CITATION: Moran v. Peel Condominium Corporation No. 485, 2022 ONSC 6539
COURT FILE NO.: CV-22-678102-0000
DATE: 20221121

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: STEPHEN MORAN, Applicant

AND:

PEEL CONDOMINIUM CORPORATION NO. 485, Respondent

BEFORE: VERMETTE J.

COUNSEL: *Spencer Toole and Bharat Kapoor*, for the Applicant

Larry Plener, for the Respondent

HEARD: September 29 and October 7, 2022

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ENDORSEMENT

[1] The Applicant brought this Application seeking the following relief:

a. an order declaring that the Respondent is in breach of the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended (the "***Act***"), its registered declaration and its rules;

b. an order requiring the Respondent to reasonably cooperate with the Applicant to permit him to complete the renovations to his unit, including, but not limited to: (a) providing the Applicant with a reasonable schedule for completion of the renovations; (b) providing the Applicant with reasonable access to the service elevators; and (c) taking such steps as may be required to prevent further unnecessary delays;

c. special damages in the amount of $33,996.45 and, if necessary, additional damages for additional costs incurred until such time as the renovations are completed;

d. general damages in the amount of $30,000.00; and

e. an order that the Applicant is exempt from contributing via the common expenses payable for his unit to any amount that the Respondent may be ordered to pay to him in this proceeding.

[2] On November 29, 2022, I issued an endorsement granting the Application in part, with reasons to follow. My endorsement read as follows:

The Application is granted, in part, with reasons to follow.

I grant a declaration under section 135 of the *Act* that the conduct of the Respondent with respect to the Applicant's renovations unfairly disregards the interests of the Applicant.

I order the Respondent to reasonably cooperate with the Applicant to permit him to complete the renovations to his unit, including, but not limited to: (a) providing the Applicant with a reasonable schedule for completion of the renovations; (b) providing the Applicant with reasonable access to the service elevators; and (c) taking such steps as may be required to prevent further unnecessary delays.

If the parties have not reached an agreement on a reasonable schedule to complete the renovations and on reasonable access to the service elevators by 3 p.m. on October 5, 2022, counsel are to advise my assistant by 4 p.m. and a case conference will be scheduled with me on October 7, 2022 for determination of any outstanding issues between the parties.

I award special damages to the Applicant in the amount of $33,996.45. There may be an order for additional special damages, depending on the schedule that is agreed upon by the parties or ordered by the Court, in the event the renovations cannot be completed by the end of October 2022.

I decline to grant an award of general damages.

I order that the Applicant is exempt from contributing via the common expenses payable for his unit to any amount that the Respondent is and may be ordered to pay to him in this proceeding.

The issue of costs will be dealt with after the issues of reasonable schedule and reasonable access have been resolved. In the meantime, I strongly encourage counsel to agree on costs

[3] My reasons for granting the Application in part are set out below.

A. FACTUAL BACKGROUND

1. The parties and the initial renovation request

[4] The Respondent is comprised of 341 residential condominium units and appurtenant common elements located in Mississauga, Ontario. Over 1,100 people reside in the building.

[5] The Applicant has been the owner of one of the residential units located within the Respondent since December 2011 ("**Unit**").

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[6] The Respondent's Declaration provides that no owner can make any structural change or alteration to their unit without the prior written consent of the Board.

[7] In early November 2021, the Applicant made a request to carry out renovations in the Unit to the Respondent's Board. He completed and submitted the required renovation request form. The renovations were described as follows:

> Remove tile and wall tile in kitchen and washrooms.
>
> Install wall tile in washrooms and backsplash in kitchen.
>
> Install kitchen cabinets and [stainless steel] appliances.
>
> Install quartz counter in kitchen.
>
> Install bathroom vanities.

[8] On November 17, 2021, the Applicant was advised that his request had been conditionally approved by the Board, subject to the following requirements:

a. The renovations were to start on December 6, 2021.

b. The renovations were to be completed by December 9, 2021.

c. No work in respect of the renovations was to be done outside of this four-day period; and

d. all tradespersons would only be able to use the service elevator two times for a maximum of 20 minutes to bring in and remove materials and equipment.

[9] On November 17, 2021, the Applicant sent an e-mail to the Respondent's property manager providing details of the scope of work in respect of the renovations and explaining that the timelines established by the Board were unreasonable and could not be adhered to. The Applicant requested that the Respondent reconsider the terms and conditions of its approval of the renovations. His e-mail read as follows:

> Good afternoon,
>
> Thank you for the approval.
>
> It is evident that you do not understand the scope of work involved. Let me help you understand.
>
> The demolition of the kitchen and washrooms will take three full days followed by two - three weeks of construction.

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> Two elevator reservations of twenty minutes for a project of this nature are unreasonable:
>
> 1) It will take a minimum of three hours to remove the disposal materials.
>
> 2) It will be impossible to schedule the deliveries of the materials (i.e. tiles, kitchen cabinets, bathroom vanities, kitchen counter) to arrive on the same date and time and within a twenty minute window.
>
> I trust that you will reconsider a reasonable approval. Kindly follow-up with me by 4:00 pm on November 18, 2021. Many thanks.

[10] The following day, the Applicant was advised that the Board had agreed to provide his contractors with an extra 10 minutes for the two service elevator bookings, but otherwise would not reconsider the terms and conditions of its approval of the renovations.

[11] On December 6, 2021, the Applicant's contractors commenced the renovations, but were not able to complete the renovations by December 9, 2021. From December 6, 2021 to December 9, 2021, they carried out extensive demolition work inside of the Unit, including, but not limited to, removal of the kitchen cabinets, kitchen appliances and flooring from the kitchen area, and demolition of the two bathrooms in the Unit.

[12] On December 8, 2021, while the Applicant's contractor was working in the Unit, the Respondent's property manager came into the Unit. He used his cell phone to video record the inside of the Unit. The contractor took the opportunity to advise him that he would need to use the elevators for more than twenty minutes to remove the demolition materials from the Unit. The manager responded "I don't care" or words to that effect.

2. Events after December 9, 2021 and commencement of the litigation

[13] The Applicant subsequently retained counsel who sent a letter to the Respondent on December 17, 2021. The letter alleged oppressive conduct on the part of the Respondent in relation to the renovations of the Unit. Among other things, the letter stated the following:

> [B]efore setting arbitrary timelines, the board should have considered the scope of the renovation work as it is impossible to complete the renovation which our Client intends to do in a 4-day time period. In addition, not allowing reasonable access to the elevators to move material and equipment into the Unit is unjustified.

The letter asked for a reasonable timeline for the completion of the renovations and reasonable access to the use of the elevators.

[14] The Respondent's property manager responded to the letter of the Applicant's counsel on December 20, 2021 with a one-line e-mail: "Please advise your client to follow the Corporation's Rules and policy and procedures." There was no reference to any specific rule, policy or procedure.

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[15] On December 22, 2021, the Applicant, through his counsel, submitted a new renovation request form by e-mail. On the same day, the Applicant was advised that he needed to go to the management office to personally submit the form. The Applicant complied with this request and submitted the form in person on December 27, 2021. The submitted form requested that the renovations start on December 29, 2021 for a period of three weeks, and described the renovations to be completed as follows:

> (1) Remove demolition materials (2) Install floor tile in kitchen and two washrooms (3) Install wall tile in two bathrooms (4) Install kitchen cabinets, quartz countertop, backsplash and stainless steel appliances (5) Install bathroom vanities, light fixtures and two bathtubs (6) Painting

[16] The Applicant's lawyer sent another letter to the Respondent on February 18, 2022. At that time, more than six weeks had elapsed since the submission of the second renovation request form and the Applicant had still not received any response from the Respondent. The letter asked again for a reasonable timeline for the completion of the renovations and reasonable access to the use of the elevators.

[17] No response was received and this Application was commenced on March 9, 2022. The Notice of Application was served on the Respondent on or about March 11, 2022.

[18] On March 23, 2022, the Respondent's property manager sent the following e-mail to the Applicant:

> Good Afternoon,
>
> We understand that you wish to have your renovation completed but as a Board president in another building and owner in this building for years, you are aware that the corporation has to run based on a set of rules and policy and procedures.
>
> The corporation has to take into consideration the over 1100 people living in the building who use the elevators every day and that the superintendent must arrange to prepare the moving elevator before and after reserving it for your use. For years, other owners have been able to complete renovations with two uses of the elevator which is why that is stated on the approval of your renovation request. If someone needs the elevator a third time, we expect that they would get back to us and provide us with a request and reason why.
>
> With every renovation we need to consider noise complaints and the length of time reasonably required. Any amount of extra noise can become a noise complaint. Without a start and end date that is reasonable in consideration of other units, noise and other disturbances that are caused, again a standard amount of time of 4 days to complete a renovation was indicated on the approval. We would expect that an owner would come back to provide details for why they might need longer than 4 days.

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> If you can have your contractor provide their estimate of elevator load and time to complete the proposed project, with some additional detail of the work to be done, we will have that reviewed by the Board of Directors and, if it is reasonable, without unduly inconveniencing other owners, approval would normally be granted.
>
> While the Corporation feels that it is very heavy handed to bring an application against the corporation rather than coming back to provide proper information about your renovation proposal, as we often see happening with other owners who do not have your apparent level of experience, the Corporation is still willing to find a solution with you before both parties engage in a costly legal battle over a resolvable matter.

[19] This e-mail is specious in light of the prior communications sent by the Applicant and his counsel and the lack of response from the Respondent. I also note that the Respondent has not adduced any evidence of any written rules, policies or procedures that would apply to the situation (including anything supporting a 20-minute time limit for the use of the service elevator). Nor has it adduced any evidence of any complaints made in relation to the renovation of the Unit or the use of the service elevator.

[20] On April 5, 2022, counsel for the Applicant sent the following e-mail to counsel for the Respondent:

> I am advised that my client's contractor can start the renovations on April 18, 2022. Because of the scope of the renovations, it is not possible to provide a delivery schedule in advance. My client will provide the condominium corporation with 48 hours notice of each delivery which will require the service elevator. This should be more than sufficient time for the condominium corporation to prepare the service elevator. My client's contractor expects that each delivery will likely require the use of the service elevator for approximately one hour, subject to any unforeseen events. As previously advised, my client's contractor will also require the use of the service elevator for approximately five hours to remove the demolition materials from the unit.
>
> Please advise if your client is agreeable to the renovations proceeding on this reasonable basis. If so, then we will still need to address my client's damages and costs. My client expects to be homeless as of April 14, 2022, and will need to make arrangements for temporary accommodations until the renovations are completed. It is my client's position that these damages are solely the responsibility of the condominium corporation and its failure to approve the renovations last year, and/or communicate with my client regarding its requirements for the renovations to be approved. Completing the renovations will serve to reduce my client's damages and your client's exposure. I look forward to hearing from you.

[21] On April 14, 2022, counsel for the Applicant sent another e-mail to counsel for the Respondent as he had not heard from him in response to his April 5, 2022 e-mail. He advised that

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the Applicant was closing on his current residence on that day and would be "homeless" the following day. He also pointed out that the Respondent had had his April 5, 2022 e-mail for more than a week, and that this was more than enough time for the Respondent to evaluate the Applicant's proposal and respond with its position.

[22] Later on April 14, 2022, counsel for the Respondent sent the following e-mail:

> My client has confirmed that renovations can commence April 18, but requires the schedule for work and deliveries. To book the elevator, the owner must attend at management to complete the booking forms and pay the security deposit. Elevator bookings are for 20 minutes, which is adequate for deliveries of major appliances.
>
> Your client apparently owns a number of units in the adjoining building, and so will hardly be homeless.
>
> As your client has been providing incomplete or misleading information, there will be no consideration of agreeing to any costs.

[23] Counsel for the Applicant responded on April 14, 2022 advising that he would be seeking instructions from the Applicant and his contractor as to whether a 20-minute period was sufficient time for the elevator bookings. He also asked counsel for the Respondent to advise whether there was a principled reason why the Applicant could not reserve the elevator for an hour at a time. Counsel for the Respondent sent the following response on April 14, 2022:

> There are apparently a number of moves in the next few weeks, and management experience is that 20 minutes is sufficient to load and empty the moving elevator. How many trips would your client envision?

[24] On April 29, 2022, counsel for the Applicant asked for the dates of the moves and the length of time that the elevator would be reserved for each move. No response was provided.

[25] There is no evidence properly before me as to how long the service elevator can be used for when a resident is moving out of a unit, but it seems likely that more than 20 minutes would be required to remove all of the furniture and contents from many, if not all, units.

3. Scheduling of the Application and case conferences with Justice Myers

[26] On June 28, 2022, counsel attended at Civil Practice Court to schedule the hearing of the Application. At that time, Justice Myers scheduled a case conference with the parties for July 4, 2022 for the purpose of helping the parties to settle.

[27] On June 29, 2022, counsel for the Applicant sent the following e-mail to counsel for the Respondent:

> Further to the endorsement of the Honourable Justice Myers, and you [sic] request for a schedule that my client proposes for his renovations, I can advise that because

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> of the scope of the renovations, it is not possible to provide a delivery schedule in advance. My client will provide the condominium corporation with 48 hours notice of each delivery which will require the service elevator. This should be more than sufficient time for the condominium corporation to prepare the service elevator. My client's contractor expects that each delivery will likely require the use of the service elevator for approximately one hour, subject to any unforeseen events. As previously advised, my client's contractor will also require the use of the service elevator for approximately five hours to remove the demolition materials from the unit.
>
> I understand that your client is of the view that the removal of demolition materials can be accomplished by using a bin and wheeling it onto the elevator. Is the condominium corporation prepared to allow that bin to be in the common element hallway while it is being loaded? I am trying to understand how the condominium corporation envisions this taking place so that I can speak with my client. Assuming that we can sort this issue out, my client is still going to need the service elevator for longer than 20 minutes for the deliveries, is this 20 minute timeframe something that your client will extend?
>
> If you would like to speak, please call me on my cell today at […]. I am in court tomorrow.

[28] Counsel for the Respondent did not respond to this e-mail.

[29] At the case conference on July 4, 2022, it was agreed that the Applicant would send a construction schedule to the Respondent, and that the Respondent would respond to that construction schedule. On August 9, 2022, the Applicant's counsel sent a detailed construction schedule for the renovations to the Respondent's counsel. The construction schedule was substantially similar to the one that the Applicant had provided to the Respondent in December 2021 and to which the Respondent had never responded.

[30] Counsel for the Applicant sent a follow-up e-mail to counsel for the Respondent on August 22, 2022. On September 7, 2022, having still not received an answer from counsel for the Respondent, counsel for the Applicant wrote to Justice Myers to request an urgent application date. On September 8, 2022, counsel were advised that another case conference with Justice Myers had been scheduled for September 13, 2022.

[31] Later on September 8, 2022, counsel for the Respondent sent the following e-mail to counsel for the Applicant in relation to the proposed schedule sent one month earlier:

> I reviewed your schedule with the condominium representative, and there is no problem with the proposal except that there are no dates for start or completion, and it is felt that 7 hours of elevator use is excessive, although could be accepted if booked in 20 minute increments on appropriate notice. All work would have to be done during times set in the condominium regulations and all tradesmen verified by the building manager.

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[32] Counsel for the Applicant responded as follows on September 12, 2022:

> Thank you for your email.
>
> My client has spoken with his contractor, who has advised that he can commence the renovations on September 21st and complete the renovations within three weeks. This is predicated on your client agreeing to elevator bookings of longer than 20 minutes, including, but not limited to, the time for the removal of the demolition debris as detailed in construction schedule.
>
> Please speak with your client and advise. If I do not hear from you before tomorrow's attendance, then I will be seeking an urgent date to deal with this issue. My client's damages continue to increase and he will be seeking to recover same from the condominium corporation.

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[33] No resolution was achieved and, on September 13, 2022, the Application was scheduled to be heard on September 29, 2022.

4. Evidence on the Application

[34] The Applicant swore an affidavit and a reply affidavit and also adduced affidavit evidence of his contractor.

[35] The evidence of the Applicant's contractor, which is uncontradicted, includes the following:

> In my experience of 5 years, working as a residential construction contractor, I have never seen such deadlines established by a condominium corporation. Additionally, given the scope of the Renovations, I do not believe that it would be possible for me to complete same in four days with minimal access to the elevator.
>
> On or around December 22, 2021, with Moran's permission, I attempted to access the Unit to collect my tools which I left in the Unit. [The Respondent's property manager] stopped me in the lobby and told me that if I came to the property again, that he would call the police. I was intimidated and left the property.
>
> I can only commence the Renovations work in the Unit after removing the construction debris from the Unit. I would require access to the service elevators for at least five hours to remove the construction debris from the Unit.
>
> In addition, in order to move in and out new appliances, construction materials, flooring, and cabinetry, I would require use of the elevator for more than 20 minutes throughout the course of the Renovations. Because of the various delivery schedules, logistics with deliveries in the construction industry, and the order of operations for the Renovations, I do not believe that all of these deliveries can be scheduled at the same time.

> I am certain that, subject to availability of construction materials and reasonable access to the service elevators, I can complete the required Renovations within three to four weeks.

[36] The Applicant included in his affidavit uncontradicted evidence regarding timelines and procedures for renovations and use of the service elevators in four other condominiums in Mississauga, including three that are in close proximity to the Respondent. The windows for the use of service elevators in these condominiums are between two hours and three hours. The Applicant also gave evidence that his request to renovate another condominium unit that he owns in a nearby building over a 26-day period was approved.

[37] The Respondent relied on the affidavit of a Senior Property Manager working with the Respondent's current management company, Larry Novelski. Mr. Novelski was not involved in any of the events in issue and, according to the Applicant's evidence, the management company for which he works has been the Respondent's condominium manager for only a few months. This was not contradicted in any way. In his affidavit, Mr. Novelsky relies on a prior affidavit of another property manager of the Respondent, but that affiant is said to be no longer available. No member of the Respondent's Board provided any affidavit evidence. Generally speaking, the evidence filed by the Respondent is replete with hearsay, speculation and general and unsupported statements.

[38] No cross-examinations were held.

5. The Applicant's damages

[39] The Applicant's evidence, which is uncontradicted, is that he decided to sell the condominium unit in which he used to reside in a nearby condominium, and to move into the Unit. To this end, he sold his former residence and the sale closed on April 29, 2022.

[40] However, as a result of the events set out above, the Applicant was not able to complete the renovations and move into the Unit after the sale of his former residence. As of the date of the hearing, the Unit was not habitable as it did not have a functional kitchen or a functional bathroom. While the Applicant owns other condominium units, he could not move into any of those units as they were all occupied by tenants.

[41] Since the Applicant has not been able to move into the Unit, he has had to place his belongings in storage and make alternative temporary accommodation arrangements. The Applicant's evidence, which was supported by a number of invoices, was that his moving, storage and Airbnb accommodation costs until the end of October 2022 totaled $33,996.45.

6. Post-hearing attendances and issues

[42] I made the order set out in paragraph 2 above after the hearing on September 29, 2022. The order provided, among other things, that if the parties had not reached an agreement on a reasonable schedule to complete the renovations and on reasonable access to the service elevators by 3 p.m. on October 5, 2022, counsel were to advise my assistant by 4 p.m. and a case conference

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would be scheduled with me on October 7, 2022 for determination of any outstanding issues between the parties.

[43] Because the parties were not able to reach an agreement on all issues pertaining to the schedule to complete the renovations and on reasonable access to the service elevators by October 5, 2022, a case conference was held before me on October 7, 2022. The parties were generally in agreement with respect to the construction schedule. However, the Respondent was insisting that the Applicant be present in person every time the service elevator was used for a pre-use inspection and a post-use inspection, and the Applicant was not available to attend during the relevant period of time. I note that no evidence was provided by the Respondent to support the alleged requirement of an in-person attendance by the owner of the unit himself.

[44] After considering the information sent by counsel prior to the case conference and discussing the issues with counsel at the case conference, I ordered the following on October 7, 2022:

> The attached Construction Schedule is approved and ordered.
>
> The Applicant does not need to be physically present for the pre-inspection and post-inspection of the service elevator. He is to provide to the Respondent's management office as soon as possible a letter in writing advising of the identity of the person(s) who will be his agent(s) for the purposes of the pre-inspection and post-inspection of the service elevator. The Respondent will deal with the person(s) identified in Mr. Moran's letter for the purposes of the inspections.
>
> Mr. Moran's contractor is allowed to use the regular elevators in the condominium today, October 7, 2022, for the purpose of bringing a drill to Mr. Moran's unit so as to avoid any further delay.
>
> Mr. Toole is to send to Mr. Plener the backup information and the exact amount for the additional costs sought by Mr. Moran as a result of the fact that the renovations will not be completed by the end of October 2022. If the parties agree on an amount, they are to advise my assistant. If the parties cannot agree, they are to advise my assistant and I will provide a timetable for the exchange of written submissions.
>
> If costs cannot be agreed upon, the Applicant shall deliver submissions of not more than three pages (double-spaced), excluding the costs outline, by October 21, 2022. The Respondent shall deliver its responding submissions (with the same page limit) by November 4, 2022. The submissions of all parties shall also be sent to my assistant by e-mail and uploaded onto CaseLines.

[45] On October 21, 2022, counsel for the Applicant advised that the parties had not been able to reach an agreement on the additional damages sought by the Applicant as counsel for the Respondent had not responded to his correspondence on this point. Consequently, I issued an

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endorsement on the same day setting out a timetable for the parties to make written submissions on this issue.

[46] On October 28, 2022, counsel for the Applicant advised that the parties had reached an agreement that the Applicant's damages as a result of the renovations not being completed by the end of October 2022 were to be increased from $33,996.45 (as ordered on September 29, 2022) to $35,826.93.

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B. DISCUSSION

1. Applicable legal principles

[47] Section 135 of the *Act* provides as follows:

> **Oppression remedy**
>
> **135** (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.
>
> **Grounds for order**
>
> (2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.
>
> **Contents of order**
>
> (3) On an application, the judge may make any order the judge deems proper including,
>
> (a) an order prohibiting the conduct referred to in the application; and
>
> (b) an order requiring the payment of compensation.

[48] The oppression remedy under section 135 of the *Act* is broad and flexible. The court must balance the objectively reasonable expectations of an owner with the condominium board's ability to exercise judgment and secure the safety, security and welfare of all owners and the condominium's property assets. The availability of the oppression remedy largely turns on a factual analysis. See *Noguera v. Muskoka Condominium Corporation No. 22*, 2020 ONCA 46 at paras. 17, 21 ("***Noguera***"), *Hakim v. Toronto Standard Condominium 1737*, 2012 ONSC 404 at para. 38 ("***Hakim***") and *McKinstry v. York Condominium Corp. No. 472*, 2003 CanLII 22436 at para. 33 (Ont. S.C.J.).

[49] The test for oppression under section 135 of the *Act* mirrors that for oppression in corporate law generally: *Metropolitan Toronto Condominium Corp. No. 1272 v. Beach Development (Phase*

II) Corporation, 2011 ONCA 667 paras. 5-6. In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 ("***BCE***"), the Supreme Court described the two-prong test for oppression. First, the claimant must establish that there has been a breach of reasonable expectations. Second, the conduct must be oppressive, unfairly prejudicial or unfairly disregard the interests of the claimant. With respect to the first prong, the subjective expectation of the claimant is not conclusive. Rather, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationship at issue, general commercial practice and the entire context, including the fact that there may be conflicting claims and expectations. See *BCE* at paras. 56, 59, 62, 72 and *Noguera* at para. 17.

[50] With respect to the second prong, the courts have not drawn clear lines between any of the three statutory tests – oppression, unfair prejudice and unfair disregard – and have often found that conduct may fit into one or more of the categories. Oppression is conduct that is coercive or abusive. Oppression has also been described as conduct that is burdensome, harsh and wrongful, or an abuse of power which results in an impairment of confidence in the probity with which the company's affairs are being conducted. Unfair prejudice and unfair disregard are less rigorous tests than oppression. Unfair prejudice has been found to mean a limitation on or injury to a complainant's rights or interests that is unfair or inequitable. Finally, unfair disregard means to ignore or treat the interests of the complainant as being of no importance. See *Hakim* at paras. 32-36 and *Walia Properties Ltd. v. York Condominium Corporation No. 478*, 2007 CanLII 31573 at para. 23 (Ont. S.C.J.).

2. Application to this case

[51] In my view, it was within the Applicant's reasonable expectations that the Respondent would consider his renovation requests in a fair manner, that it would take his concerns seriously regarding the construction schedule and the access to the service elevators, and that the Respondent would provide timely responses and decisions. See *Wong v. Toronto Standard Condominium Corporation No. 1918*, 2022 ONSC 3409 at paras. 80-82 ("***Wong***"). All of these reasonable expectations have been breached in this case.

[52] Based on common sense and the evidence regarding the general practice of other condominiums located in the same area as the Respondent (with at least one of them being managed by the same management company than the Respondent at the relevant time), I also find that it was reasonable for the Applicant to expect that his request to have access to the service elevator for windows longer than 20 minutes would be seriously considered.

[53] Moving to the second prong of the test, I conclude that the Respondent's conduct has unfairly disregarded the interests of the Applicant, i.e. the Respondent has ignored the Applicant's interests and treated them as being of no importance. Among other things:

a. The Respondent and its lawyer have ignored several communications and requests from the Applicant and his lawyers, including the renovation request he personally submitted in December 2021.

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b. When the Respondent and its lawyer responded to communications, it was often after a significant delay. Further, the responses were often tone-deaf and/or non-responsive. For instance, the only response provided to the letter from the Applicant's counsel dated December 17, 2021 was: "Please advise your client to follow the Corporation's Rules and policy and procedures", which was completely non-responsive to the numerous concerns and points set out in the letter. Further, despite multiple communications providing credible and convincing explanations as to why more than 20-minute windows were required for the use of the service elevator, the Respondent maintained its arbitrary and intransigent position that the service elevator could only be reserved for 20 minutes at a time, without providing any principled and credible explanation.

c. As a result of his property manager coming into the Unit on December 8, 2021, the Respondent was aware that the Unit contained a substantial quantity of construction debris, did not have a functional kitchen or a functional bathroom, and was not habitable. Despite this, the property manager's only response to the contractor's request for a longer access to the service elevator was "I don't care."

d. The Respondent's attitude and conduct did not change after it was advised in April 2022 that the Applicant no longer had a residence to live in pending the completion of the renovations.

e. The Respondent argued that the work done by the Applicant in December 2021 exceeded the scope of the renovations that were approved (e.g. the Respondent argues that light fixtures were removed). In my view, it is unclear that the scope was exceeded in any significant way as some of the work complained about by the Respondent was arguably implied in the description of the renovations. In any event, such an argument is another example of a tone-deaf answer on the part of the Respondent. The fact that the Applicant may have slightly exceeded the scope of the approved renovations is not a proper justification for leaving the Applicant without a habitable unit for months and for not fairly considering requests to complete the renovations and correct the situation.

[54] As stated above, the Respondent has not adduced any evidence regarding any rules, policies or procedures that would apply to the situation and support the approach it adopted in this matter (including anything supporting a 20-minute time limit for the use of the service elevator). Nor has the Respondent adduced any evidence regarding: (a) any complaints made in relation to the renovation of the Unit or the use of the service elevator; and (b) any real communal interest that could in any way justify preventing the Applicant from having a habitable unit for numerous months. Finally, the Respondent has not responded to the evidence of the Applicant's contractor and has adduced no evidence to support its general position that the renovations in issue could be completed in four days with only two 20-minute elevator uses. The conduct of the Respondent in the litigation supports the view that its conduct was arbitrary and unsupported the whole time.

[55] Thus, I conclude that the Applicant is entitled to relief under section 135 of the *Act*.

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[56] Subsection 135(2) of the *Act* allows the Court to make an order "to rectify the matter" if the court determines that the conduct of a corporation unfairly disregards the interests of an applicant. The purpose of the orders I made on September 29 and October 7, 2022 regarding the construction schedule was "to rectify the matter" and allow the Applicant to complete the renovations of the Unit in a timely manner. However, the ordering of a construction schedule did not completely rectify the matter as the Applicant suffered damages as a result of the delay caused by the Respondent.

[57] Subsection 135(3) of the *Act* expressly contemplates the court making an order requiring the payment of compensation. As a result of the Respondent's unfair disregard for the Applicant's interests, the Applicant was not able to move into the Unit after selling his residence and had to incur costs that he would not have had to incur otherwise, including accommodation and storage costs. The Applicant has adduced evidence of these costs which has not been contradicted in any way. He is entitled to be compensated for such costs by the Respondent since it is the Respondent's conduct that caused the Applicant to have to incur these costs.

[58] However, it is my view that there is no evidence supporting an award of general damages in the amount of $30,000, as requested by the Applicant, or of any amount. The Applicant refers to the case *Wu v. Peel Condominium Corporation No. 245*, 2015 ONSC 2801 ("***Wu***") in support of his position. In that case, there was a finding of oppression in relation to a noise and vibration issue. There was no medical evidence supporting any medical issue with the Applicant and no evidence of loss of value with respect to the condominium unit. However, Lemon J. recognized that the Applicant had been left in a difficult, unfair and oppressive situation for almost five years, during which she had to put up with elevated noise levels and the condominium corporation's belittling conduct. Based on the evidence before him, he assessed damages at $30,000.00. A $30,000 award of general damages was also made in *Wong*, which dealt with a very similar situation of noise and vibration over an eleven-year period: see *Wong* at para. 84.

[59] In my view, *Wu* and *Wong* are distinguishable. In this case, there is no evidence that the Applicant suffered any damages except for the costs that he had to incur in relation to accommodation and storage. It is unclear what the Applicant is seeking to be compensated for by an award of general damages. Contrary to the Applicants in *Wu* and *Wong*, he did not have to live in his Unit for an extended period of time with recurring issues, such as noise and vibration. I find that the orders I made on September 29, 2022, including an award of damages compensating the Applicant for the costs that he had to incur, adequately address the Applicant's damages and the Respondent's improper conduct.

C. COSTS

[60] The parties were not able to agree on costs and have delivered costs submissions.

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1. Positions of the parties

a. Position of the Applicant

[61] The Applicant seeks costs on a substantial indemnity basis in the amount of $28,508.34.[1] He submits that the following three factors are of overriding importance: (a) the Applicant was the successful party and should be awarded his costs; (b) the Respondent did not provide the Applicant with a costs outline in advance of the return of the Application; and (c) the Respondent "chose to play hardball, eschewing negotiations and adopting positions that were unfounded and unsupported by any evidence."

[62] The Applicant states that being able to renovate his unit so that he could reside in it was very important to him and because of the Respondent's oppressive conduct, he was forced to live in an Airbnb for 192 days, while storing his personal possessions in a storage unit.

[63] According to the Applicant, the Respondent made unfounded attacks on his credibility, without any basis or evidence, and such unfounded allegations should be sanctioned by the Court through an award of costs on a substantial indemnity basis.

[64] The Applicant also makes the following submission in support of a costs award on a substantial indemnity basis:

> At every step of the way, including after the hearing of the application on September 29, 2022, PCC 485 has been unresponsive to Moran. This includes, choosing not to engage in a process for potential resolution with the assistance of the Honourable Justice Myers, not responding regarding the construction schedule, both before and after the hearing, thereby necessitating a further case conference, and not responding regarding the updated damage documents as a result of the renovations not being completed by the end of October. PCC 485 took a hard-line approach, and such an approach warrants an adverse costs award on a substantial indemnity scale.

[65] The Applicant argues that the Respondent cannot attack the quantum of costs that he is seeking since it did not provide a costs outline prior to the hearing of the Application. He submits that the amount of costs that he is seeking is both reasonable and in an amount that the Respondent would have expected to claim if it had been successful.

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[1] While the Applicant's costs outline does not include a figure on a partial indemnity basis, I calculate that the partial indemnity figure, using rates representing 60% of actual rates and including HST and disbursements, would be approximately $19,607.71.

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b. Position of the Respondent

[66] The Respondent filed short submissions in which it submits that counsel for the Applicant is claiming an excessive amount of time in this matter. The Respondent specifically complains about the time spent on correspondence, preparation for the attendances and drafting of the Notice of Application and the affidavits. Among other things, the Respondent argues that "[e]very contact was papered to the extreme" and that a series of emails was exchanged "on matters that could have readily been settled between the parties in civil conversation."

[67] The Respondent suggests that this was a straightforward Application and that a costs award of $6,000.00 would be appropriate. The Respondent did not provide a costs outline.

2. Discussion

[68] With respect to the scale of costs, as has been observed in many cases, costs on an elevated scale are exceptional and are reserved for those situations when a party has displayed reprehensible, scandalous or outrageous conduct: see *Quickie Convenience Stores Corp. v. Parkland Fuel Corporation*, 2021 ONCA 287 at para. 4.

[69] In my view, even though the conduct of the Respondent in this case could be criticized on a number of points, it does not rise to the egregious level required to award costs on a substantial indemnity basis. While the Respondent could be described as having adopted a hardline approach with respect to this dispute, hard-fought litigation is insufficient to justify an elevated costs award: see *Davies v. Clarington (Municipality)*, 2009 ONCA 722 at paras. 42-45.

[70] I do not give any weight to the Respondent's attacks on the quantum of costs sought by the Applicant, primarily for three reasons:

a. Although the unsuccessful party is not obliged to disclose what they expended on costs, an attack on the quantum of the opponent's claim for costs without disclosing one's own costs outline "is no more than an attack in the air": see *United States of America v. Yemec* (2007), 2007 CanLII 65619, 85 O.R. (3d) 751 at para. 54 (Div. Ct.).

b. The materials filed by the Respondent were not to the level of the Court's expectations. As stated above, the evidence filed by the Respondent was replete with hearsay, speculation and unsupported statements. I also note that the Respondent relied in his Factum on an affidavit that had not been served on the Applicant and was not included in its Motion Record.[2]

[2] After hearing submissions at the hearing, including a request for an adjournment by the Respondent in order to properly serve the affidavit, I allowed counsel for the Respondent to upload the affidavit onto

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c. The Respondent's suggestion that matters could have been resolved without being "papered to the extreme" is completely undermined by the communications that took place in this case, the Respondent's general unresponsiveness and its intransigence.

[71] While the Respondent's attacks on the quantum of costs are rejected, this Court must be satisfied that the costs sought are fair and reasonable. Based on my review of the Applicant's costs outline and the hours spent by the Applicant's lawyers, I find that it is appropriate to apply a small reduction to ensure the overall reasonableness of the costs award in light of all the circumstances of this case and to take into account potential duplication of work between the timekeepers involved.

[72] Taking the foregoing into account, as well as the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure* and the reasonable expectations of the parties, I find that the fair and reasonable award of costs in favour of the Applicant is on a partial indemnity basis in the all-inclusive amount of $15,000.00. In my view, this is an amount that the Respondent should reasonably have expected to pay in the event that it was unsuccessful on the application. The costs are to be paid by the Respondent to the Applicant within 30 days.

D. CONCLUSION

[73] The orders I made on September 29, 2022 and October 7, 2022 are set out above. As noted above, the parties have agreed that the Applicant is entitled to an increase in damages from $33,996.45 to $35,826.93.

[74] The Respondent is ordered to pay costs to the Applicant in the all-inclusive amount of $15,000.00 within 30 days.

Vermette J.

Date: November 21, 2022

CaseLines and to rely on it, and held that the Court would consider the affidavit, subject to the usual admissibility and evidentiary rules (e.g. hearsay). After the ruling, we took a break in order to give to counsel for the Applicant the opportunity to review the affidavit for the first time.

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