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Case Name:

Toronto Standard Condominium Corp. No. 1510 v. McCauley

RE: Toronto Standard Condominium Corporation No. 1510, Applicant, and Wayne McCauley and Anne McCauley, Respondent

[2008] O.J. No. 2747

Court File No.: 07-CV-341144PD3

Ontario Superior Court of Justice

D.A. Wilson J.

Heard: June 6, 2008.
Judgment: July 10, 2008.

(6 paras.)

Counsel:

Alyssa Minsky, for the Applicant.

George F. Vella, for the Respondents.

ENDORSEMENT AS TO COSTS

1 D.A. WILSON J.:-- This was an application brought by the condominium corporation against 2 unit owners for a declaration that they violated the *Act* and must pay damages. Pursuant to reasons released June 10, 2008, I dismissed the application and ordered that if the parties could not agree on costs, I would receive written submissions, which I have been provided with.

2 Counsel for the respondents argues that costs ought to be on a substantial indemnity basis because the application was launched as a retaliatory measure against the respondents. Further, it is submitted that having read the evidence as a whole after the responding materials were delivered and cross-examinations completed, the applicant ought to have concluded the chances of success on the application were remote. Finally, it is submitted that the applicant ought to have accepted the respondents' offer to settle of May 8, 2008, wherein if the application were dismissed without costs and releases exchanged, the respondents would not demand costs.

3 In response, counsel for the applicant argues that there is an obligation on the corporation to manage the affairs of the condominium and to enforce compliance with the *Act* which is why the application was launched. Further, Ms. Minsky submits that the applicant made an offer to settle for the sum of $5,215.20 to the applicant and had that been accepted, the respondents would not have incurred the additional legal fees necessitated by the arguing of the application.

4 In dismissing the application against Mrs. McCauley, I noted that the evidence relied on by the applicant was extremely thin and that there was absolutely no evidence of behaviour that contravened the bylaws or rules of the condominium. With respect to the evidence concerning the alleged use of hair dye by Mr. McCauley, the evidence was entirely circumstantial and appears to be based on suspicions of Shoshana Medzelski. I noted in my reasons that "*it should have been clear to counsel for the applicant after delivery of the responding affidavits, or at the very latest after conducting the cross-examinations, that the application had virtually no chance of success ...*" (emphasis mine). The applicant should have accepted the offer to settle made by the respondents May 8, 2008 within 7 days of its delivery. To persist with the application was ill-advised. Further, the applicant's offer to settle for payment by the respondents the sum of $5,215.20 was completely unrealistic based on the evidence.

5 I have reviewed the bill of costs submitted by Mr. Vella and the hourly rates and the time spent are entirely reasonable in my opinion, considering the experience of counsel and the work involved in defending the application. I award costs of $16,058.77 to be paid by the applicant to the respondents within 30 days. This figure is comprised of partial indemnity costs up to the time of the offer to settle of May 8, 2008 ($4,129.59) plus costs on a substantial indemnity basis thereafter ($10,225.95) as, in my view, once materials were delivered and certainly after the cross-examinations were complete, the applicant should have abandoned the application. The applicant chose to persist with the application and must bear the costs this decision.

6 With respect to disbursements, I fix them at $1,703.23. I have disallowed the disbursement listed as "paid to G. Hyman to try to avoid litigation" in the sum of $1,868.25 as there is nothing in the materials to explain this disbursement.

D.A. WILSON J.

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