

2019 ONSC 4779  
Ontario Superior Court of Justice

York Condominium No. 187 v. Sandhu

2019 CarswellOnt 13088, 2019 ONSC 4779

**York Condominium Corporation No. 187 (Plaintiff / Defendant by Counterclaim)  
and Harbans Kaur Sandhu (Defendant / Plaintiff by Counterclaim)**

Peter Bawden J.

Heard: October 2, 2018; March 22, 2019

Judgment: August 14, 2019

Docket: CV-18-594027

Counsel: Antoni Casalnuovo, for Plaintiff / Defendant by Counterclaim

No one for Defendant / Plaintiff by Counterclaim

Subject: Civil Practice and Procedure; Property

**Related Abridgment Classifications**

Civil practice and procedure

[XVIII Summary judgment](#)

[XVIII.3 Availability of summary judgment](#)

[XVIII.3.b Miscellaneous](#)

Real property

[X Condominiums](#)

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[X.13.g Summary or default judgment](#)

**Headnote**

Real property --- Condominiums — Practice and procedure — Summary or default judgment

Owner leased her unit to tenant, whose conflicts with building management led to tenant filing statement of claim against condominium corporation — Corporation warned owner that pursuant to by-laws, its legal fees would be charged to common expenses of her unit — Owner's son described himself as administrator of his mother's unit and swore affidavit supporting tenant's lawsuit, which failed, along with tenant's appeal — Costs of action and appeal totaling \$86,000 were added to common expenses of unit, which owner failed to pay, leading to registration of lien — Corporation brought motion for possession of unit to facilitate its sale to recover all outstanding expenses — Motion granted — Matter was appropriate for summary judgment — While owner did not have lawyer and struggled with English, and legal issues were complicated, owner's family made effective submissions — Efficient and economical resolution was required as owner was of limited means and costs of this litigation were being charged back against her unit and might exceed total value of property — Despite owner's presence in India, corporation served notice of lien on owner by sending it via registered and regular mail to address she had provided to corporation for service — Corporation fulfilled legal requirements of registering lien — Alternative to taking away elderly woman's home was burdening 253 other unit owners of condominium with costs of tenant's litigation which they had no means of controlling, which was not possible.

Civil practice and procedure --- Summary judgment — Availability of summary judgment — Miscellaneous

Owner leased her unit to tenant, whose conflicts with building management led to tenant filing statement of claim against condominium corporation — Corporation warned owner that pursuant to by-laws, its legal fees would be charged to common expenses of her unit — Owner's son described himself as administrator of his mother's unit and swore affidavit supporting tenant's lawsuit, which failed, along with tenant's appeal — Costs of action and appeal totaling \$86,000 were added to common expenses of unit, which owner failed to pay, leading to registration of lien — Corporation brought motion for possession of unit

to facilitate its sale to recover all outstanding expenses — Motion granted — Matter was appropriate for summary judgment — While owner did not have lawyer and struggled with English, and legal issues were complicated, owner's family made effective submissions — Efficient and economical resolution was required as owner was of limited means and costs of this litigation were being charged back against her unit and might exceed total value of property.

**Table of Authorities**

**Statutes considered:**

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

Generally — referred to

s. 46.1(3)(b) [en. 2015, c. 28, Sched. 1, s. 41] — considered

s. 46.1(4) [en. 2015, c. 28, Sched. 1, s. 41] — considered

s. 85(1) — considered

s. 85(4) — considered

s. 134(5) — considered

**Rules considered:**

*Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

R. 20.04 — considered

MOTION by condominium corporation for possession of unit to facilitate its sale to recover all outstanding expenses related to unit owner's tenant's failed litigation against corporation.

***Peter Bawden J.:***

1 Ms. Sandhu purchased a condominium unit at 3360 Weston Road in 2005. It is most unlikely that she studied the condominium's by-laws or the *Condominium Act* when she purchased the unit and she likely assumed, as most people do, that if she paid her monthly fees and lived harmoniously with her neighbours, she would own her unit for life.

2 Sadly, Ms. Sandhu leased her unit to a tenant who did not live harmoniously with his neighbours. The tenant, Mr. Saadilla, was in constant conflict with building management and ultimately sued York Condominium Corporation No. 187 ("YCC 187"), for over \$5 million. Mr. Casalnuovo was counsel for YCC 187. He had studied the condominium's by-laws and he quickly recognized that the litigation which had been initiated by Mr. Saadilla would have disastrous consequences for Ms. Sandhu.

3 Mr. Saadilla's claim against YCC 187 was bound to fail. When it did, the by-laws of the condominium required that any expenses paid by YCC 187 to defend the case, including its legal fees, would be charged to the common expenses of Ms. Sandhu's unit. If she didn't or couldn't pay the expenses, the same by-laws required YCC 187 to place a lien on her unit.

4 On September 28, 2016, six days after Mr. Saadilla filed his Statement of Claim, Mr. Casalnuovo wrote to Ms. Sandhu to warn her of the danger. His letter explained the by-laws of the corporation and urged her to convince Mr. Saadilla to withdraw his claim immediately.

5 Ms. Sandhu and her family did not act upon Mr. Casalnuovo's warning. Shortly after having received the letter, Ms. Sandhu's son, Balhar Singh, swore an affidavit which supported Mr. Saadilla's claims against the corporation. In his affidavit, Mr. Singh described himself as the administrator of his mother's unit and Mr. Saadilla as a model tenant.

6 Mr. Saadilla's claim failed miserably. Justice Penny dismissed the action and ordered that the costs of the proceedings be included in the common expenses for Ms. Sandhu's unit. Mr. Saadilla appealed that decision and lost again. The costs of the appeal were also added to the common expenses of Ms. Sandhu's unit.

7 At the end of the legal proceedings, YCC 187 demanded payment for both the court ordered costs and its legal expenses. The total was approximately \$86,000. Ms. Sandhu and her family continued to pay her customary share of the common expenses, but they denied any responsibility for the additional expenses incurred by Mr. Saadilla. YCC 187 served notice that if the expenses were not paid, it would register a lien against the unit. The expenses were not paid and YCC 187 registered the lien. The Sandhu family vehemently denied the validity of the lien and filed their own suit against YCC 187 and the bank which held their mortgage.

8 YCC has now brought a motion asking this court to give it possession of Ms. Sandhu's unit. If the motion is granted, the corporation will sell the unit and recover all the outstanding expenses.

9 Ms. Sandhu is an elderly woman. Her English is very limited, and she has not been able to afford counsel to defend this action. Her daughter-in-law, Amarta Sandhu, acted as her representative in these proceedings and I am very grateful for her assistance. It is apparent that Ms. Sandhu and her family have little understanding of the law which has brought them to this point. My purpose in this judgment is to explain to them, to the best of my ability, what has happened, why it is has happened and what the court must do to resolve the situation.

### **Is it appropriate to resolve this case through summary judgment?**

10 The first question is how this matter should proceed. There was a time when all legal disputes were resolved through full trials. Witnesses would be called to testify, and they would be examined at length by both parties. Trials often took a long time and the courts became impossibly backlogged. The rules were changed to allow judges to decide some cases by summary judgment rather than through a full trial.

11 Rule 20.04 of the *Ontario Rules of Civil Procedure* requires the court to give summary judgment if there is no genuine issue requiring a trial. The parties are required to put their evidence before the court through affidavits, transcripts and other documents. After reviewing that evidence and the submissions of the parties, the judge must decide whether a full trial is required. In reviewing the documentary evidence, a judge is entitled to decide whether he or she believes what a witness has said in an affidavit and, if so, how much to rely on the witness' statement. There is no need for a trial if the documentary evidence submitted by the parties will allow the judge to decide the necessary facts, apply the law to those facts and arrive at a fair decision. If the judge decides that it is in the best interests of justice that a full trial be held, the judge can refuse to grant summary judgment.

12 YCC 187 submits that this is an appropriate case for summary judgment. The only evidence that the corporation relies on is the affidavit of Mr. William Thompson, the administrator of YCC 187. Mr. Thompson has appended several letters and legal documents to his affidavit which explain the history of the case. There is no dispute about the authenticity of those documents.

13 YCC 187 further submits that if the case were to proceed to a full trial, the costs of that trial would be greater than the value of Ms. Sandhu's unit. It does not serve the interests of either party if the legal fees are greater than the amount that can be recovered.

14 Ms. Sandhu has not filed a written legal argument. She has instead provided her own affidavit which tells me what has happened from her perspective. She states in her affidavit that she was never advised of any arrears in the common expenses for her unit, she was never served with notice of the corporation's intention to obtain a lien and she requests "a full trial" to contest what she describes as a bogus lien. I understand from Ms. Sandhu's affidavit that she is opposed to this matter being decided by summary judgment.

15 I am cautious about proceeding with summary judgment when one of the parties does not have a lawyer and struggles with the English language. The legal issues are complicated. Ms. Sandhu's affidavit has been drafted without the assistance of a lawyer and it is possible that important information may have been omitted due to her lack of familiarity with the law. I note, however, that the Sandhu family appeared before me for two days during the argument of this motion and it was apparent that they had worked hard to prepare their case. They were able to make effective submissions.

16 I have decided that this case should be decided through summary judgment.

17 Mr. Thompson's affidavit is supported by uncontested documentary evidence. I have no doubts concerning his credibility or the reliability of the evidence that he has provided. Ms. Sandhu denies that she was personally served with the documents which are referred to in Mr. Thompson's affidavit. Her denial of having received the documents does not give rise to a factual dispute. YCC 187 is not suggesting that she was served personally with the documents but rather that she was served at the address that she had provided for service as was required by the *Condominium Act*. The service of the documents is a legal question which is well suited to summary judgment.

18 This case demands an efficient and economical resolution. Ms. Sandhu is of limited means. The costs of this litigation, including the legal fees of YCC 187 are being charged back against her condominium unit and may well exceed the total value of the property. Legal proceedings must be proportionate to the value of the property which is at stake. If this matter were to proceed to a full trial, Ms. Sandhu's losses could be enormous.

19 I am confident that I will be able to make the necessary factual findings and fairly resolve this dispute based on the documentary evidence.

#### **Was the lien on Ms. Sandhu's property valid?**

20 This is the heart of the dispute for the Sandhu family. Ms. Sandhu insists in her affidavit that the corporation never told her about the judgments which ordered costs against her unit and she was never served with any notice of the corporation's intention to obtain a lien. She questions how she can possibly be held responsible for the actions of her tenant when the court found as a fact that he was acting without her authorization. She submits that the lien was falsely obtained.

21 YCC 187's argument that the lien was valid involves several legal and factual steps:

a. YCC 187 has a legal obligation to abide by the terms of the condominium agreement, the by-laws of the condominium and the *Condominium Act*. It is also required to ensure that its unit holders abide by the same rules.

b. Courts have ruled that the by-laws and declarations of a condominium should be strictly enforced in order that unit holders will recognize consistency and certainty in the application of the rules.

c. It is not the function of courts to review the by-laws of a condominium to decide whether they are fair or not. Courts must enforce the by-laws unless they are clearly unreasonable or contrary to the *Condominium Act*.

d. YCC 187 passed By-Law No. 4 in 2007. Article 14 of that by-law states that each unit owner must reimburse the Corporation for any loss which is caused by the unit owner *or any resident or tenant in the owner's unit*. Article 14 specifically refers to the corporation's legal costs as one type of loss which must be repaid by the unit owner.

e. Mr. Saadilla filed his claim against YCC on September 22, 2016. Mr. Casalnuovo warned Ms. Sandhu in a letter dated September 28, 2016 that Mr. Saadilla had filed his claim and that she would be responsible for all the corporation's costs in defending the action. The corporation was required to notify Ms. Sandhu of the conduct of her tenant and it did so.

f. There is no doubt that the Sandhu family were aware of the potential implications of Mr. Saadilla's lawsuit. In his affidavit of November 18, 2016, Ms. Sandhu's son, Balhar Singh, wrote in reference to letters received from Mr. Casalnuovo: "The letters threaten to back charge to my mother's unit. The legal costs should the Corporation incur and costs with respect to Mr. Saadilla's actions." [*sic*].

g. On February 15<sup>th</sup>, 2017, Justice Penny dismissed Mr. Saadilla's claim against YCC on the basis that he was not entitled to sue the corporation because he did not have Ms. Sandhu's authorization to do so. Despite having found that the suit was brought without Ms. Sandhu's permission, the costs of the action were charged against her unit and ordered to be paid within 30 days.

h. Section 134(5) of the *Condominium Act* states that if a corporation obtains a costs order against either an owner or an occupant of a condominium unit, the costs of the litigation must be added to the common expenses for that unit. Article 14 of YCC 187's By-Law No. 4 says the same thing. The *Condominium Act* required Justice Penny to order that the costs be added to the common expenses of Ms. Sandhu's unit despite the fact that she had not authorized Mr. Saadilla to file the lawsuit.

i. Mr. Saadilla appealed to the Court of Appeal. On October 19, 2017, the Court upheld Justice Penny's decision. The Court of Appeal agreed that Mr. Saadilla could not sue the corporation because he did not have Ms. Sandhu's authorization. The Court ordered an additional \$8,500 in costs. Although that order did not specify that the costs should be charged against Ms. Sandhu's unit, that was the inevitable outcome as the result of section 134(5) of the *Condominium Act*.

j. On October 24, 2017, YCC 187 sent a registered letter to Ms. Sandhu and her daughter-in-law at 20 Fossil Hill Road in Woodbridge advising them of the outcome of the court proceedings, the cost orders of the courts and the additional costs incurred by YCC 187 for legal fees. The letter advised them that three charges totaling \$78,151.50 would be added to the common expenses for the unit. The letter requested payment within three weeks or else the corporation would serve a Notice of Lien.

k. Article 12.01 of YCC 187 By-Law No. 4 requires the corporation, *without exception*, to register a lien against any unit where the owner falls into arrears in paying the common expenses. Under the terms of its own by-laws, YCC had no choice but to pursue a lien on Ms. Sandhu's property.

l. Ms. Sandhu did not pay the amount that had been added to the common expenses of her unit. On November 15, 2017, Mr. Casalnuovo sent a Notice of Lien by Registered and Regular Mail to Ms. Sandhu and Amarta Sandhu at 20 Fossil Hill Road. The Notice was accompanied by a letter which provided a breakdown of the expenses and instructions concerning the steps which would be necessary to prevent registration of the lien. None of those steps were taken.

m. On November 29, 2017, YCC 187 registered the lien on the property. On the same day, YCC 187 advised the mortgagee, (the Bank of Nova Scotia) of the registration of the lien and provided the bank with an opportunity to clear the lien to maintain its priority in security over the property. The bank did not take any action.

n. On February 2, 2018, Amarta Singh wrote to YCC 187 to dispute the validity of the lien. She provided a return address of 20 Fossil Hill Road.

22 Ms. Sandhu has not challenged the legal validity of these steps and, in my view, there is no basis to challenge them. Mr. Casalnuovo has carefully set out the authority for each of his arguments in the Factum of the Plaintiff. I have reviewed those authorities and I find that they do support his arguments.

23 The essence of Ms. Sandhu's defence is that she was never served with the documents that establish YCC 187's claims, she had no notice of their intention to obtain a lien against her property, and the lien must therefore be invalid.

#### **Was Ms. Sandhu properly served with documents by YCC 187?**

24 From a strictly factual standpoint, it is hard to accept that Ms. Sandhu did not know anything about the actions of Mr. Saadilla. Her son was the administrator for his mother's unit. Mr. Singh's affidavit of November 18, 2016 acknowledges that Mr. Saadilla intended to bring legal proceedings against the corporation. It is hard to understand why Mr. Singh, acting as the administrator for his mother's unit, would not have told her about Mr. Saadilla's actions.

25 Ms. Sandhu states in her affidavit that she provided her daughter-in-law with Power of Attorney over her unit while she was away. The affidavit states that she left the country on November 14, 2017 but does not indicate when she returned. I understand from the submissions of the Sandhu family that she frequently travels to India and can be difficult to reach when she is there. It is certainly possible that she did not see the letters sent by YCC 187. Her son and his wife, however, clearly did see them. Neither have provided affidavits for this motion.

26 The point that I must stress to the Sandhu family is that YCC did not have to place the letters into Ms. Sandhu's hand to effect service. Ms. Sandhu frequently stayed in India at the time of these events and her own family had difficulty reaching her when she was there. It would not be realistic to require the corporation to serve her personally and the law does not require it.

27 The *Condominium Act* establishes what must be done to serve a document for the purposes of the *Act*:

- Section 46.1(3)(b) requires the corporation to keep a record of each unit owner's address for service if that address is in Ontario.
- Section 46.1(4) states that a document can be served on an owner in several different ways including delivery by prepaid mail addressed to the owner at the address for service that appears in the records of the corporation.

The Declaration for YCC 187 also has provisions concerning the service of notice.

- "...Any notice, direction or other instrument required or permitted may be given if served personally by delivering same to the party to be served, or to any officer of the party to be served, or may be given by ordinary mail, postage prepaid, addressed to... each owner at his respective unit or at such other address as is given by the owner to the corporation for the purpose of notice..."

28 Ms. Amarta Sandhu acknowledged in her submissions that 20 Fossil Hill Road was the address which Ms. Sandhu had provided to YCC 187 for service of documents and it was the "correct" address for Ms. Sandhu.<sup>1</sup>

29 YCC 187's Statement of Defence in the *Sandhu* action (CV-18-592248) states that 20 Fossil Hill Road was Ms. Sandhu's address for service. Ms. Sandhu filed a Reply to the Statement of Defence which challenged several of the pleadings of YCC 187, but the address of service was not disputed.

30 There is no evidence that any of Mr. Casalnuovo's many registered letters went unclaimed.

31 Mr. Casalnuovo acknowledges that Ms. Sandhu and her family may not have understood or accepted his warnings about the consequences of Mr. Saadilla's actions. He maintains, however, that Ms. Sandhu or her representatives were aware of Mr. Saadilla's actions, they received YCC 187's warnings and they were lawfully served with Notice of the Corporation's intention to put a lien on the property. The corporation did everything that could be asked of it to alert Ms. Sandhu of the jeopardy that she faced and what she had to do to avoid it. I agree.

32 I find as a fact that YCC 187 did serve the Notice of Lien on Ms. Sandhu by sending it via Registered and Regular Mail to 20 Fossil Hill Road in Woodbridge, Ontario, which was the address she had provided to the Corporation for the service of documents. That Notice, and the accompanying letter, fully explained the reasons for the lien, the total outstanding and the steps necessary to prevent the lien from being registered. There was nothing more that the corporation could do.

### **Was the lien valid?**

33 Ms. Sandhu's affidavit also disputes the validity of the warrant because "there was no Lien Action/Hearing brought by YCC No. 187."

34 It is not necessary for the party seeking a condominium lien to apply to the courts for an order. Under section 85(1) of the *Condominium Act*, if the owner of a unit fails to pay common expenses, the corporation has a lien against the owner's unit. The corporation must register the lien within three months of the date when the expenses were not paid or else the lien will expire. The corporation must give the owner ten days' notice of their intention to register the lien before doing so. All these legal requirements were fulfilled by YCC 187.

35 Ms. Sandhu states in her affidavit that she was never in a lawsuit with YCC 187 and never incurred any common expenses or legal fees. She submits that the court should invoke principles of fundamental justice to prevent an injustice which has arisen

from the unauthorized actions of her tenant. Amarta Sandhu pressed this point in her oral submissions, asking rhetorically 'if he had killed someone, would she be responsible for that?'

36 The simple answer to the questions raised by the Sandhu family is that section 134(5) of the *Condominium Act* makes the unit owner responsible for the financial consequences of her tenant's actions. If a corporation is awarded costs in an order which is made against an owner or an occupier of a unit, the costs, including the legal fees of the corporation, are added to the common expenses of the unit. That is simply the law of Ontario.

37 There are very good reasons for that law. One must consider the nature of condominiums and the rules that are necessary to regulate them. A condominium draws many strangers to live together in a single building. For many unit owners, the purchase of their condominium unit will be the largest financial investment of their lives. It is essential that the building is managed in a way that preserves the value of the property and maintains a sense of fairness for everyone.

38 The sense of fairness is created by imposing strict responsibilities both on unit owners and managing corporations. Unit owners are responsible for paying their share of the common expenses and for the conduct of any one who occupies their unit. The corporation is responsible for collecting the common expenses and notifying the unit owner of any troubling behaviour by a tenant. The purpose of the legislation is to ensure that the actions of a single unit owner do not give rise to additional expenses for all the other unit owners.

39 When Mr. Saadilla commenced his lawsuit, YCC 187 immediately advised Ms. Sandhu by sending a registered letter to the address which she had provided for service. It was her responsibility to keep track of letters which were sent to that address.

40 Defending Mr. Saadilla's lawsuit was going to cost money. There were 253 other unit holders in the building who had no control over Mr. Saadilla and his actions. It would quickly create a sense of unfairness in the building if those owners had to pay the legal costs to defend the action.

41 The only one who was able to stop Mr. Saadilla was Ms. Sandhu. She could have terminated his tenancy. She could have tried to intervene in the litigation. At very least she could have written to YCC 187 to advise them that she opposed the lawsuit and that Mr. Saadilla did not have her permission to sue the corporation. She did not do any of these things despite repeated warnings from the corporation.

42 The *Condominium Act* protects the innocent unit owners by imposing punishing measures on unit owners who create or permit litigation costs to arise. These punishing measures provide a powerful incentive to owners to avoid litigation altogether or to pay off the costs of the litigation immediately so that they do not become a burden on other property owners.

43 Any lawyer would have told the Sandhu family that they must pay off the outstanding common expenses to avoid having a lien registered against their property. If they had done so, they would have escaped some of the most punishing aspects of the legislation and could have pursued Mr. Saadilla for damages arising from his unauthorized actions. The Sandhu family clearly do not have the resources to clear the outstanding debt now. The only asset that remains which is of enough value to cover the outstanding debt is the unit itself.

44 It pains me to make an order that will take away an elderly woman's home. Mr. Casalnuovo has persuaded me, however, that the alternative would be to burden the 253 other unit owners of 3390 Weston Road with the costs of Mr. Saadilla's litigation which they had no means of controlling.

45 The other unit holders of 3390 Weston Road purchased their units with the expectation that they could not be held responsible for such costs. The *Condominium Act* and the by-laws of the condominium absolutely forbade it. To deny this motion would break that trust and effectively send a message to condominium owners throughout the province that the courts will not enforce the laws that they have relied upon. That is not a tolerable message.

### **The Action for Possession**

46 YCC 187 is requesting vacant possession of the unit so that it can exercise its right to sell the property under the Certificate of Lien. I make the following findings concerning that claim:

- a. Ms. Sandhu was required to contribute her portion of the common expenses of the building on the first day of every month.
- b. YCC 187 properly added the cost orders and its own legal expenses to the common expenses of Ms. Sandhu's unit. Those expenses and other common expenses were due on November 1, 2017.
- c. Ms. Sandhu did not pay her outstanding common expenses in full on November 1, 2017. On November 15, 2017, YCC 187 served a Notice of Lien on Ms. Sandhu as it was required to do under section 85(4) of the *Act*.
- d. On November 30, 2017, the Corporation caused a Certificate of Lien to be registered against the property. The Corporation served Notice of the Certificate of Lien on Ms. Sandhu and her mortgagee, the Bank of Nova Scotia, on November 30, 2017.
- e. On January 16, 2017, YCC 187 served a Notice of Sale on Ms. Sandhu, advised her of the amount owing in common expenses and alerted her to the Corporation's intention to sell the unit unless the complete sum was paid by March 9, 2018.
- f. The arrears in common expenses is still outstanding today.

47 I do grant summary judgment in favour of YCC 187 whereby it is granted possession of the property known by the municipal address of Unit 2506, 3390 Weston Road, Toronto, Ontario, M9M 2X3.

48 I further order that all costs incurred by YCC 187 in the Action for Possession be added/secured under the Condominium Lien registered to the title of the Unit.

49 I further grant leave to YCC 187 to obtain a writ of possession for the property which may be obtained within 10 days of the release of this judgment.

50 I will make a ruling as to the costs in this matter after the sale of the unit and on application by either party

*Motion granted.*

#### Footnotes

- 1 Digital Recording of Court Proceedings on 22 March 2019 at 11:08 am.