

**Superior Court of Justice
Toronto Small Claims Court**

B E T W E E N :

Michael Lahrkamp

Plaintiff

and

Metropolitan Condominium
Corporation No. 932

Defendant

Plaintiff in person

J. Fine, Solicitor for the defendant

Motion

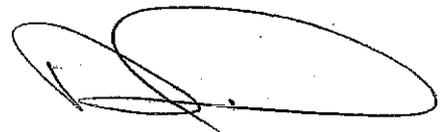
The defendant has brought a motion for clarification of my judgment dated October 29, 2010. The parties did agree at the motion that the defendant may redact from the minutes of the meetings of the Board

A handwritten signature in black ink, appearing to be a stylized name, located at the bottom right of the page.

of Directors all specific references to unit numbers and names of owners in the said meetings. In addition, based upon the defendant's submission that it would not be seeking labour charges for redacting, the order of Justice Backhouse remains in effect that the plaintiff is to pay in advance for all reasonable photocopying charges.

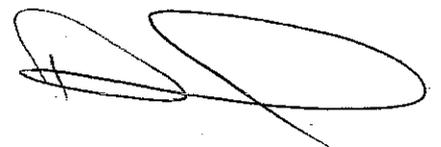
The parties, however, were in disagreement as to whether any redaction should take place in regard to the proxies ordered to be produced, and whether copies or originals of the producible documents should be provided.

As to the redaction issue, the defendant wishes to delete the name and signature of the owner, and the unit number from each proxy. I agree with this position to protect the privacy rights of each owner. I do not accept the position of the plaintiff that a verbal direction by an owner to add a candidate's name to a proxy invalidates the proxy. A verbal direction may create evidentiary problems in establishing the validity of the proxy, but does not invalidate the proxy. Nor am I satisfied that the addition of a candidate's name by a third party contravenes subsection 54(4) of the Condominium Act. The reference in that subsection to a proxy being "under the hand of the appointer" merely refers to the necessity of a signature of the owner. The

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke and a vertical stroke.

remainder of the proxy need not be completed in the hand of the owner. The concern of the plaintiff as to possible "unsigned" proxies was not established in the evidence at trial. The plaintiff's concern at trial revolved around unauthorized additions to the proxies, but in fact the evidence did not support that allegation. The fact that scrutineers may have seen the completed proxies does not support the plaintiff's position. I agree with Mr. Fine for the defendant that those scrutineers would have an implied obligation not to disclose to any other person the wishes of the owner as set out in the proxy. The fact that the defendant may have been willing to show the proxies to the plaintiff on vote day is also of no assistance to the plaintiff. A possible error by the defendant to provide the whole of the proxies to the plaintiff on vote day does not mean that the error must be continued by the court. Finally, the fact that an owner who gave a proxy was also at the meeting on vote day does not establish in itself the likelihood of a duplicate voting violation.

I am also satisfied that a third generation photocopy of the redacted documents can be provided to the plaintiff to protect the confidentiality of the redacted information. The plaintiff, however, is entitled to be satisfied that the photocopies provided with the

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher. It appears to be a single name or set of initials.

redactions in question are in fact the same as the original documents, save and except, for the redacted portions.

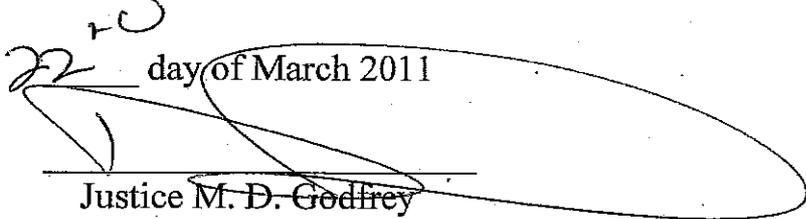
Based upon the above, I hereby order –

- (1) That the proxies and minutes be provided with the signatures and names of the owners and unit numbers redacted; and
- (2) That photocopies of the documents in question be provided to the plaintiff.

There being no merit to the plaintiff's argument, costs of the motion are awarded to the defendant in the sum of \$500.00.

Dated at Toronto this

²⁰
22 day of March 2011


Justice M. D. Godfrey