

Case Name:

York Condominium Corp. No. 486 v. Bruzesse

Between

York Condominium Corporation No. 486, applicant, and
Pat Bruzesse, Jane & Church Rehab Centre Inc., and
Millicent Adu, respondents

[2004] O.J. No. 4296

Court File No. 04-CV-269314CM3

**Ontario Superior Court of Justice
Ducharme J.**

Heard: October 20, 2004.

Judgment: October 21, 2004.

(8 paras.)

Counsel:

B.J. Rutherford appearing for the Applicant.

P. Bruzesse and M. Adu, appearing in person for herself and Jane & Church Rehab Centre Inc.

¶ 1 **DUCHARME J.** (endorsement):— This is an application pursuant to section 134 of the Condominium Act, 1998, S.O. 1998, c. 19 seeking various orders relating to a business sign and a satellite dish that the Defendants have installed on the common elements of the condominium without the approval of the Board of Directors.

¶ 2 The sign which has blown down has not been replaced. The parties have agreed that the satellite dish may be removed by the Applicant as early as tomorrow. All parties have consented to an order requiring the removal of the satellite dish and prohibiting the Applicants from installing another sign or a satellite dish on the common elements without complying with section 98 of the Condominium Act.

¶ 3 Mr. Bruzesse also consents to an order that he provide the required notices and indemnities with respect to the tenancies of the units owned by him in YCC 486 as required by section 83 of the Condominium Act, 1998 and section IV(2)(a) of the Declaration.

¶ 4 As a result, the only remaining issue is the matter of costs. Counsel for the Applicant requests that I award costs on a substantial indemnity basis. While the Respondents have needlessly prolonged this matter, I decline to do so and will award costs on a partial indemnity basis.

¶ 5 The Plaintiff is entitled to its costs in this matter. I have considered the Applicant's bill of costs which reflects legal fees and G.S.T. totalling \$5,334.98 as well as disbursements of \$600.49. As Armstrong J.A. has explained in *Boucher v. Public Accountants Council for the Province of Ontario* [2004] O.J. No. 2634 (Ont.C.A.) the fixing of costs involves more than merely a calculation using the hours docketed and the costs grid. As he put it at para. 24 of *Boucher*, "it is also necessary to step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable." Applying the *Boucher* approach and considering the Plaintiff's success in the cause, the fact that this matter is, as Mr. Rutherford concedes, a very straightforward matter, and the fact that the Applicant was awarded \$250 on the last appearance, I conclude that the amount of \$5,334.98 is too high in all of the circumstances.

¶ 6 First it appears that there are some mathematical errors in the Bill of Costs. By my calculation the listed hours result in total fees of \$4,684.50 which results in GST of \$327.92. Second, in considering this Bill of Costs I question the amounts of time attributed to the first five headings of legal fees. By way of example, I find it difficult to understand how this factum required six hours of work. Much of it consists of "boiler-plate language" and excerpts from relevant legislation. Similarly, it is difficult to understand how preparation for this Application required six hours of work. As a result I have reduced the times attributed to each of these heads.

¶ 7 Therefore, I fix costs at \$1,500 with disbursements of \$600. On consent, these costs are to be added to the common expenses for Unit 5, Level 1 on York Condominium Plan no. 486.

ORDER TO GO AS FOLLOWS:

¶ 8

1. The Respondents are ordered to permit York Condominium Corporation to remove the satellite dish and all wires or other items associated with the satellite dish;
2. The Respondents are prohibited from installing another sign or a satellite dish on the common elements of York Condominium Plan no. 486 without complying with section 98 of the Condominium Act;
3. The Respondent, Mr. Bruzesse is ordered to provide the required notices and indemnities with respect to the tenancies of the units owned by him in York Condominium Plan no. 486 as required by section 83 of the Condominium Act, 1998 and section IV(2)(a) of the Declaration. Such notices and indemnities are to be provided no later than 30 days from the release of this order; and
4. The Respondents shall pay forthwith to the plaintiff the sum of \$1,500 as costs in this matter plus disbursements of \$600 plus GST where applicable.

DUCHARME J.

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