

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE *Dow*

*MR.*

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WEDNESDAY, THE 29<sup>TH</sup> DAY  
OF MAY, 2019

BETWEEN:

**BERNICE KOTLYAR**

Applicant

and

**YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1253**

Respondent

**JUDGMENT**

**THIS APPLICATION**, made by Bernice Kotlyar, was heard this day at the Courthouse at 393 University Avenue in Toronto for an urgent hearing.

**ON READING** the Application Record, along with the Factum and Book of Authorities, filed, and on hearing the respective submissions of counsel for the Applicant,

**THIS COURT ORDERS THAT:**

1. Mr. Dean McCabe of Meritus Group Management Inc. ("**Meritus**") is appointed as the Administrator (hereinafter, the "**Administrator**") for the Respondent, York Region Standard Condominium Corporation No. 1253 ("**YRSCC 1253**" or the "**Corporation**"), pursuant to Section 131 of the *Condominium Act*, R.S.O., 1998, c.19, as amended (the "**Act**"). The term of this appointment shall be for a period of one year from the date of this Judgment unless otherwise amended by this Honourable Court (the

**“Administration”**);

2. The Administrator shall send a report to this Court and the owners annually during the term of the Administration (the **“Annual Report”**) advising of the actions, plans and/or recommendations of the Administrator;
3. In providing its Annual Report to the Court by way of motion, or for any motion regarding his duties as Administrator, Mr. McCabe shall only provide a Notice of Motion and Annual Report, if applicable, to all owners by delivering a copy of same by way of regular mail to the address kept for service in the records of YRSCC 1253 pursuant to Section 47 of the Act. The Notice of Motion and Annual Report, if applicable, shall be delivered at least 14 days prior to the return date of the Motion. The Notice of Motion shall indicate whether there is Affidavit material to accompany same. Any owner seeking a complete copy of the materials to be relied upon by the Administrator at said motion shall make a written request to YRSCC 1253’s property management, who shall then send said materials to the party making the request via regular mail to the address for service kept in the records of YRSCC 1253 pursuant to the Section 47 of the Act within five (5) business days from the date of the request. The owner shall pay for YRSCC 1253’s photocopying costs at a rate of \$0.50 per page (which is inclusive of labour and HST) at the time of the request, failing which the Respondent can add said costs as common expenses to the owner’s respective Unit;
4. During the term of the Administration, the Administrator shall have the full power and authority to:
  - a) manage the affairs of YRSCC 1253 as if the Administrator were the Board of Directors (the **“Board”**), unless otherwise ordered by this Court;
  - b) determine and collect, as the Administrator deems fit, the common expenses payable by each unit owner of YRSCC 1253, including arrears, for the proper

operation of YRSCC 1253 in accordance with the declaration registered in the Land Registry Office at York Region as instrument number YR2116877, (the "**Declaration**");

- c) levy and collect such special assessments, as the Administrator deems fit, against the units of the Corporation for the proper operation of YRSCC 1253 in accordance with the Declaration;
- d) review existing contracts entered into by YRSCC 1253 and deal with such contracts as the Administrator deems to be in the best interests of the Corporation;
- e) enter into contracts on behalf of YRSCC 1253 for the administration of the property and assets of the Corporation, including the authority to enter into and terminate contracts for the management of the property of the Corporation;
- f) maintain exclusive control and possession of the on-site management office, with the authority to change all locks on the on-site management office, and to maintain exclusive control and possession of all of the records of YRSCC 1253;
- g) retain legal counsel to advise the Administrator in relation to YRSCC 1253's affairs and to assist the Administrator in carrying out this Judgment and any other Order(s) of this Court;
- h) employ such advisors and experts as the Administrator deems fit to carry out the required maintenance and repairs to the property and assets of YRSCC 1253;
- i) move, at the expense of YRSCC 1253, at any time for this Court's opinion, advice or direction on any question regarding the administration or operation of the Corporation, or to clarify the Orders of this Court, or any combination of them;
- j) become the sole signing officer of YRSCC 1253, on all bank accounts in the name

of the Corporation and all documents required or advisable to be executed on the Corporation's behalf;

5. YRSCC 1253 shall indemnify and save harmless the Administrator for all acts, costs, expenditures, liability, claims, demands, actions, judgments, including legal costs, which may arise in the discharge of its duties, except for dishonest acts;
6. The Administrator shall be exempt from any liability to any party for any and all acts as Administrator (except for dishonest acts), regardless of whether the claim may first be commenced or instituted during the Administrator's term or after his discharge;
7. On account of time spent to perform the Administrator's duties, YRSCC 1253 shall remunerate the Administrator at the hourly rate of \$175.00, plus applicable taxes and reasonable disbursements incurred in the performance of those duties. This remuneration shall be deemed as a common expense of the owners, which YRSCC 1253 shall pay within 30 days of the Administrator having rendered an invoice or statement of account to YRSCC 1253, subject to confirmation of that account by this Court;
8. Upon request of the Administrator, every current and former manager, employee, officer, director and agent of YRSCC 1253 shall immediately surrender and deliver up to the Administrator all of the YRSCC 1253's books and records which are in the possession or control of that manager, employee, officer, director, or agent, and are required to carry out the terms of this Judgment or another Order of this Court or the business of YRSCC 1253, and if the Administrator so requests a book or record, it shall be presumed that the book or record so requested is required to carry out the terms of this Judgment or another Order of this Court or the business of the Corporation;
9. The Administrator shall not cause YRSCC 1253 to enter into any contract or transact any business with a person related to the Administrator, within the meaning of Section 4 of the

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

10. In the event that the Administrator has a material interest in a contract or transaction proposed to be entered into by the Respondent, the Administrator shall disclose, by written notice to this Court and to the owners, the nature and extent of the Administrator's interest. If the Administrator so discloses an interest in a proposed contract or transaction, the Administrator shall not cause YRSCC 1253 become a party to the proposed contract or transaction unless:

- a) the proposed contract or transaction is approved by at least two-thirds of the votes cast at a meeting of owners duly called for that purpose; or
- b) none of the owners have delivered a notice of a motion for an Order to restrain YRSCC 1253 from becoming a party to the proposed contract or transaction within 30 days of the Administrator's announcement of his interest in the proposed transaction or contract, or this Court has dismissed every motion of which notice was so delivered, whichever is later;

**AND THIS COURT ORDERS THAT:**

11. Mr. Dean McCabe of Meritus is appointed as the Inspector for YRSCC 1253 (hereinafter, the “**Inspector**”), pursuant to Section 130 of the Act, and that he remain in his appointment as Inspector unless otherwise ordered by this Honourable Court;

12. The Inspector shall be entitled to receive and review, as well as obtain copies and/or originals from any third party, of all contracts or records in relation to and/or which YRSCC 1253 is a party to, and/or any documentation which affects in any manner the assets, affairs and/or interests of YRSCC 1253, including, but not limited to, records relating to:

- a) The financial operation of YRSCC 1253 since April 16, 2014, which was the date of Registration of YRSCC 1253's Declaration, including the records of any parties contemplated in Section 115 of the Act;
- b) The repair, maintenance, design, transfer of, cost sharing, planning and/or condition of YRSCC 1253's common elements, shared facilities or any assets, including documentation regarding the condition of the lands/property upon which YRSCC 1253 is situated, including documentation prior to the registration of its Declaration;
- c) Any disclosure package(s) and any documentation from YRSCC 1253's Declarant, in addition to all documentation contemplated in subsections 43(4), 43(5) and 43(7) of the Act;
- d) Any documentation submitted to or from the municipality and/or applicable government authority regarding the design, condition, and/or use of the lands of YRSCC 1253 or its assets (proposed or actual), including any documentation created prior to the registration of YRSCC 1253's Declaration;
- e) All records as contemplated in Section 55 of the Act or the Regulations made pursuant thereto;
- f) Those records in the possession of, or which ought to be in the possession of YRSCC 1253's current and/or former members of its Board of Directors, employees, legal counsel, agents, representatives, property management, contractors, engineers, the Declarant and/or the Declarant's officers and directors; and
- g) Any other documentation which the Inspector deems necessary in his sole discretion, to assist in YRSCC 1253's operations (historical, current or future),

governance (historical, current or future), and/or fulfillment of his duties;

14. Any party receiving a written request and a copy of this Order from the Inspector shall produce for review to the Inspector all records sought in the request, including copies and/or originals from any third party, within seven (7) days from the date of the request;
15. The Inspector shall have the power and authority to employ such advisors, contractors, and/or experts as the Inspector deems advisable to carry out this Judgment, and that the costs in retaining said parties shall form part of the costs of the inspection to be paid by YRSCC 1253;
16. The Inspector shall have the power and authority to retain legal counsel to act solely on his behalf, if necessary, the costs of which retainer are to be paid for by YRSCC 1253;
17. The Inspector can request any party to attend an Examination under Oath, with five (5) days' notice of the location and time of such Examination, in accordance with the powers described in Section 33 of the *Public Inquiries Act, 2009*, S.O. 2009, c.33;
18. YRSCC 1253 shall completely indemnify and save harmless the Inspector for all acts, costs, expenditures, liability, claims, demands, actions, judgments, including legal costs etc. which may arise in the discharge of his duties, except for dishonest acts;
19. The Inspector shall be exempt from any liability to any party, person, or entity for any and all acts as Inspector (except for dishonest acts), regardless of whether the claim may first be commenced or instituted during the Inspector's term or after his discharge;
20. On account of time spent to perform the Inspector's duties, YRSCC 1253 shall remunerate the Inspector at the hourly rate of \$175.00, plus applicable taxes and reasonable disbursements incurred in the performance of those duties. This remuneration shall be considered a common expense of the owners, which the Corporation shall pay within 30

days of the Inspector having rendered an invoice or statement of account to YRSCC 1253;  
and

21. The Inspector may apply, at the expense of YRSCC 1253, to this Court at any time for the Court's opinion, advice, or direction on any question regarding the Judgment of this Court and/or the fulfillment of the Inspector's duties.
22. The Inspector shall send a report to this Court and the owners upon the completion of its term as Inspector (the "**Inspector Report**") summarizing Mr. McCabe's findings and the status of YRSCC 1253's records;
23. In providing the Inspector Report to the Court by way of motion, or for any motion regarding his duties as Inspector, Mr. McCabe shall only provide a Notice of Motion and the Inspector Report, if applicable, to all owners by delivering a copy of same by way of regular mail to the address kept for service in the records of YRSCC 1253 pursuant to Section 47 of the Act. The Notice of Motion and Inspector Report, if applicable, shall be delivered at least 14 days prior to the return date of the Motion. The Notice of Motion shall indicate whether there is Affidavit material to accompany same. Any owner seeking a complete copy of the materials to be relied upon by the Inspector at said motion shall make a written request to YRSCC 1253's property management, who shall then send said materials to the party making the request via regular mail to the address for service kept in the records of YRSCC 1253 pursuant to the Section 47 of the Act within five (5) business days from the date of the request. The owner shall pay for YRSCC 1253's photocopying costs at a rate of \$0.50 per page (which is inclusive of labour and HST) at the time of the request, failing which the Respondent can add said costs as common expenses to the owner's respective Unit;



**AND THIS COURT ORDERS THAT:**

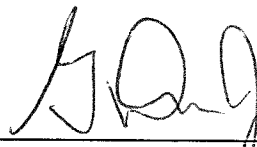
24. The within proceeding shall be subject to a publication ban, whereby the name or any identifying features of the Applicant, any affiant in this proceeding and the Respondent, along with the outcome of the within motion and/or proceeding as whole shall not be disclosed publically or by any media outlet, unless the disclosing party obtains an Order from this Court permitting same, which said Order is to be made on twenty-one (21) days Notice to the parties;
25. The publication ban described above does not pertain to any parties who are required, hired and/or retained to transact, represent or conduct services on behalf of the Applicant, the Respondent, the Inspector and/or the Administrator including but not limited to providing any relevant parties notice of the content of the within Judgment in order to fulfill the terms of same;
26. The time for and method of service of all the Applicant's Application materials has been validated and approved; and
27. The Respondent shall reimburse the Applicant for the costs of bringing the within Application on a full indemnity basis;

ENTERED AT / INSCRIPT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 29 2019

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**BERNICE KOTLYAR**

Applicant

and

**YORK REGION STANDARD CONDOMINIUM  
CORPORATION NO. 1253**

Respondent

Court File No. CV-19-620461-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO**

**JUDGMENT**

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