

CITATION: YRSCC No. 1076 v. Anjali Holdings, 2010 ONSC 1607
COURT FILE NO.: CV-09-096484-00
DATE: 20100429

SUPERIOR COURT OF JUSTICE – ONTARIO

Application under sections 98, 116, 177, 119, 134 and 135 of the *Condominium Act*,
R.S.O. 1990, c. C.26

RE: York Region Standard Condominium Corporation No. 1076

AND :

Anjali Holdings Limited and Bhardwaj & Baxi

BEFORE: The Honourable Mr. Justice P.D. Lauwers

COUNSEL: Erik Savas, for the Applicant

Mukesh Bhardwaj, for the Respondents

COSTS ENDORSEMENT

[1] The parties have been unable to agree on costs.

[2] I accept the submission of the applicant that:

A large number of cases in this area have affirmed the principle that owners and occupants who are ordered to comply with their obligations under the Act, the declaration, by-laws and rules, should have to pay all of the costs of the Corporation because to order otherwise, would mean that the unrecovered expenses would have to be borne by the other innocent unit owners in the complex through their monthly common fees or contributions to the corporation.

[3] The applicant cites a number of decisions: *Metropolitan Toronto Condominium Corporation No. 985 v. VanDuzer*, [2010] O.J. No. 571, 2010 ONSC 900 (per Low J.); *York Condominium Corp. No. 210 v. Naumovich* (unreported); *Russell Condominium Corp. No. 9 v. Wheelock*, [1993] O.J. No. 225 (Gen. Div.); *Frontenac Condominium Corp. No. 49 v. McLeod et al.* (unreported) and *York Condominium Corp. No. 482 v. Christiansen* (2003), 64 O.R. (3d) 65 (S.C.J.).

[4] Solicitor and client costs will be ordered where they are payable under contract on a guarantee: Orkin, *Law of Costs*, 2nd ed. (Aurora, Ont.: Canada Law Book Inc., 2009) looseleaf (updated to November 2009), at 2-239; *Manufacturers and Traders Trust Co. v. Amlinger*, [2006] O.J. No. 5547, 151 A.C.W.S. (3d) 1015 (S.C.J.) but the contractual right to be indemnified must be clearly and unambiguously expressed: Orkin, *supra*, at 2-239; *Dawson Properties Ltd. v. Miskelly's Electronics Inc.*, [1996] O.J. No. 2341 (Gen. Div.).

[5] The rules and declaration of the Condominium Corporation provide that owners who cause the Corporation any loss or expense in connection with a breach of their obligations shall indemnify. Rule 10 provides:

Any and all losses, costs or damages incurred by the Corporation by reason of or breach of any provision in the declaration, by-laws or rules...by any owner shall be borne and or paid for by such owner and may be recoverable by the Corporation against such owner in the same manner as common expenses. A similar provision appears in section 26(a) of the declaration.

[6] The provision could be made clearer by the insertion of a clause that specifically refers to legal fees, but the intent to cover all costs is obvious.

[7] My obligation to take an independent view of the costs is confirmed as well by Low J. in *Metropolitan Toronto Condominium Corporation No. 985 v. VanDuzer*, [2010] O.J. No. 571, 2010 ONSC 900 at para. 35, where she referred to the danger in cases where full indemnity is customary, that law firms may be tempted to “over lawyer” a matter.

[8] I have reviewed the costs submissions of the applicant and conclude that the time spent on this matter is somewhat excessive at 44 hours. I therefore reduce the claimed fees from \$12,320.00 to \$10,000.00 and award GST and disbursements as well. It would have been of more assistance if the costs outline had set out in a systematic way the time spent by counsel on each of the matters claimed.

[9] The respondent submits that the offer to settle dated October 23, 2009 must be taken into account in deciding the costs issue in this motion. The offer to settle was for an adjournment to permit the respondents to file an application for approval of the windows to the Board of Directors. The offer did not amount to a definitive offer to settle the matter. It hedged against an unfavourable answer from the Board of Directors. By contrast, my decision finally disposes of the matter although I do expect the Board of Directors to consider the application in good faith. In my view, the offer was not bettered and the principles and the cases mentioned earlier should be given full application in this case.



P.D. Lauwers J.

DATE: April 29, 2010