

**CITATION:** Dharmarajan v. York Condominium Corporation, No. 308, 2022 ONSC 7211  
**COURT FILE NO.:** CV-21-665882  
**DATE:** 20221227

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Tara Dharmarajan and Dharmaraj Iyer

Applicants

**AND:**

York Condominium Corporation, No. 308, Arto Sarkissian, Dawn Dickinson,  
Desmond Sze, Donald Smeaton and Robert Aubin

Respondents

**BEFORE:** Pollak J.

**COUNSEL:** *Michael Campbell and Natasha Mazzitelli*, for the Applicants

*Kari-Anne Layng & Emily Schatzker*, for the Respondents

**HEARD:** September 27, 2022

**ENDORSEMENT**

[1] The Applicants, Tara Dharmarajan and Dharmaraj Iyer (the “Applicants”), commenced this Application against the Defendants, York Condominium Corporation, No. 308, Arto Sarkissian, Dawn Dickinson, Desmond Sze, Donald Smeaton and Robert Aubin (together the “Respondents”) pursuant to ss. 134 and 135 of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “Act”). They seek declaratory and injunctive relief, as well as financial compensation in the amount of \$50,000.

[2] The Applicants have been the owners of Unit 6, Level 2, York Condominium Plan No. 308 (“Suite 203”) since September 19, 2016.

[3] The Applicant, Dharmaraj Iyer, is employed by ICC Property Management Ltd. (“ICC”), as a property manager of condominiums.

[4] The other Applicant, Tara Dharmarajan, is studying to become a paralegal licensed by the Law Society of Ontario and was, at the relevant time, employed by Salehi Law Professional Corporation (“Salehi Law”).

[5] The Respondent, York Condominium Corporation No. 308 (the “Corporation” or “YCC 308”), is a registered condominium corporation.

[6] The individual Respondents, Arto Sarkissian, Dawn Dickinson, Desmond Sze, Robert Aubin and Donald Smeaton, were members of the board of directors of YCC 308 (the “Board”).

[7] KUNG Property Management Inc. (“KUNG”) is the Corporation's property management company and agent, pursuant to a management contract.

[8] Ms. Katrina Bellerive is a licensed property manager and the president of KUNG.

[9] Ms. Sari Vance was a contractual property attendant for the Corporation from 2017 and 2018. Ms. Vance was not a licensed property manager. Her employment with the Corporation began in 2019 when the Corporation became self-managed by the Board until KUNG became the condominium manager for the Property.

[10] This application is brought pursuant to ss. 134 and 135 of the *Act*, which impose obligations on the Respondents to comply with the *Act*, as well as the Corporation’s declaration, rules, and by-laws, and prohibits conduct that is or threatens to be oppressive or unfairly prejudicial to an owner, or to unfairly disregard an owner’s interests.

[11] The Respondent members of the Board of Directors must exercise their duties of office in good faith and with the care, diligence and skill that a reasonably prudent person would use in comparable circumstances. The Applicants allege that the Respondents’ actions were oppressive and unfairly prejudicial to the Applicants and unfairly disregarded the Applicants’ interests. This was evident when they:

- Regarded the break-in at the Applicants’ condominium unit dismissively, and without seriousness, and made related defamatory accusations about the Applicants; (The break-in email)
- Breached their duty of confidence by disclosing confidential information about and making disparaging remarks about the Applicants when corresponding with the Applicants’ employers; (KUNG letter)

- Tried to force the Applicants to pay for half the cost of the patio door replacement, the responsibility of the Corporation, in accordance with the provisions of its Declaration; (Patio door)
- Regarded the Elevator Incident dismissively and without seriousness; (Elevator Incident) and;
- Maintained a general disinclination to respond in a timely and reasonable manner to the Applicants' inquiries and concerns and acted as unwelcoming and cold towards the Applicants. (The records issue)

[12] Further, the Applicants allege that the Respondents breached the mandatory deadlines and did not reasonably deliver corporation records requested in 2017 and 2018. They submit that such failures, are, or otherwise threaten to be oppressive or unfairly prejudicial to the Applicants, or unfairly disregard the Applicants' interests. With respect to the "KUNG Letter" the Applicants submit that the Respondents made disparaging and defamatory remarks about them. They submit that the Respondents disclosed their confidential information to their employers.

[13] The Corporation is governed by a volunteer board of directors, who are unit owners that serve on the board, during their personal time.

[14] The evidence is that when the Corporation was self-managed, Ms. Vance, the property attendant complained to Ms. Lusignan, Board President, that she had received 80 text messages from the Applicant, Mr. Iyer. She also complained to the Respondent, Robert Aubin, that she was receiving 10-15 emails a day from Mr. Iyer. These messages contained comments, advice, and questions about the management of the Corporation. The evidence is that many of Mr. Iyer's suggestions for improvements to YCC No. 308 are useful suggestions and have in some cases been implemented by the Board when practicable. The Board members were concerned that his behaviour of sending so many emails was harassment. He raised many issues, and repeatedly followed up.

[15] Ms. Vance is no longer employed with the Corporation and the Respondents do not have access to her text messages. The evidence, which I accept and is unchallenged, is that Ms. Lusignan cannot provide any reliable evidence on this Application.

[16] The Applicants submit that the Corporation and Board members did not respond to them in a timely and reasonable manner regarding their inquiries and concerns and frequently responded in a disparaging, rude, and unprofessional manner. They submit that such conduct by the

Respondents has been and threatens to be oppressive and unfairly prejudicial and disregards their interests.

[17] Further, it is claimed that the Respondents are in breach of the *Act* as amended, as well as the Declaration and Bylaws of the Corporation.

[18] The Applicants seek an order of this court that the Respondents comply with the *Act*, the Declaration and Bylaws of the Respondent, and that they have acted in bad faith and failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

[19] The Respondents submit that the evidence does not establish that the directors breached their duties of acting honestly and in good faith, and of exercising the care, diligence and skill that reasonably prudent people would exercise in comparable circumstances. They also submit that there is no outstanding non-compliance to be remedied and emphasize the significant changes that have occurred in the management of the Corporation since the events giving rise to this Application first occurred. The Corporation now has a professional property manager. Mr. Iyer agrees that things have improved since this change was made.

### **Elevator Incident**

[20] The Application, originally scheduled to proceed on May 11, 2022, was adjourned to allow the Applicants to adduce new evidence regarding Mr. Iyer being trapped in an elevator (the “Elevator Incident”).

[21] With respect to this incident, there is no evidence that the Applicants have been treated differently than any other unit owners. The elevator operates in the same manner for all occupants. The Respondents submit that the Applicants have not been “oppressed” or “unfairly prejudiced” and that their interests have not been “unfairly disregarded” as a result of the elevator incident.

[22] The Applicants did not amend their application to include allegations about the Elevator Incident and did not plead reliance on the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16.

[23] Mr. Iyer’s evidence is that one of the elevators stopped moving and the doors would not open. He had attempted to take the elevator from his second floor apartment to the lobby. He had no physical or psychological injuries as a result. Mr. Iyer did testify that his dog became anxious and was worried about the elevators and was unable to use that elevator since the Elevator Incident. He was freed from the elevator when the doors spontaneously opened, within 15 minutes, and before the fire department arrived.

[24] The evidence of Ms. Bellerive, which I accept, is that if Ms. Dharmarajan had phoned KUNG at the time of the Elevator Incident (as she swears she did), the voicemail recording would have directed her to phone an emergency number. Her call would have activated a pager that she wears, and she would have called Ms. Dharmarajan back. Ms. Bellerive's evidence is that she did not get a call.

[25] There is no evidence that the Respondents have not maintained or repaired the elevators. The Respondents do admit that the elevators sometimes become stuck, but such does not mean that they are not properly maintained or repaired in accordance with ss. 90(1) and (2) of the *Act*.

[26] The Applicants note that the elevators are old and use old technology. There is no evidence regarding the average useful life of an elevator, or of any codes or laws prohibiting elevators that use old technology.

[27] I find that the Applicants have not met their burden of proving that the elevators are unsafe or unreliable. Mr. Iyer has not become stuck in the elevators since the Elevator Incident. As well, there is no evidence that the Respondents have not complied with the terms of the *Technical Standards and Safety Act, 2000*, S.O 2000, c. 16. and its regulations.

[28] I find that this incident does not support the Applicant's allegations of "oppression", pursuant to the *Act*.

### **KUNG Letter**

[29] On April 30, 2021, Ms. Dharmarajan used the letterhead of her employer, Salehi Law Professional Corporation, to send a letter to the lawyer for the Corporation, Mr. Karr. She demanded that Ms. Bellerive apologize for threatening to report that Mr. Iyer was using his employment email address to communicate with the Corporation through his employer I.C.C. Property Management's email.

[30] The evidence is that Mr. Iyer always emailed Ms. Vance from his employment email address at I.C.C. Property Management. In the letter, Ms. Dharmarajan stated "As you will note that I am using my work Letter Head and Email re above matter. Therefore, please confirm when will the property manager, Katrina Bellerive is going to apologise to Raj for threatening to report ICC Property Management for using his work e-mail to communicant with YCC No. 308."

[31] In a June 5, 2020 email, the Corporation was advised by counsel for the Applicant that,

"Whatever email account Mr. Iyer chooses to use should not have any bearing whatsoever on the manner in which [the Manager] and YCC 308 carry out your responsibilities, one

of which is to candidly respond to condominium-related questions raised by owners within a reasonable time. YCC 308 has a duty to act reasonably, and not capriciously or arbitrarily, in the administration of the complex. As an authorized agent on behalf of YCC 308, you likewise have a duty to work reasonably and not arbitrarily towards the same ends. ***We can think of little that could be more unreasonable or arbitrary than to refuse to respond to an owners email communications on the grounds that the owner was writing from an email address of which YCC 308 disapproves.*** [emphasis added.]

[32] Mr. Stephen Karr replied that Mr. Iyer is "permitted to use any personal email address" but that the Corporation is "not inclined nor will they respond to [Mr. Iyer's] inquiries or communications through [Mr. Iyer's] work/company email".

[33] I agree that the Corporation's reluctance to reply to the emails sent from Mr. Iyer's work email, a property management company, arose from concerns of confidentiality and that there was no improper conduct by the Board in this regard.

[34] Ms. Bellerive responded by sending a letter to the Applicants and copying their employers (the KUNG Letter). In this letter she responded to Ms. Dharmarajan's concerns and set out the Corporation's concerns about harassment. She advised that the letter was the final notice to the Applicants, and to their employers, that the Corporation's solicitor would take action if the harassment continued.

[35] The KUNG Letter was a response to the letter from Ms. Dharmarajan sent on the letterhead of Salehi Law Professional Corporation.

[36] The evidence is that the Respondents felt that it was fair to warn the Applicants' employers of the possibility that they may become involved in legal proceedings.

[37] The Applicants claim the Respondents breached confidence held strictly between them and the Applicants and defamed the Applicants when they published a copy of the KUNG Letter to the Applicants' employers, as the KUNG Letter contained information relating to their capacities as registered owners of a unit at the condominium. The contents of the KUNG Letter did not otherwise concern ICC Property Management Inc. or Salehi Law Professional Corporation, as it did not include any matters in which either of those entities were meaningfully involved.

[38] It is submitted that the Corporation was not permitted to disclose their records in the correspondence and breached confidence when it disclosed the KUNG Letter and its contents about the Applicant owners to ICC and Salehi Law. Further, the Applicants allege that they were defamed the Applicants by way of statements made in the KUNG Letter.

[39] The Respondents submit that the *Libel and Slander Act*, R.S.O. 1990, c. L.12 sets out procedures for bringing actions (not applications) in libel and slander before the court.

[40] The Respondents submit, and I agree, the Applicants cannot litigate the tort of defamation in this Application. The court does not have any jurisdiction to award general damages for tortious conduct. The Applicants must claim their general damages for the tort of defamation in an Action and not in this Application.

[41] Further, the Respondents submit that the provisions of s. 55 of the *Libel and Slander Act* were not triggered by the KUNG Letter. No corporate records were disclosed. I agree.

[42] I accept that the Respondents were justified in copying the Applicants' employers because they were concerned about the amount of harassment they were receiving from the Applicants, who were both using their positions of employment and their employers' email address to pressure the Respondent's. I, therefore, do not accept the Applicant's allegations in support of a finding of oppression with respect to this incident.

### **Applicants' Concerns of being Ignored by the Board**

[43] The Applicants claim that the Corporation also frequently ignores the Applicants' inquiries submitted by email; for example, the Applicant, Mr. Iyer, has contacted the Manager or Board, and, on numerous occasions, the Manager or Board has ignored or failed to answer the content of his emails for no good reason other than the fact that the message was sent from his ICC Property Management email address. I have found above that the Board's concern regarding the case of the work email was justified.

[44] With respect to Mr. Iyer's complaints regarding his email correspondence dated April 8, 2022, Ms. Bellerive testified that when she did get his email on May 5, 2022, she responded immediately. She also provided many other examples of when she responded to the Applicants' emails in a timely manner.

[45] The Respondents deny that the Applicants have established that any of the Respondents' conduct has risen to the level of oppression by violating their reasonable expectations so as to "oppress" or "unfairly prejudice" the Applicants, or to "unfairly disregard" their interests. As such, the Respondents submit that the oppression remedy is not available on the facts of this case.

### **Limitations Act Defences**

[46] The Respondent's also submit that some of the complaints in this Application are statute barred.

[47] Pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 2, an action shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

[48] The oppression remedy described within s. 135 of the *Act* was adopted into condominium law from corporate law.

[49] The Respondents argue that it has been held that the two-year limitation period applies to oppression remedy claims under the *Ontario Business Corporations Act* (“*OBCA*”). Claims arising from singular discrete acts of oppression (in a series of such acts) that are discoverable more than two years before an action is brought, are statute barred. A series of singular acts of oppression that stretch over a period of time may result in some claims for oppression arising from earlier acts in the series being statute-barred while claims arising from later acts in the series are not. An oppressive act is singular and discrete when it occurs at a distinct time and is not dependent upon another act having happened for oppression to be said to have occurred. The limitation period is not extended for acts of oppression that are actionable in themselves because a later singular discrete act of oppression occurs.

[50] The Respondents submit that the rulings of the Ontario Court of Appeal in *Maurice v. Alles*, 2016 ONCA 287, 130 O.R. (3d) 452, and *Zhao v. Li*, 2020 ONCA 121, 149 O.R. (3d) 353, are binding on this court and apply by analogy to oppression claims advanced under s. 135 of the *Act*. I agree with these submissions that the following claims of the Applicants are statute barred.

### **The Break-In Email**

[51] On November 29, 2016, there was a break-in of the Applicants’ Unit.

[52] On December 1, 2016, in response to the reported break-in, the Respondents sent a notice to residents entitled “It’s Never Happened Before!” (the “Notice”), stating that this was the first time that a break-in had been reported at the Corporation, and providing security reminders to the residents.

[53] This notice directed residents to wait until the garage closes before entering or exiting the garage to ensure that no strangers entered the building.

[54] On December 4, 2016, Mr. Aubin wanted to send an email to persons involved in the management of the Corporation. This was in response to an email sent by Mr. Iyer wherein he had lectured the Board on their duties, made a number of suggestions to improve security at the Condominium and wanted to know the Board’s plan of action to implement these suggestions. Mr. Aubin inadvertently included both Applicants in this email in which he also expressed concerns that the Board also had obligations to administer the budget responsibly, considering not

only the Applicants, but the majority of unit owners in its decisions. As well, Mr. Aubin expressed concerns about the amount of harassment the Board had been receiving from the Applicants since they had moved into the Unit and suggested consulting a lawyer to address the harassment. He further expressed concerns about the circumstances of the break in, which he thought merited further investigation.

[55] When Mr. Aubin realized that the Applicants had received his email, he immediately apologized and asked for forgiveness. Mr. Iyer accepted this apology on December 6, 2016.

[56] I do not find that the Notice, nor Mr. Aubin's email dated December 4, 2016, provides evidence that the Respondents regarded the break-in dismissively, or failed to take it seriously. Mr. Aubin's evidence is that the Notice served the purpose of notifying residents that a break-in had happened, and also provided security reminders for the safety of the residents. Mr. Iyer agreed that the Notice constituted an appropriate safety advisory and also agreed that nothing could be inferred from the subject line, "It's Never Happened Before!"

[57] Mr. Aubin's December 4, 2016 email was meant for others concerned with administration. It was distressing to the Applicants to get such an email. Mr. Iyer immediately issued a sincere apology, which was accepted.

[58] I find that the allegations related to the 2016 break-in do not support a finding of oppression. Further, I find that they are statute-barred.

### **The Patio Door**

[59] As the Corporation paid the entire cost of replacing the Applicants' balcony door in 2017, four years before this Application was brought. I find that claims arising out of these allegations are statute-barred. There is also no evidence that the Applicants were treated differently than any other unit owners to support a finding of oppression pursuant to the *Act*.

### **Parking Garage Door**

[60] I find that the Applicants' claims relating to the parking garage door are statute-barred.

[61] The Respondents additionally submit that although the problems with the garage door took a long time to fix, the evidence supports that the Respondents at all times acted reasonably and complied with their maintenance obligations by calling their contractor for maintenance as needed and acting on the advice provided until the issues were resolved. I agree and accept these submissions.

[62] Further, the problems with the garage door affected other unit owners, who were treated the same as the Applicants. I find that the Applicants were not “oppressed” or “unfairly prejudiced” and that their interests were not “unfairly disregarded” as a result of any issues with the garage door.

### **Records Allegations**

[63] The provisions of the *Act* which govern record production have changed between the time of the initial May 26, 2017 record request and the date of this hearing.

[64] The *Act* sets out specific remedies for owners if record requests are not being complied with. These remedies can be enforced in Small Claims Court, or through application to the Condominium Authority Tribunal. The *Act* and its regulations also provided a two-year limitation period for making these claims and stipulated that requests should be considered abandoned and of no force or effect after six months. The Applicants could have but did not pursue their remedy in the Small Claims Court or before the Condominium Authority Tribunal at the time of the alleged breaches. I find that their burden of proving that they were entitled to receive records, and that they did not receive these records has not been met by the Applicants.

[65] The Applicants’ claims are statute-barred. The evidence is that neither the Applicants nor the Respondents have clear memories of the circumstances surrounding the record requests. The Applicants have the burden of proving which record requests were made and were not complied with in accordance with the legislation that governed at the time of each request. This burden of proof has not been met. I therefore find that these claims do not support a finding of oppression in violation of the *Act* or a violation of the *Act*.

### **Rogers Cable and Internet Issue**

[66] The Respondents submit that the Applicants received the same prior notice of the proposed changes to the bulk services agreement as was provided to other unit owners. The Applicants’ allegations pertaining to the bulk services agreement do not support their claims of oppression. Further, even if the notice requirements of s. 97(3) of the *Act* were triggered, the Applicants are not be entitled to any damages, as they already received a complete refund from Rogers and suffered no damages.

[67] To conclude, with respect to all of their claims, I find that the Applicants have not met their burden of proving their oppression claim pursuant to the *Act* and therefore decline to award the remedy they have requested. I do not accept the Applicants’ submission that the Board has acted unreasonably or in bad faith. The Board has acknowledged that some of the recommendations of

the Applicants are helpful, however, the Applicant, Mr. Iyer has stated that he is not interested in serving on the Board as he is “too busy”. The Board members are volunteer members who do not get any compensation for their service. It is not, in my view, a reasonable expectation of the Applicant, for a professional property manager to send a large number of emails to the Board, complaining about various matters and requiring that he receive immediate responses and that the Board take immediate corrective action. The responsibility of the Board is to act in good faith in the interest of all condominium owners, as required by the *Act*. The Board is to act reasonably and in good faith. On the basis of the evidentiary record, I cannot find that the Board has acted in bad faith or acted unreasonably.

[68] For these reasons set out above, the Application is dismissed.

### **Costs**

[69] As the Respondents are the successful parties on this motion, in my discretion, I find they are entitled to their costs on a partial indemnity basis (as submitted at trial), which I find were reasonable and just. If the parties are unable to agree on costs by reason of the operation of the Rules as a result of offers to settle, the Respondents may make submissions of no more than two pages, double spaced sent the Applicants, uploaded to Caselines with a copy sent to my assistant Roxanne Johnson at Roxanne.johnson@ontario.ca by 12 p.m. on January 3, 2023. The Applicants may make submissions of no more than two pages, double spaced sent to the Respondents, uploaded to caselines with a copy sent to my assistant by 12 p.m. on January 10, 2023. No reply submissions will be accepted.

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Pollak J.

**Date:** December 27, 2022