CITATION: Rahman v. Peel Standard Condominium Corp. No. 779, 2024 ONSC 4415
COURT FILE NO.: CV-20-3993 (Brampton)
DATE: 2024-08-08

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Aqib Rahman

Plaintiff

-and-

Peel Standard Condominium Corporation No. 779

Defendant

Aqib Rahman, acting in person
Michael Prosia, for the defendant

Heard: August 1, 2024, by video conference

Justice. R. Chown

ENDORSEMENT

[1] Mr. Rahman is not pleased with the endorsement of Stribopoulos J. dated June 27, 2023: *Rahman v. PSCC No. 779*, 2023 ONSC 3834. He agrees with the result, but not the reasons. Because of this, Mr. Rahman brought this motion.

[2] Mr. Rahman did not fully follow form 37A when he prepared his notice of motion for the motion before me. He did not include the usual paragraph that starts, “The motion is for,” followed by a description of the order the moving party wants the court to make. However, he did prepare a draft order (found at Case Center A415) and in his oral submissions he did explain what he is seeking in this motion. What he wants is for

me to have Stribopoulos J.'s reasons for decision struck from the public record. Mr. Rahman would be content with that relief and does not otherwise have a problem with the order that was made.

[3] The order Stribopoulos J. made was to stay this action because the issues in it were already determined (in Mr. Rahman's favour) by the Condominium Authority Tribunal (CAT) in a proceeding before that tribunal that involved the same parties. The defendant had taken steps to prevent Mr. Rahman from parking in accessible parking spaces in the visitor's parking area. The CAT had decided that Mr. Rahman could do so and provided associated relief such as awarding $1,500 in damages to Mr. Rahman and finding that the defendant could not charge back its enforcement costs by way of a lien against Mr. Rahman's unit.

[4] At the time of the hearing in the motion before Stribopoulos J., the defendant was trying to overturn the CAT decision, including by challenging the CAT's jurisdiction: *Peel Standard Condominium Corp. No. 779 v. Rahman*, 2021 ONSC 7113. Stribopoulos J.'s order therefore included a proviso. If the defendant's efforts to overturn the CAT decision were successful, Mr. Rahman could move to reinstate this action.

[5] The defendant's efforts to overturn the CAT decision were not successful. The Divisional Court dismissed the defendant's appeal of the CAT decision on June 26, 2023[1]: *Peel Standard Condominium Corp. No. 779 v. Rahman*, 2023 ONSC 3758. The defendant did not seek to appeal the Divisional Court decision. Mr. Rahman was therefore successful, and the parking issue is over. There is no basis to reinstate this action pursuant to the proviso in Stribopoulos J.'s order.

[1] This is the day before Stribopoulos J.'s decision was released. I observe that, seemingly independently, the Divisional Court, at paras. 12 to 14 and 26 of its reasons for decision, made negative findings about Mr. Rahman that were in some respects similar to the observations of Stribopoulos J.

[6] As I understand it, Mr. Rahman wants me to set aside the order staying this proceeding, strike the reasons for the order from the public record, and then reinstate the stay. He believes I have authority to make the order he wants me to make under rule 59.06(2)(a) of the *Rules of Civil* Procedure R.R.O. 1990, Reg. 194. He says the order of Stribopoulos J. is tainted by the fraud of the defendant's former lawyers, discovered by him after the order was made.

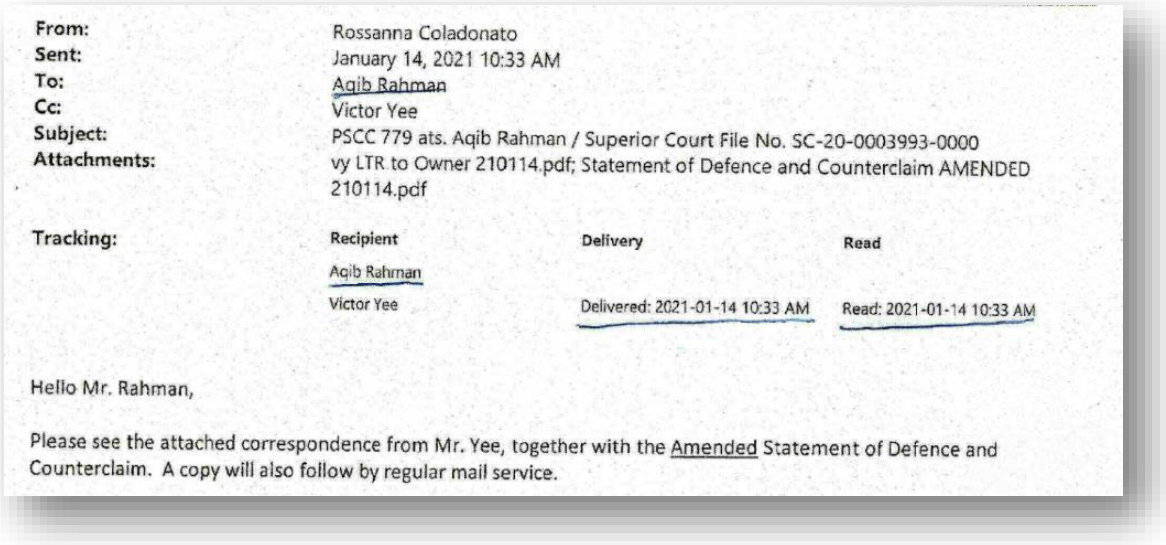
[7] I will come back to the question of whether I have the jurisdiction to do what Mr. Rahman wants me to do after I address whether Mr. Rahman has proven any fraud.

THE ALLEGED FRAUD

[8] The fraud alleged by Mr. Rahman is found in the affidavit of service of the defendant's amended statement of defence and crossclaim. The affidavit of service was sworn January 14, 2021. The affiant was Ms. Coladonato, a law clerk to Mr. Yee in the firm that represented the defendant in this proceeding at the time. Ms. Coladonato says she served Mr. Rahman with the amended statement of defence and counterclaim by email and regular mail. She attaches printouts of the covering email and the delivery confirmation receipt to her affidavit of service.

[9] Mr. Rahman says the printout of the email suggests the email was read by him at 10:33AM on January 14, 2021. Figure 1 below is an excerpt from the printout of the email.

Figure 1



From: Rossanna Coladonato
Sent: January 14, 2021 10:33 AM
To: Aqib Rahman
Cc: Victor Yee
Subject: PSCC 779 ats. Aqib Rahman / Superior Court File No. SC-20-0003993-0000
Attachments: vy LTR to Owner 210114.pdf; Statement of Defence and Counterclaim AMENDED 210114.pdf

Tracking:

Recipient	Delivery	Read
Aqib Rahman		
Victor Yee	Delivered: 2021-01-14 10:33 AM	Read: 2021-01-14 10:33 AM

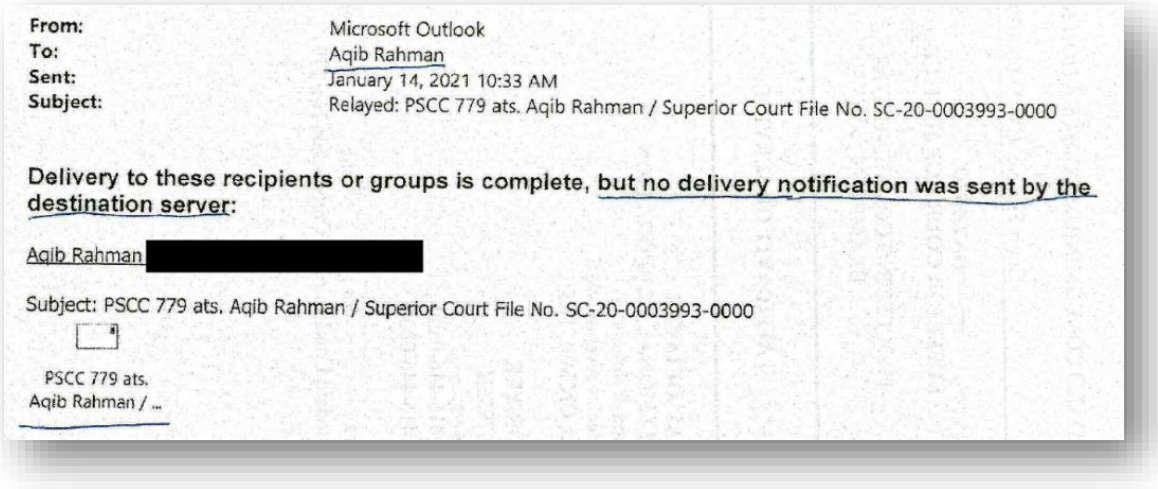
Hello Mr. Rahman,

Please see the attached correspondence from Mr. Yee, together with the Amended Statement of Defence and Counterclaim. A copy will also follow by regular mail service.

[10] Mr. Rahman says that where the printout indicates "Read: 2021-01-14 10:33AM," this must be a forgery and a fraud. He says an email could not be shown to be read if the sender does not receive a delivery notification from the destination server.

[11] Figure 2 below is an excerpt from the delivery confirmation receipt. As indicated above, this was also attached to Ms. Coladonato's affidavit of service. It shows that no delivery notification was sent from Mr. Rahman's email server.

Figure 2



From: Microsoft Outlook
To: Aqib Rahman
Sent: January 14, 2021 10:33 AM
Subject: Relayed: PSCC 779 ats. Aqib Rahman / Superior Court File No. SC-20-0003993-0000

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Aqib Rahman [redacted]

Subject: PSCC 779 ats. Aqib Rahman / Superior Court File No. SC-20-0003993-0000

PSCC 779 ats.
Aqib Rahman / ...

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[12] Mr. Rahman says the two documents are impossibly inconsistent. To repeat, Mr. Rahman says that in Figure 1 where it says “Read: 2021-01-14 10:33AM” this implies he received and read the email and this must be a fraud and a forgery because, as shown in Figure 2, no delivery notification was sent from his email server.

[13] Mr. Rahman appends as exhibit 11 to his affidavit a printout of a very brief online article about delivery receipts. It appears to be an article from Microsoft’s online help or knowledge base. It is titled “Delivery receipts aren’t generated when users send mail to external recipients.” Mr. Rahman points to this article in his affidavit, saying it affirms his point directly from Microsoft.

[14] I do not agree with Mr. Rahman’s interpretation of Figure 1. The words “Read: 2021-01-14 10:33AM” appear to be in the second row beside Mr. Yee’s name. They apply to the copy sent to Mr. Yee and show that *Mr. Yee* read the email at 10:33 AM. The first row applies to the copy sent to Mr. Rahman and is blank. This seems consistent with the delivery status notification as it seems to imply that no “received” or “read” confirmation was sent back from Mr. Rahman’s email server. The Microsoft article does not undermine this conclusion.

[15] Neither side provided expert evidence on this point. I do not fault the defendant for electing not to retain an expert because they also have other arguments, and the burden to prove fraud is on Mr. Rahman. To the extent that there is any lack of clarity in the evidence that requires expert interpretation, it is up to Mr. Rahman to address it, and he has not.

[16] It should be noted here that under Rule 16.01(4)(b)(iv), service by email is valid service and there is no requirement that the sender must receive a “read” receipt for the service to be valid.

[17] Mr. Rahman also pointed to that part of the printout of the email of the law clerk that indicates the addressee of the email. It says, “To: Aqib Rahman.” He submitted that it should say his email address and not his name. This submission is not supported by evidence and is not at all convincing. It may well be that the law clerk had Mr. Rahman

as an Outlook contact, in which case the printout may have indicated his name rather than his email address. There is no reliable evidence to support Mr. Rahman's theory.

[18] Mr. Rahman's affidavit does not clearly state that he did not receive the amended statement of defence. He advised me during submissions that he did not receive it, either by email or by regular mail. However, it was incumbent on Mr. Rahman to provide sworn or solemnly affirmed evidence that he did not receive the amended statement of defence and counterclaim. He could, for instance, have shown from his email archive that he received no such email on January 14, 2021. If he does not have an email archive that goes that far back, he could have said this. Thus Mr. Rahman's evidence is again inadequate.

[19] Mr. Rahman further submits that the statement of defence and counterclaim ought not to have been amended without a motion. He is mistaken on this point because the pleadings were open at the time of the amendment and the amendments did not involve the addition of a counterclaim or the addition, deletion, or substitution of a party. Thus, a motion was not required (see rules 26.02(a) and 27.07).

[20] Mr. Prosia acknowledged that there was an irregularity with service of the amended statement of defence and counterclaim. It was served prior to being filed. The date of service was January 14, 2021 and the date of the amendment, according to the stamped copy, was January 25, 2021. Therefore, Ms. Coladonato must have served a copy that did not bear the court's electronic "stamp" confirming the date of the amendment. The motion record in front of Stribopoulos J. contains the unstamped version.[2] Mr. Rahman's motion record before me contains the stamped version[3] that

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2 This means that Mr. Rahman would have received a copy of it when he received this motion record although, in fairness, if he had not been provided it before he may not have realized that it was amended.

3 I am not clear on when or how Mr. Rahman obtained the stamped version which he used in his motion record. However, nothing turns on this.

shows the amendment was made on January 25, 2021. The text of the stamped version appears to be the same as the text of the version that Ms. Coladonato served.

[21] Finally, it makes no sense that the defendant or Mr. Yee would commit a fraud in the manner alleged. There would be nothing significant to gain from such a fraud, and a great deal to lose. There would be no logic to the alleged of fraud.

[22] Also, the amendment was more than two years before the hearing of the motion by Stribopoulos J. It is unreasonable to suggest that *two years* before a motion *that Mr. Rahman brought*, the defendant or Mr. Yee engineered a fraud by not serving Mr. Rahman with an amended document.

[23] I am not satisfied on the record before me that there was any fraud. Mr. Rahman's main argument – that the order should be set aside on the ground of fraud – is not supported in the evidence.

STRIBOPOULOS J. DID NOT ACCEPT THE FACTS PLED IN THE AMENDMENTS

[24] Even if I found there had been a fraud as alleged, Mr. Rahman has not pointed out any meaningful prejudice that he suffered from the fact that he allegedly did not receive a copy of the amended statement of defence and crossclaim at the time it was amended. Mr. Rahman nevertheless submits that the alleged fraud taints the entire proceeding, and that Stribopoulos J.'s decision was rendered out of tainted materials. I do not accept this.

[25] Stribopoulos J.'s decision *does* reference the amended statement of defence and counterclaim. However, none of the negative comments he made about Mr. Rahman arise from the amendments. In fact, Stribopoulos J.'s decision implicitly rejects at least one of the positions set out in the amendment to the pleading. The defendant originally pled that the accessible parking spot used by Mr. Rahman was a visitor's spot, and the condo declaration prohibited owners from using visitor's spots. The amended pleading stated that, in the alternative, Mr. Rahman had repeatedly parked in spaces "in the Visitors Parking Lot which are designated for handicap parking only but has failed to

provide sufficient medical evidence to support a request for accommodation to allow him to do so." Stribopoulos J. pointed out, at para. 15 of his endorsement, that under the condo declarations, "the three accessible parking spots were to be used only 'by Owners or visitors to the Condominium requiring handicap parking'" [emphasis added]. Stribopoulos J. said that under this rule, contrary to the defendant's position, Mr. Rahman was permitted to park there. Stribopoulos J. was also critical of the defendant for requiring medical evidence in the first place. He said, at para. 65 of his endorsement, that he was "at a loss to understand why Mr. Rahman's accessible parking permit was insufficient from the standpoint of the Corporation to accommodate his request." If anything, this amendment supported some of the favourable comments Stribopoulos J. made about Mr. Rahman.

[26] The amendment to para. 53 of the amended statement of defence and crossclaim *does* mention harassment by Mr. Rahman but does so in the context of pleading a legal conclusion. The original pleading set out harassing conduct the defendant alleged Mr. Rahman committed. The amendment could not have materially impacted the findings that Mr. Rahman does not like. Even if the defendant or its lawyers deliberately failed to serve the amended statement of defence and counterclaim on Mr. Rahman, but then filed it with the court along with a fraudulent affidavit of service (which, I repeat, has not been proven), it would have made no difference to the outcome.

JURISDICTION

[27] Moving now to the jurisdiction issue, even if I had found fraud, I am not persuaded that I have the jurisdiction or authority to order that Stribopoulos J.'s reasons should be struck from the public record. Making such an order would violate the open court principle and would raise concerns about judicial independence. Rule 59.06 gives me jurisdiction to set aside or vary an order on the ground of fraud, but does not give me jurisdiction to set aside, vary, strike out, or "remove from the public record" another judge's reasons for making the order.

CONCLUSION

[28] In result, I dismiss Mr. Rahman's motion. The defendant does not seek costs.

Chown J.

Released: 2024-08-08