

CITATION: Toronto Standard Condominium Corp. No. 2581 v. Paterno, 2023 ONSC 7002
COURT FILE NO.: CV-22-00685149-0000
DATE: 20231212

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
)
TORONTO STANDARD)
CONDOMINIUM CORPORATION NO.) *Lazar Ilic and Puja Walia for the Applicant*
2581)
Applicant)
)
- and -)
) *Murray H. Miskin for the Respondent*
GIOVANNI PATERNO)
)
Respondent)
)
APPLICATION under Rules 14.05(2) and)
14.05(3)(g) of the *Rules of Civil Procedure*)
and sections 117, 119, 134, and 136 of the) **HEARD:** November 30, 2023
Condominium Act, 1998, S.O. 1998, c. 19,)
as amended)

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] Truth being stranger than fiction, pursuant to the *Condominium Act, 1998*,¹ this is a three-ring clown circus of an application by TSCC 2581 (Toronto Standard Condominium Corporation No. 2581) to evict Giovanni Paterno and to force him to sell his condominium apartment unit.

[2] In the first circus ring, after I made a detailed Compliance Order,² in which Mr. Paterno could stay in his home provided that he, colloquially speaking, behave himself, Mr. Paterno's response was to continue to post TikTok videos about his dealings with TSCC 2581's Board of Directors and to campaign for election to the Board. The response of TSCC 2581's security staff was to call out Mr. Paterno for his video postings. This led to heated verbal altercations at the lobby's concierge fortification. Mr. Paterno and the security staff argued about the court proceedings, about the video postings, and about the urination habits of Mr. Paterno's dogs. Mr. Paterno and the security staff also argued about package deliveries for Mr. Paterno (the "package

¹ S.O. 1998, c. 19.

² *Toronto Standard Condominium Corp. No. 2581 v. Paterno*, 2023 ONSC 4343.

brouhaha”, described below). Then, solely to control Mr. Paterno, TSCC 2581 decided to hire a security force tactically trained for riots.

[3] Meanwhile, in the second circus ring, Mr. Paterno’s lawyer was attempting to negotiate a settlement with TSCC 2581’s lawyer. That settlement would involve Mr. Paterno renting his condominium unit and vacating himself for up to two years. However, TSCC 2581 did not provide instructions for this settlement. Instead, without prior notice to Mr. Paterno’s lawyer, TSCC 2581 commenced litigation against Mr. Paterno for violating the Compliance Order.

[4] TSCC 2581 entered the third circus ring on an urgent basis. Derek Wheeler, the commander of the now specialized riot control security force, testified that Mr. Paterno was a potential homicidal threat. Mr. Paterno’s lawyer asked TSCC 2581’s lawyer for an adjournment so that Mr. Paterno could defend himself. This was refused, but Justice Shin Doi granted the adjournment. Then, while the parties were engaged in exchanging evidence for the litigation circus ring, and arrangements were made for me to preside as ringmaster, Mr. Paterno did rent his condominium unit, and repeated his offer to remove himself from occupancy. He did this while continuing his election campaign to join the condo Board that was suing him.

[5] TSCC 2581 now returns to court to have Mr. Paterno evicted and to have him sell his condominium unit home. TSCC 2581 submits that Mr. Paterno has again breached the *Condominium Act, 1998*. It submits that he has breached the Compliance Order. TSCC 2581 submits that the Court must grant the following relief: (a) a Declaration that Mr. Paterno is in breach of the Compliance Order; (b) an Order that Mr. Paterno shall not come within five-hundred metres of the condominium property; (c) an Order requiring Mr. Paterno to forthwith vacate his residential unit; (d) an Order requiring Mr. Paterno to sell the unit; and (e) an Order that Mr. Paterno pay costs on a full indemnity basis.

[6] As I shall explain below, the Court is not obliged to make the Order requested by TSCC 2581. The gist of the Compliance Order was that Mr. Paterno be evicted and lose his ownership of his condominium unit **if he contemptuously** breached the Compliance Order or **if** he breached the *Condominium Act, 1998*.

[7] The very poor quality of evidence presented on this motion, which is largely inadmissible hearsay and argument, shows that there has been misbehaviour by Mr. Paterno; however, TSCC 2581 has not proven any breach of the *Condominium Act, 1998*, and TSCC 2581 has not proven any contemptuous conduct by Mr. Paterno. The evidence shows clownish behaviour by both sides and overreaction and meanness by TSCC 2581 in its dealings with Mr. Paterno. The circumstances remain that an Order for Mr. Paterno to immediately sell his condominium unit is too harsh a remedy for any wrongdoing especially in circumstances where a less draconian order and a fair Order can be made.

[8] I dismiss TSCC 2581’s motion without costs and on terms. The terms are based on Mr. Paterno’s undertaking given in court.

[9] The terms of the dismissal Order, which shall recite Mr. Paterno’s undertaking, are as follows: (a) save with respect to the payment of reparations and costs, which Mr. Paterno has already done, the Compliance Order is replaced by an Order to Vacate; (b) it is ordered that Mr. Paterno shall forthwith vacate his residential unit and not attend at the condominium property; [already done]; (c) it is ordered that Mr. Paterno shall not return to reside in the unit without the consent of TSCC 2581, such consent not to be reasonably refused; (d) it is ordered that the return

to occupy the unit shall not occur earlier than December 31, 2025; (e) it is ordered that until his return to reside in the unit, Mr. Paterno may rent his residential unit [already done]; and (f) it is ordered that for all communications and dealings with TSCC 2581, Mr. Paterno shall appoint a lawyer to act as his agent.

B. TSCC 2581's Evidence for the Motion

[10] TSCC 2581's motion was supported by the affidavits dated October 12, 2023, October 22, 2023, and November 22, 2023 of **Derek Wheeler**. Mr. Wheeler is a former member of the York Regional Police. He has a thirty-year career in law enforcement as a police officer. Mr. Wheeler is the manager of the security guards at TSCC 2581. He is the Manager of Operations and Client Relations for Elite Residential Concierge, the security guard service for TSCC 2581.

[11] TSCC 2581's motion was also supported by the affidavit dated November 28, 2023 of **Tara Mehta**. Ms. Mehta is a legal assistant with Deacon, Spears, Fedson + Montizambert, lawyers of record for TSCC 2581. She proffered in evidence an \$8,542.80 invoice for the tactical guard unit retained by TSCC 2581 to protect against Mr. Paterno.

[12] TSCC 2581's case depends almost entirely on Mr. Wheeler's evidence.

[13] Mr. Wheeler expresses argumentative opinions and argumentative conclusions based on his expertise and experience as a police officer. He provides this evidence without being qualified as an expert and without providing an expert's affidavit as to impartiality. His malice toward Mr. Paterno is palpable.

[14] Mr. Wheeler is a paid partisan who did not witness the events that he extravagantly describes. Much if not most of Mr. Wheeler's evidence is inadmissible hearsay either as an unqualified expert or as an unreliable fact witness. Much of Mr. Wheeler's testimony is rhetorical argument characterizing Mr. Paterno as some sort of monster.

[15] Mr. Wheeler's affidavit contains numerous examples of unsubstantiated and unfair opinions or conclusions. For example, he deposes that the security guards were "understandably scared to fully disclose the Respondent's ongoing dangerous conduct in written incident reports and to attend the condominium property to carry out their security duties."

[16] There was no dangerous conduct and why the security guards, who Mr. Wheeler said are specialists in managing violent situations, would underreport Mr. Paterno's alleged misconduct in their incident reports makes no sense. I have read the reports and seen the annexed videos. There is no underreporting. Moreover, there is no evidence that the security guards were too afraid to do their jobs. I have viewed the videos and the security guards do not seem cowered or cowardly. Mr. Wheeler was not a witness to the events, and it is for the security guards to give evidence about their own feelings. The verbal altercation about package deliveries, the package brouhaha that I shall describe below, belies Mr. Wheeler's evidence that the staff was afraid to do their job. If anything, they were officious in carrying out their duties.

[17] As another example of demonstrably poor evidence, Mr. Wheeler deposes that the video of the incident of July 29, 2023, which is described below, proves that residents were delaying entering the condominium building because of fear of Mr. Paterno. Mr. Wheeler deposed that "this practice is common among residents and building staff upon entering the condominium property, the hallways, and the elevators in order to avoid any contact with [Mr. Paterno] due to fear for their safety." This highly prejudicial statement, which cannot even be called evidence since it is

not based on anything Mr. Wheeler may have witnessed in the lobby, hallways, and elevators, is not even admissible hearsay since the source of his information and belief is not identified. Further, in any event, the relevant issue is Mr. Paterno's conduct after the Compliance Order of July 26, 2023, and there is no probative evidence that the residents were in fear for their safety because of Mr. Paterno's conduct after July 26, 2023.

[18] In another example of highly prejudicial non-probative pseudo evidence, Mr. Wheeler deposed that Mr. Paterno posted a TikTok video on August 15, 2023 that included a reference to the notorious 2018 Toronto Van attack, in which a mentally ill person killed ten persons by vehicular homicide. Then, Mr. Wheeler uses the posts of a commentator to associate Mr. Paterno with the notorious Francisco Villi murder-suicide that occurred at a different condominium. Mr. Wheeler uses the video to depict and characterize Mr. Paterno as a psychopath with homicidal ideations. Mr. Wheeler's statements are presented as proof of Mr. Paterno scaring building residents and condominium staff. The statements are inflammatory, irrelevant, personal opinions and worthless rhetoric designed to embarrass Mr. Paterno and mislead the court.

[19] In yet another example of inadmissible testimony with highly prejudicial but no probative value, Mr. Wheeler deposed that "There are many similar accounts [of murder threats] and threats suffered by other building staff and residents while on the Property, but these individuals are too scared of [Mr. Paterno] to report such incidents in writing." If evidence of anything, this unsubstantiated inflammatory statement is evidence of Mr. Wheeler's paid malice against Mr. Paterno.

[20] In still yet another example of non-probative, scare-mongering, pseudo evidence, Mr. Wheeler deposed that "despite what was previously represented by [Mr. Paterno] during the initial Application of this matter and the Compliance Orders, the Respondent continues to terrorize staff and other residents through his aggressive, unpredictable, and erratic behaviour."

[21] There is no evidence that Mr. Paterno has terrorized staff and other residents since the end of July 2023. As the description of the facts below will reveal, there has been inappropriate, rude, and offensive verbal behaviour by Mr. Paterno but nothing that justifies depicting him as a terrorist or a homicidal deranged person.

[22] For many reasons, Mr. Wheeler's evidence is not credible or reliable or even admissible. I can and do dismiss TSCC 2581's motion on this ground alone. What remains of Mr. Wheeler's evidence does not prove TSCC 2581's allegations against Mr. Paterno.

C. Mr. Paterno's Evidence for the Motion

[23] Mr. Paterno resisted the motion. He relied on his own affidavit dated November 3, 2023. In his affidavit evidence and his videos, Mr. Paterno presents his side of the story about his grievances with the management of TSCC 2581 which concern the maintenance standards for the building and what Mr. Paterno regards as unfair harassment and unfair treatment of him personally.

[24] Since TSCC 2581 is not on trial, I need not opine on the truth of Mr. Paterno's allegations about whether TSCC 2581 is compliant with its obligations to Mr. Paterno or the other residents of the condominium in maintaining the premises. What I can say is that insofar as Mr. Paterno offers relevant evidence about his own motivations, feelings, behaviour, and interactions with the security staff, Mr. Paterno is a credible witness expressing his honest beliefs and opinions.

[25] I am able to make my own assessment of the probative value of the video and documentary

evidence provided by TSCC 2581 about Mr. Paterno's behaviour.

[26] Some of the videos have audio and some do not. I have been provided with transcripts of some of the verbal altercations. The scene for these interactions between Mr. Paterno and the security staff is in the lobby where there is a solid barrier of a concierge counter installation as depicted in the photo below, which shows Mr. Paterno's tenant in front of the counter and the security staff behind the counter. This photo was taken at the time of the package brouhaha incident. The scenes in the videos of Mr. Paterno's encounters with the security staff at the concierge are similar.



[27] Mr. Paterno's language and his comportment are deplorable, but as I shall describe below, they do not constitute contemptuous conduct that would justify ordering Mr. Paterno to sell his condominium unit. The videos and audio show that Mr. Paterno's deportment is one of extreme agitation and anger. He is profane, rude, verbally aggressive, and loud. However, at no point is there any physical violence, and the security staff are not in danger. The staff appear annoyed and frustrated and are uncomfortable, but they appear more than capable of managing the situation.

[28] Mr. Paterno also relied on the affidavit dated October 20, 2023 of **Katie-Lynn Alexander**. Ms. Alexander is a licensed paralegal and a litigation law clerk for Miskin Law Professional Corporation, Mr. Paterno's lawyer of record. She provided evidence about Mr. Miskin's interactions with the lawyers acting for TSCC 2581.

[29] Mr. Paterno relied on the affidavit dated November 9, 2023 of **Michelle Turchanikov**. Ms. Turchanikov is a friend of Mr. Paterno. She lives in a nearby condominium. She is a dog fancier, like Mr. Paterno. Ms. Turchanikov thinks Mr. Paterno is a "great guy." She believes that Mr. Paterno is working hard at sobriety and that people are holding Mr. Paterno's past conduct against him.

[30] Mr. Paterno relied on the affidavit dated November 9, 2023 of **Lucy Marreiros**. Ms. Marreiros lives at TSCC 2581's condominium. Her evidence is similar to Ms. Turchanikov's evidence. She testified very favourably about Mr. Paterno's dogs and about Mr. Paterno. Ms. Marreiros was a witness to the package brouhaha between Mr. Paterno and the security staff. She says everyone was talking loudly, but that Mr. Paterno was not screaming as alleged.

[31] Mr. Paterno also relied on the affidavit dated November 10, 2023 of **Anthony Ardizzi-Ali**.

Mr. Ardizzi-Ali is a co-resident in TSCC 2581's condominium. He testified that Mr. Paterno is a polite man who has helped shovel and salt the walkway to the building and who last winter built a large snowman for the parents and kids. Mr. Ardizzi-Ali thinks Mr. Paterno's American Bullies are gentle giants.

[32] I have no reason to disbelieve Ms. Turchanikov, Ms. Marreiros, and Mr. Ardizzi-Ali. I, however, do not rely on their evidence, and give it no probative weight in deciding the issues I must decide.

D. Facts

[33] The facts up to the time of the Compliance Order are set out in my Reasons for Decision released on July 26, 2023. I incorporate those facts by reference in these Reasons for Decision. For present purposes, the story can begin shortly before I issued the Compliance Order at the end of July 2023.

[34] On **July 21, 2023**, the security staff at the concierge desk spoke to Mr. Paterno and told him to refrain from posting TikTok videos. Mr. Paterno had been posting videos for some time. He says that he has been doing so for a variety of reasons including for entertainment and also for educational purposes. In the videos, he talks about a variety of issues including mental health issues, including his own struggles with substance abuse. In some of these videos, Mr. Paterno described what was happening between him and the management and Board of Directors of TSCC 2581 and he passionately airs his grievances.

[35] On **July 21, 2023**, called out by security staff for posting these videos, Mr. Paterno responded with a profane angry outburst at the concierge desk.

[36] On **July 24, 2023**, Maria Luisa Paterno, Mr. Paterno's sister, who owns another unit in the condominium, sent a letter to TSCC 2581's property management company. She complained that the security staff were picking on Mr. Paterno.

[37] On **July 25, 2023**, Mr. Ilic of TSCC 2581's lawyers responded to Ms. Paterno. He said that Mr. Paterno's matter was before the court and if Mr. Paterno had concerns, then his lawyers should communicate with TSCC 2581's lawyers.

[38] Also on **July 25, 2023**, there was another outburst by Mr. Paterno at the concierge desk with security guard Yuvraj Sharma. Mr. Paterno was upset because he believed that Mr. Sharma had sent an incident report to Mr. Paterno's lawyer as part of the court proceedings to get rid of Mr. Paterno.

[39] Pausing here in the narrative, it should be observed that the incidents of July 21, 2023 and July 25, 2023 cannot be evidence of a breach of the Compliance Order, which had not yet been issued.

[40] In any event, these incidents did not amount to breaches of the *Condominium Act, 1998*. Mr. Paterno's evidence, for which he was not cross-examined, is that he was asked by security to stop recording videos in the building. He admits that his response was angry, but he denies using threats or violence. He notes that although the police were called there have been no charges.

[41] On **July 26, 2023**, I released my Reasons for Decision setting out a Compliance Order. The terms of the Compliance Order were as follows:

- a. It is declared that Mr. Paterno is (i) in breach of ss. 117 and 119 of the *Condominium Act, 1998*; (ii) in breach of Part 3, Section 15 of the condominium declaration and the Rules of TSCC 2581; (iii) in breach of workplace violence and harassment policies created pursuant to the *Occupational Health and Safety Act*³ to protect staff working at TSCC 2581.
- b. It is ordered that Mr. Paterno shall not disturb the comfort and quiet enjoyment of other residents of their units and/or the common elements of TSCC 2581.
- c. It is ordered that Mr. Paterno forthwith comply with the Act, the declaration, the Rules of TSCC 2581, and the *Occupational Health and Safety Act* policies.
- d. It is ordered that Mr. Paterno shall not initiate any direct or indirect contact with the property manager, security personnel, or any other employee of TSCC 2581, other than by way of written communication delivered electronically or by mail to the attention of the property manager for TSCC 2581.
- e. It is ordered that within 100 days of the release of the Reasons for Decision, Mr. Paterno shall pay TSCC 2581 \$2,602.16 for the damage he caused at the concierge desk.
- f. It is ordered that within 100 days of the release of the Reasons for Decision, Mr. Paterno shall pay TSCC 2581, \$35,000 for its costs on account of obtaining the compliance order pursuant to the *Condominium Act, 1998*, all inclusive, including the costs of this application on a full indemnity basis.
- g. It is ordered that upon proof by TSCC 2581 on a motion made on seven days' notice that Mr. Paterno has breached any of terms (b) – (f), set out above, then:
 - i. Mr. Paterno shall forthwith vacate his residential unit at TSCC 2581; and
 - ii. Mr. Paterno shall within 120 days sell his residential unit by the registration of a transfer in favour of a person who is not a relative.

[42] As I explained in my Reasons for Decision, Mr. Paterno has lived at the condominium since 2016 without incident until 2021 when his misbehaviour began. He, however, has a serious long-standing substance abuse illness and beginning in 2021, he lapsed in managing his problem. While under the influence of alcohol or drugs, he breached his responsibilities to the employees of the condominium corporation and his communal responsibilities to his fellow residents of the condominium. He was remorseful for his wrongdoing. He had made efforts to seek assistance for his alcoholism and substance abuse problems. He wished to remain a member of the condominium community. He promised not to repeat his bad behaviour.

[43] As I explained in my Reasons for Decision, TSCC 2581 was more than justified and indeed was statutorily obliged to enforce and to protect the rights of the residents of the condominium to not be disturbed by Mr. Paterno's misbehaviour. As I explained in my Reasons for Decision, however, an immediate Eviction Order and an immediate Order for him to sell his condominium unit was too harsh a remedy for his wrongdoing. What the circumstances required was a Compliance Order. Mr. Paterno required the behaviour management of a conditional Order the breach of which: (a) could find him in contempt of a court order; and (b) in any future event of

³ R.S.O. 1990, c. O.1.

misbehaviour would require him to sell his condominium unit.

[44] On **July 29, 2023**, there was another heated verbal altercation between Mr. Paterno and Mr. Sharma. Mr. Wheeler deposed that Mr. Paterno taunted the staff claiming that he had “won” the application despite the incident reports that had been filed by Mr. Sharma. Mr. Paterno says that he appreciated that he had not won the application, but he was victorious insofar as he did not have to sell his condominium. He appreciated that he was required to pay \$35,000 in order to stay at the condominium and he was not feeling victorious about that. I find that there was taunting, but there is nothing here contemptuous or in breach of the Compliance Order.

[45] On **August 1, 2023**, there was a phone meeting between Mr. Ilic and Mr. Miskin. During this conversation, Mr. Miskin indicated that Mr. Paterno was willing to move out of the building for up to two years in consideration of some reduction in the costs awarded in the Compliance Order. Mr. Ilic said he would obtain instructions. As will be seen, nothing came of this settlement proposal, and Mr. Paterno paid the sums required by the Compliance Order.

[46] On **August 11, 2023**, there was another incident report proffered by Mr. Wheeler. The report prepared by the security staff indicates that an elderly resident attended at the concierge desk to complain that she had been profanely threatened by Mr. Paterno. The report says that the woman said that Mr. Paterno threatened to kill her. Mr. Paterno strongly denies the truth of the incident report. He admits knowing the woman and says that in the past she had complained about Mr. Paterno’s formidable looking dogs. Mr. Paterno notes that there is no evidence that for this serious allegation that the police were informed. He notes that there is no evidence from the alleged victim herself.

[47] My own conclusion is that this incident report is inadmissible as evidence. It has no probative value. It is another example of highly prejudicial pseudo evidence designed to embarrass Mr. Paterno.

[48] On **August 14, 2023**, Mr. Miskin wrote Mr. Ilic asking whether TSCC 2581 had provided instructions about Mr. Paterno’s proposal to rent out his unit. Mr. Ilic advised that the Board was meeting the following week and he expected instructions after that meeting.

[49] Unbeknownst to Mr. Miskin and Mr. Paterno, the Board met and rejected the settlement offer. Rather, Mr. Ilic received instructions to pursue an eviction of Mr. Paterno.

[50] On **August 28, 2023**, Mr. Paterno signed a *Residential Tenancies Act*, standard form residential tenancy agreement to rent his condominium unit to Siddharth Behal, Rohit Behal, Kishan Gupta, and Diksha. The Tenancy was to commence on October 1, 2023.

[51] On **September 8, 2023**, there was another heated verbal altercation at the concierge desk between Mr. Paterno and Mr. Sharma. Mr. Paterno heatedly accused Mr. Sharma of intentionally writing incident reports to harass him and to provoke him.

[52] On **September 10, 2023**, Mr. Sharma resigned. Mr. Wheeler attributes the resignation to the incident of September 8, 2023. There is, however, no evidence from Mr. Sharma that this is true.

[53] On **September 29, 2023**, without notice to Mr. Paterno, TSCC 2581’s lawyers contacted Practice Court and asked for a motion on an urgent basis. TSCC 2581’s Counsel advised the court that: (a) Mr. Paterno had failed to comply with the Compliance Order (which actually had not yet been signed and entered); (b) Mr. Paterno’s behaviour had worsened; and (c) Mr. Paterno may be

a danger to others in the building.

[54] On **October 9, 2023**, in anticipation of resuming court proceedings against Mr. Paterno, TSCC 2581 hired a “tactical security guard” to remain at the condominium 24 hours a day for 14 days, beginning around the time Mr. Paterno was expected to be served with the motion record. Tactical security guards have specialized training to manage risks to public safety and to defuse potentially violent situations. Mr. Wheeler deposed that this unit was retained because of fear of Mr. Paterno’s reaction to be served with court process.

[55] Thus, after the release of the Compliance Order, notwithstanding the strictness of the Order, TSCC 2581 hired specialized security personnel highly trained in managing public safety and in managing violent situations. Mr. Wheeler’s evidence was that this specialized force was hired for the sole purpose of protecting building staff and residents from Mr. Paterno. TSCC 2581 incurred \$15,000.77 on account of these specialized security services and it seeks to recover this sum from Mr. Paterno.

[56] On **October 10, 2023**, Justice Chambers scheduled an emergency motion for an eviction and sale for October 23, 2023.

[57] On **October 11, 2023**, Mr. Ilic sent Mr. Miskin a draft of my July 26, 2023 Compliance Order for approval as to form and content. Mr. Ilic signed the consent, and in a reply email, Mr. Miskin inquired about whether Mr. Ilic had yet received instructions about Mr. Paterno’s proposal to vacate his unit for up to two years. Mr. Ilic disingenuously responded by email: “unfortunately at this time I do not have instructions regarding a response to the offer.” This is disingenuous because Mr. Ilic had instructions to reject the offer and arrangements had already been made for a hearing on an urgent basis to evict Mr. Paterno.

[58] Meanwhile, also on **October 11, 2023**, Mr. Paterno left a package for pickup by Siddharth Behal, his tenant, at the concierge. This is the beginning of the brouhaha incident. The package contained keys and access devices for the condominium unit.

[59] On **October 13, 2023**, Siddarth Behal came to the concierge desk and asked for the parcel, which was denied him because he was not a registered tenant. He was told that a lease agreement had to be produced and registered with the management of the condominium before keys and access devices would be released to him. Mr. Behal left, and Mr. Paterno then telephoned the security staff and then went to the concierge demanding the release of the package to him, which was refused. There was a very heated conversation by a shouting and agitated Mr. Paterno. The package was not released to Mr. Paterno.

[60] Meanwhile also on **October 13, 2023**, which was a Friday, TSCC 2581 served its motion material and a factum on Mr. Paterno’s lawyer’s office. Given the manner of service, service of the motion material became effective on **October 16, 2023**. While nothing ultimately turns on it, the service was not compliant with the provisions of the Compliance Order, which required seven days’ prior notice for the enforcement motion.

[61] On **October 14, 2023**, the package brouhaha incident continued with Mr. Paterno returning, this time accompanied by a police officer. Security staff explained that the package could not be released without proper documentation about the tenancy.

[62] This did not end the package brouhaha, and **October 16, 2023**, Mr. Paterno delivered the lease agreement, and on **October 17, 2023**, TSCC 2581’s management company accepted Mr. Paterno’s tenants for a rental of his residence and allowed the tenants to occupy the unit.

[63] Mr. Miskin saw the motion material for the first time on **October 16, 2023**. Since he had a trial scheduled for October 23, 2023 and since he needed time to prepare Mr. Paterno's response, **between October 16 and 18, 2023**, Mr. Miskin asked for a consent adjournment. TSCC 2581's lawyer refused this request.

[64] On **October 23, 2023**, Justice Shin Doi adjourned TSCC 2581's motion. She made the following endorsement:

Adjournment granted to November 14 or 15 or 16, 2023. The Respondent's counsel requested an adjournment of the Applicant's motion because the Respondent has rented out the premises on a monthly basis. The Respondent requested an adjournment to November 14, 15 or 16, 2023. An adjournment is hereby granted. The Respondent shall serve and file materials by November 10, 2023. The parties shall confirm the motion date with Toronto Civil Judges Motions (civiljudgesmotions@ontario.ca). As a condition of the adjournment, the Respondent has agreed on a without prejudice basis to not attend the premises unless necessary until the hearing of the motion on November 14, 15 or 16, 2023. [TSCC 2581] requested that the motion be heard by Justice Perell who granted an Order in this matter on July 26, 2023.

[65] Following the adjournment, arrangements were made for me to hear the motion, and I set the date for the motion for November 30, 2023. The parties exchanged affidavits during November.

[66] Ms. Marreiros and Ms. Turchanikov were cross-examined on **November 14, 2023**.

[67] On **November 24, 2023**, Mr. Paterno submitted his candidate profile for his campaign for election to the Board of Directors of TSCC 2581.

[68] TSCC 2581 served its supplementary factum on **November 28, 2023**. In its factum, TSCC 2581 asked for the additional relief of Orders: (a) prohibiting Mr. Paterno from seeking a position on TSCC 2581's Board of Directors; and (b) prohibiting Sam Paterno, Mr. Paterno's father from attending at the condominium property. Sam Paterno had been annoying management by making inquiries about how many director positions were to be filled at the overdue general meeting of the condominium's membership.

[69] Mr. Paterno served his factum on **November 29, 2023**.

[70] The motion was argued on **November 30, 2023**. I reserved judgment.

E. Discussion and Analysis

[71] There is no dispute between the parties about the applicable law, which I set out at some length in my July 26, 2023 Reasons for Decision. An order to force the sale of a condominium owner's property is an extreme order reserved for cases in which a less harsh Order is inappropriate.⁴

[72] For example, a sale Order might be appropriate in a case of contempt of court orders where the unit owner has been dishonest in his or her evidence and the owner appears to be unmanageable

⁴ *York Region Condominium Corporation No. 794 v. Watson*, 2021 ONSC 6574; *Carleton Condominium Corp. No. 348 v. Chevalier*, 2014 ONSC 3859; *York Condominium Corp. No. 301 v. James (Litigation guardian of)*, 2014 ONSC 2638; *York Condominium Corp. No. 82 v. Singh*, 2013 ONSC 2066; *Waterloo North Condominium v. Webb*, 2011 ONSC 2365; *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, [2010] O.J. No. 3491 (S.C.J.); *Metropolitan Toronto Condominium Corp. No. 946 v. J.V.M. (Public Guardian and Trustee of)*, [2008] O.J. No. 5412 (S.C.J.); *York Condominium Corp. No. 136 v. Roth*, [2006] O.J. No. 3417 (S.C.J.).

and has acted deliberately and wilfully to breach the Compliance Order.⁵

[73] The question in the immediate case is entirely a question of fact whether Mr. Paterno breached the *Condominium Act, 1998* or the Compliance Order by his conduct between July 29, 2023 and November 30, 2023.

[74] I begin the analysis with TSCC 2581's requests for Orders: (a) prohibiting Mr. Paterno from seeking a position on TSCC 2581's Board of Directors, (b) prohibiting Sam Paterno, Mr. Paterno's father, from attending at the Condominium Property, and (c) requiring Mr. Paterno to pay \$15,000.77 for "highly trained security forces with expertise in managing risks to public safety to protect the building staff."

[75] The first two requests are moot having regard to the Order I shall be making. In any event, I am not aware of any authority, and none was provided to me, that would authorize this court to prohibit Mr. Paterno from seeking election to the condo's board. And there is no factual basis or authority to treat Sam Paterno as a trespasser and to prohibit him from TSCC 2581's property.

[76] As for the third malicious request, it is denied. Before the Compliance Order, Mr. Paterno's behaviour was due to substance abuse. He suffers from an illness. He is not a terrorist and has never been a threat to public safety. He has done nothing since the Compliance Order to warrant hiring specially trained security forces.

[77] Turning then to the factual issue before the court, I note that Mr. Paterno has complied with the monetary terms of the Compliance Order. I note again that TSCC 2581's case against Mr. Paterno is built almost entirely on the evidence of Mr. Wheeler and most of that evidence has little probative value. All the alleged incidents of violations of the Compliance Order concern what happened at the concierge desk. It is not a violation of the Compliance Order to post TikTok videos. It is not a breach of the Compliance Order to speak about concerns about the maintenance of the condominium building. It is not a violation of the Compliance Order to rent a condominium unit to others. It is not a violation of the Compliance Order to run for election to the Board of Directors of TSCC 2581. There is no evidence from occupants that suggests that Mr. Paterno is a menace that warrants calling in a special tactical unit of security guards.

[78] TSCC 2581 submits that Mr. Paterno has repeatedly and deliberately breached the Compliance Order. This submission, however, has not been proven based on the balance of probabilities and it certainly has not been proven beyond a reasonable doubt, which is the criminal standard of proof for any finding of contempt of a court order.⁶

[79] From the time of the compliance Order until this renewed motion to evict Mr. Paterno, TSCC 2581 has not proven a clear intention or any intention on Mr. Paterno's part to harm the condominium, and there has been no persistent refusal by him to abide by the rules of the condominium. No rules were identified that prohibited Mr. Paterno from making TikTok postings discussing his affairs with the condominium.

[80] TSCC 2581 submits that Mr. Paterno blatantly disregarded the prohibition not to have contact and communications with the building staff. There was no blatant disregard by Mr. Paterno

⁵ *York Condominium Corporation No. 82 v. Singh*, 2013 ONSC 2066; *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, [2010] O.J. No. 3491 (S.C.J.).

⁶ *Bell ExpressVu Limited Partnership v. Torroni* (2009), 94 O.R. (3d) 614 (C.A.); *Prescott-Russell Services for Children and Adults v. G. (N.)* (2006), 82 O.R. (3d) 686 (C.A.).

of this direction. It appears that at least some of the communications were initiated by condominium security staff reproaching Mr. Paterno for his TikTok postings. The staff approached him, and he cannot be faulted just for responding. While his response was aggressive, rude, profane, and obnoxious, for which he should be ashamed, his deplorable conduct did not breach the *Condominium Act, 1998* or the Compliance Order.

[81] From the time of the Compliance Order until this renewed motion to terminate Mr. Paterno's ownership, there has been no proven disturbance of the quiet enjoyment of the residents of the condominium corporation.

[82] I do not condone Mr. Paterno's foul language and his fits of public rage but although he did it poorly, his intent throughout was to disengage from the verbal hostilities and it was his idea to introduce a two-year cooling off period before he might return to the condominium that he owns. This was a dignified proposal, and it deserved a dignified and decent response. The appropriate Order to make in this case, is the Order set out in the introduction to these Reasons for Decision.

F. Conclusion

[83] For the above reasons, TSCC 2581's motion is dismissed without costs and on the terms set out above.

Perell, J.

Released: December 12, 2023

CITATION: Toronto Standard Condominium Corp. No. 2581 v. Paterno, 2023 ONSC 7002
COURT FILE NO.: CV-22-00685149-0000
DATE: 20231212

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2581**

Applicant

- and -

GIOVANNI PATERNO

Respondent

REASONS FOR DECISION

PERELL J.

Released: December 12, 2023