

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Meshal v. Dort*, 2024 NSSM 30

Date: 20240508

Docket: 22-517581

Registry: Halifax

Between:

Samira Meshal

v.

Brian Dort – Providence Property Management & Halifax County Condominium
Corporation # 38

Adjudicator: Dale Darling, KC

Heard: May 26 & August 31, 2023, and March 11, 2024, in Halifax,
Nova Scotia

Decision May 24, 2024

Counsel: The Claimant was self represented.
Michael Blades and Grace Levy for the Defendants

By the Court:

Introduction:

[1] This case arises out of the purchase, renovation and eventual sale of a condominium unit located at 1326 Lower Water Street, Unit 220, Halifax, Nova Scotia, by the Claimant Ms. Meshal.

[2] Ms. Meshal owned the unit from March until November of 2021. She was a member of the Board of Halifax County Condominium Corporation #38 (“HCCC 38”) during that time, but her relationship with the Corporation and their property management company, Providence Property Management, and in particular with Brian Dort of Providence, presents in the narrative as significantly conflictual.

[3] The evidence tendered on behalf of the Claimant was heard May 26 and August 31, 2023. A further date of September 11, 2023, was scheduled for the Defendant’s case, and on September 5, 2023, Mr. Blades gave notice on behalf of the Defendants of his intention to file for non-suit. The parties filed briefs on that motion, and I issued a written decision ([2023 NSSM 53](#)) on October 3, 2023, in which I allowed the non-suit in part.

[4] The hearing reconvened on March 11, 2024, with the Defendant electing to call evidence from Mr. Brian Dort. Ms. Meshal was assisted at this hearing by her son, Ashraf Meshel, who conducted cross examination.

[5] What remained at issue between the parties was the head of damages described in the statement of claim as “The total extracted at sale as per the estoppel certificate (\$7764.66), and the amount of the refundable alteration deposit never refunded (\$500.00)”.

[6] The full amount paid by Ms. Meshal for the estoppel certificate arrears was \$8,532.78, as December condominium fees and two additional late fees (\$50.00 each) were added to the amount stated in the estoppel certificate.

Decision:

[7] I find that Ms. Meshal is entitled to the return of the monies paid to Mr. Dort by the Corporation for legal expenses incurred in the production of a defamation cease and desist letter sent to Ms. Meshal. All other claims are dismissed.

Background:

[8] Although somewhat repetitive, to provide context I am reiterating the finding of fact from my decision on the motion for non-suit, with additions from the evidence heard March 11, 2024:

1. Ms. Meshal, through her company Meshal Holdings, purchased Unit # 220 at 1326 Lower Water Street, Waterfront Place, Halifax Nova Scotia (“Unit 220”), on February 1, 2021. The sale price was \$334,000.
2. The building containing Unit 220 is a condominium, registered as Condominium Corporation No. 38, one of the Defendants. Mr. Brian Dort, (the other named Defendant), of Providence Property Management, is the Property Manager for the Corporation.
3. On February 27, 2021, Ms. Meshal through Meshal Holdings entered into a contract with LOAA Construction Ltd, whose principle is Mr. Fabil Shabiu, for renovations at Unit 220. That contract is in evidence before me in Exhibit C-1.
4. The Bylaws under which the Condominium Corporation governs require prior written approval of the Board of Directors prior to the performance of plumbing or electrical repairs or alterations in any unit or wall (Exhibit C-3 and Exhibit D-1 Tab 3), and Mr. Dort explained how Alteration Agreements are used to reflect the requirements of the bylaws and Articles, which under 704 require approval of structural changes.
5. Construction work began on the unit sometime after February 28, 2021, without an Alteration Agreement in place, and Mr. Dort contacted Ms. Meshal explaining the process. Mr. Dort and Ms. Meshal worked on an agreement.
6. A work stoppage on alternations occurred on March 5th, 2021. This was confirmed by the evidence of Mr. Shabiu and Ms. Meshal, and also that work recommenced on March 11, 2023,

after a signed Alteration Agreement was received by the Corporation and approved. That Agreement was provided in evidence at Exhibit D-1, Tab 9. It provided for a \$500.00 security deposit to be used to “help cover any costs incurred by HCCC #38 as a result of the damages, repairs or cleaning resulting due to the alterations; otherwise it will be held in trust until the final inspection is completed by building management”. It also included a “\$150.00 (non-refundable) payable to Providence Property Management”.

7. There was another partial work stoppage from April 5, 2021, which was Easter Monday to April 15, 2021. At issue was whether work could occur on Easter Monday, as the Defendant did not allow construction work on a holiday. For the purposes of this decision, the key issue was a dispute at to the approval of a drop ceiling.
8. Approved work commenced on April 15, 2021, and included adjustments to sprinklers, which are a “common element” of the condominium, meaning HCCC#38 has control over any changes to them pursuant to the by-laws and Alteration Agreement.
9. The renovations proceeded but in the period from May to August, were fraught with concerns expressed by other residents of the condominium, and by the HCCC#38 Board. Mr. Dort was in his role as property manager relaying these concerns to Ms. Meshal.
10. By July 31, 2021, 11 Incident Reports (Exhibit D-1 Tab 38) had been generated by Providence regarding concerns about where LOAA contractors were parking, their use of elevators, noise, construction debris. Perhaps more critical were concerns raised by residents about contractors not wearing masks, despite repeated requests that they do so. I take notice of the fact that this renovation occurred in 2021, during a time of ongoing COVID-19 restrictions.

11. A Stop Work Order was issued to LOAA Construction with an attached Trespass Notice August 1, 2021. (Exhibit D-1, Tab 37). Mr. Dort told Ms. Meshal she would need to get a new contractor approved as LOAA would not longer be permitted on site. In a response email to Mr. Dort that same day, Ms. Meshal objected to the stop work saying, “stop interfering with access to my private property, for those whom I have granted the right of entry under a license agreement – a fundamental right of ownership.”
12. The evidence confirms that LOAA ignored the Order. Before me on August 31, 2023, Mr. Shabiu’s evidence was that he continued working in August of 2021 despite the stop order, because he “worked for Ms. Meshal”. Sometime around the end of August 2021 the renovations were completed.
13. Mr. Dort’s evidence was that the Board required legal assistance to navigate through this dispute. In early August, the Defendants engaged the services of Mr. Blades to provide advice on how to deal with the issue. A letter was sent to Ms. Meshal from Mr. Blades on September 6th, 2021, asserting the Board’s position that many of the renovations had not been performed with approval, and asserting the right of HCCC #38 to inspect the finished renovations. The letter also advised her that the Corporation held her responsible for legal fees, a required fire watch, and what they said were outstanding condominium fees.
14. Ms. Meshal’s evidence confirms that the renovations were completed by August 29, 2024. The property was listed for sale on September 23, 2021, according to a cut sheet provided in the Claimants evidence, C-1, showing a sold price of \$550,000. Ms. Meshal says she was forced to list due to unwarranted conflict with the Defendants. At the hearing before me on March 11, 2024, Ms. Meshal admitted in cross examination that the sale constituted a profit of some \$216,000 over the price paid for the unit in March of 2021.

15. The closing of the property was scheduled for December 1, 2021. In accordance with requirements for condominium sales, an Estoppel Certificate was issued by the Defendant Corporation. It included arrears in respect to Unit 220 for the amount of \$7764.66, found at Exhibit D-1, Tab 62. (As discussed above, that amount became \$8,532.58).

16. Along with other required disclosures, it showed amounts owing to the Corporation at time of issue as follows:
 - Condominium fee - \$668.12
 - Late Admin fees - \$250.00
 - NSF fees - \$50.00
 - Fire Watch - \$134.50
 - Late fee X 4 - \$200.00
 - Legal fee - \$4418.30
 - Admin fee - 1270.75
 - Cease and desist notice - \$547.40
 - Admin fee - \$50.00

[9] At the time of sale, Ms. Meshal took the position that these arrears were both unwarranted and a surprise to her, and that they jeopardized the sale of her unit. Mr. Ash, who acted for Ms. Meshal in the sale, explained how they delayed the sale and resulted in a \$10,000 holdback.

[10] Unusual they may have been, but Ms. Meshal had known for months that HCCC#38 took the position these monies were owed. During the fall of 2021, periodic invoices were issued for them, but not paid.

[11] Finally, on December 1st, 2021, Mr. Ash advised that his client would pay the arrears sought but that she reserved the right to claim it back through legal action.

[12] Ms. Meshal says she is entitled to the estoppel arrears as well as the \$500 security deposit paid under the Alternation Agreement. I will now review these claims.

[13] I will now review the entirety of the evidence with respect to these two heads of damages.

The Estoppel Certificate:

[14] Estoppel certificates are a normal part of the process of selling a condominium in Nova Scotia. One of their functions is to disclose any potential charges against the unit. The Certificate for Ms. Meshal's unit was requested November 25, 2021, and arrangements were made for an inspection with a report issued November 30, 2021, by Mr. Jason Trembley of MF Electric. The Report disclosed that the renovations had not followed some required electrical standards, as well as other deficiencies.

[15] The Certificate was issued the day after the inspection. Ms. Meshal paid as described. Some deficiencies continued to exist after closing, (hence the holdback), but the specifics of those is not before me. As said above, Ms. Meshal paid the amounts demanded.

[16] Based upon the evidence before me, I make the following findings with respect to the Estoppel Certificate Amounts.

Condominium Fee Arrears and Associated Late Fees:

[17] The Certificate lists \$668.12 as condominium fees for July of 2021, which Mr. Dort says were the result of a cheque returned NSF and associated late fees of \$250.00 (late fees of \$50.00 per month associated with the alleged NSF cheque for July, August, September, October, November of 2021). Fees for December were added before the arrears were paid.

[18] At the hearing before me, Mr. Meshal conceded that the July rent had not been paid. On March 12, 2024, I received an email from Ms. Meshal withdrawing this position, and stating that the July fees were paid.

[19] She referred to her exhibit C-4, which contains counterfoils of the cheques issued for fee payment, and while she says that one cheque was returned, that she issued another cheque “right away.”

[20] The evidence before me does not support this assertion. In total, 9 cheques were issued, for March to November of 2021, with the July cheque # 119 returned. There is no question of this, as Exhibit D-2, Tab 6 contains an email dated September 2, 2021, from Ms. Meshal to Scotiabank requesting that they pay the late fees accrued due to the stopped cheque.

[21] Despite Ms. Meshal’s assertions, there is no documentary evidence of a replacement cheque. I find that the July fees and late charges were owing, and they were not a surprise to Ms. Meshal, as she received more than one notice, including Mr. Blades letter of September 6, 2021,

Firewatch - \$134.49 (plus \$50 late administration fee) & the \$500

[22] Mr. Meshal had also conceded the fire watch fee on March 11, 2024, and in her email to me of March 12, 2024, Ms. Meshal reverted to her position that she should not have been charged for this fee, as it was a “common area service paid for with my monthly assessment (condo fee).”

[23] While the original Alteration Agreement signed March 5, 2021, did not include changes to the ceiling, by April 5, 2021, emails between Ms. Meshal and Mr. Dort, a scope of work document adding three new elements, number 7 being “BULKHEAD in all ceiling of the unit”. This was clarified by Ms. Meshal by saying that the ceiling in the living room and two bedrooms would be dropped one and three-quarter inches.

[24] This raised concerns with Mr. Dort regarding sprinklers, as he explained in an April 6, 2021, email that costly unit repairs had occurred in the past due to leaks caused by unit alterations.

[25] Troy Life and Fire Safety was engaged by Mr. Dort, and in an email of April 7th they indicated that the sprinklers would need to be lowered if the walls were lowered.

[26] There is an exchange of April 8, 2021, with Ms. Meshel wanting to know how much notice is needed to lower the sprinklers. Mr. Dort responds that insurance, WCB and trade certificates will be required for the contractor, Atlantic Sprinkler, that a few days are required to arrange for the fire watch, and that the Board needs to approve the alternation of the sprinkler system and

that they are meeting on April 14, 2021. The Alteration Agreement required this information from contractors involved in the renovation.

[27] Ms. Meshal was unhappy about the information that was being requested and an e-mail from her on April 8th, 2021, states “I think you are asking for too much. While Meshal Holdings are engaged in number of multi units, when hired a well-known trader, we don't ask them to provide such info. Now it is very clear you are trying hard to stop my contractor from delivering his project on time. You have forward us with the Fire Protection instructions, and we have followed those instructions. I don't understand what is your targets from dallying the work. Enough is enough. [Email produced verbatim] (Ex D-1, Tab 24)

[28] Mr. Dort responded that he would pass her concerns along to the Board.

[29] An e-mail of April 15th, 2021, from Sharon Beals, HCCC Board President, to Ms. Meshal and copied to Mr. Dort which states: “Our HCCC #38 Board of Directors met last evening and gave consideration to your request for changes to the sprinkler system, and alteration of a common area element. The Board has agreed that this can proceed following these conditions: Providence will contact your contractor of choice to do the work. HCCC #38 will modify the

sprinklers as requested as they are the property of the Corporation and the corporation's duty to maintain. You will be responsible for the costs of the Sprinkler work, fire watch and administration cost for the duration of the work while the fire monitoring is suspended.”

[30] Atlantic Automatic Sprinklers, the subcontractor for the sprinklers, issued an invoice to LOAA Construction for the work May 21, 2021, which it appears was not paid. The separate fire watch invoice for \$134.49 and a late administration charge of \$50.00 was issued August 9th, 2021, to Ms. Meshal, and it was not paid.

[31] Based upon the evidence before me, I find that there is no evidence that the work on the sprinklers arose out the normal duties of HCCC #38 to maintain the common elements. It was necessitated entirely by the renovations that Ms. Meshal was undertaking, and the email of April 15, 2021, made it clear that permission to modify the sprinklers would only be granted upon Ms. Meshal being responsible for the costs associated with it. I dismiss the claim for the fire watch charges.

The \$500 Security Deposit

[32] The signed Alteration Agreement of March 5, 2021, states ‘A security deposit of \$500 is required for projects with a total cost exceeding \$5000 or requiring building or electrical permits along with processing fee of \$150 nonrefundable payable to Providence Property Management check or money order only. The security deposit will be held in trust until the final inspection is completed by building management (check or money order only made out to HCCC #38). The deposit will be used to help cover any costs incurred by HCCC #38 as a result of damages, repairs or cleaning resulting due to the Alterations’.

[33] The retention of the \$500.00 security deposit under the Alteration Agreement, was also due to the issues with the sprinklers. On November 14, 2022, Troy Life and Fire Safety Limited invoiced HCCC #38 for three damaged sprinklers in Unit 220, which had been discovered before the sale in 2021. The repair had been delayed from January due to supply chain issues. The entire cost was \$172.73, and in an email of March 8, 2023, Mr. Dort advised the new owner of the unit that “The \$500 security deposit noted in the estoppel certificate covered most of the costs”. The balance owing was \$172.73, and the evidence confirms that the new owner had a holdback from Ms. Meshal to cover this expense.

[34] I refer to the Alteration Agreement between the parties, which states “The security deposit will be held in trust until the final inspection is completed by building management (cheque or money order only made out to HCCC #38. The deposit will be used to help cover any costs incurred by HCCC#38 as a result of damages, repairs, or cleaning resulting due to the Alterations.”

[35] Again, there is no question from the evidence that the need for repairs to these sprinklers was revealed by the inspection of the unit prior to sale. As a common element, the sprinklers remained the responsibility of HCCC#39 to rectify, and the deposit was used for that purpose, leaving the new owner with a small amount to pay from the holdback. I dismiss the claim for the deposit.

Admin fee - 1270.75

Legal fees- \$4418.30

[36] The “admin fee” referred to above relates to management fees that were charged to HCCC # 38 by Providence Property Management for work Mr. Dort testified was required to address the issues created by Ms. Meshal’s contractor continually failing to adhere to the requirements of the corporation during the renovation. These fees reflected work Mr. Dort says were beyond the normal

scope of his duties to the Corporation, and they were being invoiced to Ms. Meshal in the fall of 2021.

[37] The legal fees referenced were sustained between August 3 and August 29, 2021, and culminated in the letter sent to Ms. Meshal on September 6th, 2021, which reviewed the position of HCCC#38 on the current status of the renovations. It should be noted that during this time, despite a stop work order issued on August 4, 2021, the work in unit 220 continued without authorization from the Corporation until August 29th, 2021. The letter reflects research done by Mr. Blades to produce the letter of September 6, 2021, in which HCCC#38 clarified their position regarding monies owing for the fire watch, the management fees, legal fees, and the outstanding invoice to Atlantic Sprinklers, as well as inspection requirements.

[38] I find that both of these expenses were necessary and justified under a recital in the Alteration Agreement which states “Any associated incurred cost to the corporation including legal will be the owner’s responsibility to reimburse.” The evidence supports the conclusion that Ms. Meshal’s contractor had become oblivious to the requirements of the Corporation. It was impossible to stop the work when stop work orders were ignored. What was the Corporation to do?

[39] Board minutes reflect the urgency of a need to deal with the situation, and Mr. Dort was tasked with attempting to rectify the issue. It must be remembered that this was a time in which health concerns regarding COVID-19 continued, and the Corporation was fielding complaints from residents of unmasked workers, contrary to their internal policy.

[40] That the Corporation's concerns about the renovations were justified, was further confirmed by the electrical issues and unauthorized changes to common elements that came to light in November of 2021, some of which led to a \$10,000 holdback for repairs. I find that the administration fees from Mr. Dort and the legal fees incurred were legitimate incurred costs which the Alternation Agreement required Ms. Meshal to pay. The claim for these amounts is dismissed.

Cease and desist notice - \$547.40 plus admin fee - \$50.00

[41] I was advised that there is an outstanding (at time of hearing) defamation lawsuit filed by Mr. Dort against Ms. Meshal. The amount described was the cost of Mr. Dort having Mr. Blades draft a defamation cease and desist letter to Ms. Meshal.

[42] Mr. Dort advised that when the Corporation learned that he has spent this money they “decided I would get reimbursed for it”.

[43] The Counterclaim filed by the Defendants is for defamation, which is excluded from this Court’s jurisdiction under section 10 (c) of the Small Claims Court Act, RSNS 1989, c. 430, and it is my understanding that that dispute is before the Supreme Court.

[44] I find that costs associated with a proceeding that has been filed in another Court pursuant to their jurisdiction, are too remote from the terms of the Alteration Agreement and the requirements it created for Ms. Meshal. Such costs are properly sought in that forum. I therefore award Ms. Meshal the return of the amount of \$597.50, to be paid by HCCC#38.

Conclusion

[45] An order will issue accordingly. With divided success, no costs or interest will be awarded.

Dale Darling, KC, Small Claims Court Adjudicator