CITATION: York Condominium Corporation No. 137 v. Hayes 2012 ONSC 4590
COURT FILE NO.: CV-11-437248
DATE: 20120807

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: YORK CONDOMINIUM CORPORATION No. 137

AND:

EDNA MERLE HAYES

BEFORE: PENNY J.

COUNSEL: *B. Rutherford* for the Applicant

G. Issac for the Respondent

HEARD: August 3, 2012

ENDORSEMENT

The Application

[1] This is an application by a residential condominium corporation under s. 134 of the *Condominium Act 1998*, S.O. 1998 c. 19 for various orders relating to the alleged violent, harassing and inappropriate conduct of the respondent, a unit owner in the condominium.

[2] Specifically, the condominium seeks:

(a) a permanent injunction, restraining the respondent from;

(i) entering upon the common elements of the condominium except for the purpose of ingress to and egress from her unit;

(ii) having any oral or physical contact or communication with any resident or employee of the applicant;

(iii) communicating with, harassing or having any contact (whether in person, by telephone, by e-mail, or in writing) with any member of the board of directors, any management or security personnel, or any other employee of the applicant, or any other person doing business with the condominium including but not limited to, any of the individuals who have sworn affidavits in these proceedings;

(iv) coming within 25 feet of any of the individuals who have sworn affidavits in these proceedings;

(v) entering or coming within 25 feet of the condominium's management office located at 85 Emmet Ave., Toronto, Ontario; and

(vi) contacting, communicating with or harassing any member of the board of directors, any management or security personnel, any employee or contractor of the condominium, or any person doing business with the condominium;

(b) an order requiring the respondent to vacate her unit at YCC No. 137 (Unit 1, Level 6) immediately and permanently, and to list that unit for sale immediately, such sale to close nor more than 90 days from the date of the order of this court, failing which the condominium shall be entitled to list unit for sale and thereafter to sell unit, to recover all of its costs in returning the unit state of fitness for occupation from the proceeds of sale, and to move without notice before the court, if necessary, for a writ of possession that will enable the condominium to have vacant possession of the unit in order to give effect to the sale;

(c) a declaration that the respondent has breached sections 117 and 119(1) of the *Condominium Act 1998*, Articles III (1), IV(1)(b) and(c)and XII(2) of the declaration of YCC No. 137 and rules 4, 8, 10 and 15 of the Rules of YC No. 137;

(d) an order that the respondent cease and desist from her uncivil, improper and illegal conduct that violates the *Act* and the declaration and rules of YC No. 137;

(e) an order that the respondent be removed from the board of directors before the expiration of her term of office;

(f) an order that the respondent's appointment as secretary to the board of directors be revoked;

(g) an order that the respondent return any of the condominium's documents, minutes of meetings, and keys that are in her possession;

(h) an order that the respondent comply with YCC No. 137's declaration, bylaws and rules as required by section 119 (1) of the *Act*;

(i) an order that, pursuant to section 134 of the *Act*, the respondent pay to the applicant its costs on a substantial indemnity basis and that such costs be deemed to be common expense contributions attributable to the respondent's unit; and

(j) an order that if the respondent fails to comply with any order issued by the court, the applicant may re-attend on two days notice for further orders to enforce compliance.

Background

[3] The condominium relies principally on six incidents which occurred last fall and winter:

(1) September 19, 2011 assault on Mario Santos

(2) September 20, 2011 assault on Ana Agostinho

(3) September 24, 2011 threatening voicemail left for Ruth Abraham

(4) September 28, 2011 assault on Sherry Dasilva

(5) Early October, 2011 assault on Sherry Dasilva

(6) December 12, 2011 verbal abuse of Sherry Dasilva

[4] Maria Santos is 80 years old. She lives in the condominium with her daughter, Ana Agostinho. On September 19, 2011 Mrs. Santos was taking a walk around the condominium property. The respondent encountered Mrs. Santos and proceeded to shout at her, assailing her with expletives and profanities. The respondent pushed and waved her fists at Mrs. Santos in a threatening manner. Mrs. Santos returned home crying and shaking with fear. She is now terrified of the respondent and will not take walks on the condominium property unaccompanied.

[5] Ana Agostinho is also a resident of the condominium. She lives in her unit along with her mother, Mrs. Santos, her husband and her son, together with a dog. In her affidavit she says that on September 20, 2011, Mrs. Agostinho saw the respondent near the front entrance of the condominium and asked what happened between the respondent and Mrs. Santos. The respondent yelled at Mrs. Agostinho and threw her bags down on the ground. Mrs. Agostinho moved one of the respondent's bags out of the way and started walking up the stairs toward the lobby of the condominium. The respondent grabbed Mrs Agostinho from behind, causing Mrs. Agostino's glasses to fall off. The respondent picked up the glasses and threw them away, causing them to break. Mrs. Agostinho tried to pull away from the respondent. The respondent grabbed Mrs Agostinho's hair and then pulled off Mrs. Agostino's jacket. The respondent then started throwing punches at Mrs. Agostinho's face.

[6] This incident was described in Ms. Agostinho's affidavit and captured on a security surveillance video which was put in evidence and shown in court. The incident was also witnessed by Ruth Abraham, a member of the board of directors of the condominium. Ms. Abraham also filed an affidavit in this application describing the events above.

[7] In addition, Ms. Abraham says that, on September 24, 2011, she retrieved a voicemail left by the respondent on Ms. Abraham's cell phone on Wednesday, September 21, 2011, the day after the Agostinho incident. In that voicemail, among other things, the respondent said: "Ruthie, it's Merle. I will have a wonderful day especially when I see you, whenever. You fuckin' bitch, I will get you. You fuckin' liar, you fuckin' conniver… I have seen you act on the board. I know you. Other people know you okay bitch. I am not finished with you."

[8] Ms. Abrams deposes that because of the confrontational, aggressive and threatening tone of the respondent's voicemail message, she fears for her physical safety in and around the building and does not feel comfortable while alone on the condominium's common elements.

She arranges to be accompanied by an employee of the condominium whenever she leaves or returns to her unit and no longer enjoys the use of the common elements. She is also reluctant to go to the management office for fear that the respondent may end up assaulting her or other board members.

[9] Sherry Dasilva is also a resident at the condominium. She filed an affidavit in this application in which she deposes that on September 28, 2011, the respondent came to Ms. Dasilva's door and forced her way in, hitting Ms. Dasilva with the door in the process. The respondent threw a box of flea powder, hitting Ms. Dasilva in the face. When the respondent was asked to leave, she used both hands to push Ms. Dasilva so that Ms. Dasilva fell back, hitting her head against the closet door handle. The respondent refused to leave and had to be forcibly pushed out the door.

[10] About one week later, Ms. Dasilva encountered the respondent in the condominium's elevator. The respondent was pushing a metal shopping buggy filled with cat food. The respondent began hitting Ms. Dasilva with the buggy, hitting her in the legs with the buggy five or six times before Ms. Dasilva could get out.

[11] Ms. Dasilva also deposes that on December 12, 2011, she was accosted by the respondent in the mailroom. Ms. Dasilva told the respondent to leave her alone and moved out of the mailroom toward the elevator. The respondent was yelling and swearing at Ms. Dasilva as the elevator doors closed. Now, Ms. Dasilva is afraid to go downstairs to get her mail and gets her boyfriend to do it

[12] There are miscellaneous other incidents as well. On September 25, 2011, another unit owner, Joao Tavares, was sitting on a chair in front of the building. The respondent approached him and demanded that he removed his chair. The respondent was shouting at Mr. Tavares. Her behavior was both threatening and erratic, causing Mr. Tavares and his spouse to leave the area. On September 27, 2011, a designer, Nedda Zaharelos, working on renovations of YCC No. 137's lobby, was the subject of unprovoked verbal attacks and abusive behavior by the respondent, sometimes in the presence of other residents and condominium employees.

[13] The respondent, Edna Merle Hayes, filed an affidavit dated December 16, 2011 in these proceedings. She is a member of the board of the condominium. The respondent did not deny any of the allegations listed above. Rather, her affidavit focuses on what I would describe as a legal issue, i.e., whether the board has taken appropriate steps to initiate these proceedings, remove her from the board and remove her from her unit. Her affidavit also makes allegations against Ms. Abraham, suggesting that Ms. Abraham is biased against the respondent because they disagree about the necessary level of reserve funds the corporation should maintain against future contingencies.

The Issues

[14] There are essentially three issues:

(i) is the respondent in non-compliance with the *Act* or the declaration, bylaws or rules of the condominium?

(ii) if yes, has the condominium properly initiated these proceedings?

(iii) if yes, what is the appropriate remedy in the circumstances of this case?

Statutory Scheme

[15] The *Act* sets out a statutory scheme of rights and obligations of a condominium and unit owners with respect to the management and administration of the condominium and with respect to compliance with the *Act*.

[16] Subsection 17(3) of the *Act* imposes a positive duty on YCC No. 137 to take all reasonable steps to ensure that all unit owners comply with the *Act* and with the Declaration Bylaws and Rules of the condominium.

[17] Section 117 provides that no one shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to anyone.

[18] Subsection 119(1) of the *Act* requires all owners and occupiers of the unit in the condominium to comply with the *Act* and the declaration, bylaws and rules of the condominium. Subsection 119(3) provides that the condominium has the right *to require* owners and occupiers to comply with the *Act* and the declaration, bylaws and rules.

[19] Section 134 of the *Act* provides that the condominium may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of the *Act*, the declaration, the bylaws or the rules of the condominium. The court may grant the order applied for, order the payment of damages and costs and grant such other relief as is fair and equitable in the circumstances. An award of damages or costs against an owner shall be added to the common expenses for that person's unit.

[20] Article III of the condominium's Declaration provides that each owner has the full use, occupancy and enjoyment of the whole or any part of the common elements except as otherwise provided. Article IV(1)(c) provides, however, that the owner of each unit shall comply with the *Act*, declaration and condominium bylaws and rules. Article XII(2) requires all present and future owners to comply with the provisions of the declaration, bylaws and any other rules of the condominium.

[21] Rule 8 of the condominium provides that owners shall not create or permit the creation of any noise or nuisance which in the opinion of the board or the manager may or does disturb the comfort or quiet enjoyment of the property by other owners (in his affidavit, the then manager, Mr. Farrow, expresses the opinion that the respondent's behavior has been disturbing the comfort or quiet enjoyment of the property by other owners).

[22] By the terms of the statute, the condominium has the duty to effect compliance by the owners of units. Moreover, the *Act* gives the condominium the right to require compliance by the owners. Where most unit owners are following the rules, the court is, in effect, "duty bound" in the judicial exercise of discretion to give the condominium the assistance of the court. One of the advantages of requiring compliance is that a message is sent, by the board and the court, to unit owners that the declaration, bylaws and rules are in place for a good reason and that they will be enforced. To permit noncompliance opens the door to the noncompliance of other unit owners (see *Re Peel Condominium Corporation No. 78 and Harthen et al.* (1978). 20 O.R. (2d) 225 (Co. Ct.); *Metropolitan Toronto Condominium Corp. No. 776 v. Gifford* (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.)).

[23] The general message should be that enforcement will be expected and exceptions will be rare. This is to foster the result that people only move into the condominium if they are prepared to live by the rules of the community which they are joining. If they are not, they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes or preferences. The provisions of the *Act* and the declaration, bylaws and rules are "vital to the integrity of the title acquired by" unit owners. Unit owners are not only bound by the rules and regulations but are "entitled to insist that other unit owners are similarly bound" (see *Re Carleton Condominium Corporation No. 279 and Rochon et al*. (1987), 59 O.R. (2d) 545 (C.A.) at 522).

[24] The condominium is entitled to apply under s. 134 of *the Act* for relief to prevent the continuance of uncivil, improper and illegal conduct towards condominium owners. In *York Condominium Corporation No. 136 v. Roth* 2006 CarswellOnt 5129, Perell J. wrote:

> [T]here is uncontradicted evidence that Mr. Roth disrupted an owner's meeting on June 13, 2006 and physically assaulted the Condominium Corporation's president. There is also uncontradicted evidence of rude, aggressive, abusive, and dismissive behavior by Mr. Roth in his relations with his neighbors, contractors that provide services to the condominium, and with the staff that manages the Condominium Corporation.
>
> Accepting this evidence, and there is no basis for me not to do so, the Condominium Corporation is justified in seeking an order that Mr. Roth cease and desist from his uncivil, improper and illegal conduct that violates the *Condominium Act 1998* or the bylaws and rules of the Condominium Corporation.
>
> The issue then is how should the court exercise its discretion under s. 134 of the Act to require Mr. Roth to conduct himself only in accordance with his rights and obligations in under the *Condominium Act 1998* and the declarations, bylaws, and rules of the Condominium Corporation.

(i) Has the Respondent Breached the Act, Declaration, Bylaws or Rules of the Condominium?

[25] In *Roth, supra*, Perell J. had no difficulty concluding that the *Act* etc. was violated when the respondent Roth committed a single physical assault against the president of the condominium at an owners' meeting and engaged in behavior that was "rude, aggressive, abusive and dismissive in his relations with his neighbors."

[26] The evidence submitted by the applicant in this case which, importantly, was not denied by the respondent in her responding affidavit, is that the respondent committed no less than five physical assaults on other condominium unit owners or occupiers and, in several other instances, engaged in verbal abuse, threats and intimidation in relation to a board member, other unit owners or occupiers and service providers to the condominium. The result of this behavior is that the respondent has repeatedly intimidated and instilled fear in a number of her fellow members of this community.

[27] There is, in my view, no serious doubt that the totality of the conduct proven against the respondent is likely to both damage property and cause injury to a person and, therefore, violates s. 117 of the *Act*. Indeed, the conduct in question has actually caused injury and damage.

[28] There is also, in my view, no serious doubt that the respondent's conduct constituted noise or nuisance which a reasonable manager could conclude (and in this case did conclude) would disturb the comfort or quiet enjoyment of the property by other owners and was thus in violation of Rule 8 of the condominium's Rules.

[29] I am, therefore, satisfied that the applicant has proved the various forms of misconduct, as summarized above, on a balance of probabilities. In all the circumstances, I am satisfied that the applicant has proved that the respondent has been repeatedly in violation of s. 117 of the *Act* and has also violated the declaration, bylaws and rules of the condominium.

(ii) Were These Proceedings Properly Constituted?

[30] The respondent makes essentially three arguments alleging the improper constitution of these proceedings:

1. the board did not provide notice to the respondent under s. 23 of the *Act*;

2. the board did not authorize the applicant's counsel to commence these proceedings, as constituted; and

3. the board has not followed the procedures necessary for the removal of the respondent as a director under subs. 51(8) of the *Act*.

[31] I will deal with each one of these arguments in turn.

1. **Section 23 of the *Act***

[32] Section 23 of the *Act* provides:

> (1) Subject to subsection (2), in addition to any other remedies that a corporation may have, a corporation may, on its own behalf and on behalf of an owner,
>
> (a) commence, maintain or settle an action for damages and costs in respect of any damage to common elements, the assets of the corporation or individual units; and
>
> (b) commence maintain or settle an action with respect to a contract involving the common elements or unit, even though the corporation was not a party to the contract in respect of which the action is brought.
>
> (2) Before commencing an action mentioned in subsection(1), the corporation shall give written notice of the general nature of the action to all persons whose names are in the record of the corporation maintained under subsection 4 (2) [subject to certain exceptions not relevant here].

[33] The respondent argues that this application is an "action" commenced under s. 23 of the *Act*. She further argues that no notice was given to the unit owners, as required under subs. 23(2). She argues, therefore, that these proceedings are not properly constituted and are, therefore, void *ab initio* and must be dismissed.

[34] This issue can be dealt with quite simply. Section 23 deals with two particular types of actions: 1) an action for damage to common elements, assets of the corporation or individual units; or 2) an action with respect to a contract involving the common elements or a unit where the corporation was not a party to the contract in respect of which the action is brought. Section 23 specifically provides that it is "in addition to any other remedies" that the condominium may have.

[35] Section 134 of the *Act* specifically authorizes a condominium to bring an "application" to the Superior Court of Justice for a compliance order. The court may make an order enforcing compliance with any provision of the *Act*, the declaration, the bylaws, or the rules of the condominium (see *Roth*, *supra*, para. 11).

[36] This proceeding is an "application" under s. 134 for a compliance order, not an "action" for damages or on a contract to which the condominium is not a party under s. 23. This application, therefore, asserts an "other remedy" which the condominium has. Accordingly, the notice requirements of s. 23 have absolutely no application to the circumstances of this case.

2. **The Board's Authorization of Counsel**

[37] On September 23, 2011, the board sent a letter to the applicant's counsel stating that a meeting had been held on the previous day at which a quorum of the board resolved that a "restraining order be obtained against" the respondent.

[38] The respondent argues, on the basis of this resolution, that applicant's counsel had no authority to seek to remove the respondent as a member of the board or to seek an order requiring the respondent to sell her unit and move out of the condominium.

[39] Again, this issue can be dealt with relatively simply. This is because, on March 2, 2012, a newly constituted quorum of the board of the condominium ratified the commencement of the application brought against the respondent under CV-11-437248 by applicant's counsel and instructed applicant's counsel to proceed with the application accordingly. This application, as noted above, specifically seeks remedies associated with the removal of the respondent from the board and the forced sale of her unit.

[40] The respondent's counsel contests the validity of these authorizations purely on the form of the document, i.e., letter to counsel rather than certified board resolution. There is no evidence that the representations contained in this correspondence to the applicant's counsel are incorrect. In my view, on the basis of the indoor management rule, applicant's counsel was entitled to treat these authorizations as valid. The second authorization of March 2, 2012, which specifically ratifies the issuance of the application, is signed by the President and the Vice President of the condominium. In the absence of clear evidence that the board did not authorize these actions, the correspondence must be accepted on its face. In my view, therefore, the actions of applicant's counsel in commencing this application, including the scope of the relief sought, were authorized by the board of the condominium.

3. **Procedure for Removal from the Board**

[41] Section 33 of the *Act* provides that:

> Subject to subsection 51(8), a director, other than a director on the first board, may be removed before the expiration of the directors term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the units in the corporation vote in favor of removal.

[42] Section 51(8) of the *Act* provides that:

> A director elected under subsection(6) may be removed before the expiration of the director's term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the owner-occupied units in the corporation vote in favor of removal.

[43] The respondent argues that there has been no notice of meeting, no duly called meeting of owners and no vote of owners in respect of her removal from the board. She argues that because the procedure for removal of an incumbent board member prior to the expiration of his or her term is specifically set down in the *Act*, the discretion of the court in respect of a compliance order under s. 134 does not extend to an order removing a board member prior to the expiration of his or her term.

[44] There is, in my view, much to be said for the respondent's argument on this point. I do not say that a circumstance could never arrive arise under which a board member could be removed before the expiration of his or her term by order of the court under s. 134. However, s. 134 deals with an order enforcing compliance with a provision of the *Act*, etc. There is no suggestion in this case that the respondent's election to the board was somehow the result of non-compliance with a provision of the *Act*, declaration etc. The whole point of the applicant's argument is that the respondent's *conduct*, in the assaults and verbal abuse, etc., has been non-compliant with basic norms of behaviour within the community, not that she was improperly elected to the board in the first place.

[45] I appreciate that the applicant seeks to argue that the same conduct ought to disqualify the respondent from continued participation on the board. However, in my view, that is a matter which ought to be dealt with in accordance with the democratic processes for the election and removal of directors contemplated by the *Act* and not, in the circumstances of this case, to be the subject of a court order for compliance under s. 134.

[46] In any event, even if I were to conclude that the jurisdiction of the court extended to the granting of an order removing a member of the board in the circumstances of this case, I would decline to exercise my discretion on the basis that there is a clear, well-established democratic process for the removal of a director prior to the expiration of his or her term set out in the legislation.

(iii) What is the Appropriate Remedy?

[47] As noted above, the condominium seeks a broad, permanent injunction restraining the respondent's conduct in virtually all aspects of her interaction with the condominium and the members of its community. In my view, the scope of the restraining order sought against the respondent is both overreaching and unworkable.

[48] However, having regard to my conclusions set out above, I am satisfied that the respondent's behavior, some of which occurred after the respondent had notice of these proceedings, warrants some form of restraining order.

[49] Accordingly, an order shall issue requiring the respondent:

(1) to be of good behavior and keep the peace while on any property associated with the condominium;

(2) to cease and desist from uncivil, improper or illegal conduct that violates the *Act* or declaration, bylaws or rules of the condominium;

(3) to refrain from assaulting, verbally abusing, swearing at, harassing, threatening or intimidating any member of the board, unit owner or occupier or staff member, contractor or other person doing business with the condominium including, without limitation, any person who has sworn an affidavit or provided evidence of any kind in this application; and

(4) to refrain from approaching, within 15 feet, except at a duly authorized board meeting or duly authorized meeting of unit owners: Maria Santos, Ana Agostinho, Sherry Dasilva, Ruth Abraham, Joao Tavares or Nedda Zaharelos.

[50] In addition to a restraining order, the condominium seeks an order requiring the respondent to sell her unit and moved out, failing which the condominium itself would have the ability to sell the unit and obtain, *ex parte*, an order for vacant possession.

[51] A similar issue came before Perell J. in the *Roth* case, *supra*. Perell J. held, at para. 21:

> In all the circumstances and, in part, because it would, in my opinion, not to be just to require Mr. Roth to sell his home without providing him with an opportunity to show that he can abide by the rules that govern in his community, I believe the appropriate order is to direct him to control his behavior, especially his manner of communicating with the officers and employees of the Condominium Corporation, so as to comply with the Act, declarations, bylaws and rules of the Condominium Corporation in default of which the Condominium Corporation may apply to the court: a) pursuant to rule 60.11 for a contempt order; b) pursuant to s. 134 of the *Condominium Act, 1998* for such a further order to enforce compliance as the court deems just; or c) pursuant to both rule 60.11 and s.134 of the *Condominium Act, 1998*.

[52] Code J., in *Metropolitan Toronto Condominium Corporation No.747 and Korolekh,* 2010 CarswellOnt 5939, applied the same principles but came to a different conclusion. The reasons for his conclusion were explained in paras. 87 and 88 of his reasons:

> In short, this case is a "perfect storm" where the misconduct is serious and persistent, where its impact on a small community has been exceptional and where the respondent appears to be incorrigible or unmanageable. It must have been difficult to obtain the nine affidavits as some of the affiants are vulnerable and fear reprisals. They are entitled to the security of an order that removes Ms. Korolekh from their condominium corporation. She has been given opportunities, since May, 2009, to reform her ways or even to offer to reform her ways. There is no sign from her that she is willing or able to change.
>
> In all these circumstances, it would be unwise to try to reintegrate Ms. Korolekh into a community that fears her and that she has persistently tried to intimidate. People join condominium corporations voluntarily on the basis that they agree to share certain collective property and to abide by a set of rules and obligations that protect the collectivity. There is no right to continue membership in this corporation or this community, once a clear intention to harm it and a persistent refusal to abide by its rules have been exhibited in the extreme ways seen in this case. 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.

[53] While the respondent's conduct in this case is more serious and more persistent than the conduct exhibited by Roth, it does not rise to the level exhibited by Korolekh.

[54] Further, while the respondent's conduct did take place over several months (September to December 2011), there is no evidence of any recent incidents, notwithstanding the extensive delays due to a number of adjournments.

[55] Most importantly, the remedy of forced sale is, in many ways, the ultimate and harshest remedy available. As such, it should be reserved for the most egregious cases. I agree with the kinds of parameters established by Code J. for the imposition of this remedy, including where the respondent is "incorrigible and unmanageable," where the respondent has been "given opportunities to reform her ways and exhibits an unwillingness to change" and a "persistent refusal to abide by" the community's rules has been exhibited "in extreme ways."

[56] In my view, before the harshest remedy is imposed, the applicant ought to be given the opportunity to show that she is capable of complying with the rules and regulations governing behaviour in this community. I have made a restraining order imposing limitations on her behaviour. It is to be hoped that this order will have a salutary effect and that the respondent is able to demonstrate her willingness to change and to conduct herself in accordance with the rules which she agreed to when she purchased her unit.

[57] If the respondent proves unworthy of this hope and trust, the applicant is at liberty to bring further application to this court, including but not limited to contempt proceedings under rule 60.11 of the *Rules of Civil Procedure* or additional remedies (including a forced sale of her unit) under s. 134 of the *Act*.

Costs

[58] The parties shall seek to reach an agreement on the disposition and quantum of costs. Failing agreement, a party seeking costs shall do so by filing a Bill of Costs (and any supporting documents) together with a written submission not to exceed two typed, double-spaced pages within 10 days of the release of these Reasons. A party wishing to respond to a request for costs shall do so by filing a written submission, subject to the same page limit, within a further 10 days.

PENNY J.

Released: August XX, 2012