

**CITATION:** Toronto Standard Condominium Corporation No. 2931 v. Tsatskin, 2024 ONSC 6392

**COURT FILE NO.:** CV-23-00708078-0000

**DATE:** 20241127

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2931  
Applicant

**AND:**

MARINA TSATSKIN  
Respondent

**AND**

**CITATION:** Gagliese, et. al. v. Tsatskin, 2024 ONSC 6392

**Court File No.:** CV-24-00726588-0000

**DATE:** 20241126

**RE:** CRISTINA GAGLIESE, TONY GAGLIESE and VINCE MESSINA  
Applicants

**AND:**

MARINA TSATSKIN, FAINA ZILBERMAN and MARK ZILBERMAN  
Respondents

**BEFORE:** Justice Chalmers

**COUNSEL:** *J. Fine* and *J. Fine*, for the Applicant, Toronto Standard Condominium Corporation No. 2931

*N. Tourgis*, for the Applicants, Christina Gagliese, Tony Gagliese and Vince Messina

*H. Ashraf*, for the Respondent(s)

**HEARD:** October 1, 2024, by videoconference

### **ENDORSEMENT**

#### **OVERVIEW**

[1] Marina Tsatskin is the owner of a condominium unit which is known municipally as Suite 226, 280 Howland Ave., Toronto. She moved into the building in October 2022. The applicant, Toronto Standard Condominium Corporation No. 2931 (TSCC 2931) states that soon after Ms. Tsatskin moved into the building, she exhibited dangerous and anti-social behaviour.

[2] TSCC 2931 brought a motion without notice for an interim injunction to restrain Ms. Tsatskin from entering the common elements and from residing in the condominium. The matter came before me on November 1, 2024. TSCC 2931 argued that Ms. Tsatskin had engaged in uncivil, abusive, and harassing behaviour, which included spray painting swastikas on the doors of unit owners. By order dated November 2, 2023, I granted the interim injunction.

[3] The motion to continue the order was scheduled for November 10, 2023. At Ms. Tsatskin's request I adjourned the motion to December 11, 2023. The motion was later adjourned to February 8, 2024.

[4] By endorsement dated April 8, 2024, I found that Ms. Tsatskin had exhibited conduct that was not consistent with condominium living. I made the following findings of fact:

- a. Ms. Tsatskin spraypainted swastikas on the doors to Units 211 and 229 on July 3 and 4, 2023;
- b. When confronted by Chloe Tobe, Ms. Tsatskin spraypainted her in the face and hands;
- c. Ms. Tsatskin made offensive, racist and anti-Semitic remarks to other unit owners, including calling Pamela Tobe a Nazi;
- d. Ms. Tsatskin had called Ms. Bauco's employer and stated that she was trafficking people through the office, was trying to rob Ms. Tsatskin and was stalking her; and,
- e. Ms. Tsatskin's conduct has interfered with the quiet enjoyment of other unit owners

[5] I concluded that Ms. Tsatskin's conduct caused emotional upset and psychological harm that was not of a trifling or transitory nature. I was satisfied that Ms. Tsatskin had demonstrated that she is unable or unwilling to abide by the rules and regulations of the condominium and that she had "repudiated the cooperative foundation of condominium living".

- [6] I granted the injunction restraining Ms. Tsatskin from:
- i) engaging in uncivil, improper, illegal, abusive, dangerous, harassing and/or intimidating conduct which is likely to injure any person or unreasonably interfere with the use and enjoyment by the other unit owners;
  - ii) communicating with, harassing, assaulting or having any contact, physical or otherwise, with any owner or resident of TSCC 2931, including but not limited to, and of the individuals who have sworn affidavits in these proceedings or whose names are mentioned in any affidavit;
  - iii) acting in an uncivil, improper, illegal, abusive, dangerous, harassing, intimidating, and/or verbally or physically abusive manner, as the case may be, towards other owners or residents.

[7] I did not order that Ms. Tsatskin was required to sell her unit. I provided her with a “last opportunity to demonstrate that she can comply with the *Act* and the declaration, rules and regulations of the condominium, before requiring her to sell the unit”. I stated that “if there is a breach of the restraining order, the applicant may return to this court for an order to compel Ms. Tsatskin to sell the unit”.

[8] TSCC 2931 argues that Ms. Tsatskin is in breach of the order. It is alleged that after the order was granted on April 8, 2024, Ms. Tsatskin and her family members made unwarranted complaints to the Law Society of Ontario (LSO) and the Human Rights Tribunal of Ontario (HRTO) for the purpose of harassing and intimidating persons involved in these proceedings. The TSCC 2931 brings this motion for an order compelling Ms. Tsatskin to sell her unit.

[9] A separate application is brought by Cristina Gagliese, her father Tony Gagliese and her husband Vince Messina (the Gagliese Applicants). They seek an order prohibiting Ms. Tsatskin and her parents, Faina and Mark Zilberman from having any contact with them or any persons associated with them. They also seek an order restraining the respondents from commencing any proceedings against them including proceedings before a regulatory body such as LSO or the HRTO.

[10] For the reasons set out below, I find that Ms. Tsatskin is in breach of the order dated April 8, 2024. She has continued her harassing and intimidating behaviour. I order that she sell her condominium. I also grant the relief sought by the Gagliese Applicants and order that Ms. Tsatskin, and Mr. and Ms. Zilberman are prohibited from contacting them or any persons associated with them.

### **THE ISSUES**

[11] The following issues will be addressed in this endorsement:

- a. Is Ms. Tsatskin in breach of the Order dated April 8, 2024?
- b. Is the TSCC 2931 entitled to an order compelling Ms. Tsatskin to sell her condominium?
- c. Are the Gagliese Applicants entitled to an order prohibiting the respondents from contacting them or any party they may represent?

## **ANALYSIS**

### ***Issue #1 – Is Ms. Tsatskin in breach of the Order dated April 8, 2024?***

#### *Position of the Parties*

##### *TSCC 2931*

[12] TSCC 2931 states that after I granted the order on April 8, 2024, Ms. Tsatskin continued to harass and intimidate persons who affirmed affidavits against her, the owners of other units in the condominium and counsel for the applicant.

[13] In support of its motion, the TSCC 2931 relies on the following conduct:

- a. Ms. Tsatskin made two complaints to the LSO; one against Cristina Gagliese, who was a witness in these proceedings, and one against Jake Fine, a senior associate at Lash Condo Law LLP, which firm acted on behalf of TSCC 2931 in bringing the application against Ms. Tsatskin. Both complaints were dismissed by the LSO.
- b. Ms. Tsatskin’s mother Faina Zilberman and her sister Michelle Zilberman made a series of complaints to the HRTO. The complaints were filed against:
  - i) George Droulias, who is a unit owner whose complaints of harassment led to criminal charges against Ms. Tsatskin.
  - ii) Mr. Droulias’ employer EdgePoint Wealth.
  - iii) Ms. Gagliese’s employer Steven Monk.
  - iv) Lash Condo Law with specific complaints against Jonathan Fine, the lawyer retained by TSCC 2931 and Ayesha Aziz, a law clerk at Lash Condo Law.

[14] TSCC 2931 argues that the complaints to the LSO and to the HRTO are revenge/reprisal actions against persons involved in the original application against Ms. Tsatskin.

[15] On November 15, 2023, Ms. Tsatskin submitted a complaint to the LSO against Ms. Gagliese. The complaint was made shortly after I granted the interim injunction in favour of TSCC 2931. Ms. Tsatskin alleged that Ms. Gagliese behaved improperly and provided inaccurate

information to support the position of the condominium. There appears to have been no substance to the complaint, and it was dismissed by the LSO.

[16] In November 2023, Ms. Tsatskin's mother, Faina Zilberman sent a threatening email to Mr. Gagliese in which she states that Ms. Gagliese had struck Ms. Tsatskin. This was denied by Ms. Gagliese.

[17] On June 19, 2024, Ms. Zilberman initiated a HRT0 complaint with respect to Cristina Gagliese. The respondent to the complaint was Ms. Gagliese's employer, Steven Monk, the founder of CEO Law. In the complaint Ms. Zilberman alleges that Ms. Gagliese had been stalking Ms. Tsatskin. She states that Ms. Gagliese is abusing the law and tricking the police into laying charges against them. She also alleges that Ms. Gagliese was racist against Jewish people and had said that Jewish people are making the area look cheap. Ms. Gagliese denied all allegations set out in the HRT0 application. Mr. Monk advised that he has never had any contact with either Ms. Zilberman or Ms. Tsatskin. Mr. Monk and CEO Law filed a response to the HRT0 application.

[18] There are two HRT0 complaints involving Mr. Droulias. Ms. Tsatskin's sister Michelle Zilberman brought a HRT0 application alleging that he was harassing Ms. Tsatskin. The respondent to the complaint is Mr. Droulias' employer EdgePoint Wealth.

[19] The other HRT0 complaint involving Mr. Droulias was brought by Faina Zilberman. She alleges that Mr. Droulias and his wife listened to their conversations. She also alleged that Mr. Droulias made comments about immigrants, the fact that Ms. Tsatskin and her family were Jewish and had made the property look cheap. Mr. Droulias denied all allegations.

[20] On June 2, 2024, Ms. Tsatskin named Lash Condo as a respondent in a complaint to the LSO. She alleged that Mr. Fine behaved improperly towards her. The LSO dismissed the complaint.

[21] Ms. Tsatskin also made a complaint to the HRT0 in which Lash Condo Law was a respondent. The complaint alleged that Ms. Aziz a law clerk at Lash Condo Law, had been rude to Ms. Tsatskin and had sent the same email five times. Ms. Aziz denied the allegations set out in the complaint.

[21] On August 14, 2024, Marina Tsatskin sent a photo of a dildo to Mari, the building manger, Ayesha Aziz, Jake Fine and Jonathan Fine of Lash Condo, with the caption "Why are you discriminating against the fact that I'm still looking for the perfect dildo. It's not fair that you are not considering my disability and disrespecting my family like that."

*Ms. Tsatskin*

[22] Ms. Tsatskin denies that she breached the order dated April 8, 2024. She has not resided at the condominium since the order was made. She denies that she engaged in any uncivilized or harassing behaviour.

[23] Ms. Tsatskin argues that the LSO complaint with respect to Ms. Gagliese was submitted on November 15, 2023, before I made my order on April 8, 2024. She argues that this complaint cannot be evidence of a breach of my order or ongoing harassing conduct. I note that the LSO complaint was brought shortly after I granted the interlocutory injunction restraining Ms. Tsatskin from entering the common elements of the building or from residing in the condominium.

[24] Ms. Tsatskin argues that she has a right to make complaints to the HRTO and LSO. Engaging those institutions is an exercise of a statutory right and not a contravention of the order or a collateral attack. If the complaints made to the HRTO or LSO are inappropriate, those organizations will dismiss the complaints. Ms. Tsatskin states that my order does not specifically provide that Ms. Tsatskin or her family are not entitled to make a complaint to these organizations.

[25] Ms. Tsatskin also takes that position that she was entitled and justified in bringing the complaints. She states that Tony Gagliese, (the father of Christina Gagliese) sent two emails to the condominium board dated September 5 and 7, 2024, in which he refers to Ms. Tsatskin as the “Nazi girl”.

[26] Ms. Tsatskin also argues that the order dated April 8, 2024, applied to Ms. Tsatskin and did not expressly apply to her family members. Because her parents are not subject to the court orders, and are not in breach, Ms. Tsatskin cannot be held accountable for their actions.

[27] Ms. Tsatskin states that she has a mental illness and that it is the responsibility of the applicant to accommodate her. Ms. Tsatskin filed a letter from Ms. Wendy Kirk, a psychotherapist, dated August 1, 2021. Ms. Kirk did not deliver an affidavit. The letter is very brief. It states that in 2021, Ms. Tsatskin experienced stress related to her condominium and had been “significantly inconvenienced by them.” In my view the letter is not properly in evidence before me. In any event, the letter states that Ms. Tsatskin was under “stress” and was “inconvenienced” by the Board in 2021. I am of the view that the letter does not support Ms. Tsatskin’s claim that she has a mental illness.

[28] Ms. Tsatskin also filed a letter from Dee Hope dated August 28, 2024. Ms. Hope is a community service worker at Sound Times Support Service. The letter was written to support a release from custody request for Ms. Tsatskin. Ms. Hope states that she is happy to assist Ms. Tsatskin in making referrals for mental health counselling. Ms. Hope does not state in her letter that she met with Ms. Tsatskin. She does not provide any diagnosis or prognosis. There is no evidence that Ms. Tsatskin went to a mental health program.

### *Discussion*

[29] I am satisfied that Ms. Tsatskin is in breach of the order dated April 8, 2024. The endorsement provided as follows:

Ms. Tsatskin is enjoined from, *inter alia*, residing in the unit and from engaging in any improper, harassing, or intimidating conduct which is likely to injure any person or unreasonably interfere with the use and enjoyment by the other unit owners. Ms. Tsatskin’s

compliance with the order will be a factor in determining whether an order will be made compelling her to sell the unit.

[30] I find that Ms. Tsatskin engaged in “improper, harassing and intimidating” conduct when she made the LSO complaint against Jake Fine and the HRTO complaint against Ms. Aziz. I also find that the HRTO complaints against Mr. Droulias and Ms. Gagliese’s employers constitute harassing and intimidating conduct.

[31] Ms. Tsatskin argues that there is nothing improper in making a complaint to the LSO or HRTO, and that she is entitled to make complaints to these regulatory bodies. Although there is nothing that prevents someone from making a HRTO or LSO complaint, the complaint must be legitimate and not made for a collateral purpose. I find that the complaints to the LSO and HRTO were not *bona fide*.

[32] Ms. Zilberman is the applicant for the HRTO complaint against Ms. Gagliese. The HRTO complaint was not brought against Ms. Gagliese but instead against her employer, Steven Monk and CEO Law. One of Ms. Gagliese’s emails indicated that she was a lawyer. Ms. Zilberman and Ms. Tsatskin conducted research on the internet to find out where Ms. Gagliese worked. Although Ms. Tsatskin was subject to a court order to not harass Ms. Gagliese, she assisted her mother in completing the form. The form itself contains a number of errors. It states that the preferred language of the applicant is French. Ms. Zilberman does not speak French. The form also provides that the applicant resides in Aroura. In fact, Ms. and Mr. Zilberman live in Pennsylvania.

[33] The HRTO complaint involving Mr. Droulias was brought against his employer, EdgePoint. There was no connection between Ms. Tsatskin and her family with EdgePoint.

[34] Counsel for Ms. Tsatskin was unable to provide a reasonable explanation for why the HRTO applications were brought against the employers. There was no connection between Ms. Zilberman or Ms. Tsatskin with Mr. Droulias or Ms. Gagliese’s employers. I find that the HRTO complaints were intended to embarrass Ms. Gagliese and Mr. Droulias with the intent to affect the relationship with their employers. I accept the submission of counsel for TSCC 2931 that the HRTO complaints were an act of retribution and revenge because Ms. Gagliese and Mr. Droulias had made complaints about Ms. Tsatskin.

[35] Ms. Tsatskin argues that the complaint to the HRTO involving Ms. Gagliese was appropriate because her father Tony had described Ms. Tsatskin as a “Nazi girl”. Mr. Gagliese swore an affidavit in which he deposes that he did not know Ms. Tsatskin’s name. He only knew her as the person who had made anti-Semitic remarks and had spray painted a swastika in the hallway. His identification of Ms. Tsatskin as the “Nazi girl” was not unreasonable in the circumstances. I do not find his identification of her to be a justification for the HRTO complaint. In any event this “justification” does not explain why the HRTO complaint was made against Ms. Gagliese’s employer and not against Mr. Gagliese.

[36] The fact that the complaints were initiated by Ms. Tsatskin’s family is no answer. The family members had no relationship with Mr. Gagliese, Mr. Droulias or their employers. The only

connection was that Ms. Gagliese and Mr. Droulias had made complaints against Ms. Tsatskin. Ms. Zilberman testified that she and Ms. Tsatskin completed the complaint form together. I find that Ms. Tsatskin instructed and influenced her mother and sister with respect to the HRT0 complaints.

***Issue #2 – Is the Applicant entitled to an Order compelling Ms. Tsatskin to sell her condominium?***

[37] TSCC 2931 seeks an order compelling Ms. Tsatskin to sell the condominium unit. A forced sale of a condominium unit is “extraordinary relief”: *York Condominium Corporation No. 136 v. Roth*, 2006 CanLII 29286 (ON SC), at paras. 3, and 8. It is the “ultimate and harshest remedy available. As such, it is a remedy of “last resort” and should be reserved for the most egregious cases”: *York Condominium Corporation No. 137 v. Hayes*, at para. 55.

[38] TSCC 2931 relies on the decision of Justice Code in *MTCC 747 v. Korolekh*, 2010 ONSC 4448. In that case, the court held that the forced sale was appropriate because of Ms. Korolekh’s extreme conduct. The court held that, “Ms. Korolekh has irreparably broken the bond with her community and an effective order cannot be made that would force these parties to now join together again”: at para. 88.

[39] Ms. Tsatskin argues that the conduct alleged against her is entirely different from the conduct described in the *Korolekh* case. She denies engaging in any physical assault or mischief against property. She states that since the date of my order, her conduct has not been “incorrigible or unmanageable”. I disagree.

[40] In my endorsement dated April 8, 2024, I found that Ms. Tsatskin had engaged in extreme conduct. She had painted swastikas in the hallway of the building. I also found that she had assaulted Ms. Tobe when she spraypainted her in the face. She had made offensive, racist and anti-Semitic comments to other unit owners. I concluded that Ms. Tsatskin had demonstrated that she is unable or unwilling to abide by the rules and regulations of the condominium and that she had “repudiated the cooperative foundation of condominium living”.

[41] Although I found Ms. Tsatskin’s conduct to be extreme, I did not order that she immediately sell her unit. I provided her with a “last opportunity” to demonstrate that she can comply with her responsibilities as an owner in a condominium: *Toronto Standard Condominium Corporation No. 2581 v. Paterno*, 2023 ONSC 4343, at paras. 57 and 60. Instead of demonstrating an ability to comply with her responsibilities, Ms. Tsatskin’s unacceptable conduct has continued.

[42] Ms. Tsatskin continues to harass Ms. Gagliese, Mr. Douglias and the Applicant’s lawyers. I find that she directly or indirectly with the assistance of her mother and sister brought the HRT0 and LSO complaints to intimidate and harass the persons connected with this application. There is simply no explanation for why the respondents to the HRT0 applications were Ms. Gagliese and Mr. Droulias’ employers. Ms. Tsatskin fails to take responsibility for her actions and continues to deny any wrongdoing. Although a forced sale of the unit is drastic, I am satisfied that no other



reasonable remedy is available: *Waterloo North Condominium Corporation No. 168 v. Webb*, 2011 ONSC 2365.

[43] Ms. Tsatskin argues that it would be unfair to order a sale of the unit because she has a mental illness. As noted earlier in this endorsement Ms. Tsatskin filed the letter from Wendy Kirk. Ms. Kirk did not deliver an affidavit. Even if the letter from Ms. Kirk was properly before me, she did not provide the opinion that Ms. Tsatskin suffers from a mental illness. Ms. Kirk simply states that Ms. Tsatskin has “stress” and has been “significantly inconvenienced” by the condominium board.

[44] A sale of a condominium unit may be ordered even if there is evidence of a mental illness. In *Metropolitan Toronto Condominium Corporation No. 946 v. J.V.M (Litigation Guardian of)*, 2008 CanLII 69581 (ONSC) the unit owner suffered from paranoid schizophrenia. Despite the respondent breaching the condominium’s rules and by-laws by exhibiting improper and uncivil conduct, the respondent was given one last chance to comply with the *Act* and remain in her unit. The respondent continued to behave in an improper manner. The court granted the order for the forced sale of the condominium.

[45] Ms. Tsatskin has demonstrated that she will not be bound by an order of this court to not harass or intimidate persons involved in the application. I am satisfied that an order forcing Ms. Tsatskin to sell the unit is the only remedy that remains available.

***Issue #3- Are the Gagliese Applicants entitled to an order restraining Ms. Tsatskin from contacting any persons in any way related to Ms. Gagliese, Mr. Gagliese or Mr. Messina?***

[46] The Gagliese Applicants bring the application seeking a permanent injunction restraining Ms. Tsatskin and her family members from engaging in any harassing conduct against them. The Gagliese Applicants also seek an order of damages “at large” to show the condemnation of the court.

[47] The Gagliese Applicants state that since Ms. Gagliese and Mr. Messina moved into the condominium, they have been the subject to Ms. Tsatskin’s harassing and abusive behaviour. Mr. Gagliese took the lead in attempting to have the condominium board enforce the rules with respect to Ms. Tsatskin. When TSCC 2931 commenced the application against Ms. Tsatskin, the material mentioned Ms. Gagliese and Mr. Messina by name and identified their unit number. The Gagliese Applicants state that as a result of the disclosure they have been subject to further harassment by Ms. Tsatskin.

[48] In support of their application, the Gagliese Applicants rely on the following:

- i) On November 15, 2023, Ms. Tsatskin submitted a complaint to the LSO against Ms. Gagliese. She alleged that Ms. Gagliese behaved improperly and provided inaccurate information to support the position of the condominium. The complaint was dismissed.

- ii) In November 2023, Faina Zilberman sent a threatening email to Mr. Gagliese in which she states that Ms. Gagliese had struck Ms. Tsatskin.
- iii) On June 19, 2024, Faina Zilberman filed a HRTO complaint naming Ms. Gagliese's employer Mr. Monk and CEO Law as respondents. Ms. Tsatskin admits that she completed the complaint form with her mother.
- iv) On cross-examination, Ms. Tsatskin stated that she plans on re-opening the complaint against Ms. Gagliese with the LSO.

[49] The Gagliese Applicants argue that if the injunction is not granted, they have a real and legitimate concern that the respondents will continue to harass them.

[50] Ms. Tsatskin denies that she harassed the Gagliese Applicants. She argues that she is not in breach of the order because the LSO complaint was brought before my order dated April 8, 2024. She also argues that she did not bring the HRTO complaint. The complaint was brought by her parents who were trying to help her.

#### *Discussion*

[51] The Gagliese Applicants seek a permanent injunction against the respondents. The three-part test for granting an injunction is as follows:

- a. Is there is a serious issue to be tried?;
- b. Will the applicant suffer irreparable harm if an injunction is not granted; and,
- c. Which of the parties suffer the greater harm from the granting or refusal to grant the injunction: *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311, at pg. 334.

[52] The three elements of the test are to be considered as a whole. Strength in one part of the test can make up for the weakness in another. The court is then to consider whether the injunctive relief is appropriate in all of the circumstances: *Struik v. Dixie Lee Food Systems Ltd.*, 2006 CanLII 27574 (ON SC), at paras. 35-36.

[53] I am of the view that the three-part test has been satisfied.

[54] The Gagliese Applicants must establish there is a serious issue to be tried. Essentially this requires a determination that the case is not frivolous or vexatious: *RJR-MacDonald*, at p. 337. For the reasons set out above, I find that the respondents breached the order and have continued to harass and intimidate the Gagliese Applicants. I am satisfied that the Gagliese Applicants' claim is not frivolous or vexatious.

[55] I find that if the injunction is not granted the Gagliese Applicants are at an increased risk of harm. The reputation of the Gagliese Applicants may be damaged. Ms. Gagliese is the subject

of two HRTO complaints. The complaints make serious allegations and involve her employer. As noted above, I find that the HRTO complaints are intended to embarrass Ms. Gagliese and affect her relationship with her employer. Damages for the loss of reputation would be difficult to quantify. I am satisfied that the Gagliese Applicants have established irreparable harm.

[56] I am also satisfied that the Gagliese Applicants would suffer greater harm from the refusal to grant the injunction than the respondents will suffer if the order is not granted. If the injunction is not granted, the Gagliese Applicants will continue to be subject to ongoing harassment. However, there would be no prejudice to the respondents if the injunction is granted. The respondents would simply be required to comply with a court order and not harass the Gagliese Applicants. Mr. and Ms. Zilberman state that they have no objection to being subject to an injunction that they do not harass the Gagliese Applicant.

[57] I grant the injunction sought by the Gagliese Applicants.

[58] The Gagliese Applicants argue that the respondents are in contempt of my order dated April 8, 2024. They seek an order for the payment of a fine, or an award of damages.

[59] I am not prepared to order the payment of a fine or make an award of damages at this time. This relief would be available only after a finding of contempt in the liability phase of a contempt hearing. Although the Gagliese Applicants argue that Ms. Tsatskin breached the order dated April 8, 2024, a motion for contempt was not brought.

[60] Although I am not prepared to award damages at this time, this is without prejudice to the Gagliese Applicants bringing a separate motion for contempt should the respondents breach this or any other order made in these proceedings.

## **DISPOSITION**

[61] I make the following order in favour of TSCC No. 2931:

- a. Ms. Tsatskin is required to sell her unit;
- b. Ms. Tsatskin is required to enter into an agreement of purchase and sale within three months of the date of this Order. The closing date shall not be more than six months from the date of this Order;
- c. After entering into the agreement of purchase and sale, Ms. Tsatskin shall notify the TSCC 2931 and its lawyers that she entered into the agreement of purchase and sale and to provide them with a copy of the agreement. She shall also provide the name of the conveyancing lawyer or agent she retained to assist her on the sale of the unit. If there is any change in her conveyancing lawyer or agent, she will notify TSCC 2931 and its lawyer of the change forthwith;
- d. If Ms. Tsatskin fails to sell the unit within the time frame set out above, TSCC 2931 shall be entitled to sell the unit. TSCC 2931 may apply to this court for an order for

vacant possession. TSCC 2931 may list the unit for sale for the last listing price of Ms. Tsatskin less up to 10%. The TSCC 2931 may accept any offer that is at, or above the listing price. If there is no accepted offer within 60 days, the TSCC 2931 may lower the price by a further 10%;

- e. The sale proceeds shall be distributed in the following order:
  - 1. sale costs;
  - 2. monies owing to TSCC 2931, including any orders of costs made by this Court;
  - 3. a holdback in the amount of the additional costs claimed by TSCC 2931 pursuant to s. 134(5) of the *Condominium Act*, R. S.O. 1990, c. C. 26 (the *Act*) costs to be paid to TSCC 2931;
  - 4. Any other costs owed by Ms. Tsatskin;
  - 5. encumbrances against the unit or Ms. Tsatskin;
  - 6. to Ms. Tsatskin.
- f. Within two business days following the date of this endorsement, Ms. Tsatskin shall execute an irrevocable direction to her conveyancing lawyers that provides that the proceeds of the sale shall be distributed in accordance with paragraph e above.
- g. Ms. Tsatskin shall not lease the unit or permit anyone to have possession;
- h. Ms. Tsatskin is prohibited from purchasing, leasing or residing in the unit;
- i. All previous restraining orders made by this court remain in effect.

[62] I make the following order in favour of the Gagliese Applicants:

- a. I grant an injunction restraining the respondents from communicating with, harassing, assaulting, or having contact with any of the Gagliese Applicants or any persons associated with the Gagliese Applicants, directly or indirectly including without limitation their respective families, employers or acquaintances;
- b. The respondents are restrained from commencing any further proceedings as against the Gagliese Applicants, including any proceeding to a regulatory body including the LSO and HRTO, without leave of this court.

*Costs*

[63] The TSCC 2931 and the Gagliese Applicants are successful on their applications and are presumptively entitled to their costs.

[64] TSCC 2931 seeks its costs on a full indemnity basis. It argues that the other condominium owners should not be required to absorb the costs incurred because of Ms. Tsatskin's unacceptable conduct.

[65] Section 134(5) of the *Condominium Act* (the *Act*) provides that if a condominium corporation obtains a compliance order that includes a cost component, the condominium can charge the actual costs incurred by the corporation to the common expenses for the unit. There is a distinction between the costs that are awarded by the court as between the parties and the actual costs incurred by the condominium as a result of a condominium owner's conduct: *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, 2005 CanLII 13778 (ON CA), at paras. 45 and 49. Section 134(5) of the *Act* does not derogate from the court's obligation to determine the reasonable award of costs between the parties: *TSCC No. 1446 v. Weinstein*, 2021 ONSC 3526, at para. 9.

[66] Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides the court with discretion in the determination of costs. The exercise of this discretion is guided by the factors set out in Rule 57.01, having regard for the overriding principles of reasonableness, fairness, and proportionality: *Barbour v. Bailey*, 2016 ONCA 334, at para. 9; *Beaver v. Hill*, 2018 ONCA 840, 143 O.R. (3d) 519, at para. 12, leave to appeal refused, [2019] S.C.C.A. No. 82; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 6 O.R. (3d) 291 (C.A.), at para. 38; *Zesta Engineering Ltd. v. Cloutier*, [2002] O.J. No. 4495 (C.A.), at para. 4.

[67] The rules and principles pertaining to the issue of costs have three principal purposes:

- (i) to indemnify successful litigants for the expense of litigation;
- (ii) to encourage settlement; and
- (iii) to discourage and sanction inappropriate behaviour by litigants: *Fong v. Chan* (1999), 46 O.R. (3d) 330 (C.A.), at para. 22.

[68] I am of the view that the third purpose is most relevant. I am satisfied that Ms. Tsatskin's inappropriate behaviour justifies an award of substantial indemnity costs in favour of both TSCC 2931 and the Gagliese Applicants.

[69] TSCC 2931, seeks its costs on a substantial indemnity basis in the all-inclusive amount of \$39,369.20. Ms. Tsatskin argues that the costs claimed are excessive. Her counsel submitted a cost outline which provides that if successful she would have sought costs in the amount of \$30,808.27 on a substantial indemnity basis.

[70] In fixing costs of the motion, I am not undertaking the same task as an assessment officer or fixing costs with mathematical precision. I am fixing an amount for costs that is fair and reasonable in the circumstances.

[71] I award costs of the motion to TSCC 2931, fixed in the amount of \$30,000 inclusive of counsel fee, disbursements and H.S.T. I am satisfied that costs in the all-inclusive amount of \$30,000 is proportional, fair and within the reasonable expectations of Ms. Tsatskin to pay. The

costs are payable by Ms. Tsatskin to TSCC No. 2931 within 30 days of the date of this endorsement.

[72] The Gagliese Applicants seek their costs on a substantial indemnity basis in the all-inclusive amount of \$28,396.62. Counsel for Ms. Tsatskin submitted a cost outline in which she states that if successful she would have sought costs on a substantial indemnity basis in the amount of \$27,764.90.

[73] I award costs of the application to the Gagliese Applicants fixed in the all-inclusive amount of \$25,000. I am satisfied that costs in the all-inclusive amount of \$25,000 is proportional, fair and within the reasonable expectations of the respondents to pay. The costs are payable by the respondents to the Gagliese Applicants within 30 days of the date of this endorsement.

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Chalmers J.

**DATE: November 27, 2024**