

2012 CarswellOnt 11541
Ontario Superior Court of Justice

York Condominium Corp. No. 446 v. All Unit Owners of York Condominium Corp. No. 446

2012 CarswellOnt 11541, 222 A.C.W.S. (3d) 809

**York Condominium Corporation No. 446 v. All Unit
Owners of York Condominium Corporation No. 446**

Dawson J.

Judgment: June 29, 2012

Docket: CV-11-2366-00

Counsel: Mr. T. **Duggan**, for YCC 446

Ms O. President-Branford, for herself

Mr. H. Guled, for himself

Subject: Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Real property

X Condominiums

X.6 Condominium corporation

X.6.j Miscellaneous

Headnote

Real property --- Condominiums — Condominium corporation — Miscellaneous

Application was to extend term of administrator and to approve administrator's report for administrator's activities for specified period -- — Administrator had to have autonomy to pursue what needed to be done without further restrictions or directions in order — Five of seven current directors supported reappointment of administrator — Five of seven current directors supported reappointment of administrator -- It was premature to be considering changing property manager — Order sought was granted .

Table of Authorities

Cases considered by Dawson J.:

York Condominium Corp. No. 506 v. All Unit Owners & Mortgagees of York Condominium Corp. No. 506 (2011), 2011 CarswellOnt 3117, 2011 ONSC 2839 (Ont. S.C.J.) — followed

Statutes considered:

Condominium Act, 1998, S.O. 1998, c. 19

s. 121 — considered

s. 131 — considered

Dawson J.:

1 Endorsement

2 This is an application to extend the term of Mr. Andrew Wallace, an Administrator of YCC 446, and to approve of his report for his activities for the period from November 1, 2011 to May 31, 2012, and for related matters.

3 Mr. Wallace was appointed the Administrator of YCC 446 by order of the court dated June 7, 2011. His term has been extended periodically by order of the court dated July 14, September 23 and November 29, 2011. The appointment is pursuant to s. 131 of the *Condominium Act, 1998*, S.O. 1998, c. 19.

4 The material filed demonstrates that YCC 446 was "in crisis" when the Administrator was appointed. The reports successively filed have shown that since his appointment Mr. Wallace has been able to make considerable progress in moving the overall "health" of the corporation in the right direction. However, based on my review of the evidence there is still considerable work to be done, some of it quite fundamental, in order to place the corporation on a sound footing, financially and otherwise.

5 Ms. President-Branford is a member of the current board of directors. That board was elected pursuant to a meeting held as provided in one of the previous orders of the court. It is effectively a "shadow board" as when an Administrator has been appointed pursuant to s. 131 of the Act the board has no power. Ms. President-Branford is concerned that not enough is being done to include members of the board in the work being done by the Administrator. She asks that some conditions be placed in any continuation Order to address this. Her concern is that board members are not learning to do the things they will have to know when the corporation returns to self governance.

6 Mr. Guled expressed concerns about a number of day to day management issues and dissatisfaction with the way they are being handled. He has also raised concerns about the property manager and nepotism and conflict of interest. The affidavit material suggests that the respondents want the Administrator to put out tenders for an on-site property manager.

7 Based on all that I have read in the filed material I conclude that at this time the Administrator must have the autonomy to pursue what needs to be done without further restrictions or directions in the order. The affidavit material shows that Mr. Wallace is reviewing matters with the board. Five of seven of the current directors support his re-appointment and four of them have sworn affidavits to that effect. While the court would encourage Mr. Wallace to work closely with the board, I am not persuaded that further conditions are warranted in the order.

8 With respect to tendering for an on-site property manager, I was referred by counsel for the corporation to the decision in *York Condominium Corp. No. 506 v. All Unit Owners & Mortgagees of York Condominium Corp. No. 506*, 2011 ONSC 2839 (Ont. S.C.J.). In that case some of the respondents were dissatisfied with the existing property manager and wanted to substitute a new one. The court held that the Administrator should be left to determine if and when that should occur. The court noted that there was little point in appointing an experienced and skilled person as Administrator and then trying to have the court micro-manage the situation. I agree with these comments.

9 The Administrator's report shows that he is making efforts to keep the board informed and involved. He has considered issues with respect to the property manager and concluded the existing manger is doing a good job. It is premature to be considering changing the property manager. Mr. Wallace has sworn to these facts in his reply affidavit.

10 Applying the test found in s. 121 [sic] of the *Condominium Act* to the evidence before me I conclude the order sought should be granted. I have signed the draft order provided by counsel for the corporation. The signed draft order has been sent to the trial office and counsel should arrange to have it issued and entered. The term is extended and the report and fees approved.

11 Justice Dawson.

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