COURT OF APPEAL FOR ONTARIO

CITATION: York Region Standard Condominium Corporation No. 972 v. Lee, 2025 ONCA 385
DATE: 20250522
DOCKET: COA-24-CV-0988

van Rensburg, Sossin and Gomery JJ.A.

BETWEEN

York Region Standard Condominium Corporation No. 972

Plaintiff (Respondent)

and

Peter Tak Ming Lee and Mun Chung Leung

Defendants (Appellants)

Peter Tak Ming Lee and Mun Chung Leung, acting in person

Timothy Duggan, for the respondent

Heard: May 15, 2025

On appeal from the judgment of Justice R. Lee Akazaki of the Superior Court of Justice, dated May 28, 2024, with reasons reported at 2024 ONSC 3010.

REASONS FOR DECISION

[1] This appeal concerns a decision granting judgment to the respondent, York Region Standard Condominium Corp No. 972. The appellants, Peter Tak Ming Lee and Mun Chung Leung, were ordered to deliver possession of their unit to the respondent and the respondent was granted leave to issue a writ of possession in respect of the unit (unless the appellants discharged the lien within 60 days).

[2] The underlying dispute related to the discovery of defective plumbing in the condominium and the remedial efforts undertaken by the respondent, which were resisted by the appellants, who refused the respondent's entry to their unit for the purpose of addressing the defective plumbing. Litigation ensued, and the respondent prevailed at every stage, resulting in legal expenditures by the respondent and costs awards at the Superior Court and this court. Ultimately, in February of 2022, this led the respondent to register a lien on title to the unit in respect of these expenses. The respondent then commenced the action to enforce the lien, which was granted by the trial judge.

[3] The trial judge valued the lien to be realized on any sale, as fixed in the amount of $25,084.39. In his calculation, the trial judge determined that certain of the legal expenses claimed by the respondent could not be added to the value of the lien, and thus rejected the respondent's position that the value of the lien had grown to $71,352.05.

[4] The appellants appeal the finding of the trial judge on several grounds, notably that the trial judge was biased, that he disregarded material evidence and that he erred in finding the lien valid.

[5] In our view, for the reasons set out below, these grounds of appeal are without merit and must be rejected.

A preliminary issue with fresh evidence

[6] First, addressing a preliminary issue raised by the respondent, the appellants seek to rely on an affidavit sworn by Peter Tak Ming Lee on November 25, 2024. The appellants did not seek to admit this affidavit as fresh evidence. This affidavit, at least in part, appears to include information related to the appellants' allegations of bias against the trial judge. Fresh evidence adduced on appeal for "the purpose of asking the court to review the proceedings in the court below" is subject to the *Palmer* criteria, whereas fresh evidence relating to trial fairness is subject to a modified standard: *Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517, at para. 30; *R. v. Colley*, 2024 ONCA 524, 172 O.R. (3d) 419, at paras. 63-65. In either case, the fresh evidence still must be subject to a motion for admission, which was not brought in this case.

[7] In subsequent correspondence to the court, Mr. Lee states that in preparing his affidavit for the appeal, he mistakenly included excerpts of the certified trial transcript as exhibits. He states that this was not intended to introduce fresh evidence, but rather to refer to portions of the official trial record already submitted in the Appeal Book and Compendium. The appellants request that this court treat those transcript excerpts as part of the appeal record and not as fresh evidence.

[8] The respondent agrees that the transcript from the trial can be considered as part of the appeal record but objects to the admission of Mr. Lee's affidavit.

[9] We agree that the transcript forms part of the appeal record, but we do not admit or consider Mr. Lee's affidavit.

[10] We turn now to the grounds of appeal raised by the appellants.

The trial judge was not biased

[11] The appellants' allegations of bias are based simply on the fact that the trial judge, prior to his appointment, knew and had some contact with Christopher Jaglowitz, a lawyer formerly with the firm representing the respondent.

[12] The allegation appears to arise from a statement the trial judge made that "neither Ms. Kwok, nor the board of directors, nor Mr. Bui, nor Mr. Jagluwitz (ph), nor any of the other members of Mr. Bui's firm that were mentioned they do not desire for you to lose your home." The appellants seek to have the court infer from this reference that the trial judge and Mr. Jaglowitz engaged in out-of-court communications about the case. The appellants further note that Mr. Jaglowitz chaired a panel at a professional development event on which, a decade prior to his appointment, the trial judge spoke.

[13] Finding a reasonable apprehension of bias existed in relation to a judge requires clear evidence that the judge was not approaching the matter at issue with an open mind fair to all parties: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 49; *Ly Innovative Group Inc. v. Facilitate Settlement Corporation*, 2025 ONCA 194, at para. 54. The appellants have raised no such evidence.

[14] The trial judge's reference to Mr. Jaglowitz appears simply to be based on his mistaken belief that Mr. Jaglowitz continued to be a lawyer with the firm representing the respondent. It is not in dispute that Mr. Jaglowitz left the firm in 2019. Further, the fact of some contact between the trial judge and a lawyer who once worked with the firm representing the respondent does not amount to evidence that the trial judge was not approaching this dispute with an open mind.

The trial judge did not improperly disregard evidence

[15] The appellants next argue that certain evidence was disregarded. The appellants do not set out in any detail which evidence they refer to, although the appellants do reference complaints about the supposed inconsistencies in the respondent's evidence, for example, as it related to the necessity of replacing the defective plumbing.

[16] At the hearing, the appellants raised additional errors in the treatment of certain evidence in the proceedings before Brown J., which the trial judge also relied upon. The trial judge was entitled to consider this record. Further, the decision of Brown J. already was subject to an unsuccessful appeal. It is not open to the appellants to challenge that record in the context of this appeal.

[17] We, therefore, reject this ground of appeal. The trial judge's factual findings were rooted in the record before him and are entitled to deference.

The trial judge did not err in finding the lien was valid

[18] The appellants further argue the trial judge erred in finding the lien was valid. The appellants argue that there was no court order underlying the lien. While the trial judge modified the value of the lien (in the appellants' favour), he found the lien was valid and was based on a proper court order.

[19] Again, we see no basis to interfere with this finding, which was also based on the record.

The trial judge's calculation of the lien must be corrected

[20] That said, while not raised by the appellant, there appears to be an error in the trial judge's calculation of the lien which warrants appellant clarification.

[21] There is no dispute that in the appeal of Brown J.'s decision, this court awarded costs in favour of the respondent in the amount of $4,500.

[22] Section 134(5) of the *Condominium Act, 1998*, S.O. 1998, c.19, provides:

> If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit.

[23] In light of this provision, this court has recognized the distinction between an "award of costs" between litigants ordered by a court and "additional actual costs" expended by a condominium corporation in obtaining a compliance order: *Toronto*

Standard Condominium Corporation No. 1633 v. Baghai Development Limited, 2012 ONCA 417, 293 O.A.C. 123, at paras. 61-62; *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.* (2005), 253 D.L.R. (4th) 656 (Ont. C.A.), at para. 8. In the usual course, it would be open to a condominium corporation to add its actual, reasonable costs, in addition to a court ordered award of costs, to the common expenses attributable to a unit pursuant to s. 134, or as in this case, to a lien based on those expenses.

[24] In this case, however, the panel of this court awarding costs turned its mind not only to an appropriate award of costs in the appeal, but also to the amount appropriate to add to the condominium corporation's common expenses: see *York Region Standard Condominium Corporation No. 972 v. Lee*, 2021 ONCA 914. The panel, at para. 17, stated:

> In this court, the Corporation seeks costs of about $9,000. It is unusual for this court to award costs for an appeal that exceed the costs of the proceeding leading to the judgment under appeal. We see no reason to exceed the application judge's award of costs, and therefore fix costs before this court in the amount of $4,500, all-inclusive, and order that this amount be added to the common expenses attributable to the owners' unit. [Emphasis added.]

[25] In these circumstances, in our view, it was not open to the respondent to seek to add its full costs of $9,089.35 before the assessment officer, nor was it open to the trial judge to include this additional amount in the calculation of the lien. Rather, the fixed amount attributable both to the "costs" and "additional actual

costs” relating to the appeal of Brown J.’s decision was $4,500. As a result, the difference between these two amounts (i.e., $9,089.35-$4,500), $4,589.35, was improperly added to the lien and must now be removed (with the corresponding removal of any applicable interest).

[26] We acknowledge both that the appellants did not raise this specific error as a ground of appeal, nor was this specific argument made before the trial judge. We also stress that this clarification and the correction of the error in the calculation of the lien has no bearing on the validity or enforceability of the lien, as correctly found by the trial judge.

Conclusion and disposition

[27] The trial judge observed that the appellants, who were self-represented, regrettably failed to appreciate the underlying basis for the lien, and more broadly, failed to understand and adhere to the rules and practices of litigation, requiring the expenditure of legal fees by the respondent, and resulting in a series of costs awards. These litigation costs, in turn, formed the basis for the lien. The respondent was entitled to enforce the lien and the trial judge committed no error in issuing an order to do so, subject only to the correction to the calculation of the lien set out above.

[28] For these reasons, the appeal is allowed, in part. In light of the mixed success on the appeal, we make no order as to costs.

"K. van Rensburg J.A."
"L. Sossin J.A."
"S. Gomery J.A."