

Applicant(s): CIBC MORTGAGES INC

Counsel: J. Riewald

Respondent(s): YORK CONDOMINIUM CORPORATION NO. 54

Counsel: J. Fine

December 6, 2024

- [1] These are my reasons on the motion heard yesterday on the Hamilton short motions list.
- [2] CIBC brings a motion for access to a unit known as 1001-31 Four Winds Drive, Toronto and an order that the respondent provide it with keys to the unit. The respondent is not the owner of the unit, but York Condominium Corporation No. 54 (the "Condo Corp").
- [3] Except for a slight variation to the wording of the language of the order with respect to the delivery of keys, to which CIBC agrees, the Condo Corp does not oppose the orders sought. The parties appeared before me to argue for costs – each side asserting it is entitled to costs.
- [4] CIBC is a chargee with respect to a charge registered against the unit. The chargor and owner of the unit is Marcella D'Ostillo. D'Ostillo died in May 2020.
- [5] Default in payment under the charge has occurred and continues. The charge provides that upon default CIBC shall be entitled to possession of the unit.
- [6] Section 9.10 of the Standard Charge Terms details that D'Ostillo certified to CIBC that if she failed to meet any of her obligations under the mortgage, then CIBC could take possession of the Property without any encumbrances or interference. CIBC is entitled to quiet possession as against D'Ostillo and her beneficiaries.
- [7] The land which CIBC is defined to have mortgaged under the Mortgages Act includes the registered owner's undivided interest in the common elements of the condominium corporation.

- [8] CIBC has commenced power of sale proceedings. CIBC was not able to access the unit.
- [9] CIBC requested the cooperation of the Condo Corp to obtain entrance to the unit. The Condo Corp's property manager provided a contact name for a Ms. Gallace with respect to the unit. CIBC renewed its request for cooperation in gaining access to the unit. The Condo Corp advised that Ms. Gallace was responsible for the unit and that her permission was required to give access to the property.
- [10] CIBC was not provided with any documentation to confirm that Ms. Gallace had authority to deal with the unit. On behalf of the Condo Corp, the property manager advised that access would only be provided to the registered owner or lawyer authorized by the owner to provide access.
- [11] CIBC again renewed its request for access. The Condo Corp advised it could only provide access to the legal owner but could provide access if CIBC entered into an Indemnity Agreement and to pay the Condo Corp's legal costs. CIBC refused to do so.
- [12] The parties reached a stalemate and CIBC brought this application on or about November 14, 2024.
- [13] There is no evidence before me that the Condo Corp has provided access to anyone. It appears that Ms. Gallace may have access at least to the common elements, but there is no evidence before me as to how she obtained access.
- [14] CIBC seeks costs of \$3,000 inclusive of disbursements and HST on a partial indemnity scale.
- [15] CIBC asserts the motion was only necessary because the Condo Corp refused to provide access and that it should have done so. CIBC did not point to any authority that required the Condo Corp to provide CIBC with access to the building or the unit. CIBC relies on its contract with D'Ostillo and D'Ostillo's obligations to CIBC to assert that the Condo Corp was required to provide access without a court order.
- [16] The Condo Corp submits that it is not a party to the contract between CIBC and D'Ostillo. Further, the terms of the mortgage with D'Ostillo set out in the standard charge terms allow CIBC to seek from D'Ostillo all of its expenses, include legal fees on a substantial indemnity basis, related to enforcement of its rights under the mortgage including all costs incurred by CIBC to protect its interests and enforce its rights under the mortgage. The Condo Corp asserts that it cannot let strangers into the property, that there could have been equities between CIBC and D'Ostillo of which it was not aware, that the application was necessary and that CIBC should not have sought costs from it. Because CIBC did so, the Condo Corp was put to unnecessary expense.
- [17] On the facts before me, I agree with the submissions of the Condo Corp.

[18] The Condo Corp seeks costs on a partial indemnity basis of \$1900 inclusive of disbursements and HST. In my view, those costs are fair and reasonable and they shall be paid by CIBC to the Condo Corp forthwith.

[19] I therefore make the following orders:

1. CIBC shall be granted access to the property municipally known as 1001-31 Four Winds Drive, Toronto (North York), ON M3J 1K9 (the "Property").
2. The Condo Corp shall provide access to the Property to CIBC and shall provide keys to the Property to CIBC if it has any such keys in its possession.
3. CIBC shall pay to the Condo Corp its costs of this application fixed in the amount of \$1,900 inclusive of disbursements and HST, payable forthwith.

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