

2008 WL 5248483 (Ont. S.C.J.), 2008 CarswellOnt 7668

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York Region Condominium Corp. No. 633 v. 1262018 Ontario Inc.

York Region Condominium Corporation No. 633, Applicant and 1262018 Ontario Inc., Respondent

Ontario Superior Court of Justice

J.E. Kelly J.

Judgment: November 13, 2008

Docket: Toronto CV-08-361884

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Counsel: Douglas H. Levitt, for Applicant

Subject: Property

Real property.

Cases considered by J.E. Kelly J.:

Ridley v. Ridley (1989), 1989 CarswellOnt 421, 37 C.P.C. (2d) 167 (Ont. H.C.) -- referred to

Westbury Canada Life v. Newall (1992), 6 C.P.C. (3d) 281, 1992 CarswellOnt 431 (Ont. Master) -- referred to

Statutes considered:

Condominium Act, 1998, S.O. 1998, c. 19

Generally -- referred to

s. 84 -- referred to

s. 134 -- referred to

s. 134(3)(b)(i) -- referred to

s. 134(3)(b)(ii) -- referred to

s. 134(5) -- referred to

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J.E. Kelly J.:

1 This is an application that was brought before the courts today for a disposition of the Application in Support of this Application. The Applicants filed an Application Record, factum and Book of Authorities.

2 Counsel for the Respondent appeared today and sought an adjournment of the proceeding. He also sought to file an affidavit sworn by his client and served on the Applicant yesterday. The reason given for the request for adjournment was in order to argue a procedural issue (that this matter should have been commenced by way of statement of claim rather than Application) and that he just received instructions from his client who was away from the city over the last weekend until yesterday.

3 The Respondent also sought to cross examination the affiant in the Application.

4 I dismissed the application for adjournment for the following reasons:

1. The Notice of Application was issued September 4, 2008;

2. The original return date of the Application was today;

3. The relief sought in this application is for arrears in common expenses commencing in 2002 and the respondent has, on occasion indicated he would pay but did not;

4. An appearance notice was filed by counsel in mid September, 2008;

5. Approximately 2 months has elapsed since the appearance notice allowing the respondent ample time to provide his counsel with the proper instructions to file an affidavit (or not) and conduct cross-examinations.

6. The reasons in *Ridley v. Ridley* [1989 CarswellOnt 421 (Ont. H.C.)] and *Westbury Canada Life v. Newall* [1992 CarswellOnt 431 (Ont. Master)]; and,

7. The fact that appointments for court time such as that reserved for today and two months ago must be adhered to properly.

5 It is my view that the Respondent, not counsel, was simply attempting to delay this matter further. This is not a case of Solicitor's mistakes or negligence.

6 The substantive motion was granted pursuant to the terms contained in the order attached hereto.

J.E. Kelly J.:

7 *THIS APPLICATION*, made by Applicant for, among other things, orders enforcing the Respondent's compliance with the provisions of the *Condominium Act*, 1998, S.O. 1998 c.19 (the "*Act*"), and to recover unpaid common expenses, was heard on November 13, 2008, at Toronto, Ontario.

8 *ON READING* the Notice of Application, the Applicant's Factum, and the Affidavit of Victor Schiralli, filed, and on hearing the submissions of counsel for the Applicant and for the Respondent,

1. *THIS COURT DECLARES* that the Respondent, 1262018 Ontario Inc., is in breach of Section 84 of the

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Act due to its failure to pay the common expenses from and after September, 2002 in respect of the condominium unit legally described as follows:

Unit 1, Level 2, York Region Condominium Plan No. 633; LT 51 PL M2009, more fully described in Schedule "A" of Declaration LT532539 as amended by LT1032762; Vaughan, registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) at Newmarket, and its appurtenant common interest, municipally known as 4040 Steeles Avenue West, Unit 201, Vaughan, Ontario L4L 4V9. (the "Unit")

2. *THIS COURT ORDERS* pursuant to Section 134 of the Act, that the Respondent, 1262018 Ontario Inc., shall comply with its duties and obligations under the Act.

3. *THIS COURT ORDERS* pursuant to Subsection 134(3)(b)(i) of the Act that the Respondent, 1262018 Ontario Inc., pay to the Applicant the sum of \$24,565.31 in damages as a result of its non-compliance with the Act, which sum represents the arrears of common expenses payable in respect of the Unit which were not secured by the lien registered against the Unit on September 23, 2008.

4. *THIS COURT ORDERS* pursuant to Subsection 134(3)(b)(ii) of the Act that the Respondent, 1262018 Ontario Inc., pay to the Applicant its costs of \$ 13,831.63 incurred in obtaining this order.

5. *THIS COURT ORDERS* pursuant to Subsection 134(5) of the Act that the sum so ordered to be paid in paragraph 3, above, namely, \$24,565.31, and paragraph 4, above, shall be added to the common expenses for the Unit, and the Applicant may specify a time for payment of same.

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