

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

580 CHRISTIE STREET CO-OWNERSHIP  
INC.

Applicant

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)  
) Jake Fine, for the Applicant  
)  
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– and –

MIHA HALIK

Respondent

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) Miha Halik, In Person  
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) **HEARD:** June 7, 2024

**PAPAGEORGIU J.**

**Overview**

[1] The Applicant manages 580 Christie on behalf of a group of owners. It seeks vacant possession of the Respondent’s unit at Suite 707-580 Christie Street, Toronto Ontario as well as leave to issue a writ of possession, and an Order that it could sell the Respondent’s Co-ownership interest. This is based upon various breaches of the Co-Ownership Agreement to which the Respondent is a party.

**Decision**

[2] For the reasons that follow, I grant the orders sought.

**Issues**

- Issue 1: Did the Respondent breach the Co-ownership Agreement?
- Issue 2: Does such breach entitle the Applicant to the Orders sought?

## Analysis

### Issue 1: Did the Respondent breach the Co-ownership Agreement?

[3] The Respondent did breach the Co-ownership Agreement in a variety of ways.

[4] The Applicant and all of the owners including the Respondent are parties to a Co-Ownership Agreement dated August 13, 2007, revised January 24, 2018.

[5] Pursuant to Article 2.03 of the Co-Ownership Agreement, the Respondent has an exclusive license to the Suite subject to all terms and conditions in the Agreement.

[6] Pursuant to Article 7.02(i) of the Co-Ownership Agreement, the Respondent agreed to indemnify and hold harmless the Applicant and the other Co-Owners against all losses, costs and liabilities suffered or incurred by them in respect of any breach, default or non-performance of the Respondent or those for whom he is in law responsible of any covenant of the Agreement.

[7] Article 8.01 of the Co-Ownership Agreement provides that a Co-Owner shall be in default whenever:

- (i) Any amount has become due and payable to the Corporation that is the responsibility of the Co-Owner to pay and it is not paid to the Corporation in full on or before the third day after it is due.
- (ii) the Co-owner ... commits or permits any act or omission in respect of that interest that would be a repudiation of or otherwise inconsistent with the rights of the other Co-owners under the Co-ownership Arrangements;
- (iii) the Co-owner ... fails to rectify any other breach by the Co-owner ... of any provision of the Co-ownership Arrangements on or before the 10th day after the Corporation notifies the Co-owner of such breach (or the Corporation notifies the Co-owner of the third such breach in any period of 12 consecutive months).

[8] The parties have been embroiled in litigation for the past two years attempting without success to obtain the Respondent's compliance with the Agreement.

[9] The Respondent is in default of the Agreement because he:

- (i) failed to pay any of the amounts due and payable to the Applicant which are not currently stayed on appeal.
- (ii) acted in a manner that is inconsistent with the rights of the other co-owners.

(iii) failed to rectify his breaches of the Agreement.

[10] The particulars are as follows:

- He had a water leak and refused to allow the Co-ownership to enter the unit to fix it.
- There were a variety of attendances and orders made ordering the Respondent to cooperate with the Applicant's plan to enter his unit to assess and fix any leak without any success.
- Because of increasingly dangerous conditions with the unit, Black J. ordered that an urgent hearing be held on April 19, 2022.
- The Respondent did not file any materials and as such the Application was heard in writing unopposed.
- On April 19, 2022, Sanderson J. found that the Respondent's behavior which included refusing access for the fire inspector or a key was in breach of court orders. Sanderson J. ordered that the Respondent immediately provide a key to the Applicant. She also ordered that the Applicant could have access to the unit with 24 hours' notice together with any other entities which may require entry to ensure the safety of the premises including Toronto Fire Department, Toronto Police Services and/or Toronto Public Health. She further ordered that if the Applicant found conditions that required remediation during such attendance, the Respondent was required to immediately remedy them. If the Respondent failed then the Applicant was entitled to take such measures and the Respondent must reimburse the Applicant for any costs of this. She further ordered that the Respondent reimburse the Applicant for \$12,227.14 expended to remedy the leaks.
- Another court attendance was required on June 1, 2022 when the Respondent scheduled a case conference but then failed to attend. Black J noted that the Respondent was still not cooperating with efforts to access the unit and that there were growing health and safety concerns. He ordered that the Applicant's motion to obtain access to the unit would proceed in writing. Acknowledging that the Respondent takes steps to avoid service, Black J. ordered that service could be undertaken by ordinary mail and by an attempt at service; if the Respondent failed to answer the door, the documents could be taped to it, and this would constitute valid service.
- At a case conference on July 15, 2022, before Akbarali J., the Respondent indicated he was not willing to abide by Sanderson J.'s order to allow for inspection. She noted that the Respondent had appealed the Toronto Fire Services inspection order and so it was stayed. She found that there was urgency to these issues and that the Applicant's motion for contempt would proceed together with a r. 59.06 motion which the Respondent intended to bring to set aside Sanderson J.'s order. She imposed a timetable. She also ordered that the materials for the contempt motion could be served by email.

- The Respondent sought to appeal Akbarali's Order, then sought to abandon it, but did not deliver a proper notice of abandonment. Corbett J. directed him to serve a proper Notice of Abandonment failing which his appeal would be deemed abandoned by September 9, 2022.
- Nevertheless, the Respondent continued to frustrate the efforts of the Applicant from carrying out its duties. The Co-Ownership brought a motion for contempt.
- On August 12, 2022, Koehnen J. heard the contempt motion. The Respondent was present. He crafted a consent order and indicated he would hold his reasons on the contempt motion in abeyance in the hopes the consent order would resolve matters. With respect to costs, Koehnen J. found that the Respondent had failed to comply with Sanderson J.'s order and awarded \$14,870.36 in costs.
- The Respondent sought leave to appeal Koehnen J.'s order but this was dismissed by Corbett J. on October 25, 2022, for failing to perfect the appeal and follow Court directions.
- Subsequently, the Applicant determined that there was a large cockroach infestation and that all materials in the Respondent's units would have to be removed to address it. The Respondent failed to prepare the suite for treatment and another motion was required.
- On January 16, 2023, there was another case conference with Koehnen J. because of issues related to the pest infestation. The Respondent did not attend. He ordered that the issue proceed to a motion and imposed a timetable. He also made orders for substituted service.
- The motion proceeded before Koehnen J. on February 13, 2023. He found that there was a significant degree of infestation and that the pest control company retained to remediate it could not do so because of the large quantity of material therein. The only way to address the cockroach infestation was to remove all the contents of the unit. It would have to then be sealed for six weeks to ensure the infestation was completely resolved. Koehnen J. ordered that the Applicant was entitled to takes steps to obtain compliance with previous orders and that they could remove the contents of the Respondent's suit and take remediative action. He also ordered that the Respondent pay previous costs in the amount of \$2,757.20 plus \$5,220.35 in respect of remediation costs already incurred. He also ordered full indemnity costs in respect of the attendance before Sanderson J. in the amount of \$32,814.04 and \$19,370.80 in respect of this motion because of the Respondent's conduct in failing to obey orders, and in contesting things at every step instead of taking a more cooperative approach.
- The Respondent appealed Koehnen J.'s Order of February 13, 2023. He sought a stay which was denied by Nordheimer J. on April 14, 2023. The Respondent did not perfect this appeal. On July 17, 2023, the Registrar of the Court of Appeal dismissed the Respondent's appeal with costs payable in the amount of \$750.

- Thus, the Applicant has obtained several court orders requiring the Respondent to pay \$104,939.80 in costs and damages.
- As of June 7, interest in the amount of \$22,150.26 based upon section 4.03 of the Co-Ownership Agreement which provides that interest on overdue amounts is 18 %.
- He is also in arrears of his common expenses in the amount of \$5,606.19.
- As a result of the Respondent's various breaches, on April 25, 2023, the Applicant gave the Respondent notice to vacate the property.
- The Respondent has failed to vacate.
- Since July 23, 2023, there have been multiple hearings because the Respondent produced a letter from a physician suggesting that he may lack capacity. Many steps were taken to address this including an Order for a capacity assessment with the Respondent's consent. Ultimately, the Respondent indicated that he did not want to attend for a capacity assessment. In my endorsement dated February 27, 2024, I concluded based on my observations of the Respondent that he is an astute man who understands litigation procedure.

**Issue 2: Does such breach entitle the Applicant to the Orders sought?**

[11] Pursuant to Article 8.02.1 of the Co-Ownership Agreement, when a Co-owner is in default of the agreement, he shall give the Co-Ownership vacant possession of the Suite within 30 days after a request. Further, the Co-Ownership can take possession of and dispose of the Co-owner's co-ownership interest.

[12] Article 8.03.1 of the Agreement provides the Applicant with a lien against the Respondent's Co-Ownership Interest for any default of the Respondent's financial obligations to the Applicant, together with all reasonable costs, charges and expenses incurred by the Applicant in connection with the collection or attempted collection of the unpaid amount.

[13] The total amount of the lien as of June 7, 2024, is \$110,609.64, inclusive of interest and arrears common of expenses.

[14] The Respondent raised a variety of issues, all of which sought to go behind previous Orders which were final. Nothing he raised is a valid defence to the issues raised by the Applicant as to the Respondent's non-compliance with Court Orders and the Co-Ownership Agreement.

[15] He also asked that I permit him to try to sell his unit on his own first within a specified time limit. However, he could have been trying to do that this past year while we dealt with capacity issues he raised, but he failed to take any such steps. I would just be delaying the inevitable if I were to give him this time. It could also lead to more proceedings where more costs orders are made against the Respondent which is not in his interest.

[16] I add that the Respondent's non-compliance with the Co-ownership Agreement and various Orders of the Court continues to permit dangerous conditions to exist that are and/or are likely to damage the property and/or cause injury to the occupants of the Property, including but not limited to the known pest infestation and the excessive items in the Suite.

[17] I have empathy for the Respondent who is elderly, who has a mental illness, mistrusts the Applicant and the judicial system considerably, lives on a fixed income, questions all proceedings that have occurred to date, and who generally feels quite aggrieved. He will now likely become homeless at least for a while until his unit is sold. However, his conduct affects the other residents who should not have to have their common fees go towards the Respondent's noncompliance issues. Many of them may also be elderly and on a fixed income.

[18] The courts have given the Respondent multiple opportunities to comply. There were many proceedings that went to case conferences only, where judges urged upon the Respondent compliance without any cost orders initially, but he would not comply. These were relatively simple matters that ballooned all out of proportion. Had the Respondent simply complied, he would not find himself in the current predicament.

[19] The Applicant advises me that there is significant equity in the Respondent's unit, and it is very likely that the Respondent will ultimately receive funds in the hundreds of thousands of dollars after his debt to the Applicant is paid. As well, the Respondent did advise me that he resided in a shelter for a time when he could not attend at his unit by court order and as such, it appears he is knowledgeable in obtaining assistance from shelters.

[20] I direct that the Applicant provide me and the Respondent with a report on the status of the sale efforts on the first of every other month beginning with August 1, 2024. This need not be anything elaborate.

[21] I also advised the Respondent that I would set out the appeal procedure in this decision. The appeal in this case should be to the Divisional Court. If the Respondent wishes to stop the enforcement of this Order, he must also seek a stay. If he wishes to appeal previous orders, then he must make a motion to extend the time to appeal.

## **Conclusion**

[22] Therefore, the Applicant is entitled to the Orders sought.

[23] I also grant the Applicant its full indemnity costs in the amount of \$29,908 to which they are entitled pursuant to the Co-Ownership Agreement. I find that such costs are fair and reasonable and within the reasonable contemplation of the Respondent, who contributed to significant delay and the need for multiple attendances. I have reviewed the time and hours spent which I find reasonable.

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Papageorgiou J.

**Released:** June 20, 2024

**CITATION:** 580 Christie Street v. Halik, 2024 ONSC 3538

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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Respondent

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**REASONS FOR JUDGMENT**

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Papageorgiou J.

**Released:** June 20, 2024