

CITATION: Metropolitan Toronto Condominium
Corporation No. 179 v. Chow, 2012 ONSC 587
COURT FILE NO: CV-11-425761
DATE: [20120124]

SUPERIOR COURT OF JUSTICE - ONTARIO
Commercial List

RE: METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 1179

Applicant

- and -

YIN NANG CHOW AND MAN CHUI YIU

Respondents

BEFORE: The Honourable Mr. Justice Glenn A. Hainey

COUNSEL: *Jonathan H. Fine & Bradley Chaplick,*
for the Applicant

Yin Nang Chow,
Respondent in Person

HEARD: Written submissions

ENDORSEMENT
AS TO COSTS

[1] The parties appeared before me on September 29, 2011 at which time the applicant sought an order compelling the respondents to comply with the *Condominium Act*, 1998 S.O. 1998, C.19. The respondents consented to an order which required them to comply with their duties and obligations under the *Condominium Act* with respect to quarterly fire safety inspections of the respondents' condominium. At the time, I reserved by decision on costs.

[2] The applicant seeks costs on a full indemnity basis pursuant to section 134 of the *Condominium Act*. The applicant also relies upon the Ontario Court of Appeal's decision in *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.* in

which the Court of Appeal confirmed at section 134(5) “was intended to shift the financial burden of obtaining compliance orders from the condominium corporation and, ultimately, the innocent unit owners, to the unit owners who’s conduct necessitated the obtaining of the order.”

[3] The applicant submits the respondents received numerous prior warnings concerning the fire and safety issues in respect of their condominium unit and that the legal proceedings were unnecessary as the respondent should have complied with their obligations and duties without the necessity of formal court proceedings.

[4] The respondents submit that their financial situation makes it impossible for them to satisfy a substantial costs order. They provided me with financial information demonstrating that monthly net income is less than \$100 more than their monthly fixed expenses.

[5] Although I am sympathetic to the respondents’ difficult financial circumstances, I agree with the applicant that the costs of requiring them to comply with their obligations should not be borne by the other innocent unit holders in the condominium corporation. Further, because the respondents’ failure to comply created fire safety risks, I agree that the condominium corporation had no alternative but to proceed with a formal court application to ensure compliance with respect to the important issue of fire safety.

[6] Accordingly, I am of the view that the condominium corporation should receive a costs award that provides it with full indemnity in respect of the expenses incurred in compelling the respondents to comply with their fire safety obligations.

[7] I have carefully reviewed the applicant’s costs outline, and I am of the view that it is fair and reasonable under the circumstances and, accordingly, the applicant is awarded costs on a full indemnity basis of \$12,000, payable by the respondents. The amount shall be added to the common expenses for the respondent’s condominium unit pursuant to subsection 134(5) of the *Condominium Act* and shall be payable over a four-year period which should result in an increase in the respondents monthly common expenses of approximately \$250.

HAINES, J.

DATE: