CITATION: York Condominium Corp. No. 42 v. Hashmi et al, 2012 ONSC 4533
COURT FILE NO.: 06-CL-6587
DATE: 20120807

SUPERIOR COURT OF JUSTICE - ONTARIO
COMMERCIAL LIST

RE: YORK CONDOMINIUM CORPORATION NO. 42,

Applicant

And

ABID HASHMI and ALL UNIT OWNERS OF YORK CONDOMINIUM CORPORATION NO. 42

Respondents

BEFORE: Justice Newbould

COUNSEL: George F. Vella, for the Administrator

Nicolo' Fortunato, John Beechy, Amarit Grewal, Nas Rin Islam, Abul K. Kabir, Franca Pagagioa, Gertrude Armbrust, Shah Jahan Khan, Asad Afaqui, Anver Karim, A.J. Karim, Ataul Haq Malik, A. Jaya Kumar and Abu Turab, Unit owners

DATE HEARD: August 2, 2012

E N D O R S E M E N T

[1] On August 28, 2006 Mr. Atrens was appointed the Administrator of YCC 42 by order of Lederman J. YCC 42 is comprised of 897 apartment style condominiums in Etobicoke. On December 11, 2011 Brown J. directed that a referendum be held to determine whether the owners wanted the condominium to be continued under the management of the Administrator or a board of directors. The owners overwhelmingly voted to have a board of directors. Thus there needs to be an election of directors.

[2] At issue is how the voting procedure is to take place. All parties appearing today support the need for a vote. There were some differing views as to how it is to take place. Section 131 (3) and (4) of the *Condominium Act*, S.O. 1998, C. 19, ("Act") gives the court jurisdiction to make an order considered just, including on an application of the Administrator for an opinion, advice or direction on any question regarding the management or administration of the condominium. I therefore have jurisdiction to make any order required for the proper conduct of the vote to be taken, to ensure it is fair to all owners.

[3] The by-law of the condominium provides for 5 directors, to be elected in rotation. At the first meeting to elect directors, two are to be elected for one year, two are to be elected for two years and one is to be elected for three years.

[4] Because over 15% of the units are occupied by unit owners, section 51(6) of the Act provides that one position on the board is to be elected only by owner-occupiers. An issue is whether that position should be someone elected for one year, two years or three years. The Administrator recommends that the position be for one of the one year terms. No reason for this recommendation is given. Several owner-occupiers who attended think the position should be for three years. I agree with them. It seems to me that an owner-occupier has a more direct interest in the affairs of the condominium than an owner who has rented out his or her unit. Therefore, the one position to be elected under section 51(6) of the Act by only the owner-occupiers shall be elected for three years.

[5] The Administrator indicates that many owner-occupiers may wish to run for the one position to be elected only by the owner-occupiers and if unsuccessful, run for one of the remaining four positions. It is said this will cause logistical problems at the meeting to elect directors and that the court therefore should order that any owner-occupier candidate that puts his or her name forward for the one position should not be entitled to run for any of the other positions. In my view, there is no basis for making such an order. No disability should be placed on a unit owner, either for running or voting, unless provided for in the Act, the Declaration or the by-law of the condominium corporation, and none is so provided.

[6] In my view, there should be one meeting of the owners to elect a new board of directors. The first vote is to be by the owner-occupiers to elect a director for a three year term. Any owner-occupier who has unsuccessfully run for the three year term is entitled to run for the remaining four positions. A second vote is to be held to elect directors to the remaining four positions. The two owners receiving the highest number of votes shall be elected to two year terms and the two owners receiving the next highest number of votes shall be elected to one year terms.

[7] Some owners have asked for restrictions on proxies as to when they must be filed and how, including a suggestion that they be deposited in a ballot box. Again, in my view any restriction must be found in the Act, the Declaration or the by-law of the condominium corporation. The Act permits anyone to attend the meeting and that votes may be cast either personally or by proxy. I see no basis to restrict the right of an owner to have a proxy delivered at the time of the meeting. Obviously it would be better that any proxy be filed in advance of the meeting to give the scrutineers or supervisor of the meeting a chance to review them, and hopefully that will occur. But I make no order limiting the date for filing proxies. Also, I leave it to the Administrator as to where and how proxies are to be kept prior to the meeting.

[8] Under the Act, notice of a meeting is to be at least 15 days. Hoy J. on March 21, 2008 ordered that this minimum be extended to 19 days. I would continue with that direction. I would also continue with the direction she made with respect to the form of proxies, except that the proxies need to provide for two votes, one for the owner-occupier position and the second for the other four positions.

[9] The Administrator points out that some owners may indicate in writing prior to the notice of meeting to be sent out that they wish their names to be included in the notice of meeting as a person who has indicated an intention to be a candidate, as provided in section 28(2) of the Act, and that there should be some date by which such an intention should be provided to the Administrator. I think this makes sense. The Administrator intends to hold the meeting sometime late in September. In my view, the Administrator should determine the date of the meeting and the date that notice of the meeting will be sent, and then notify all owners of that intended date

three weeks in advance. The notice is to be given in accordance with the Act and by-law and posting notices in the buildings, while obviously something that can be done, will not suffice as notice. The owners should be given until one day before the notice of the meeting is to be sent to indicate an intention to be a candidate. An owner-occupier will be entitled to indicate that he or she wishes to run for the owner-occupier position and if unsuccessful to run for the other four positions, and the notice of the meeting shall so indicate if any owner-occupier provides notice of such intention prior to the notice of meeting being given.

[10] One owner asked that all candidates must give prior notice of an intention to be a candidate and that there be no nominations from the floor. I see no basis for making such an order.

[11] One owner asked that each candidate be provided with complete mailing and e-mail addresses, fax numbers and phone numbers of all unit holders. I raised privacy concerns which the owner acknowledged may be an issue. Section 28(2) of the Act provides that the names and address of persons who have indicated they wish to be a candidate for the board of directors is to be provided in the notice of meeting. In my view, this guidance should be used and no unit owner's information need be provided by the Administrator other than required by section 28(2) for an owner who has notified the Administrator of an intention to be a candidate for the board of directors.

[12] Brown J. ordered that a retired judge be the supervisor of the referendum vote. The Honourable Donald Cameron was chosen. I make the same order. If Mr. Cameron is willing to serve, I would order that he supervise the meeting at which the votes are taken. If he is not willing to serve, the Administrator shall select another retired judge to supervise the meeting. The Supervisor shall either chair the meeting or approve the person chairing the meeting.

[13] Once the meeting has been held, the Supervisor shall report to the court on the outcome with the same information as contained in the report of Mr. Cameron dated March 30, 2012 regarding the referendum.

[14] Once the Supervisor has reported to the court on a successful election of the board of directors, the Administrator shall be discharged and he shall pass his accounts.

[15] On completion of this process, I see no need for this matter to remain on the Commercial List, and further proceedings, if any, shall be commenced in the civil section of the Superior Court of Justice in Toronto unless leave is granted by a Commercial List judge to commence it on the Commercial List.

[16] These reasons shall be delivered to Mr. Vella who shall then provide a copy to all unit owners.

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Newbould J.

DATE: August 7, 2012