COURT FILE NOS.: 05-CV-291282 PD1
05-CV-302196 PD3
DATE: 20051221

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **YORK CONDOMINIUM CORPORATION NO. 08**

Applicant

- and -

GINETTE PERNA, VICTOR ALVEZ, BAICHNEE RAGUNAUTH, EILEEN LEE, MOSES BASEDEO and AMEER ALIMUDDIN on behalf of all unit owners and Mortgages of Units of YORK CONDOMINIUM CORPORATION NO. 08

Respondents

BEFORE: **Spence J.**

COUNSEL: **George F. Vella**, for the Applicant

Steven Bellissimo, for the Respondents

DATE HEARD: **December 16, 2005**

E N D O R S E M E N T

Re: Court File No.: 05-CV-302196 PD3

[1] The applicant, York Condominium Corporation No. 8 ("YCC 8"), seeks the appointment of an administrator. The Application Record has not yet been duly served on all of the respondents so the application cannot proceed yet. It is adjourned to a date to be set by the Court office.

Re: Court File No.: 05-CV-291282 PD1

[2] The respondents move for the relief set out in their Notice of Motion dated December 6, 2005. In view of the time allocation requested for this motion and the submissions of the parties, the request for relief in paragraph (d) of the Notice (a finding of contempt) is adjourned to a date to be set by the court office.

[3] I refused to grant the request of the applicant for an adjournment of the motion of the respondents. No reason was shown why it should await the new application that is being made by the applicant.

[4] The applicant says it does not oppose an order of the kind contemplated in paragraph (b) of the Notice (*i.e.*, disclosure of the results of the election) provided that the Chairman is directed that, to determine those results, he is first to give effect to orders that the applicants seek as set out in their Notices of Motion returnable September 13, 2005 (in paragraph 1 of that Notice) and December 16, 2005. For purposes of this hearing of the three above-mentioned motions, the relief that the applicants seek under the September 13 motion is that the Court should direct the Chairman to nullify and disqualify either all proxies tendered by and on behalf of or naming any of the respondents or George Brown as the proxy holder for the General Meeting of June 29, 2005 or, as a minimum, alternatively, all such proxies for which duplicate proxies have been filed.

[5] The three above-mentioned motions were heard on the basis set out above.

[6] By order dated June 15, Herman J. ordered that a meeting be held to elect directors of the applicant on June 29, 2005. Following events on that day and July 19, 2005, the respondents and the applicant each brought motions for September 13. On that date, on consent of the parties, Day J. granted an order for the appointment of a new independent chairman to reconvene the meeting and to proceed with the completion of the election and then to announce the results at a time to be agreed between the parties or to be set by court order. Day J. adjourned the two motions then before the Court to the hearing for that court order. The applicant's motion was heard at the present hearing but the respondents' motion was not and it is accordingly adjourned to a date to be set by the Court office.

[7] On October 13, the parties met and completed the challenges and the tabulation of the votes. The parties disagreed about releasing the results. The applicant and the respondents each gave notice of their present motions returnable December 16.

[8] The applicant contends that the results of the election as determined by the Chairman ought not to be released and carried into effect without first making adjustments to correct defects in respect of the proxies (the September 13 motion) and the unit owners' list that was used at the meeting (the December 16 motion).

[9] With respect to the proxies used at the meeting, the affidavits presented by the applicant in its motion record provide evidence as to the delivery of defective proxies at the meeting on June 29 and as to the failure of the meeting on July 19 to complete a satisfactory review of the proxies. The respondents dispute much of the evidence of the applicant and they say that, in any event, the process conducted on July 19 and completed on October 13 dealt with all issues raised with respect to the proxies. The applicant says that, regardless, it is known that nine proxies are bad and that this taints the process. In view of the process carried out on October 13, there is nothing now before the Court that would show that bad proxies have survived that process.

[10] The applicant submits that the respondents employed tactics of intimidation in obtaining the proxies they delivered for the meeting and that this fact taints the entire

process. In view of the fact that the applicant consented on September 13 to a court order that that process was to be carried through to completion, the applicant cannot now be heard to contend that the process was tainted from the start.

[11] For the above reasons, there is no basis for the relief requested under the motion of the applicants for September 13.

[12] In its motion for December 16, the applicant disputes the propriety of the Chairman having used for the process what the applicant refers to as the sign-in list for the meeting. The applicant contends that the list is defective in a number of respects as can be shown from the other records of the applicant, consideration of which has been refused in the course of the completion of the process.

[13] The respondents submit that it was the responsibility of the applicant to maintain and provide a unit owners' list that was correct and that it was proper for the meeting process to be carried out on the basis of the unit owner list which the applicant originally provided for that purpose. This submission is supported by sections 47, 51 and 55 of the *Condominium Act, 1998*, S.O. 1998 c. 19. Accordingly, there is no basis for any relief based on the use of the unit owners list in the process.

[14] In *Peel Condominium Corp. No. 516* v. *Williams*, [1999] O.J. No. 770 (Gen. Div.), the Court said as follows:

> ¶19 The Act is structured to place decision making in respect of the affairs of condominium corporations in the hands of those directly affected, *i.e.* the unit owners. The court should be reluctant to interfere in the internal affairs of a corporation except in very exceptional circumstances.

[15] For the above reasons, order to go as requested by the respondents, as follows:

(1) a mandatory order directing David Thiel, the Chairman, to disclose and reveal the results of the election of the Board of Directors at a meeting held on October 13, 2005 at 7:00 p.m.; and

(2) an order that all proxies and ballots currently being held by David Thiel be released to the new Board of Directors, and that David Thiel attend and complete the remainder of the Annual General Meeting.

Certain other matters are adjourned as set forth above.

[16] Counsel may make submissions as to costs, if necessary.

Spence J.

DATE: December 21, 2005