CITATION: 2512322 Ontario Ltd. v. Toronto Standard Condominium Corporation No. 2255, 2025 ONSC 410
COURT FILE NO.: CV-21-00660918
DATE: 20250127

2025 ONSC 410 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	*Peter-Paul E. Du Vernet* for the plaintif
2512322 ONTARIO LTD.	)	
	)	
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2255, MOSHIN MUHAMMED, NAFEES BACCHUS, RAJ SHARMA, and DUKA PROPERTY MANAGEMENT INC.	)	*Jonathan Fine* for the defendant Toronto Standard Condominium Corporation No. 2255
	)	
Defendants	)	
	)	
	)	**HEARD: October 10, 2024**

KOEHNEN J.

REASONS FOR JUDGMENT

[1] The defendant, Toronto Standard Condominium Corporation No. 2255 ("TSCC 2255") moves for partial summary judgment dismissing the relief claimed in paragraphs 1 (d) and 1 (e) of the statement of claim.

[2] For the reasons set out below, I grant the motion. The paragraphs of the statement of claim on which TSCC 2255 seeks judgment in effect seek orders entitling the

plaintiff to withhold common expenses because of complaints the plaintiff has against the corporation. The simple answer to that claim is that s. 84 (3) (b) of the Condominium Act, 1998[1] does not exempt an owner from paying common expenses even if it has a claim against the corporation.

Background Facts

[3] TSCC 2255 is a commercial condominium corporation in the form of a commercial plaza at Finch Avenue West and Highway 27 in the City of Toronto. It contains 49 units. The plaintiff is the owner of Unit 1, a stand-alone unit that occupies approximately 25% of the area of the Corporation and which the plaintiff originally operated as a banquet hall.

[4] The plaintiff has failed to pay common expenses since 2019. It has refused to do so for three reasons.

[5] First, the plaintiff alleges that TSCC 2255 did not send it financial information or notices of meetings after management and ownership of the plaintiff changed in April 2019 even though the Property Manager was advised of the change. This appears, at least at the outset, to be more of a mechanical glitch in recording the change of address to which to send the information in question rather than a fundamental denial of service.

[1] *Condominium Act*, 1998, SO 1998, c. 19.

2025 ONSC 410 (CanLII)

[6] Second, the plaintiff complains that certain parts of its unit constitute common elements that must be repaired and maintained by the Condominium Corporation and that it has failed to do so.

[7] Third, it appears there was some sort of error in the calculation of water charges within the corporation. Each unit had its own water meter, but it appears that for at least a certain time period, the water charges for the entire condominium were charged to the plaintiff's unit.

[8] In response to these issues, the plaintiff stopped paying common expenses asserting that its claim against the Corporation for those defalcations exempted it from paying common expenses. In response, TSCC 2255 registered a Certificate of Lien against the plaintiff's unit on February 28, 2020. At the time, the arrears of common expenses came to $20,526.92. The plaintiff has not made any payments towards common expenses since then. The Corporation issued a Notice of Sale Under Lien on November 3, 2022 at which time the lien for common expenses, interest and legal costs came to $473,772.46. As of the time of the hearing, counsel for TSCC 2255 advised that the amount of the lien stood at $974,703 with the principal amount being approximately $690,429.

[9] There is much finger-pointing between both sides about a large number of issues. Those debates and disagreements are not, however, relevant to the issue before me which, in my view, can be resolved as a pure question of law.

2025 ONSC 410 (CanLII)

Analysis

[10] As noted, TSCC 2255 moves for summary judgment dismissing the relief claimed in paragraphs 1 (d) and 1 (e) of the statement of claim. Those paragraphs claim:

> d) A declaration that the common expenses that would otherwise be payable by 251 have been satisfied and discharged by the TSCC failure to pay the water account that is being assessed for the entire TSCC property as against 251 alone, which 251 has been forced to pay as a consequence of transfer of the arrears to the 251 municipal tax account, and despite TSCC under the direction of the personal Defendants and the Defendant Duka Property Management having invoiced and having collected from unitholders for the municipal water expense, and the repairs that 251 has been required to effect due to lack of repair to the common elements;
>
> e) An Order declaring that any lien by or registered by TSCC has been satisfied and discharged, and precluding TSCC from seeking payment of any common expenses or registering any other further lien or making any claim whatever until the TSCC obligations in respect of payment of the water account, and management fees collected, have been finally adjudicated;

[11] In other words, in those paragraphs the plaintiff takes the position that it is not required to pay expenses because it has a claim against TSCC 2255 in relation to the water expenses and potentially other expenses for repairs and maintenance which the plaintiff argues the corporation should have but did not carry out.

[12] In my view, the complete answer to this question is found in section 84 (3) (b) of the *Condominium Act*, 1998[2] which provides:

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[2] *Condominium Act*, 1998, SO 1998, c. 19.

2025 ONSC 410 (CanLII)

> **No avoidance**
>
> (3) An owner is not exempt from the obligation to contribute to the common expenses even if,
>
> ….
>
> (b) the owner is making a claim against the corporation;
>
> …

[13] That language is simple, direct, and unqualified.

[14] Ground J. described the purpose of this provision in *Fisher v. Metropolitan Toronto Condominium Corp. No. 596,*[3] as follows*:*

> [13] … It appears to me that the purpose of such provision is to ensure that the condominium corporation is assured of receiving the proportionate shares of common expenses from all owners of units in order to be in a position to pay the expenses of the condominium corporation such as heating, hydro, maintenance and repairs which are paid for the benefit of all unit owners. The condominium corporation operates basically as a nonprofit corporation and is dependent upon the payment of common expenses by all unit owners in order to meet the obligations of the condominium corporation.

[15] In *Carleton Condominium Corporation No. 396 v. Burdet,*[4] Sally Gomery J. (as she then was) described the effect of the provision as follows:

> [77] …Unitholders do not have the right to set-off amounts that they claim from a condominium corporation from the amounts they owe for common expenses. Section 84(3)(b) of the Condominium Act, 1998 states that the owner of a condominium unit "is not exempt from the obligation to

[3] *Fisher v. Metropolitan Toronto Condominium Corp. No. 596,* 2004 CarswellOnt 6242 (Div Crt).
[4] *Carleton Condominium Corporation No. 396 v. Burdet,* 2020 CarswellOnt 12426.

2025 ONSC 410 (CanLII)

> contribute to the common expenses even if ... the owner is making a claim against the corporation".

[16] In *Carleton Condominium Corporation No. 396 v. Burdet*[5], the Court of Appeal for Ontario applied the words of the statute directly and without qualification saying:

> [5] … In any event, s. 84(3) of the Condominium Act provides that an owner is not exempt from the obligation to contribute to common expenses even if the owner is making a claim against the corporation.

[17] There are good public policy reasons for a simple, direct, and unqualified application of the provision. If it were otherwise, it would be far too easy for unitholders to avoid common expense payments by taking the position that the corporation was somehow in default of or fell short of some obligation to the unitholder. That would unnecessarily complicate the efficient management of condominium corporations.

[18] The plaintiff tried to reframe the issue in its factum as follows:

> Can this condominium corporation refuse to perform all of its statutory obligations to 251 as unit owner, yet demand payment of, and lien for common expenses which are to pay for the services not being provided, and enforce the lien before determination of the issues.

[19] That is simply a more passionate way of expressing the policy reflected in s. 84(3) of the Condominium Act. Based on the language of the Act, the short answer to the plaintiff's reframing of the issue is: yes.

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[5] *Carleton Condominium Corporation No. 396 v. Burdet*, 2018 ONCA 342.

2025 ONSC 410 (CanLII)

[20] Under the policy reflected in s. 84(3) of the Condominium Act, the corporation's obligation to provide services and the plaintiff's obligation to pay common expenses are two separate and distinct matters. If the plaintiff believes the corporation is not providing services, it must either engage with the Corporation to have those services provided or pursue the Corporation through the courts. It cannot resort to unilateral self-help by failing to pay common expenses.

[21] I am not persuaded that the plaintiff's three complaints against TSCC 2255 relieve it of its obligations to pay common expenses. As noted earlier, the issue about not receiving notices was, at least at first, an easily correctible error in the recording of the correct address for service and was later a response by the Condominium Corporation to the plaintiff's failure to pay common expenses.

[22] With respect to the claim for maintenance and repair expenses, this, especially, would appear to engage the policies underlying s. 84(3) of the Condominium Act. Owners and condominium corporations may differ about whether a repair is necessary or the extent of the repair. Just because an owner disagrees with the decision of a condominium corporation does not give the owner the right to withhold common expenses. That is a dispute that must be resolved through the appropriate adjudicative mechanism. Instead of doing so, the plaintiff alleges that it proceeded to make the repairs on its own and has withheld common expenses in return. The *Act* simply does not permit this. Moreover, I have not been directed to any evidence setting out the nature or the cost of those repairs.

2025 ONSC 410 (CanLII)

[23] The answer with respect to the water charges is similar, s. 84(3) prohibits the plaintiff from withholding common expenses. Moreover, the entire issue of whether the plaintiff is actually out of pocket for any of the overcharged water expenses is surprisingly uncertain given the importance of that issue to the plaintiff on this motion. Nowhere in its materials does the plaintiff say that it actually ever paid those water charges to the City or anyone else. During my deliberations I asked plaintiff's counsel whether there was any evidence that the plaintiff was actually out of pocket in this regard. He could not provide a direct answer. He initially stated that

> There was no dispute in the proceedings that [the plaintiff] had paid for the excess water charges by way of addition to the tax bill there are a number of evidentiary references, including in the exhibits to the responding material, to the excess water charges having been added to the tax bill. Had the tax bill not been paid the City would have initiated a tax sale.

That, however, is far different than saying the plaintiff actually paid for the excess charges and was not reimbursed for them.

[24] When I pushed further on the issue, plaintiff's counsel responded stating:

> As far as we understand, the City did not make any repayment to [the plaintiff], **but may have allowed a credit related to the water account settlement**. There is no evidence in that regard, and we are not aware of an assessment or reconciliation so as to establish whether, and to what extent, at this stage, [the plaintiff] may be out of pocket for the previous water arrears alone. (Emphasis added)

2025 ONSC 410 (CanLII)

[25] One might have expected that when resisting a motion for summary judgment on the basis that the plaintiff paid excess water charges, the plaintiff would prepare a reconciliation to show the court how unfair it is to force the plaintiff to pay excess charges but not allow him to deduct those charges from common expenses.

[26] The City was initially a third party to this proceeding. Its statement of defence and cross-claim, although not evidence, gives me further pause to question the plaintiff's allegation that it paid excess water charges in light of the plaintiff's failure to introduce evidence in this regard. The City's defence explained that after becoming aware of the excess charges, the City reversed those charges by way of a credit to the plaintiff's overdue tax bill as follows:

> 22. On or about March 19, 2021, the City re-allocated the resulting credits in the Plaintiff's Property Tax Account to its then-outstanding property tax arrears. Prior to this reallocation of credits, the Plaintiff's property tax arrears (not including other charges transferred to the account, such are fire services charges, property standards inspection fees, and Provincial Offences Act fines) were the following:
>
> a. 2020 Property Taxes: $136,283.71
>
> b. 2021 Interim Billing: $66,409.20
>
> Following the City's transfer of credits, the Plaintiff's 2020 property tax were paid in full, and the Plaintiff's 2021 property taxes were reduced from $66,409.20 to $41,064.66.

[27] The plaintiff's complete lack of evidence to show any out-of-pocket loss as a result of the excess water charges leads me to conclude that, in the circumstances of this case, enforcing the letter of s. 84 (3) does not create any injustice to the plaintiff.

2025 ONSC 410 (CanLII)

[28] The plaintiff raises a number of additional issues in response to the motion.

[29] It argues that there is no evidence from any representative of TSCC 2255 but that the evidence comes from the Property Manager alone and that the Property Manager is not well-placed to respond to the issues the plaintiff has raised. I fail to see the relevance of that point given the way TSCC 2255 has framed its motion. The motion is about the failure to pay common expenses and whether the plaintiff has the right to withhold common expenses in light of s. 84 (3) of the *Condominium Act*. The Property Manager is probably best placed to testify about how much the plaintiff has withheld in common expenses. The issue of whether the plaintiff is entitled to do so is a legal issue That does not require the court to get into the factual issues the plaintiff raises.

[30] Next, the plaintiff submits that the motion is inappropriate because the parties have agreed to a standstill agreement as reflected in endorsements of Justice Myers and Justice Merritt. I do not accept that submission. The endorsement of Justice Myers called for the standstill to remain in force until 30 days following a mediation. The mediation was completed more than 30 days before this motion was actively pursued. The endorsement of Justice Merritt called for the standstill agreement to remain in force until the hearing of this motion.

[31] The plaintiff further submits that this is not a matter appropriate for summary judgment or partial summary judgment. I disagree.

2025 ONSC 410 (CanLII)

[32] The rules provide that the court shall grant summary judgment if "the court is satisfied that there is no genuine issue" that requires a trial.[6]

[33] There is no genuine issue that requires a trial if the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. "This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result."[7]

[34] Where the court is satisfied that the only issue is a question of law, the court may determine the question and grant judgment accordingly.[8]

[35] The fundamental issue here is a simple question of law concerning the interpretation of s. 84(3) of the *Condominium Act*. That issue can easily be resolved on summary judgment.

[36] The plaintiff then submits that this matter is not susceptible to partial summary judgment and points to the reasons of the Court of Appeal for Ontario in *Butera v. Chown, Cairns LLP*,[9] where the court warned about the dangers of partial summary judgment motions including:

(i) Delay of the resolution of the main action;

(ii) Expense;

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[6] *Rules of Civil Procedure*, R.R.O., Reg. 194, Rule 20.
[7] *Hryniak v. Mauldin*, 2014 SCC 7 at para.49.
[8] *Rules of Civil Procedure*, Rule 20.04(4).
[9] *Butera v. Chown*, Cairns LLP, 2017 ONCA 783.

2025 ONSC 410 (CanLII)

(iii) Waste of judicial resources;

(iv) Higher risk of duplicative or inconsistent findings.

[37] I am satisfied that those dangers do not exist here. Despite the considerable lapse of time, the action has not progressed materially. At the end of oral argument, I set a peremptory timetable to get the balance of the action to trial within a reasonable time. Although the summary judgment motion has resulted in expense to the parties, having the issue resolved will also save expense at trial and could provide a substantial impetus to settlement. Although there is some additional burden on judicial resources to argue the motion, that too is offset by the savings in trial time. The issue of law here is discrete and does not require the court to wade into factual details which the parties would do if the issue were tried. In this case, resolving the issue clearly upfront rather than at trial is not a waste of judicial resources. The most serious of the concerns that the Court of Appeal raised is the risk of duplicative or inconsistent findings. That risk simply does not arise here because of the entirely separate and discrete nature of the issue I am being asked to rule on. The trial court will not be asked to examine whether the plaintiff is entitled to withhold common expenses as a result of which there can be no inconsistent finding.

[38] The plaintiff further submits that any motion that may result in partial summary judgment should only be granted in the clearest of cases where the issues on the

2025 ONSC 410 (CanLII)

judgment sought are “easily severable” from the balance of the case.[10] As noted above, this is exactly such a case.

2025 ONSC 410 (CanLII)

[39] Finally, the plaintiff argues that:

> It readily follows that where a trial is required involving the same parties, the same witnesses providing the same evidence, about the same facts and issues, as are relied upon for summary judgment, the risk of duplication and inconsistent outcomes is particularly acute. In such cases, the benefits of summary judgment as a cost saving or tool for efficiency are lost since a trial is required on all the same facts among all the same parties anyway.[11]

[40] The trial will not involve the same witnesses providing the same evidence about the same facts and issues as are relied on for the summary judgment motion. By way of example, for the plaintiff to succeed at trial I expect it would have to lead to detailed evidence about the specific nature of the repairs and maintenance it undertook, demonstrate why the Condominium Corporation was responsible for that work, set out the costs related to that work, demonstrate that the costs were reasonable, and demonstrate that the maintenance and repairs were necessary. Although the plaintiff made bald assertions in that regard on the motion before me,

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[10] *Gray v. Sobel Adjusting Solutions*, par. 45 quoting *Corchis v. KPMG Peat Marwick Thorne* [2002] OTC 475 (CA) at par. 3.

[11] Citing*: Peel Condominium Corporation 346 v. Florentine Financial*, 2021 ONCA 1350; *Mason v. Perras Mongenais*, 2018 ONSC 1447.

I was not directed to any evidence of that sort presumably because it was not relevant to the interpretation of s. 84(3) of the *Condominium Act*.

Leave to Permit Jonathan Fine to Act

[41] The plaintiff objected to having Jonathan Fine act as counsel for TSCC 2255 on this motion. The plaintiff submits that the Condominium Corporation already had counsel and that, as a general rule, parties cannot have more than one counsel without leave.

[42] Master Brott discussed this principle in *Michriky v. Hack*,[12] where she noted:

> 24. As long as there is good reason to depart from the general rule, and as long as the Court controls the process so that any problems that may occur as a result of more than one solicitor being on record may be addressed, exceptions may be addressed under Rule 1.04(1), 1.04(2) and 2.03. …

[43] Here there was good reason to depart from the general rule. Mr. Fine has expertise in condominium law. The corporation's other counsel has more expertise in general commercial litigation and oppression which is the basis of the plaintiff's claim. The plaintiff identified no prejudice to itself or the litigation process by allowing Mr. Fine to appear on the motion. I therefore grant leave to Mr. Fine to act on this motion.

Conclusion and Costs

[12] *Michriky v. Hack*, 2005 CanLII 6397 (ON SC).

2025 ONSC 410 (CanLII)

[44] For the reasons set out above, I grant the motion of TSCC 2255 and dismiss the relief claimed in paragraphs 1(d) and 1 (e) of the statement of claim.

[45] Both parties prepared cost outlines. The costs of both sides were similar. The plaintiff's costs on a partial indemnity scale came to $20,864.32. The Condominium Corporation's costs came to $23,772 on a partial indemnity scale. I have examined the Condominium Corporation's costs outline and am satisfied that the time sought was reasonably incurred. I therefore fix its costs at $23,772 on a partial indemnity scale payable by the plaintiff to TSCC 2255 within 30 days.

Koehnen J.

Released: January 27, 2025

2025 ONSC 410 (CanLII)

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Plaintiff

– and –

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2255, MOSHIN MUHAMMED, NAFEES BACCHUS, RAJ SHARMA, and DUKA PROPERTY MANAGEMENT INC.

Defendants

REASONS FOR JUDGMENT

Koehnen J.

Released: January 27, 2025