COURT OF APPEAL FOR ONTARIO

CITATION: World Medpharm Inc. v. York Region Standard Condominium Corporation No. 1279, 2024 ONCA 907
DATE: 20241213
DOCKET: COA-24-CV-0282

Brown, Huscroft and Miller JJ.A.

BETWEEN

World Medpharm Inc. and World Medpharm (2014) Inc., cob as World Pharmacy

Applicants (Respondents)

and

York Region Standard Condominium Corporation No. 1279, York Region Standard Condominium Corporation No. 1247, 2352711 Ontario Inc., cob as Enhanced Care Pharmacy Thornhill* and 2819826 Ontario Inc.*

Respondents (Appellants*)

Benjamin J. Rutherford, for the appellants

David M. Golden and Michael Hochberg, for the respondents

Christopher R. Dunn, for York Region Standard Condominium Corporation No. 1247

Heard: December 10, 2024

On appeal from the order of Justice Eugenia Papageorgiou of the Superior Court of Justice, dated February 27, 2024, with reasons reported at 2024 ONSC 1191.

REASONS FOR DECISION

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[1] The appellant, 2352711 Ontario Inc. (“Enhanced Care”), operated a business styled “Enhanced Care Pharmacy” in a condominium building at 7163 Yonge St. in Thornhill (“Building Two”). It subleased its premises from 2337636 Ontario Inc. (“233”), not a party in this appeal, which itself leased its space in the building from the appellant, 2819826 Ontario Inc. (“281”). This appeal is from an order made under s. 134 of the *Condominium Act*, *1998*, S.O. 1998, c. 19, directing the appellants to cease operations. The appeal was dismissed from the bench with reasons to follow. These are our reasons.

[2] The respondents also operate a pharmacy at premises at 7181 Yonge St. (“Building One”). Building One and Building Two are part of a common development built by the same developer, Liberty Development Group (the “Declarant”). At the time the development was under construction, the respondents entered into an Exclusive Use Agreement with the Declarant, which granted the right to exclusive operation of a pharmacy in both Building One and Building Two. Declarations registered on title of each building prohibit the operation of a pharmacy without the consent of the Declarant (the “Declaration”).

[3] The Declarant nominated the respondents as its agent to enforce the provisions of the Declaration pertaining to the Exclusive Use Agreement.

[4] When the respondents became aware that the appellants were operating a pharmacy in Building Two, they requested the York Region Standard

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Condominium Corporation No. 1247 (“1247”) to direct the appellants to cease operations. When the appellants refused to do so, the respondents brought the present application.

[5] The appellants requested that the application judge not grant the order sought by the respondents, using her discretion under s. 134(3)(c) of the *Condominium Act* to provide “such other relief as is fair and equitable in the circumstances”. The application judge found that the circumstances did not justify relieving the appellants of their obligation to comply with the declaration. The application judge found that the appellants were in breach of the declaration and directed, pursuant to s. 134 of the *Condominium Act*, that they comply. A motion to this court for a stay pending appeal was unsuccessful, and the appellants have ceased operating the pharmacy in Building Two.

[6] The appellants advanced five grounds of appeal.

[7] First, the appellants argued that the application judge erred in giving undue weight to the lease agreement between the appellants. The lease agreement adverts to the declaration’s prohibition on carrying on business as a pharmacy, and provides for 233 to indemnify Enhanced Care for any losses that occur as a result. The application judge found the lease to be powerful evidence that the appellants were aware of the Declaration’s prohibition on carrying on business as a pharmacy. The appellants argued that the application judge ought to have been

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persuaded instead by the evidence of the principal of 233 and Enhanced Care that despite what the text of the lease suggests, the appellants did not know about the prohibition.

[8] The application judge was entitled to draw the inference she did from the text of the lease agreement and reject the appellants' evidence to the contrary. She made no error in doing so.

[9] Second, the appellants argue that the respondents lacked standing to bring the application, which they argue could only have been brought by 1247. The appellants did not adduce any authority for the proposition that the original Declarant could not appoint an agent to enforce its rights under the declaration, and we do not accept it.

[10] Third, the appellants argue that the application judge erred in not exercising her discretion under s. 134(3)(c) of the *Condominium Act* to refuse to grant the enforcement order. The application judge, the appellants argued, should not have been persuaded on the evidence that appellants' pharmacy operations would have any impact on the business of the respondents, particularly when she found that the appellants' clientele could be adequately served by the large number of pharmacies in the neighbourhood.

[11] The appellants' argument seems to be that – given the existing level of competition in the neighbourhood – the Exclusive Use Agreement could not have

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been of any real value to the respondents, so the application judge ought to have found that it would be fair and equitable not to enforce the declaration.

[12] The appellants were unable to persuade the application judge to draw this inference and accordingly she did not exercise her discretion in their favour. Exercises of discretion are entitled to deference, absent some misapprehension of evidence or misapplication of principle. We have not been persuaded that the application judge did either, and would not interfere.

[13] Fourth, the appellants argued that the application judge failed to take into account the harm that would be caused to the appellants' patients as a consequence of the closure of the pharmacy. The appellants argued that their combined services were not those of a medical practice and traditional pharmacy, but were part of an innovative and highly integrated model of medical care that could not be replicated if their pharmacy operations were not located on-site. The appellants argued that their professional obligation to provide optimal health care to their patients ought to have outweighed the respondents' commercial interests, in the public interest.

[14] The application judge did not find this argument persuasive. She found that the appellants knew they were contractually bound not to open a pharmacy in the leased premises and did so anyway. She noted the absence of evidence of any

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harm caused to third parties. That finding was sufficient to dispose of the appellant's argument, and the application judge made no error in rejecting it.

[15] Fifth, the application judge was said to have erred in finding that the business carried on as Enhanced Care Pharmacy was not actually a pharmacy within the meaning of the declaration. We see no merit in this submission.

DISPOSITION

[16] The appeal is dismissed. The respondents are entitled to costs of the appeal in the amount of $15,000, inclusive of HST and disbursements, as agreed among the parties.

"David Brown J.A."
"Grant Huscroft J.A."
"B.W. Miller J.A."

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