

**CITATION:** Laxmi Realestates Inc. v. TSCC No. 2470, 2024 ONSC 5143  
**COURT FILE NO.:** CV-23-00710262-0000  
**DATE:** 20240917

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
LAXMI REALESTATES INC., 10221821 ) Jonathan Wright and Megan Molloy, for the  
CANADA INC., 2405125 ONTARIO ) Applicants  
CORPORATION, and A.J. MEDICAL )  
CENTRE INC. )  
Applicants )  
- and - ) John De Vellis, for the Respondent  
)  
TORONTO STANDARD )  
CONDOMINIUM CORPORATION NO. )  
2470 )  
Respondent )  
)  
)  
)  
) **HEARD:** August 30, 2024

2024 ONSC 5143 (CanLII)

**PAPAGEORGIU J.**

**Overview**

[1] The Applicants are owners of condominium units located in the condominium building managed by the Respondent, the Toronto Standard Corporation No. 2470 (“TSCC2470” or the “Corporation”).

[2] The building is a commercial condominium. There are 23 units.

[3] There are three different types of businesses operated at this building: restaurants; salons; and medical clinics. The Applicants all operate medical clinics out of TSCC2470, while the Board members and others own units that operate as restaurants and salons.

[4] The Applicants bring a motion for the appointment of an Administrator, pursuant to s. 131 of the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended. The main reasons for the application are alleged issues with corporate governance, poor financial management, a failure to comply with

the *Condominium Act*, and a distrust of the current Board to implement the repairs and other items set out in a recently passed Reserve Fund Study.

[5] The Applicant's proposed order sets out that the Administrator would be appointed for a two-year term, and then an election would be held in respect of Board positions.

[6] The parties have agreed on who the Administrator will be if the court makes the order.

### **Decision**

[7] For the reasons that follow I am dismissing the motion without prejudice to the Applicants returning to Court on an expedited basis if the Corporation has not made sufficient progress towards addressing the matters that led to this application, by January 1, 2025.

### **Issue**

[8] Have the Applicants demonstrated that it is just and convenient, as well as in the best interests of the unit owners, that an Administrator be appointed?

### **Analysis**

#### **The Law**

[9] The *Condominium Act* vests in the unit owners the power to manage the affairs of the corporation through an elected board. Self-governance is the norm: *Bahadoor v. York Condominium Corporation No. 82* (2006), 53 R.P.R. (4th) 281 (Ont. S.C.), at para. 26.

[10] Nevertheless, the Act recognizes that there are circumstances where a corporation must be overseen by an outside party, at least for a time. Section 131 of the Act permits the Court to appoint an Administrator, if the appointment would be just or convenient in regard to the scheme and intent of the Act, and if determined to be in the best interests of the unit owners. Courts take into account a variety of circumstances when considering whether an Administrator should be appointed: *York Condominium Corporation No. 42 v. Hashmi*, 2011 ONSC 2478, at para. 6; *Skyline Executive Properties Inc. v. Metropolitan Toronto Condominium Corporation No. 1385* (2002), 17 R.P.R. (4th) 152 (Ont. S.C.), at para. 26; and *Bahadoor*, at para. 28. The case law establishes the following factors:

- a demonstrated inability of the board to manage the corporation.
- the existence of substantial misconduct or mismanagement or both.
- the necessity of bringing order to the affairs of the corporation.

- whether the Board has formulated an operating and project expenditure plan that presents a reasonable prospect of achieving the orderly management of the affairs of the corporation.
- the existence of a struggle within the corporation amongst competing groups which impedes or prevents proper governance of the corporation.
- whether only the appointment of an administrator has any reasonable prospect of bringing order to the affairs of the corporation.

[11] These factors must be balanced against the cost of appointing an Administrator: *Bahadoor*, at para. 28.

[12] Further, the power to appoint an Administrator under s. 131 should only be invoked as a last resort. In that regard, when a court is considering this issue, there must be a good reason for why the unit owners should not manage their corporation's affairs through an elected board: *York*, at para. 7; *Bahadoor*, at para. 26.

### **Background of TSCC 2470**

[13] TSCC2470 was created by registration of its Declaration on June 30, 2015.

[14] The business and affairs of TSCC2470 are managed by a three-member Board of Directors, elected by the 23 voting units.

[15] TSCC2470 was not professionally managed until 2018. Until then, it had been managed by the Declarant. Since 2019, it has been managed by Capitalink Property Management ("Capitalink"), a licensed property management company. Until recently, the property manager was Ramesh Prasai, formerly employed by Capitalink. In 2024, he joined another management company, and Raj Balasundram of Capitalink took over as senior property manager.

[16] Since the turnover, the President of the Board has been Kiritharan Sinnadurai. The Board President and his wife owned 9 units at the relevant time, and now own 7. The other two Board members collectively own 5 units. The Applicants collectively own 8 units.

### **Have the Applicants shown that there is an established inability to manage TSCC2470, substantial misconduct, and mismanagement?**

[17] TSCC2470 is governed by the Act, as well as its Declaration, By-Laws, and Rules. The Board has a statutory duty to manage the affairs of TSCC2470 and to enforce the Act, as well as TSCC2470's Declaration, By-Laws, and Rules.

[18] There are many specific requirements in the Act and at common law, which govern the Board's actions. The principal ones at issue in this proceeding relate to Annual General Meetings

(“AGMs”),<sup>1</sup> Board Meetings,<sup>2</sup> the preparation and dissemination of financial statements,<sup>3</sup> the development of an investment plan,<sup>4</sup> and the periodic preparation of Reserve Fund Studies.<sup>5</sup> TSCC2470 must ensure that in its units or common elements, no conditions exist or any activities are carried out, which could cause injury to an individual or damage to its property.<sup>6</sup> Further, in exercising its powers and duties, the Board is required to act honestly, and in good faith, and must exercise the care, diligence, and skill of a reasonable person.<sup>7</sup> These duties are owed to the condominium community as a whole, not to the Board members themselves personally, or to any individual or group of owners.

[19] Courts have held that the failure to comply with the Act is a reason supporting the appointment of an Administrator: *York Condominium Corporation v. Persaud*, 2009 CanLII 72099 (Ont. S.C.), at para. 9.

[20] For the following reasons, I am satisfied that the Applicants have established that the current Board has not effectively managed TSCC2470, and that this mismanagement was substantial, including the failure to comply with the Act.

[21] I note at the outset that the former property manager acknowledged that there has been severe mismanagement on the Board’s part.

***Conduct with respect to Board and AGM Meetings and Financial statements***

[22] Section 45(2) of the Act requires the board to hold an AGM not more than three months after registration of the Declaration. Even though TSCC2470 was turned over in 2018, the Board did not hold an AGM until 2021.

[23] Although there is some conflicting evidence on how often the Board met, during the 2023 AGM, the property manager admitted that the Board was only meeting once a year, despite all of the issues faced by the Corporation that needed to be addressed and despite the property manager’s request that the Board hold more meetings. Minutes of board meetings produced show that prior to this Application, there had been only five meetings in the time between 2018 and 2023. After the Applicants commenced this proceeding, the Board held four meetings in between November 2023 and the date of this Application.

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<sup>1</sup> *Condominium Act*, s. 45(2).

<sup>2</sup> *Condominium Act*, s. 32(1).

<sup>3</sup> *Condominium Act*, s. 67(4).

<sup>4</sup> *Condominium Act*, s. 115.

<sup>5</sup> *Condominium Act*, s. 94.

<sup>6</sup> *Condominium Act*, s. 117.

<sup>7</sup> *Condominium Act*, s. 37(1).

[24] Since s. 32(1) of the Act says that a condo corporation can only conduct business at a duly constituted board meeting, it is unclear how the Board has been lawfully conducting business. If it has been conducting business outside meetings where there would be minutes, there is an issue as to transparency. This speaks to the lack of proper governance.

[25] The Board has also failed to provide unit holders with audited financial statements as required. As a result, unit owners have been kept in the dark with respect to finances.

[26] In 2022, the Applicants became suspicious and requested a Status Certificate pursuant to s. 76 of the Act. The Status Certificate disclosed that the Reserve Fund was severely underfunded.

[27] They asked for financial statements but did not receive copies until September 2023. At that time, TSCC2470 provided copies of the audited financial statements for 2019, 2020, and 2021 as part of the AGM package. Although the 2022 statements should have been completed by that time, the 2022 statements were not part of the AGM package. They were provided subsequently.

[28] Auditors retained in 2018 and 2020 noted noncompliance with the Act. For example, in 2020 the Auditor stated:

As required by Section 67(4) of the Condominium Act, 1998, we report that the condo corporation has not complied with the requirements of Section 115(8) of the Act as the condo corporation has not developed an investment plan for reserve investments.

As required by Section 67(4) of the Condominium Act, 1998, we report that the condo corporation has not deposited all monies received from owners to be allocated to the reserve fund into a reserve bank account or reserve investments and, as a consequence, has a balance of \$38,041 in its reserve bank and investments which is less than the amount necessary to fund the reserve fund of \$41,411. This is not in accordance with the requirements of Section 115(4) of the Act.

[29] In 2022, the Auditor again noted that TSCC2470 was not complying with s. 115(5) of the Act, that it had not deposited all funds into a reserve fund bank account, that there was no Reserve Fund Study, and that it had a \$24,624 debt to the bank with no borrowing By-Law in place as required.

***Insufficiently funded since its inception***

[30] The audited financial statements show an ever-worsening picture of the finances, as well as underfunding of the required Reserve Fund.

[31] As of December 31, 2023, TSCC2470 had a cumulative deficit of almost half a million dollars.

[32] The former property manager continually advised the Board that it had to raise common fees paid by unit holders in order to meet expenses; however, there were only negligible increases from 2018 until 2024, such that the Corporation did not have enough money to meet ongoing expenses or address ongoing repair issues discussed below.

***Failure to pay invoices***

[33] The previous property manager gave evidence that there had been a “huge” number of invoices that had not been paid on time, and that he repeatedly advised the Board of the situation. Because the Board did not sufficiently raise common expenses, management would prioritize some of the important contractors that provided regular service, such as garbage removal and landscaping, and they would pay those “slowly” because they did not have sufficient funds to pay all the invoices.

***Cleanliness***

[34] The Applicants have raised issues with respect to garbage collection and cleanliness, particularly in relation to common areas like hallways.

[35] The Applicants have been requesting more frequent garbage collection, as garbage sometimes piles up around the bins.

[36] The Applicants say that this is because the tenants who operate restaurants put used oil in containers in the garbage area when they should not. When the Applicants raised an issue regarding the oil bins with the property manager, he said that he had asked the Board to write to the restaurants directing that they stop this practice, but the Board President said that he did not want to upset the restaurants.

[37] The Board’s response to this complaint is in part to dispute the claim that the building is improperly cleaned. The Board also says that it feels that it has arranged sufficient cleaning and garbage collection. It has a cleaner who attends six days per week for three hours a day, but the Corporation admits that during snowy or rainy periods, it is more difficult to keep corridors clean. Garbage is collected three days per week, but the Corporation admits that garbage may pile up between collection dates.

[38] This level of attention to garbage collection and cleanliness may be adequate for the owners of restaurants and salons, but cleanliness is particularly important for the owners of medical clinics, as their clients come to them for health and wellness.

[39] Although the Board takes the position that it is entitled to make these decisions, there is no evidence that the Board discussed and accounted for the specific needs of the owners of medical units when it established the cleaning schedule and garbage collection practice. There is no evidence that it sought to balance the needs of all unit owners, other than a bald assertion that it has done so.

***Parking***

[40] The Applicants raise the issue of the absence of parking, particularly on weekends when the banquet tenant holds events and monopolizes the available parking spaces. Management has directed the banquet hall to inform TSCC2470 of events, so that security can be arranged to ensure that banquet hall guests park where they are supposed to. However, TSCC2470 could not add security because of outstanding payments to the security company.

[41] As well, there have been problems with broken lighting in the parking lot in the past. Sometimes, the Applicants have had to search for the owners of vehicles that are improperly parked to ask them to move.

***Failure to Repair***

[42] Although the Board has conducted some repairs over the years that are set out in the property manager's affidavit material, the Applicants have shown that they have been plagued with water intrusion from both the roof and the ground, and there have been significant delays when they reported these concerns to the Board.

[43] Additionally, there have been leaks in the corridors. On or around January 24, 2024, the ceiling collapsed because of a leak.

[44] Water is a slipping hazard; one patient slipped as a result of water penetration and made an official complaint.

[45] Unit owners have resorted to covering equipment with garbage bags, elevating equipment off the floor, and intervening when it rains to either stop the flooding or clean the drains.

[46] There have also been problems with brickwork falling off, unrepaired water stains on the ceiling, problems with snow removal, holes in the ceiling with wires protruding, improperly installed drains which are tripping hazards, and cracks in the asphalt. The Applicants claim the response from the Board has been insufficient when the Applicants have complained.

[47] There are some factual disputes here, but overall, on a balance of probabilities, the Applicants' evidence supports the existence of many of these problems and the Board's failure to address these in a timely manner, or at all.

[48] As will be seen, one of the likely reasons for some of the leaks and delay in repair has been the need for roof repairs that have not been done because of the Board's failure to approve a Reserve Fund Study until 2023, which revealed that the roof needed repair. Another reason for the leaks and delay is that the Board had insufficient funds to repair the problems because it had not properly maintained the Corporation's finances. For example, by email dated May 12, 2023, the property manager emailed one of the Applicants to explain that certain repair and maintenance obligations were not being completed because TSCC2470 had no money. He even went as far as

to send a screenshot of TSCC 2470's operating account to show the evidence. The balance in TSCC 2470's operating account as of that day was (-) \$137.57.

### ***The Reserve Fund Study***

[49] Section 94 of the Act mandates that a Reserve Fund Study be done every three years. The purpose is to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation, are adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation.

[50] The Act also mandates that once a Reserve Fund Study is received, it must be reviewed within 120 days. Following review, the board must propose a plan for the future funding of the reserve fund to ensure that the fund will be adequate for the purpose for which it was established: ss. 94(8) and 94(9). Within 15 days of proposing a plan, the board must send the owners a notice containing a summary of the study, a summary of the proposed plan, and a statement indicating the areas, if any, in which the proposed plan differs from the study.

[51] TSCC2470's Board has not complied with any of these provisions of the Act, notwithstanding the fact that the reserve fund decreased from 2020 to 2021 from \$109,000 to \$2,000.

[52] TSCC2470 received a Reserve Fund Study in 2021, but failed to adopt it.

[53] TSCC2470 received a draft of another Reserve Fund Study on January 17, 2023, but did not approve it until January 2024. This timing is not in accordance with the Act. At the September 2023 AGM, the property manager confirmed that the Reserve Fund Study would have to be redone because the 2023 study had not been approved in a timely manner.

[54] The 2023 Reserve Fund Study confirms the Applicants' evidence regarding a number of long-standing issues that have not been addressed by the current Board. The matters set out in the Study include the following:

- i. Issues with the concrete walkway, which was cracked, heaved in, and differently settled;
- ii. There was an unconstructed sidewalk;
- iii. Damaged and cracked curbs are present across the common elements;
- iv. Asphalt pavements are cracked and settled, pooling water;
- v. The interlocking pavement is settled and damaged.
- vi. The roof, which a number of unit owners have had issues with, is noted as having several deficient conditions.



- vii. The stone finishes are delaminated, including exposed substrate, and are damaged at several locations.

[55] The Reserve Fund Study sets out that addressing these issues will cost approximately \$410,000.

[56] When the current property manager was cross-examined, he confirmed that for the majority of the repairs mandated by the Reserve Fund Study, the Board has no plan of redress other than that the Board “hopes” to address them this year. TSCC2470’s factum lists a number of issues that it admits have not been attended to and that it intends to address in the 2024 calendar year, but with no details as to specific plans in that regard. The Board has not hired any professionals yet to assist it in formulating a plan to address these issues.

[57] The Board has also not carried out a full detailed building audit, as the Reserve Fund Study advised should be done.

[58] The failure to retain the necessary professionals, including engineers, and engineering consultants, supports the imposition of an Administrator: *York Condominium Corporation No. 25*, at para. 38.

**Does the current Board have a sufficient operating and project expenditure plan?**

[59] In January 2024, when the Board approved the Reserve Fund Study, it finally raised common expenses and established a new budget. The Board also approved a Special Assessment in July 2024.

[60] The new budget is an increase of 120 % and includes an increase in the reserve fund contribution, in accordance with the 2023 Reserve Fund Study.

[61] Essentially, the combination of the increase in common expenses, as well as the Special Assessment, will eliminate the deficit and will result in sufficient money to fund the required repairs noted in the 2023 Reserve Fund Study.

[62] The difficulty is that there is no comfort that the recently raised funds will be sufficient since they are based on an out-of-date Reserve Fund Study. As well, the funds raised do not take into account the potential outcome of the building audit proposed in the Reserve Fund Study.

[63] Furthermore, the timing shows that these actions were only taken in response to this Application. In *2308478 Ontario Ltd. v. York Region Condominium Corporation No. 715*, 2016 ONSC 6256, at para. 12, the court concluded that the condominium corporation should not be credited with actions it took only in response to the planned court application.

**Is there a struggle within the corporation amongst competing groups which impede or prevent proper governance of the corporation?**

[64] As set out above, there has been an ongoing struggle between the owners of the medical units and the owners of units with restaurants and salons. At this point, there is a complete lack of trust between the competing factions.

[65] The Board's President says that it was the Board's feeling that, during the pandemic and the years following, the owners could not handle increases to common expenses. He noted that the units owned by the Applicants are all operated as medical units, while the other units in the Corporation are operated mainly as restaurants or as personal services businesses, which were hit hard by the pandemic. However, this does not explain the noncompliance with the Act prior to the pandemic, which began in 2020, or after the pandemic was substantially over in 2022.

[66] He also said that while some may wish for a higher level of service, such as more frequent cleaning or garbage pickup, the Board is charged with making these decisions. He believes that the Board of the Corporation acted fairly and reasonably in balancing the owners' ability to pay, with the operational needs of the Corporation. But despite his belief, there is no evidence of any balancing of interests. Indeed, allowing the state of disrepair to continue for so long was not in any unit owner's interest.

[67] While the Board is owed deference, this does not extend to noncompliance with the Act. I do not accept the Corporation's evidence that it took into account the impact on the Applicants' businesses of the various issues that could have been addressed if the Corporation had a proper and sufficient budget. Additionally, TSCC2470 did not provide any specific evidence documenting the financial struggles in terms of the inability of the other unit owners to afford increases in common expenses that would have permitted the Board to comply with its obligations under the Act and at law.

[68] As such, the current Board has preferred the interests of some unit owners, in particular the interests that the Board members had, when it failed to increase funds to address longstanding issues because it did not have the funds to do so.

[69] Additionally, the height of the COVID crisis did not continue past the end of 2022. As such, COVID does not explain why the Board did not choose to raise common expenses and approve the Reserve Fund Study until January 2024, or not issue a Special Assessment until July 2024. There is also evidence that there were problems with the Board's ability to manage the Corporation well before COVID, as set out above.

[70] The way in which this Board has operated has failed to support one of the principal objects of the Act, which is to achieve fairness among the unit owners, their tenants, and the corporation: *York Condominium Corporation No. 42*, at para. 40; *Bahadoor*, at para. 27.

**What is the prospect for orderly governance if an Administrator is not appointed?**

[71] The Applicants argue that even though the Corporation's financial affairs have been stabilized, where they remain vulnerable to an inexperienced or misguided Board, or a lack of a sufficient expenditure plan reflecting a reasonable prospect of orderly management going forward,

this will support the appointment of an Administrator: *York Condominium Corp. No. 506 v. All Unit Owners & Mortgagees of York Condominium Corp. No. 506*, 2011ONSC 2839, at para. 15.

[72] While it is true that the Board's past mismanagement raises concerns going forward, TSCC2470 has provided evidence that the new property manager has ten years' experience, and in particular, experience in taking over corporations in trouble. Therefore, there is a good property manager in place who should be able to do most of the work. The difficulty in this case, is that even with a good property manager in place, the current Board has a long history of not listening to the property manager, and the Applicants do not trust the Board, even though the Board has provided its commitment to continue moving forward.

[73] It is also concerning that the Board has not recognized that it has preferred its own interests, that it has not sought to update the Reserve Fund Study, and that it did not commission a building audit. It is also concerning that the Board does not recognize the legitimate concerns that the Applicants have raised about garbage collection, cleanliness, and other matters. The Board has not sought to consider a resolution that would be fair to all unit holders, rather than one that just addresses the needs of the owners of the units with restaurants and salons.

**Are future elections a sufficient way of ensuring that TSCC2470 will be able to operate effectively?**

[74] TSCC2470 argues that if the Applicants are dissatisfied with the current Board, they can seek to be elected to the Board. This is simply fanciful. Because the Board owns 12 of the 23 voting units, there is nothing the Applicants can do to secure even one position on the Board.

**Are the costs of appointing an Administrator so significant that they outweigh other considerations?**

[75] There is merit to the argument that the cost of an Administrator could be significant relative to the size of the Corporation.

[76] The proposed duties set out in the draft Order include managing the Corporation in place of the Board, filing reports twice annually, determining common fees, levying special assessments required, reviewing contracts entered into by the Corporation, entering into any new contracts required, maintaining control of the on-site management office, retaining counsel, employing advisors.

[77] The only evidence that the Applicants gave is that the Administrator charges \$175 per hour. When cross examined one of the Applicants estimated that the cost of an Administrator could be between \$20,000 and \$40,000 per year, but that is only an estimate from one of the Applicants, not the proposed Administrator. Even the lowest amount would represent a 10 percent increase in the Corporation's budget.

[78] While a final budget would have been difficult for the Administrator to provide without actually being appointed, the Administrator could have provided some evidence of how much time

it might take by reviewing the Reserve Fund Study, financial statements, and the Applicants' materials on this motion.

**Is the appointment of an administrator the only reasonable prospect of bringing order to the affairs of the corporation?**

[79] If order cannot be brought to the affairs of the Corporation, the Applicants' businesses will continue to suffer and there will also be impacts to all unit owners. However, the appointment of an Administrator will be costly and this cost will be unpredictable.

[80] Despite all of the significant concerns set out in these reasons, I am not persuaded that at this stage, the appointment of an Administrator is the only reasonable prospect of bringing order to the affairs of the Corporation. Nor am I persuaded that the current situation justifies the appointment of an Administrator when there are unforeseen potential costs that could severely damage the businesses of all unit holders. I am not satisfied that this is in the best interests of unit holders at this time. This is particularly so, given how small the building is. Notably, the cost of the estimated repairs in the Reserve Fund Study is approximately \$400,000.

[81] As noted, the Board has taken steps towards establishing a new budget. It has raised common expenses and levied a Special Assessment to be paid over 12 months that will be sufficient to conduct the required repairs based upon the costs set out in the Reserve Fund Study. It says that it is committed to effecting repairs, passing annual budgets, and following the recommendations of the property manager.

[82] As noted, the new property manager is experienced.

[83] In my view, the Board should be given a chance to continue with the progress it has made.

[84] Going forward, based upon this record, the various matters that an Administrator would likely have had to address are: updating the Reserve Fund Study to ensure that it correctly sets out funds that need to be raised, and if they are not, that they raise additional funds; retaining experts to conduct necessary repairs; arranging for a building audit; reviewing the various operating matters and addressing fairness issues in respect of garbage collection, cleanliness, as well as other concerns raised by the Applicants, which I have set out in these reasons. As well it would have to have ensured that the Act was complied with, that AGM's were held and that financial statements were prepared and disseminated as required.

[85] I expect the parties to work towards addressing their common interests so that the expenses of an Administrator will not be necessary. This is the most practical and best option for these parties, because the reality is that even if an Administrator is appointed, it will not be forever. Afterwards, the parties will still be owners of a small community of condominiums and the current Board will still be able to outvote the Applicants. This court cannot change the By-Laws and voting procedures for the Corporation as part of its powers under s. 131 which is the basis for this Application. This is not an oppression remedy application where the Court may make any order it sees fit.

[86] If the Applicants continue to have concerns because insufficient progress has been made as of January 1, 2025, they may return to the court to seek the appointment of the Administrator on an expedited basis before me and/or any other relief that they may be entitled to at law.

[87] This approach balances the interests of all the parties, ensures that the parties do not incur the unpredictable cost of an Administrator unnecessarily, and ensures that the appointment of an Administrator will truly be a last resort, in accordance with the legal test.

### **Costs**

[88] Pursuant to s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, costs are in the discretion of the court. Rule 57 of the *Rules* sets out the factors which courts should have regard to when awarding costs. The overall objective is “to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant”: *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26; *Clarington (Municipality) v. Blue Circle Canada Inc.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 52; and *G.C. v. Ontario (Attorney General)*, 2014 ONSC 1191, at para. 5.

[89] In this case I requested the parties’ submissions as at the time of the Application on the basis of what they would request if they won or what they should pay if they lost and they did so.

[90] In my view, the outcome in this Application, even though dismissed, may entitle the Applicants to their costs on the basis that this Application was required. As such, the submissions on costs which were made on the above basis, did not take into account this potential argument.

[91] Therefore, the parties may make submissions as follows: The Applicants within 5 days and the Corporation within 5 days thereafter.

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Papageorgiou J.

**Released:** September 17, 2024

**CITATION:** Laxmi Realestates Inc. v. TSCC No. 2470, 2024 ONSC 5143

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

LAXMI REALESTATES INC., 10221821 CANADA  
INC., 2405125 ONTARIO CORPORATION, and A.J.  
MEDICAL CENTRE INC.

Applicants

**– and –**

TORONTO STANDARD CONDOMINIUM  
CORPORATION NO. 2470

Respondent

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**REASONS FOR JUDGMENT**

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Papageorgiou J.

**Released:** September 17, 2024