

CITATION: YCC No. 42 v. Gosal et al./YYC No. 42 v. Karim et al.
COURT FILE NO.: CV-14-496029/
CV-14-496588
DATE: 20130416

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
YORK CONDOMINIUM CORPORATION) *Derrick M. Fulton, for the Applicant*
NO. 42)
)
Applicant)
)
- and -)
)
SANDEEP GOSAL, AMINA BURE,) *Self-represented*
MARK CIAFARANI, VINCE)
CIAFARANI and VISTA PROPERTY)
MANAGEMENT INC.)
)
Respondents)

BETWEEN:)
)
YORK CONDOMINIUM CORPORATION) *Carol A. Dirks, for the Applicant*
NO. 42)
)
Applicant)
)
- and -)
)
ANVER KARIM and SHAH JAHAN) *Self-represented*
KHAN)
)
Respondents)

HEARD: March 28, 2014

PENNY J.

COSTS ENDORSEMENT

[1] In my decision of April 2, 2014, I allowed the Gosal Application and dismissed the Khan Application and directed cost submissions to be filed in writing. Both sides sought substantial indemnity costs. The Khan Application sought costs payable by the Corporation. The Gosal Application sought costs payable by Khan and Karim personally.

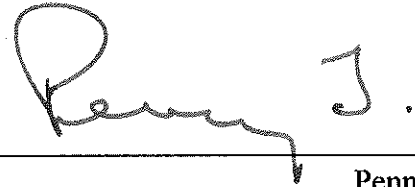
[2] The Gosal Application sought substantially indemnity costs of \$44,620 (or partial indemnity costs of \$31,680). The Khan Application sought substantial indemnity costs of \$31,520.

[3] Mr. Fulton, for the Khan Application, argues that the Chair of the September 2013 AGM invalidated the Election and declared that Gosal and Gure were not members of the board. Mr. Fulton reported to the old board and received instructions from the old board to commence the Khan Application. Mr. Fulton argues that someone had to commence an application to resolve the uncertainty surrounding the September 2013 Election. Mr. Fulton also argues that the Khan Application sought directions, as alternative relief, which were issued with respect to the next election.

[4] The normal rule of costs is that a successful party is entitled to its costs on a partial indemnity basis. This principle ought not to be departed from except for good reason.

[5] In this case, the real applicants and respondents in the applications were Gosal and Gure and Khan and Karim. While it is true that there was significant uncertainty in this condominium community about the validity of the Election and the authority of the board, this uncertainty arose from the Chair's reconsideration of the result. That reconsideration was prompted by, and largely the result of, representations by Khan, supported by Karim. I found, among other things, that those representations could and should have been raised at the time of the Election, not months later.

[6] Gosal and Gure were successful in their application. Khan and Karim were unsuccessful. The Corporation is entitled, therefore, to costs as against Khan and Karim, whose application was not authorized by a majority of the board. I do not think this case warrants departure from the normal scale of costs. However, the Corporation's costs include the cost of injunction proceedings before Belobaba J. fixed in the amount of \$2,500. I therefore find Khan and Karim are liable to YCC 42 for its costs in application CV-14-496588 in the amount of \$30,000 (inclusive of fees, disbursements and all applicable taxes). These costs are enforceable as a common expense against any units owned by Khan and Karim in accordance with s. 134(5) of the *Condominium Act, 1998*.

A handwritten signature in cursive script, appearing to read "Penny J.", is written above a horizontal line.

Penny J.

Released: April 16, 2014