

CITATION: Thunder Bay Condominium Corporation No. 15 v. Ewen, 2016 ONSC 1342
COURT FILE NO.: CV-15-0397
DATE: 2016-03-23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THUNDER BAY CONDOMINIUM CORPORATION NO. 15, Applicant, and
BRUCE EWEN and JOAN EWEN, Respondents

HEARD: Via Written Submissions

BEFORE: Fregeau J.

COUNSEL: *Jordan R.D. Lester*, for the Applicant

David W. Dubinsky, for the Respondents

REASONS ON COSTS

[1] In paragraph 20 of my endorsement dated October 26, 2015, I indicated that if the parties could not agree on the costs of this application they were to file written submissions as to costs. The Applicant has now provided their costs submissions together with a costs outline. The Respondents have not filed any submissions as to costs.

[2] The Applicant is seeking full indemnity costs in the amount of \$9,032.66 including HST plus disbursements of \$426.94. The Applicant submits that condominium corporations are normally awarded full indemnity costs on successful applications based on the principle that other unit owners should not have to bear any portion of the cost resulting from the inappropriate actions of respondents.

[3] The Applicant further submits that the respondents were warned 14 times that proceedings would be commenced against them if they failed to comply with the rules against

smoking in their unit. The Applicant submits that the condo board also provided a very reasonable offer to settle to the respondents which was ignored. The offer provided that the condo corporation would purchase electronic cigarettes for the Respondents that they could use inside of their unit.

[4] In the alternative, the Applicant submits that it should be awarded costs on a substantial indemnity basis in the amount of \$8,556.34 including HST and disbursements.

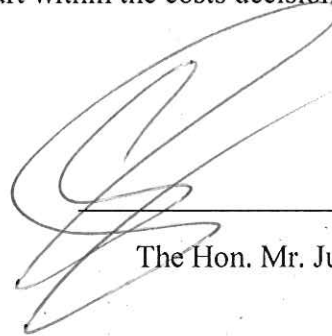
[5] The Applicant's costs outline sets out the fees of Mr. Lester, called in 2013, at \$245.00/hr, of Mr. Mouck, an articling student, at \$50.00/hr and of Ms. Wilson, a clerk with 2+ years' experience, at \$180.00/hr. Mr. Lester has docketed time of 19.8 hours, Mr. Mouck has docketed time of 8.7 hours and Ms. Wilson has docketed time of 14.2 hours.

[6] Given the simplicity of the Application, both in regard to facts and law, I find the total docketed time to be excessive in all the circumstances, particularly approximately \$2,500.00 in clerk time.

[7] In my opinion, the Applicant is entitled to costs on a full indemnity basis in an amount less than claimed by the Applicant. The Respondents ignored numerous warnings from the Applicant. The Respondents ignored a very reasonable offer to settle from the Applicant. The Respondents could have and should have avoided the hearing of this Application. The Respondents would have, or should have, been aware that they would bear the reasonable costs of unsuccessfully opposing the relief sought by the Applicant. The owners of other units should not be out of pocket as a result of the unreasonable behavior of the Respondents.

[8] The Applicant's request for \$7,993.50 plus HST plus disbursements for full indemnity costs is excessive. The Applicant shall have their costs in the amount of \$7,000.00 plus HST plus disbursements in the amount of \$426.94. These costs shall be paid by the Respondents to the Applicant within 30 days of the release of this decision.

[9] Pursuant to s. 134(5) of the *Condominium Act* the Applicant shall add the amount of this cost award to the common expenses of the Respondent's unit and specify a time for payment by the owner. The Applicant is entitled to do so pursuant to the *Condominium Act*. It is not necessary that this be included as an order of the court within the costs decision.



The Hon. Mr. Justice J.S. Fregeau

DATE: February 23, 2016

CITATION: Thunder Bay Condominium Corporation No. 15 v. Ewen, 2016 ONSC 1342
COURT FILE NO.: CV-15-0397
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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THUNDER BAY
CONDOMINIUM
CORPORATION NO. 15,
Applicant, and
BRUCE EWEN and JOAN EWEN,
Respondents

HEARD: October 20, 2015

BEFORE: Fregeau J.

COUNSEL: *Jordan R.D. Lester*, for the
Applicant

David W. Dubinsky, for the
Respondents

REASONS ON COSTS

Fregeau J.

DATE: February 23, 2016

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