

2019 CarswellOnt 680
Ontario Superior Court of Justice

LaFramboise v. York Condominium Corp. No. 365

2019 CarswellOnt 680, 301 A.C.W.S. (3d) 878

**Christine LaFramboise and Sandra Oudit (Applicants) and
York Condominium Corporation No. 365 (Respondent)**

Diamond J.

Judgment: January 15, 2019

Docket: CV -13-492001

Counsel: No one for Applicants
Antoni Casalinuovo, for Administrator

Subject: Property

MOTION by condominium corporation for order for directions to determine whether condominium corporation passed borrowing by-law.

Diamond J.:

1 After I afforded the unit owners the opportunity to serve and file responding material to this motion, no such responding material arrived. Accordingly I am deciding this motion based solely on the material filed by the respondent.

2 In my view, there is no dispute that the vote by the unit owners who attended the September 24, 2018 meeting complies with sections 50 and 53 of the *Condominium Act*.

3 The issue raised by the Administrator, namely whether section 56(1) of the *Act* (as that section has been amended) requires the majority of unit owners to relate to (a) the 25% quorum requirement or (b) the voting requirement is one of statutory interpretation. Given that the jurisprudence is clear that the *Act* is remedial legislation to be given liberal interpretation, I agree with the interpretation afforded to section 86(1) by the Administrator.

4 There was a proper by-law passed on September 24, 2018. The correct and reasonable interpretation of the current provisions of section 56(10) is that those provisions did not on their face (despite any arguable punctuation errors) amend the requirements in section 50 and 53 of the *Act*.

5 A majority of all unit owners were in attendance, and a majority of those present unit owners approved the by-law. The by-law in question has been validly passed.

Diamond J.:

6 *THIS MOTION*, made by the Respondent, York Condominium Corporation No. 365 ("*YCC 365*"), for an Order for directions pursuant to Section 131 of the *Condominium Act, 1998*, S.O. 1998, c. 19 to determine whether YCC 365 has passed a borrowing bylaw, was heard this day at the courthouse, 393 University Avenue, Toronto, Ontario, M5G 1E6.

7 *ON READING* the Motion Record, Factum and Book of Authorities of the Respondent, YCC 365, and on hearing the submissions of the lawyer for the Respondent,

1. *THIS COURT ORDERS AND DECLARES* that YCC 365 has passed a borrowing by-law at its meeting of owners on September 24, 2018, a copy of which is attached hereto as Schedule "A".

Schedule "A"

BY-LAW NO. 5 YORK CONDOMINIUM CORPORATION NO. 365 (the "Corporation")

BORROWING BY-LAW

WHEREAS:

- A. The Corporation is required to maintain and repair the common elements of the Corporation;
- B. The Corporation is required to maintain an adequately funded reserve fund for the purposes of funding major repairs and replacements to the Corporation's common elements and assets;
- C. It has been determined that the Corporation's reserve fund is not adequately funded and is insufficient to fund anticipated major repairs and replacements to the Corporation's common elements and assets;
- D. It has been determined that the Corporation shall borrow such funds as may be required to replenish the Corporation's reserve fund as to ensure that the Corporation has adequate funds in its reserve fund to fund anticipated major repairs and replacements to the Corporation's common elements and assets; and
- E. The *Condominium Act, 1998* (the "Act") requires, at Section 56(3), that a by-law be approved by the owners to permit the Corporation to borrow funds.

NOW THEREFORE BE IT ENACTED as a by-law of the Corporation as follows:

1. The Corporation be and is hereby authorized to borrow up to the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) from CWB Maxium Financial or from such lender as the Corporation's Court Appointed Administrator (the "Administrator") may determine (the "Lender") upon terms and conditions as the Administrator may, at his discretion, determine (the "Loan").
2. The Corporation be and is hereby authorized to enter into, and the Administrator be and is hereby authorized and directed to execute and deliver to the Lender for and on behalf of the Corporation, such loan agreement(s) as may be required to obtain the Loan from the Lender and approved by the Administrators, with such additions, deletions and amendments as the Administrator may approve, execution as aforesaid to be conclusive evidence of this and Administrator's approval.
3. The Corporation be and is hereby authorized to enter into, and the Administrator be and is hereby authorized and directed to execute and deliver for and on behalf of the Corporation, such agreement(s) amending, extending, renewing or replacing the Loan as may be entered into by the Corporation with the Lender in respect of the Loan and approved by the Administrator, from time to time, provided that no such agreement(s) shall have the effect of increasing the principal balance outstanding under the Loan as of the date of the amendment, extension, renewal or replacement.
4. The Corporation be and is hereby authorized to provide such other security or to give such other undertakings as may be reasonably required by the Lender as general and continuing collateral security for the performance of all obligations, present and future, contingent or otherwise, of the Corporation owed to the Lender.
5. The Administrator be and is hereby authorized:
 - (a) to execute (under corporate seal or otherwise) and deliver such loan agreements, security agreements, charges/ mortgages, and such other documentation as may be required, from time to time and to take such other steps as may be necessary to give effect to the foregoing;

(b) to delegate to one or more of the officers of the Corporation, as may be designated by the Administrator, all or any of the powers conferred by the foregoing clauses of this by-law to such extent and such manner as the Administrator shall determine at the time of such delegation; and

(c) to give indemnities to any officer or other person who has undertaken or is about to undertake any liability on behalf of the Corporation.

IN WITNESS WHEREOF, the Corporation has affixed its corporate seal attested by the hand of its duly authorized offices on the day of, 2018.

YORK CONDOMINIUM CORPORATION NO. 365

Per:

Name: William Thompson

Title: Court Appointed Administrator

I have the authority to bind the Corporation.

Motion granted.