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CONDOMINIUM LAW AND ADMINISTRATION

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Condominium Law and Administration is an invaluable resource for those involved in conveyancing, development, condominium management or the representation of condominium corporations, whether inside or outside of Ontario.

This release features updates to Chapter 4 (The Declaration and Description), Chapter 5 (The By-Laws and Rules), Chapter 11 (Tarion Warranty Corporation), Chapter 23 (Legal Proceedings), Chapter 24 (Oppression Remedy).

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Highlights

THE DECLARATION AND DESCRIPTION—THE DECLARATION FOR A FREEHOLD STANDARD CONDOMINIUM—ADDITIONAL MATERS—SECTION 7(4)(B)—CONDITIONS OR RESTRICTIONS RESPECTING THE OCCUPATION AND USE OF THE UNITS AND COMMON ELEMENTS—HARASSMENT, NOISE, ETC.—The Ontario Superior Court of Justice found that the owner had breached ss. 117 and 119 the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "Act") as well as the condominium's declaration and rules. Having granted the Toronto Standard Condominium Corporation No. 2490 (the "corporation") a compliance order but not a restraining order banning the unit owner from the property, the court exercised its discretion under s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990 c. C-43 and declined to award costs to either party. Citing Rule 57.01 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194 (the "Rules") and the factors to be considered in determining costs, the court acknowledged that the awarding of costs "is not an exact science" and that the "overarching principle is that costs must be fair, reasonable and proportionate." Canvassing the applicable caselaw, the court referenced the Court of Appeal for Ontario's decision in *Sky Clean Energy Ltd. (Sky Solar (Canada) Ltd.) v. Economical Mutual Insurance Company*,(2020), 3 C.L.R. (5th) 241, 6 C.C.L.I. (6th) 1, 2020 CarswellOnt 12527, 2020 ONCA 558, 152 O.R. (3d) 159, [2021] I.L.R. I-6265 (C.A.), at para. 119 wherein the court noted that the parties' reasonable expectations about the amount of a costs award was an important factor. The court also cited its own decision in *Youkhana v. Pearson*, 2024 CarswellOnt 8387, 2024 ONSC 3184 (S.C.J.) in which the court confirmed that the following legal principles applied in assessing costs: that costs awards have various purposes; that costs generally should follow the event, be proportional to the issues, the outcome and the amount awarded, and be reasonable for the losing party to pay, given the totality of the circumstances; that a party's conduct is relevant where worthy of sanction; and an undue focus on proportionality ignores principles of indemnity and access to justice.

The court noted that, while rare, costs on an elevated scale may be warranted under s. 49 of the Rules where a party fails to accept an offer to settle or where the unsuccessful party's behaviour—including the circumstances giving rise to the litigation and the conduct of the proceedings—was reprehensible, scandalous, or outrageous and thereby worthy of sanction. Costs were justified where the proceedings were "clearly vexatious, frivolous, or an abuse of process." While acknowledging that the court looked to the overall outcome of the litigation and not an issue-by-issue analysis of success, the court confirmed that costs could be awarded or denied concerning a specific issue or part of a proceeding under Rule 57.01(4)(a) of the Rules and that costs awarded to a successful party could be reduced to reflect time spent on issues on which that party was not successful.

The court found that there was divided success on the application: even though the corporation was not successful in obtaining a restraining order against the owner, given that the owner had refrained from any further highly inappropriate conduct after receiving the first warning letter, the corporation had failed to prove some of its conduct allegations and the owner had proposed mediation after being served with the application, which proposal the corpora-

tion had declined, the corporation's application was not frivolous, unnecessary or abusive. The corporation's behaviour in the circumstances giving rise to the application and in the conduct of the proceedings also was not worthy of sanction. The court pointed out that the corporation was obligated to take all reasonable steps to enforce compliance with the Act, its declaration, bylaws and rules under s. 17(3) of the Act and that the corporation had largely achieved this compliance via the warning letter: *Toronto Standard Condominium Corporation No. 2490 v. Francis*, 2025 CarswellOnt 21022, 2025 ONSC 6605 (S.C.J.).

LEGAL PROCEEDINGS—ACTIONS BY OWNERS—GENERAL—The purchaser of the strata lot, Luya Han ("Han"), sued the sellers, Darren and Rosella Buchannon (the "Buchannons"), and the sellers' real estate agent, Jag Dhillon ("Dhillon"), for negligent misrepresentation. Han claimed that the Buchannons had failed to disclose that there was a pending strata levy for the cost of the pipe leak and flood repair work that had been effected on the property pre-listing and that Dhillion had claimed, on two occasions, that the "flood" damage to the property had been "resolved and fully paid." In fact, six months post-closing, a special levy was imposed on Han for the costs of the repair work that had been effected pre-closing. Han also sued the Buchannons in contract, alleging that the Buchannons had failed to remedy a number of minor deficiencies and to effect certain minor repairs to the lot pre-closing. Referencing the five general requirements that must be proven on a balance of probabilities to establish a claim in negligent misrepresentation, the Provincial Court of British Columbia confirmed that the Buchannons had a duty of care to Han to ensure that the information contained in the disclosure package was complete and accurate. The court found that it was "plain and obvious" from the information contained in the disclosure package—specifically, the corporation's March 7, 2023 Special General Meeting minutes (the "Minutes") reflecting the owners' resolution authorizing the corporation to borrow the funds needed to pay for the repairs—that no resolution to impose a levy had been approved or was pending pre-closing: the owners had made a reasonable decision to borrow the funds necessary to effect the repairs and to pursue a warranty claim and litigation to recoup the repair costs. The court concluded that a prudent purchaser, finding out about a loan that would need to be repaid, would have made inquiries about this potential liability.

The court held that the Buchannons had not made any "false, misleading, or inaccurate" representations in the documents contained in the disclosure package concerning payment for the repairs and that the Buchannons had met their required disclosure obligations therein. Dismissing the negligent misrepresentation claim against the Buchannons accordingly, the court observed that there was still a chance that Han could recover the levy imposed on her should the corporation's outstanding litigation against the warranty provider prove successful. In rejecting Han's claim against Dhillon, the court noted that Dhillon had emphatically denied making any representations about the flood damage having been resolved and fully paid, and that the representations conflicted with the Minutes. The court pointed out that, armed with this inconsistency, Han would have been on notice to seek clarification through her own real estate agent about the prospect of a special levy. Dhillion did not owe Han a duty of care to warn Han about a potential special levy: a warning would place Dhillon in a conflict of interest with the Buchannons. Han had her own real estate agent and should have consulted with that agent or a lawyer on the matter. The court dismissed Han's claims regarding minor deficiencies and repairs in

their entirety; the court was satisfied that certain minor repairs had been effected and inspected by Han but that Han had inexplicably had those repairs redone post-closing and that other contested, minor items were without merit and/or sufficient evidentiary proof: *Han v. Buchannon*, 2025 CarswellBC 2417, 2025 BCPC 139 (P.C.).