged the Respondent for the legal fees it incurred in relation to the Respondent’s denials of entry to the fan coil service personnel, as it had said it would do. The Respondent did not pay these amounts. She was sent formal notices of arrears. Eventually the Applicant placed a lien against her property, which the Respondent says was invalid.

[28] In January 2024, fire inspections were conducted. The Applicant asserts that the Respondent denied entry to the inspector. The Respondent denies this. She says she allowed an entry in January 2024, and rescheduled an entry originally scheduled for March 2024 cooperatively with the Applicant.

[29] That month, a return visit by the fan coil service personnel was scheduled. The Applicant issued a service notice that stated in part: “This is the second and last visit organized and

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paid for by the corporation. If we won't be able to enter your suite this time, it will be the owner's responsibility to organize this service by calling [the service provider], organizing the date and time of the visit, and covering the costs of the inspection and cleaning."

[30] The Respondent advised the Applicant that the proposed January date was not suitable for her given her professional obligations, and asked if the service personnel could instead come in February. The Applicant responded, "This is a recall visit organized by the corporation and the second time you are refusing entry for dryer maintenance." The Applicant then asked the Respondent to contact the service provider directly "to make arrangements for a date and pay them directly for services." The Applicant stated that it would organize two visits by service personnel "and after that, it is the owner's responsibility to contact contractors and pay them directly."

[31] The Respondent submits that she denied entry to the service personnel because of her health, and that she exercised the option, offered to her by the Applicant in its notices, to arrange directly for the service personnel to come and to pay on her own for their services. She submits that the Applicant cannot now fault her for exercising an option that the Applicant itself made available to her.

[32] More generally, the Respondent submits that the Applicant has acted abusively and in bad faith ever since the spring 2023 fan coil servicing issue. She states that even though the first photograph giving rise to the Applicant's concerns about "hoarding" is from 2017, the Applicant only "came up with" its concerns about hoarding after the fan coil servicing dispute. She asserts that the Applicant's allegations of hoarding are pretextual.

Condition of the Respondent's Car and Parking Spot

[33] The Applicant states that the Respondent's car, which is parked in her parking spot in the condominium building, is "derelict": it is dirty and unsightly, it is inoperable, and it has been left unattended and unused for three years. The Applicant states that the Respondent has thereby breached her duty under the Declaration to maintain her parking unit "in a clean and sightly condition."

[34] The Rules provide that the owner of a parking unit may not park or leave their automobile in the parking lot if, in the opinion of the condominium's board of directors or property manager, the car "may pose a security or safety risk, either caused by its length of unattended state, its physical condition or its potential damage to the property." Where such a security or safety concern arises, then, upon two weeks' written notice, the owner "shall be required to attend to his vehicle as the circumstances require and as directed by" the board or manager. The Applicant submits that the Applicant's car has been left unattended for three years and is in poor physical condition, and that the board and/or manager are therefore of the view that the car may pose a security or safety risk.

[35] The Applicant submits that the Respondent has not moved her car when requested. In October 2022 the Respondent was asked to move her car to enable painting work to be done in the garage. She said that she would need to get the Canadian Automobile

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Association to start the car or else have it towed, and that she would try to get it moved the following day. She did not move the car.

[36] In December 2022 the Applicant sent her an email asking if the car was moveable, and indicating that if it was not moveable, she should make arrangements as soon as possible for the car to be repaired or removed. The Respondent did not move the car.

[37] The Respondent does not contest that she has not used or moved the car since July 2021. She does not contest the photographic evidence that shows that the car is extremely dusty. She disagrees with the characterization of the car as "derelict," however, noting that the car has renewed license plates, was inspected in 2020, and was repaired in 2021. She further states that she was out of the country when she was asked to move the car and therefore could not move it, and that in any event she was asked to move the car in connection with maintenance work that was going to be done in the garage but was subsequently cancelled.

Reimbursement of Applicant's Compliance Costs

[38] The Applicant seeks an order requiring the Respondent to reimburse it in full for any compliance and enforcement costs it incurs in carrying out the terms of the compliance order. It grounds this request in the following:

a. section 92(4) of the *Condominium Act*, which provides that if unit owners do not uphold their obligations to repair after damage, maintain the condominium's common elements, and maintain their own units, the condominium corporation may do the work necessary to carry out these obligations and may add the cost of the work to the unit owner's contribution to the common expenses;

b. article 2.02 of the Declaration, which provides that "any losses, costs or damages incurred by the Corporation attributable to the breach of any Rules by any Owner … shall be paid by such Owner and are recoverable in the same manner as Common Expenses"; and

c. article 6.01(d) of the Declaration, which provides: "If an Owner does not make repairs that are his responsibility within a reasonable time after written notice is given to him by the Corporation then the Corporation may make them; in such event an Owner … shall reimburse the Corporation for the cost thereof, including any legal or collection costs".

[39] The Respondent submits that any reimbursement obligation should attach only to reasonable costs associated with the enforcement of the compliance order.

Costs of this Application

[40] The Applicant submits that the Respondent should pay the Applicant's costs on this Application on a full indemnity basis. It grounds this claim in s. 134(3)(b)(ii) of the *Condominium Act,* which provides that the Court may require a unit owner to pay the costs

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incurred by a condominium corporation in obtaining a compliance order. The Applicant also relies on article 2.02 of the Declaration, cited above.

[41] The Applicant also cites case law, including cases that have held that if a unit owner engages in "outrageous and persistent" misconduct that significantly impacts on other residents and has received prior warnings form the condominium, full indemnity costs may be appropriately ordered (*see, e.g., Peel Condominium Corp. No. 304 v. Hirsi,* 2014 ONSC 346, at para. 2). The Applicant further points to the principle, articulated in several cases, that "blameless" condominium unit owners should not be penalized for an individual unit's non-compliance (*see, e.g., Simcoe Condominium Corporation No. 89 v. Dominelli,* 2015 ONSC 4474, at para. 10).

[42] The Respondent submits that the issues and costs in this Application have been "blown out of proportion" by the Applicant's actions, that the fees claimed by the Applicant are inflated and unreasonable, that various charges have already been levied against by the Respondent through the chargebacks discussed above, and that the Respondent is a senior citizen with physical and mental issues.

Analysis

Condition of the Respondent's Unit

[43] I find, based on the record before me, that the Respondent has engaged in what may be characterized as "hoarding" behavior. She has accordingly failed to comply with her obligation under the *Condominium Act* and the Declaration to maintain her unit, and her obligation under the *Act* to not cause a condition in her unit that is likely to cause property damage or personal injury or illness (s. 117).

[44] I make this finding based on the photographic and other evidence from the March 2024 entry into the Respondent's unit, described above. I acknowledge that the Respondent is making sincere efforts to address the situation and has made many strides. Nonetheless, given the severity of the issue (as documented in the evidence from only a few months ago) and the duration of the issue (given that a photograph from 2017 shows the unit in a similar state), I find that there is a reasonable basis for concern about the maintenance, cleanliness, and hygiene of the unit now and in the future.

[45] I accordingly grant a compliance order allowing the Applicant to enter the Respondent's unit with notice and to require the removal of specific identified hazards from the unit. When entering the Respondent's unit, the Applicant's personnel are required to take reasonable steps to accommodate the Respondent's health by wearing masks, self-screening for illness, and enabling the Respondent to vacate her unit during the service call should she wish to. I am hopeful that these precautions will allay the Respondent's concerns about protecting her health, while enabling the Applicant to carry out its duties.

[46] There is insufficient evidence before me to support any finding that the Respondent has failed to comply with her obligation to not keep anything in her unit that "will in any way increase the risk of fire," pursuant to the Rules. The Applicant's generalized concern that

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there are "combustibles cluttered throughout the unit" and items on top of the stove could result in fire is not sufficient to ground such a finding. I therefore decline to grant a compliance order specifically addressing the handling of fire-related hazards.

Denial of Entry to Service Personnel

[47] I find that the Respondent has inappropriately denied entry to her unit to service personnel hired by the Applicant. In making this finding, I have considered the admissible evidence on the string of interactions between the Respondent and various service personnel from February 2023 onward. I find there to be several instances on which the Respondent inappropriately prevented service personnel from entering her unit.

[48] However, I do not accept all of the Applicant's allegations on this issue. As discussed below, on two of the occasions that the Applicant characterizes as inappropriate denials of entry, the Applicant in fact knew about, acquiesced to, and even facilitated the Respondent's decision to arrange for (and pay for) the service calls on her own. Those incidents therefore cannot be characterized as improper denials of entry.

[49] As discussed above, the Respondent's perception, at least on some occasions, was that she had a choice to admit, or not admit, service personnel into her unit. She understood, based on the language of the service notices issued by the Applicant, that if she denied entry to the fan coil service personnel enough times, she would then be free to get the fan coils serviced herself, at her own expense.

[50] However strained the Respondent's interpretation of the service notices may have been, it was reinforced by Applicant's own conduct on more than one occasion. In May 2023, the Respondent told the Applicant that she wished to arrange her own fan coil servicing, and the Applicant provided her with the service provider's contact information so that she could do so. In January 2024, the Respondent asked to reschedule a planned fan coil service call, and the Applicant invited her to deal directly with the service provider to do so. Against this backdrop, the Respondent's belief that she could opt out of the centralized service calls and make her own arrangements was not entirely unfounded. Indeed, she did exactly that, twice, with the assistance and acquiescence of the Applicant.

[51] Furthermore, given that the Applicant knew and accepted that the Respondent had arranged for her own fan coil servicing in May 2023, it is perplexing that the Applicant nonetheless sent the fan coil service providers to the Respondent's door for a service call that, by mutual agreement, was no longer proceeding. The Respondent, unsurprisingly, was displeased at having service providers show up at her door and request entry. She did not let them in. Her conduct cannot reasonably be described as improper.

[52] The May 2023 incident was a significant blow to the parties' relationship. After that incident, the Applicant sent its June 2023 letter to the Respondent raising the "hoarding" issue and demanding reimbursement of its compliance costs. In the months that followed, the Applicant was sent notices of arrears and a lien was placed against her property.

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[53] For the reasons outlined above, I find that the May 2023 denial of entry was not unreasonable. I likewise I find that the Respondent's rescheduling of the January 2024 fan coil servicing, which was known about and facilitated by the Applicant, was not an unreasonable denial of entry.

[54] I find that the Respondent unreasonably denied entry to service providers on the following occasions: February 2023 (pest control), March 2023 (pest control), April 2023 (fan coil service), July 2023 (the postponements and eventual cancellation of fan coil service), and August 2023 ("hoarding" inspection). (The January 2024 fire inspections are hotly contested and based on the information before me I make no finding in respect of them.) These denials of entry took place over a series of months, and, in many cases, in the face of efforts by the Applicant and service personnel to try to work with the Respondent to reschedule or accommodate her needs. These denials of entry were unreasonable.

[55] I find that a compliance order regarding service personnel entering the Respondent's unit is appropriate. Without such an order, the Applicant will not be able to reliably carry out routine maintenance work in the Respondent's unit. This will prevent the Applicant from meeting its obligations to other condominium residents and will potentially place all residents at risk. The Respondent does not have the right to consent, or not consent, to each individual service call and unit entry. She has the right to receive reasonable notice of each service call, but nothing more. By repeatedly denying entry to service providers and postponing and cancelling their visits, she asserts a legal right that she does not have.

[56] I do not doubt that the Respondent has genuine health concerns that shape her behaviour. However, the Respondent is obligated to make some effort to facilitate the accommodation of her health issues by the Applicant and service personnel. The Applicant tried to accommodate her by, for example, by rescheduling appointments, offering to have service personnel wear masks and screen for COVID, permitting her to leave her unit during service calls if she wished, and leaving ant traps by her door for her to place in her apartment so that service personnel did not have to enter her unit. The pest control service providers asked if they could take any steps to accommodate or alleviate the Respondent's health concerns. The Respondent is required to take reasonable steps to facilitate that accommodation. She cannot simply refuse all service calls. She cannot just say that she is sick and unable to admit service personnel until she is better – particularly when her health issues are chronic and ongoing. That is not reasonable, and not respectful of her legal obligations toward the Applicant or her ethical obligations toward her fellow condominium dwellers.

[57] I therefore grant a compliance order requiring the Respondent to admit service personnel to her unit when reasonable notice is provided to her of their service calls. The order requires service personnel (and any accompanying personnel of the Applicant) to take the steps outlined above to accommodate the Respondent's health conditions.

Condition of the Respondent's Car and Parking Spot

[58] I find, based on the evidence before me, that the Respondent's car is extremely dusty, and, from that perspective, unsightly. To this extent, I find that the Respondent has not complied with her obligation under the Declaration to maintain her parking unit in a clean and sightly condition, although this would be remedied if she were to simply wash the car.

[59] It is uncontested that the car has not been moved for three years. It appears that the car has not been driveable for most or all of that time. Respondent’s counsel asserts that her client intends to sell the car, although there is no evidence properly before me in support of this claim. Nor is there any evidence to suggest that the Respondent has a particular timeline or plan for selling the car.

[60] In these circumstances, it is reasonable for the Applicant to state that, under the Rules, it considers the car to pose a security or safety risk. It was also reasonable for the Applicant to have asked the Respondent, in December 2022, to either remove or repair the car. The Respondent did not respond to that reasonable and authorized request.

[61] I therefore grant a compliance order requiring the Respondent to either restore and maintain her car in a driveable condition, or remove it, within 75 days.

Costs of this Application

[62] In seeking full indemnity costs, the Applicant relies on s. 134(3)(b)(ii) of the *Condominium Act,* which provides that the Court “may” require a unit owner to pay the costs incurred by a condominium corporation in obtaining a compliance order. As this language acknowledges, and as is well-established at law, the decision to award costs is discretionary.

[63] In exercising my discretion to fix costs under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, I may consider the factors enumerated in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[64] In the recent case of *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, the Ontario Court of Appeal restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then “step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”. The overarching objective is to fix an amount for costs that is objectively reasonable, fair, and proportionate for the unsuccessful party to pay in the circumstances of the case, rather than to fix an amount based on the actual costs incurred by the successful litigant. While the reasonable expectation of the parties concerning the amount of a costs award is a relevant factor that informs the determination of what is fair and reasonable, it is not the only, determinative factor and cannot be allowed to overwhelm the analysis of what is objectively reasonable in the circumstances of the case. To hold

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otherwise would result in the means of the parties artificially inflating costs with the concomitant chilling effect on access to justice for less wealthy parties. Costs that are reasonable, fair, and proportionate for a party to pay in the circumstances of the case should reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend.

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[65] Based on these considerations, I do not award costs to either party. I find it reasonable, fair, and proportionate for each party to bear its own costs, for the following reasons.

[66] First, success on this Application is divided. The Applicant did obtain a compliance order, but one that is narrower and less aggressive than what it had sought.

[67] Second, I have found some of the allegations advanced by the Applicant to be excessive and unsupported by the evidence. From this perspective, there is some basis to the Respondent's concern that the Applicant has overreacted to her conduct.

[68] Third, I reject the Applicant's suggestion that the Respondent's conduct is "outrageous and persistent" in a way that warrants full indemnification. The evidence does not bear out this claim. Indeed, in *Hirsi,* on which the Applicant relies, the condominium resident against whom costs were awarded had been involved in stabbing and shooting incidents. It is a great understatement to say that the Respondent's behaviour comes nowhere close to that.

Order Granted

[69] I order the following:

a. The Applicant may enter the Respondent's condominium unit for any non-emergent reason upon at least 72 hours' written notice, in accordance with the requirements of s. 19 of the *Condominium Act* and/or article 9.03 of the Declaration. The Applicant may enter the Respondent's condominium unit or parking unit without notice in the event of an emergency;

b. The Respondent must not interfere with, impede, or prevent the Applicant from exercising this right of entry;

c. If, when exercising this right of entry, the Applicant finds that there is a hazard or nuisance in the unit that is reasonably expected to cause harm to the other units or the common elements, the Respondent shall remove or rectify the hazard or nuisance, in accordance with the Applicant's reasonable directive, within ten days of the directive, at her own cost;

d. If the Respondent does not so remove the hazard or nuisance, the Applicant may enter the unit to remove or rectify the hazard or nuisance upon 48 hours' written notice, and the Respondent shall be responsible for any reasonable associated costs;

e. The Respondent shall either restore the vehicle in her parking unit to a driveable and reasonably clean condition, or remove the vehicle from her parking unit, within 75 days, at her own cost; and

f. When entering the Respondent's condominium unit, the Applicant's personnel, and/or its service personnel, shall wear masks, self-screen for sickness prior to entry, and, where feasible, arrange for the Respondent to leave her unit during the service call should she wish to.

[70] The compliance order is granted without prejudice to the Applicant to bring an application for a further compliance order should the circumstances warrant it.

2024 ONSC 4635 (CanLII)

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Parghi J.

Released: August 20, 2024

CITATION: Metropolitan Toronto Condominium Corporation No. 961 v. Pereira, 2024 ONSC 4635
COURT FILE NO.: CV-24-715921
DATE: 2024-08-20

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 961

– and –

SHELLYANN LEE PEREIRA

REASONS FOR DECISION

PARGHI J.

Released: August 20, 2024

2024 ONSC 4635 (CanLII)