

# [York Condominium Corp. No. 221 v. Mazur](#)

Ontario Judgments

Ontario Superior Court of Justice

M. Koehnen J.

Heard: January 7, 2022.

Oral judgment: January 7, 2022.

Released: March 31, 2022.

Court File No.: CV-670035/21

[2022] O.J. No. 1530 | 2022 ONSC 2002

Between York Condominium Corporation No. 221, Plaintiff, and Julian Eugene Mazur and Christine Beryl Mazur, Defendants

(31 paras.)

## **Case Summary**

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**Municipal law — Powers of municipality — Regulation of property and activities — Safety — Unsafe or hazardous property — Application by Condominium Corporation to compel respondents to bring their unit into compliance with fire department's order, to remove combustibles in respondents' unit, and for legal costs on a full indemnity granted — The respondents failed to comply with fire inspection order deadline due to family members' deaths and health concerns — Unfortunate incidents did not justify a two-year delay to comply with a fire inspection order, the failure of which constituted a hazard to the life and property of other condominium unit holders — Condominium corporations were entitled to full indemnity costs by virtue of the Condominium Act.**

**Real property law — Condominiums — Unit holders — Duties of — Application by Condominium Corporation to compel respondents to bring their unit into compliance with fire department's order, to remove combustibles in respondents' unit, and for legal costs on a full indemnity granted — The respondents failed to comply with fire inspection order deadline due to family members' deaths and health concerns — Unfortunate incidents did not justify a two-year delay to comply with a fire inspection order, the failure of which constituted a hazard to the life and property of other condominium unit holders — Condominium corporations were entitled to full indemnity costs by virtue of the Condominium Act.**

## **Statutes, Regulations and Rules Cited:**

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Condominium Act, s. 17(3), s. 19, s. 26, s. 117, s. 134, s. 134(5)

Ontario Fire Code, s. 1.2.1.1, s. 1.4.1.2

Fire Protection and Prevention Act

## **Counsel**

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*J. Wright and M. Molloy*, for the Plaintiff, YCC No. 221.

*J. Mazur*, Self Represented Defendant.

*C. Mazur*, Self Represented Defendant.

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### **ORAL REASONS**

#### **M. KOEHNEN J. (orally)**

1 This is an application by York Condominium Corporation Number 221 against the respondents Julian and Christine Mazur. Mr. And Mrs. Mazur are the owners and occupants of a unit within the Condominium Corporation. The Condominium Corporation applies for a variety of forms of relief. They are all focused on the fact that the unit has been deemed to be in violation of fire regulations by the Toronto Fire Department. The Condominium Corporation seeks an order compelling the respondents to bring their unit into compliance with the fire department's order, as well as orders restraining the respondents from collecting unacceptable levels of combustible materials in their unit, dumping garbage in the common elements of the Condominium Corporation and for legal costs on a full indemnity scale.

2 At the outset of the application, the respondents sought an adjournment in accordance with an email that they sent to the court office on January 5, 2022. The basis for the adjournment request is that this hearing and the timetable associated with it were set by Justice Myers at triage court without notice to the respondents.

3 It does appear that the respondents were not given notice of the triage court attendance. While it would have been preferable to have been given notice of the triage court attendance, in my view, the absence of that notice does not warrant an adjournment. The respondents were served with the endorsement arising out of triage court and with application materials on November 5 and November 13, 2021. The respondents raised no concerns about the hearing date or the timetable imposed by Justice Myers until January 5. Had the respondents had difficulty with the hearing date or the timetable, they should have raised that long before the hearing date and shortly after they received notice on November 5, 2021.

4 The respondent's basis for the adjournment is that videoconferencing is an intolerable invasion of their privacy. They would prefer to adjourn the hearing to an in-person hearing when those become available again.

5 At the moment, in-person hearings are not permitted as a result of health regulations imposed by the provincial government because of the spread of the Omicron variant of the COVID-19 virus.

6 The fact that this hearing is occurring by videoconference does not constitute grounds for an adjournment. Courts across Canada have been conducting all manner of hearings by videoconference since the outbreak of the COVID-19 pandemic in March of 2020. To the extent that the respondents do not wish to participate by videoconference, they were provided with a telephone number that allowed them to participate by phone without video. The respondents took advantage of that opportunity, appeared, and made submissions at today's hearing.

7 The issue underlying this hearing arose on April 15, 2020, when Toronto Fire Services attended at the Condominium Corporation to conduct an inspection of the property. As a result of that inspection, the Toronto Fire Services issued a fire inspection order which indicated that the respondents were:

"Collecting combustible material within [their] dwelling unit in a quantity and manner which constitutes a fire hazard..."

8 In addition, the fire inspection order required the respondents to:

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"Remove combustibles from the dwelling unit to: (a) maintain a minimum one metre clearance from the kitchen stove and any other cooking appliances in the kitchen; (b) provide egress pathway from each room that is occupied in all floor areas with a minimum one metre clearance. The access route must be clear of any obstructions from floor to ceiling to provide a safe means of egress for the occupants and emergency responders; and (c) maintain a minimum distance of one metre from the ceiling to ensure adequate clearance for smoke alarm operation."

**9** The fire inspection order was required to be completed by the respondents by June 1, 2020. The respondents either failed or refused to comply with that deadline.

**10** In oral submissions today the respondents submit that they have obtained an extension of the fire inspection order. There are, however, no written materials before me to demonstrate that assertion. The endorsement of Justice Myers, setting this hearing date, made it clear that if the respondents wished to introduce any evidence at the hearing, they were required to do so by affidavit to which they would be required to attach supporting documents. The respondents have filed no affidavits and no other documentary materials on this application.

**11** On June 8, 2020, the Condominium Corporation, through its counsel, sent a letter to the respondents indicating that they had failed to comply with the fire inspection order by June 1, 2020 as required. The Condominium Corporation followed up with a further letter from counsel on November 17, 2020. On November 29, 2020, the respondents responded by indicating that a large moving truck would be present on December 8th with three movers to remove their belongings throughout the day. That did not occur. Further correspondence ensued.

**12** On August 22, 2021, the respondents wrote to the Condominium Corporation explaining that the delay in clearing the unit was due to a series of setbacks including the fact that Mr. Mazur's mother died in Victoria, B.C., that his brother-in-law was killed in a home accident and that Ms. Mazur was stabbed with a barbeque fork by a deranged passer-by and that Ms. Mazur was undergoing treatment for breast cancer.

**13** On October 10, 2021, the corporation obtained a security and fire protection inspection to certify that the alarm units in the corporation's units had been tested and were operational. The certificate of inspection indicates that the inspectors were not permitted entry into the respondent's unit to inspect and verify operation of the alarms.

**14** A number of provisions of the Condominium Act come into play on this application.

**15** Section 17 (3) of the Act, require the Corporation to take all reasonable steps to ensure that owners and occupiers of units comply with the Act, the declaration and the by-laws and the rules of the corporation.

**16** Section 19 of the Act allows the corporation or its authorized designee to enter a unit on giving reasonable notice to perform the objects and duties of the corporation.

**17** Section 117 of the Act provides that "no person shall permit a condition to exist in a unit or carry on an activity in a unit if the condition or the activity is "likely to damage the property or cause injury to an individual."

**18** Section 134 of the Act allows the corporation and others to apply to the Superior Court of Justice for an order enforcing compliance with any provision of the Act, the declaration, by-laws or rules.

**19** Article IV of the Corporation's Declaration provides in (1)(c) that if a unit holder does anything which increases the risk of fire or other insured perils that increases the insurance premium rate, then the increase in the monthly premium can be visited on the unit owner or occupant.

**20** Article VI of the Corporation's Declaration provides that each unit owner shall maintain his unit and that each unit owner shall be responsible for all damages and costs caused by the failure of the unit owner to maintain and

repair his unit. The same provision allows the corporation to make any repairs that an owner is obliged to make and that he does not make within a reasonable time.

**21** By way of summary, the gist of the forgoing provisions is to allow the corporation to enforce fire inspection orders within individual units of the corporation. There is no doubt in my mind that the conditions in the respondents' unit are likely to cause injury to others. Toronto Fire Services has issued a fire inspection order against the unit. To allow the unit to be in continued violation of a fire inspection order creates a serious hazard to the property and individual safety of other occupants of the Condominium Corporation.

**22** The Condominium Corporation itself is potentially liable for many of those hazards if it does not take steps to remediate them. Section 26 of the Condominium Act deems the corporation to be the occupier of common elements for liability purposes. Section 1.2.1.1 of the Ontario Fire Code obligates the "Owner" of a property to carry out the provisions of the fire code. The term "Owner" is defined in s.1.4.1.2 as "any firm, person or corporation having control over any portion of the building or property under consideration and includes the persons in the building or the property." The Condominium Corporation falls within the definition of "Owner" and is therefore obligated to ensure that the respondents comply with the Ontario Fire Code and the Fire Protection and Prevention Act.

**23** In providing remediation orders for situations like this, courts have recognized that their discretion goes so far as to compel an owner to vacate and sell their unit if they do not comply with relevant safety orders. See, for example, *Davis v. Peel Condominium Corp No. 22*, (2013) ONSC 3367 at para. 1; *York Condominium Corporation No. 82 v. Singh* (2013) ONSC 2066 at para. 43; and *Metro Condominium Corporation No. 747 v. Korolekh* (2010) ONSC 4448 at para. 80.

**24** The respondents agree that they are required to comply with the fire inspection order. They consent to the substantive relief that is being sought by the corporation. Although they objected, initially, to the order restraining them from spreading garbage in the common elements on the basis that they did not so, they did admit that their son has, on occasion, spread garbage in the common elements. The respondents agree, however, that given that they have not spread garbage in the common elements in the past and have no intention of doing so in the future, that an order restraining them from doing so does not, in any way, impact their daily conduct.

**25** The respondents also agreed to bring their unit into compliance with the fire inspection order. The respondents have agreed that being given until February 21, 2022, to bring their unit into compliance is reasonable. An order will therefore issue to that effect. The respondents equally agree that the Condominium Corporation or its appropriate designee can enter their unit on February 22, 2022, to confirm that the unit has been brought into compliance with the fire inspection order. In addition, the respondents have agreed that by January 31, they will advise the Condominium Corporation if they anticipate having any difficulty bringing the unit into compliance with the fire inspection order themselves. If they do have any such difficulty, then the corporation will be able to bring the unit into compliance and attribute the costs of doing so to the respondents and their unit.

**26** The Condominium Corporation seeks costs on a full indemnity basis of \$21,705.27. Condominium corporations are entitled to full indemnity costs in situations like this by virtue of s. 134(5) of the Condominium Act. See also *Peel Standard Condominium Corporation No. 767 v. 2069591 Ontario Inc.*, (2012) ONSC 5241 at para. 8; *Metropolitan Toronto Condominium Corporation No. 596 v. Best View Dining Ltd.*, (2018) ONSC 5058 at paras. 23-26, 29-30, 33-34; and *York Condominium No. 187 v. Sandhu* (2019) ONSC 4779 at para. 21(h).

**27** The underlying principle supporting full indemnity costs to condominium corporations is that if they are not entitled to full indemnity costs, it is the other unit holders who effectively bear the legal costs that have been incurred by an offending unit holder's conduct. That has been deemed to be inappropriate.

**28** The respondents resist the claim for costs. They submit that they have been willing to comply with the fire inspection order and that the only reason they have not been able to is that the Condominium Corporation has refused them the right to park a truck at a convenient spot adjacent to their unit in order to permit the removal of

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materials. I am not in a position to accept that evidence. As noted earlier, the endorsement of Justice Myers required the respondents to submit any evidence in writing. The respondents have not done so. The reason for the requirements to submit evidence in writing well before the hearing is to prevent parties from being taken by surprise at the hearing. Taking a party by surprise at a hearing, renders them unable to present any responding evidence to the Court. In addition, the correspondence between the parties that is in the record tends to belie the respondent's submission today that they were willing to comply with the fire inspection order.

**29** The correspondence in the record indicates that the respondents intended to appeal the fire inspection order. There are, however, no materials before me that indicate any appeal was actually filed. In addition, the respondent's letter of August 2021, purports to give reasons for the respondent's failure to comply. As noted earlier, those reasons included: the death of Mr. Mazur's mother, the death of his brother-in-law, Ms. Mazur being stabbed with a fork by a deranged passer-by and Ms. Mazur's cancer treatment.

**30** Although those incidents are all very unfortunate and warrant sympathy for the respondents, they do not justify an almost two-year delay in complying with a fire inspection order. The failure of which constitutes a hazard to the life and property of other condominium unit holders.

**31** I have reviewed the bill of costs of the Condominium Corporation. The Condominium Corporation put together a cogent easy to follow application record of 190 pages containing Exhibits A through to U. The Corporation's lawyer also prepared a cogent 22-page factum summarizing the record in a form that is easily accessible. Materials of that quality are of great assistance to the Court and to an opposing party in that they clearly set out the case to which the opposing party is required to respond. One can always cast stones at an opposing party's bill of costs with the benefit of hindsight. The costs of the Condominium Corporation here fall well within the range of reasonableness. I therefor award the Corporation costs which I affix on a full indemnity scale at \$21,705.27.

M. KOEHNEN J.