CITATION: Simcoe Condominium Corporation No. 89 v. Dominelli, 2015 ONSC 3661
BARRIE COURT FILE NO.: 14-1387
DATE: 20150608

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN: SIMCOE CONDOMINIUM CORPORATION NO. 89	)	S. Hodis, Counsel for the Applicant
Applicant	)	
– and –	)	
JOSEPH STEFANO DOMINELLI and DIANNA LABRANCHE	)	F.A. McFarlane, Counsel for the Respondents
Respondents	)	
	)	
	)	**HEARD:** April 1 and 30, 2015

REASONS FOR DECISION

QUINLAN J.:

Overview

[1] Dianna Labranche has a dog that weighs over 25 pounds. Despite the fact that Ms. Labranche and her fiancé, Mr. Dominelli (the respondents), were aware that the condominium owned by Mr. Dominelli has a 25-pound weight restriction on pets, Ms. Labranche brought her dog with her when she moved into Mr. Dominelli's condominium.

[2] The respondents sought no permission or accommodation from the Condominium Corporation (the applicant) until they failed in their efforts to have the dog remain as a therapy dog for Ms. Labranche's work with autistic children.

[3] When the applicant's property manager advised the respondents that the dog had to be a service dog for a resident of their unit in order for the 25 pound weight restriction to be overridden, Ms. Labranche obtained letters from a doctor that supported the notion that the dog is a therapy dog for her.

[4] The issue before me is whether the respondents have established that Ms. Labranche has a disability within the meaning of the *Human Rights Code*[1] (the *Code)* and that she requires a dog of over 25 pounds to meet her disability-related needs. If so, has the applicant fulfilled its duty to accommodate?

Nature of the Application

[5] The applicant seeks orders requiring the respondents to permanently remove the dog from their unit and the common elements of the condominium and permitting the applicant to inspect their unit. The applicant also seeks a declaration that it has not discriminated against the respondents in violation of the *Code.*

Evidence

The Condominium

[6] Simcoe Condominium Corporation No. 89 (the applicant) is a residential condominium located in Barrie, Ontario, comprised of fifty-seven residential units located in three separate three-storey buildings. None of the buildings have elevators. The only means of ingress and egress from the units is by way of a common stairway and hallway. Approximately seventy percent of the residents have been described as senior citizens.

[7] The applicant's governing documents include a Declaration, By-laws and Rules. Rule 42 restricts the size of a dog or a cat that an owner or occupier can have in a unit, to an animal that is 25 pounds or less. The Rule setting the 25-pound weight restriction on dogs and cats was implemented by the applicant in 2005 to address safety concerns. Rules such as these are commonplace in multi-level condominiums and have been found to be neither unreasonable nor inconsistent with the *Condominium Act,* 1998[2] [3] (the *Act*).

[8] The Declaration requires owners and occupiers to comply with the Rules, as does s. 119 of the *Act.*

History of the Matter

[9] Mr. Dominelli owns one of the condominium units. Ms. Labranche moved in with Mr. Dominelli in July 2014. The two are engaged and reside in a common law relationship. Ms. Labranche also brought her dog when she moved into the unit. The dog is a "Miniature" Golden Retriever/Australian Shepherd mix.

[10] The respondents were aware of the 25-pound weight restriction imposed by the Condominium Corporation when Ms. Labranche moved into the unit with her dog. They did not seek permission or accommodation from the applicant to allow the dog to reside on the property.

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1 R.S.O. 1990, C.H. 19.
2 *York Condominium Corp. No. 382 v. Dvorchik,* [1997] O.J. No. 378 (C.A.) at para. 6.
3 S.O. 1998, c.19.

[11] On August 22, 2014, the applicant's property manager sent the respondents a letter advising them that they had to remove the dog from the unit within two weeks because it weighed over 25 pounds, and was in violation of the applicant's Rules.

[12] On September 10, 2014, Mr. Dominelli informed the applicant that the dog was being used by Ms. Labranche as a therapy dog for her work with autistic children.[4] The applicant's property manager advised the respondents that the rule would be enforced, and on September 19, 2014, sent the respondents a final notice advising them to remove the dog.

[13] On September 20, 2014, Mr. Dominelli asked how to call a meeting of the owners and confirmed that the dog was being placed in a kennel.

[14] On September 22, 2014, the applicant's property manager received a requisition for an Owner's Meeting to vote on removing the 25-pound weight restriction in the Rules. The requisition was initiated by the respondents as they wanted to change the 25-pound rule. The respondents stated that that the dog was a therapy dog for children with special needs and autism and that the dog "plays an important role in their [the children's] lives as well as [Ms. Labranche's]". In support of their request to obtain the required signatures to apply for the requisition, Ms. Labranche wrote a letter purportedly from the dog, signed with a paw print and "Love, Peaches."[5]

[15] On September 25, 2014, the respondents met with the applicant's Board. Ms. Labranche stated that the dog helps autistic children and that because the dog was now in a kennel, "[the dog] wasn't able to visit the children". Ms. Labranche provided letters from some of the parents of the children with whom she works. Ms. Labranche said that she was very attached to the dog and needed it in her life as well. Mr. Dominelli confirmed at the meeting that he was aware of the 25-pound weight restriction and brought the dog onsite anyway because he and Ms. Labranche were involved in a serious relationship. He threatened that he would go to the local media to expose the dog issue.

[16] After meeting with the Board, Ms. Labranche e-mailed the applicant's property manager. She stated that a handler and dog are trained to work together to provide a service to those in need, that the dog in question "is [her] service dog because she is trained to work for [her] and as a team to provide this service for the many children that benefit from it." Ms. Labranche further stated,

> I understand that the service is being used for someone other than myself, however, having me as her handler is what allows her to provide this service ... I will continue to fight for the rights of my service dog, myself as the handler, and the children that she supports.

4 In that e-mail, Mr. Dominelli confirmed that the dog was above the 25-pound weight limit.
5 In that letter, Ms. Labranche confirmed that the dog was above the 25-pound weight limit.

[17] On September 29, 2014, the applicant's property manager emailed the respondents that the dog had to be removed from the premises unless it "service[d] a resident of that unit".

[18] On October 2, 2014, the respondents advised the applicant that Ms. Labranche needed the dog for her own use, and that the dog was a service dog for her as well as for the children with whom she works. They provided an undated letter from Dr. Charles Vanderwater. The respondents stated that, in accordance with the letter from Dr. Vanderwater, the dog was a service animal and they would pick the dog up from the kennel and bring her back to their unit.

[19] Dr. Vanderwater's letter stated that, "[E]vidence has shown that the dog is in fact a service/therapy dog ... and provides a direct role for [Ms. Labranche], in her struggles with stress and past abuse." It spoke of Ms. Labranche's "emotional needs" as an individual who has struggled with the emotional impact of previous traumas. The doctor personally endorsed the dog as serving a valuable medical role for Ms. Labranche individually in her personal/private life, as well as a role in the context of serving others. He stated that the dog is a "far better solution to the medical and emotional needs of [Ms. Labranche] (the alternative being medication)". Dr. Vanderwater further stated that "it is not reasonable that [Ms. Labranche] would have to disclose personal medical details to a condominium board in order to validate her claim of need for [the dog] as providing a personal service to her". The letter, which is undated, is appended to these Reasons as Appendix "A".

[20] When cross-examined on her affidavit, Ms. Labranche testified that Dr. Vanderwater is not her family doctor. She described him as the doctor that she "use[s] down here [in Barrie]". Ms. Labranche sees Dr. Vanderwater on an "as-needed basis", and did not know how long she had been seeing him. She testified that she "typically" contacts Dr. Vanderwater by e-mail.

[21] After the applicant's property manager received the request for accommodation, the applicant's property manager and the applicant's solicitor contacted the respondents to arrange a meeting to discuss the request.

[22] On October 10, 2014, the applicant's solicitor asked the respondents for a release or direction to allow Dr. Vanderwater to speak to the applicant, and advised Ms. Labranche that, under the *Code,* she had the obligation to establish that she had a disability and that the dog was required to assist with her disability-related needs. A meeting, with or without legal counsel and her doctor, was again requested.

[23] An Owner's Meeting was held on October 27, 2014, and the majority of owners (29 to 10) voted against removing the 25-pound weight restriction in the Rules.

[24] On November 3, 2014, the applicant's solicitor again requested to meet with Ms. Labranche and asked her to provide a release or direction to allow Dr. Vanderwater to provide information to the applicant. The respondents told the applicant's property manager to speak to Dr. Vanderwater directly and advised that they would not attend any meeting.

[25] The applicant's solicitor attempted on several occasions to obtain written confirmation and/or a copy of a release confirming that Dr. Vanderwater would speak to them. Ms. Labranche did not provide a release and Dr. Vanderwater confirmed in a letter dated November 18, 2014 that Ms. Labranche was not prepared to complete a release of information document and had no obligation to do so. Dr. Vanderwater stated that, "It should be sufficient that The (sic) requirement for a Service Dog for her personal well-being is a medical decision that I fully support and concur with." Dr. Vanderwater stated that Ms. Labranche was in the process of filing a human rights complaint and that he would be writing letters and documents of support of her claim.[6] Dr. Vanderwater's letter dated November 18, 2014, is appended as Appendix "B".

[26] Ms. Labranche confirmed at her cross-examination that she only gave her doctor permission to "reaffirm that he had written a letter" and tell the Board what he had put in his letter and no more.

[27] By letter dated November 26, 2014, the Board denied the respondents' request for accommodation on the basis that there was no objective medical evidence that supported or identified that Ms. Labranche had a disability under the *Code;* what her disability-related needs were; and how the dog is specifically required to address her disability-related needs. The Board's Decision stated that Dr. Vanderwater had not provided any clear diagnosis or identified any disability which would require accommodation and the limitations or needs associated with that disability, but had only identified symptoms such as stress, which do not in itself establish a disability under the *Code* which must be accommodated. The Decision further stated that the Board found that there was no indication that Ms. Labranche required a dog that was more than 25 pounds to address any need. The Decision noted the Board's concerns about whether the request for accommodation had been made in good faith given the history of events.

[28] The letter set out the consequences of the Board's Decision: the respondents were to permanently remove the dog by December 1, 2014 and an inspection of their unit would take place to ensure compliance.

[29] The respondents advised the applicant's property manager on November 27, 2014, that they would remove the dog by December 1, 2014, but would not confirm that they would permanently remove the dog. They also advised that they would not allow an inspection of their unit.

[30] The respondents removed the dog by December 1, 2014, but returned the dog to the unit on January 17, 2015, without the applicant's permission. The dog remains in the unit.[7] At her cross-examination, Ms. Labranche testified that she will not permanently remove the dog without a court order.

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6 Although it was obvious from the letter that Dr. Vanderwater would not discuss Ms. Labranche's medical condition with the Board, he ended his letter indicating he could be contacted if he could be of further assistance.
7 Although Ms. Labranche testified at her cross-examination on March 5, 2015 that "they" were moving in six months, there was no information provided at the hearing that the respondents have taken any steps in that regard.

[31] Ms. Labranche deposed in her affidavit that the dog is necessary for her well-being. She has a fear of being alone and the dog comforts her. She has a strong bond and as a result of having the dog, does not need to take medication for her "condition". She spoke of her anxiety "from prior traumatic historical situations that continue to adversely affect [her]" and stated that the dog saved her life and continues to assist her. She is unable to cope without the dog and was not able to go to work when the dog was in the kennel. An exhibit to Ms. Labranche's affidavit confirmed absences from work.

[32] On January 15, 2015, Dr. Vanderwater supplied a third letter stating that Ms. Labranche "has a medical condition which has been mitigated by the presence of her Service Dog." He stated that he is convinced of the benefit and utility of the dog "for medical reasons". He outlined his view of the requirements for a service dog and the information that needs to be given to a condominium board, and then wrote that he "confirm[ed] the presence of a medical condition that her service dog is part of her treatment for". His letter is appended as Appendix "C".

Issues

[33] Does Ms. Labranche's dog weigh more than 25 pounds?

[34] If so, have the respondents established that Ms. Labranche has a disability within the meaning of the *Code* and that she requires a dog weighing more than 25 pounds due to disability-related needs?

[35] If so, has the applicant fulfilled its duty to accommodate?

Analysis

1. Does the dog weigh over twenty-five pounds?

[36] The respondents argue that there is no objective evidence that the dog weighs over 25 pounds. Ms. Labranche raised this issue in her affidavit sworn February 12, 2015; however before that affidavit she and Mr. Dominelli had acknowledged that fact. For example, in the letter Ms. Labranche wrote and signed with a paw print and "Love Peaches", Ms. Labranche admitted that her dog weighed more than the allowable maximum weight for dogs to live in the condominium. The respondents asked on September 22, 2014 that there be an Owner's Meeting at which they would request an amendment to the Rule prohibiting dogs over 25 pounds from living in the condominium so that their dog could remain. In a September 10, 2014 email, Mr. Dominelli wrote that he understood that "our [dog] is above the 25-pound weight limit".

[37] Ms. Labranche was subsequently cross-examined on her affidavit. I consider her answers to questions concerning her dog's weight to be evasive and vague. Notwithstanding the communications to which I have referred, she testified that she did not know her dog's weight. She admitted, however, that the dog "could" weigh over 25 pounds.

[38] I find that Ms. Labranche's dog weighs over 25 pounds.

2.a. Has Ms. Labranche established that she has a disability?

[39] The respondents argue that Ms. Labranche has a disability within the meaning of the *Code:* in particular, a "condition of mental impairment" or "mental disorder". They rely on evidence from Ms. Labranche and letters written by Dr. Vanderwater.

The law

[40] The respondents bear the initial onus of establishing a *prima facie* case of discrimination under the Code: they must establish that Ms. Labranche has a disability within the meaning of the *Code* and that a requirement imposed by the applicant, in this case the 25 pound weight restriction on pets, adversely affects her because of her disability.[8] If the respondents establish a *prima facie* case of discrimination, the inquiry shifts to whether or not the applicant has fulfilled its duty to accommodate to the point of undue hardship.[9] Under the *Code*, "disability" includes a condition of mental impairment or a mental disorder.

[41] The Human Rights Tribunal of Ontario (the Tribunal) has outlined the necessary evidence to prove discrimination on the basis of mental disability. In *Crawley v. LCBO et al,*[10] the Tribunal referred with approval to a decision of the British Columbia Human Rights Tribunal, which held that, "[A] bare assertion of pain or anxiety is not... a sufficient basis upon which to allege that one has a mental disability..."[11]

[42] "Stress" of itself is not a disability for the purposes of the *Code*:

> ... In order to come under the important protection of human rights legislation, there needs to be a diagnosis with some specificity and substance. References to "stress" and "psychological problems" by themselves ... do not meet that standard. *12*

[43] To establish a "mental disability", a diagnosis of some recognized mental disability, or at least a "working diagnosis or articulation of clinically-significant symptoms" that has "specificity and substance" is required.[13]

Ms. Labranche's evidence

[44] Ms. Labranche deposed to her "situation", "special needs", "plight", "mental health", "condition", "illness", "anxiety" and "fear of being alone"; she requires her dog "for medical purposes", "for [her] own personal use", so that she does not need to resort to medication, for her "well-being" and "to protect and comfort [her]"; she has a "strong

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8 *Supra* note 1, s. 10(1).
9 *Taite v. Carlton Condominium Corporation No. 91 et al,* 2014 HRTO 165 (CanLII) at paras. 53-54.
10 2011 HRTO 1429.
11 *Ibid* at para. 57, referring to *Dow v. Summit Logistics,* 2006 BCHRT 158, at para. 18.
12 *Ibid* at para. 58, referring to *Re Skytrain and CUPE, Local 7000 (Olsen)* (2009), 99 C.L.A.S. 4, 2009 CLB 11377 at para. 69.
13 *Ibid* at para. 63.

bond" with her dog and that her dog "saved [her] life"; she could not function properly when the dog was out of the unit and she was frequently ill, anxious and unable to go to work.

[45] Her employment calendar was an exhibit to her affidavit. It indicated that she was absent from work one-and-a-half unaccounted days during the approximately two months the dog was out of the unit. Other absenteeism was clearly unrelated, including attending at Dr. Vanderwater's office to pick up letters he had written for this proceeding, as she acknowledged when cross-examined on her affidavit.

Assessment of Ms. Labranche's evidence

[46] Ms. Labranche damaged her credibility by refusing to admit that her dog weighs over 25 pounds when she had previously acknowledged this fact. She did nothing to enhance or repair her credibility when she claimed that she could not work when her dog was out of the unit, an assertion contradicted by her aforementioned evidence on cross-examination and her employment calendar. Her credibility is also adversely affected by her failure to be forthright in her affidavit: she deposed to having attempted to negotiate a "reasonable resolution" with the Board, but this is not the evidence. She did not attempt to "resolve the issue". She obtained the first of Dr. Vanderwater's letters and then refused the Board's requests for further information.

[47] Ultimately, I do not accept the evidence of Ms. Labranche. She was prepared to modify her evidence as she perceived a need to do so. I conclude that Ms. Labranche simply wanted to keep her dog in violation of the applicant's Rules of which she was aware when she moved into the condominium.

[48] Ms. Labranche knew by October 10, 2014 that she was obliged to establish that she had a disability. This was clearly, fairly and accurately outlined in the letter of that date from the applicant's solicitor and reiterated in the Board's November 26, 2014 decision. But nowhere in Ms. Labranche's affidavit or during her cross-examination did she provide evidence that she has a disability. I infer that this is because Ms. Labranche was unable to provide such evidence.

Dr. Vanderwater's letters

[49] I infer that Dr. Vanderwater hinted at a potential human rights complaint when he referred in the first of his letters to the matter possibly being "taken to another level". He no longer hinted at such in the second of his letters when he referred to a human rights complaint that Ms. Labranche was "in the process of filing" and that he would support. But Dr. Vanderwater never wrote that Ms. Labranche has a "disability" within the meaning of the *Code*. He never provided a diagnosis. He referred only to symptoms such as "stress", to Ms. Labranche's "medical and emotional needs", "personal well-being" and "medical condition". He referred to the dog performing a "valuable medical role", a "personal service" and being part of Ms. Labranche's treatment for a medical condition. Dr. Vanderwater wrote that service dogs are "legitimate for those with seizure disorders, PTSD, and cancer patients", but he did not relate any disorder to Ms.

Labranche and did not provide a diagnosis of "mental impairment", "mental disorder" or any other "disability".

Assessment of Dr. Vanderwater's opinion

[50] Dr. Vanderwater's letters appear to lack that degree of objectivity and impartiality I would expect from a professional providing an opinion that he knows, or can anticipate, will be tendered in court. Dr. Vanderwater described his first correspondence as a "letter of factual support". He referred to his second letter as providing "information". He described his third letter as a "note". But it is clear to me that Dr. Vanderwater purported in all three letters to provide a medical opinion supportive of Ms. Labranche in her dispute with the condominium Board. Although there is no positive obligation on the part of a physician to assist the court when providing a medical opinion, I would expect that any such opinion provided be based on medical evidence that would inherently be of assistance to the court.

[51] Dr. Vanderwater's letters strike me as partisan and argumentative. As expressed, Dr. Vanderwater felt that "validation" by a "third party" and a note from a "medical professional" alone should "suffice"—even if those letters did not provide factual support for a diagnosis of a disability. He appears to have adopted the role of advocate, and fails to provide the evidence Ms. Labranche was obliged to put before the court: that she has a disability. I infer that Dr. Vanderwater did not do so because he was unable to do so.

[52] Counsel for the respondents argued that "privacy" concerns prevented the respondents from obtaining evidence that Ms. Labranche has a disability, but it was Ms. Labranche who put her mental health in issue. Having done so, she can hardly raise privacy concerns to prevent the issue from being fully explored. The respondents' counsel also argued that the applicant was obliged to obtain medical evidence concerning Ms. Labranche's "disability", however, the law to which I have referred establishes that the onus is on the respondents to satisfy the court that Ms. Labranche has a "disability".

Determination as to disability

[53] The test for disability as phrased in *Crowley v. LCBO et al.*[14] requires medical evidence, a diagnosis of some recognized mental disability, or "working diagnosis" or "articulation of clinically-significant symptoms" that has "specificity and substance". Dr. Vanderwater's medical evidence to assert Ms. Labranche's diagnosis did not provide that.

[54] Furthermore, I rely on the decision of Justice Flynn in *Waterloo North Condominium Corp. No. 186 v. Weidner*[15] to determine whether the medical opinion provided by Dr. Vanderwater falls within the definition of a "disability". In *Waterloo North Condominium Corp. No. 186*, the applicant Condominium Corporation forbade residents from keeping pets in their respective units and was seeking an order requiring the

14 *Supra* note 10.

15 65 O.R. (3d) 108, 123 A.C.W.S. (3d) 953 at para. 39.

respondent to remove her dog from the condominium. The respondent claimed that she suffered from a mental disorder and that enforcement of the prohibition against pets would be an act of discrimination within the meaning of s. 10(1) of the *Code*. The court stated that despite a physician providing confirmatory evidence that the respondent suffered from depression and that giving up the dog would adversely affect her mental health, there was no evidence before the court that depression was a "mental disorder" such that it would render it a "disability" within the meaning of s.10(1) of the *Code*.

[55] Similarly, in the case at hand, there is no evidence before this court that Dr. Vanderwater's generic labelling of Ms. Labranche's diagnosis as a "medical condition" falls under the definition of a "disability" within the meaning of s. 10(1) of the *Code*. As such, I find that Ms. Labranche has not established that she has a disability within the meaning of the *Code*.

[56] The respondents have accordingly not established a *prima facie* case of discrimination.

2.b. Do Ms. Labranche's disability-related needs require a dog over 25 pounds?

[57] Even if I had found that the respondents had established that Ms. Labranche has a disability, she has not satisfied me that she needs a dog weighing over 25 pounds to meet her disability-related needs. Considering Dr. Vanderwater's apparent lack of objectivity and his reference to "evidence" without describing the evidence to which he refers, I find I can give no weight to his opinion that "the dog is in fact a service/therapy dog" that "provides a direct role for [Ms. Labranche] in her struggles with stress and past abuse" and a "valuable medical role for [Ms. Labranche] individually in her personal/private life..."

3. Has the applicant fulfilled its duty to accommodate?

[58] Given my findings, I do not need to determine if the applicant met its duty to accommodate Ms. Labranche under the *Code* to the point of undue hardship. However, even if I were to assume that the applicant had a duty to accommodate Ms. Labranche in respect of her claim that she needed the dog because of her disability-related needs, I would find that the applicant fulfilled its duty.

[59] The applicant was entitled to seek further information about Ms. Labranche's disability-related needs, at which point the respondents had a duty to cooperate in the accommodation process by providing the applicant with appropriate medical documentation confirming those needs.

[60] Ms. Labranche was advised by the applicant that they required information to make their decision and that they wished her to sign a release to allow them to speak to Dr. Vanderwater. I reject the respondents' position that they provided consent to speak to Dr. Vanderwater and that Dr. Vanderwater would have spoken to the applicant about Ms. Labranche's purported disability: the evidence is clearly to the contrary. The respondents chose not to provide information about Ms. Labranche's disability-related needs, taking the position that the letters from Dr. Vanderwater were sufficient.

[61] They should have provided the requested information. The applicant was entitled to adequate, objective medical information with a diagnosis of a mental disability and information about Ms. Labranche's disability-related needs. By refusing to provide such information, the respondents failed to cooperate in the accommodation process.

[62] Through the applicant's explicit request for medical documentation, I find that the applicant took reasonable steps to ascertain whether Ms. Labranche had a disability and a disability-related need to have a dog over 25 pounds, and thereby fulfilled the procedural aspect of any duty it would have had to accommodate Ms. Labranche. The substantive aspect of any duty to accommodate would not have been triggered because the respondents did not respond to the applicant's reasonable request for medical information.

[63] As the Supreme Court of Canada held in *Central Okanogan School District No. 23 v. Renaud,*[16] a person seeking accommodation must do her part in the accommodation process. The respondents refused to provide adequate objective medical documentation to the applicant. To the extent that Ms. Labranche might have had a need for accommodation which was not met, it was because of her refusal to respond to the applicant's reasonable request for information.[17] I would dismiss the respondents' claim in these circumstances.

Conclusion

[64] I accordingly grant:

1. An order under s. 134 of the *Condominium Act,* 1998 requiring the respondents, the owner and occupant of Unit 134, to comply with their obligations under section 119 of the *Condominium Act,* 1998, Part XIII (2) of the Declaration and Rule 42 of Simcoe Condominium Corporation No. 89 and to permanently remove the dog referred to as Peaches from the unit and the common elements of Simcoe Condominium Corporation No. 89, as the dog weighs more than 25 pounds.

2. An order under s. 134 of the *Condominium Act,* 1998 prohibiting the respondents or any owners or occupants of Unit 134 from keeping in the unit or on the common elements of Simcoe Condominium Corporation No. 89, either permanently or temporarily, any household pet that does not comply with their obligations under section 119 of the *Condominium Act,* 1998 and the Declaration and Rules of Simcoe Condominium Corporation No. 89.

3. An order that the applicant be permitted to enter Unit 134 on eight hours' notice which can be given by e-mail, in writing or by telephone to inspect the unit to ensure that the respondents are complying with the provisions in the Declaration and Rules of Simcoe Condominium Corporation No. 89.

16 [1992] S.C.J. No. 75, [1992] 2 S.C.R. 970 at p. 31

17 *Baber v. York Region District School Board,* 2011 HRTO 213 (CanLII) at para. 106.

4. A Declaration that the respondents are in breach of,

    i) Section 119 of the *Condominium Act,* 1998;

    ii) Part XIII(2) of the Declaration of Simcoe Condominium Corporation No. 89; and

    iii) Section 42 of the Rules of Simcoe Condominium Corporation No. 89.

5. A Declaration that Simcoe Condominium Corporation No. 89 has not discriminated against the respondents in violation of the *Human Rights Code,* R.S.O. 1990, C.H. 19 or breached any provision of the *Human Rights Code* by requiring the respondents to comply with their obligations under the *Condominium Act,* and the Declaration and Rules of Simcoe Condominium Corporation No. 89.

Costs

[65] If the parties are unable to agree on costs, I will receive written submissions from the applicant by June 17, 2015 followed by responding submissions from the respondents June 26, 2015. Any reply by the applicant should be filed by July 3, 2015. Costs Submissions shall be no more than three pages in length, exclusive of any Costs Outline or Offers to Settle. If no submissions are received by July 3, 2015, the issue of costs will be deemed to have been settled as between the parties.

QUINLAN J.

Released: June 8, 2015

Appendix "A"

rec'd Oct 2/14

151/02

Dr Charles Vanderwater
274 Hurst Drive Suite 101
Barrie, Ontario
L4N 0Z3

705.726.6059 office

705.726.8015 fax

This is Exhibit 14 referred to in the affidavit of Maria Kasila
Sworn before me in the City of Barrie, in the County of Simcoe this 1 day of February A.D. 20 15
A Commissioner, Etc

Re: Dianna Labrancho : [redacted]

Service/Therapy Dog : Peaches

I have been asked to comment on circumstances surrounding decisions made by The Board of Directors regarding the Service/Therapy Dog named " Peaches "

I am aware that there has been a number of letters,communications, and petitions provided to the Board of Directors regarding Peaches . To date the Board has required Peaches to be off site. Evidence has shown that the dog is in fact a service/therapy dog . The dog provides valuable service to three to five children who have various medical needs that Peaches has a valuable and positive impact on. Further, Peaches provides a direct role for Dianna , in her struggles with stress and past abuse. It appears that the Board of Directors has not , to date, been sensitive to the very real emotional needs of an individual who has struggled with the emotional impact of previous traumas. Service/therapy dogs are as legitimate for those with seizure disorders,PTSD,and cancer patients as are the more well known circumstances such as the hearing or visually impaired. Service and therapy dogs are permitted on buses,in stores,in restaurants,and in medical offices and public hospitals.

I personally endorse "Peaches" as serving a valuable medical role for Dianna individually in her personal/private life as well as a role in the context of serving others (especially children) as noted above as you well know.

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Appendix "B"

Dr. Charles Vanderwater
274 Hurst Drive Suite 101 Barrie Ont L4N 0Z3
Phone: (705) 726-1191 Fax: (705) 726-8015

RECEIVED
NOV 18 2014
BAYSHORE PROPERTY MANAGEMENT

Nov 18, 2014

This is Exhibit 20 referred to in the affidavit of Marie Rush
Sworn before me in the City of Barrie, in the County of Simcoe this 1 day of February A.D. 20 15
A Commissioner, Etc.

Re: DIANNA LABRANCHE
[redacted]

Attention

Sonja Hodis
Barrister,Solicitor, and Notary

I have had an opportunity to read the letter you wrote to Dianna Labrance of 134-10 Coulter Street, Barrie Ontario (dated Nov . 3, 2014.)

The content of the letter is NOT factually correct . Be aware that Dianna is not willing to complete a release of information document allowing a direct disclosure of her health history. You make it appear that she is uncooperative in doing so. In fact, Diana has no obligation whatsoever in disclosing her health history to you, or any official from her condominium Board of Directors.

The PHIP (Personal Health Information Protection Act) indicates that Health Information need only be shared with individuals engaged in her sphere of personal health care. The Board of Directors of a Condominium corporation or its Legal representative(s) do not meet that test.

It should be sufficient that The requirement for a Service Dog for her personal well being is a medical decision that I fully support and concur with. That should be adequate information for the purposes of the Condominium Board of Directors.

I note that Dianna is now in the process of filing a Human Rights Complaint citing the Actions of The Board of Directors. If that comes to pass, I will be writing letters and documents of support for her claim.

If I can be of further assistance do not hesitate to contact me.

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Sincerely,

C. Vanderwater MD CCFP

Appendix "C"

Dr. Charles Vanderwater

Phone: (705) 726-1191 Fax: (705) 726-8015

Jan 15, 2015

This is Exhibit "B" referred to in the affidavit of Diana Labranche sworn before me, this 13 day of February 20 15

A COMMISSIONER FOR TAKING AFFIDAVITS

Leanne Brenda Ridout, a Commissioner, etc., Province of Ontario, for Fay McFarlane & Associate Professional Corporation, Barrister and Solicitor, Expires April 24, 2016

Re: DIANNA LABRANCHE

[redacted]

To Whom It May Concern,

Diana has a medical condition which has been mitigated by the presence of her Service Dog. I have gone over her needs and am convinced of the benefit and utility of the dog for medical reasons.

In Ontario there is no requirement that a service dog be certified or registered or formally trained. There is also no requirement that the nature of the medical condition be disclosed to a condominium board. A simple note that a condition exists for which the dog a significant factor in her treatment and wellness is what is required.

I confirm the presence of a medical condition that her service dog is part of her treatment for. This is all that is required for her to prove; and this note is,in essence,her statement of that proof.

I trust this note resolves the matter.

CVanderwater

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Sincerely,

C. Vanderwater MD CCFP

CITATION: Simcoe Condominium Corporation No. 89 v. Dominelli, 2015 ONSC 4474
BARRIE COURT FILE NO.: 14-1387
DATE: 20150713

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
SIMCOE CONDOMINIUM CORPORATION NO. 89	S. Hodis, Counsel for the Applicant
Applicant	
– and –	F.A. McFarlane, Counsel for the Respondents
JOSEPH STEFANO DOMINELLI and DIANNA LABRANCHE	
Respondents	
	HEARD: By Written Submissions

COSTS ENDORSEMENT

QUINLAN J.:

Overview

[1] The respondent Joseph Dominelli is the owner of a condominium in the applicant Simcoe Condominium Corporation No. 89. The respondent Dianna Labranche is Mr. Dominelli's fiancé. The respondents were aware when Ms. Labranche moved with her dog into Mr. Dominelli's condominium that the weight of Ms. Labranche's dog exceeded the 25-pound weight restriction imposed by the applicant's Rules. The applicant asked the respondents to remove the dog. The respondents removed the dog temporarily, but refused to do so permanently, claiming that Ms. Labranche required the dog as a therapy dog. After a hearing that lasted much of two days, I found that the respondents had not established a *prima facie* case of discrimination under the *Human Rights Code* (the *Code*) and I ordered that the respondents comply with their obligations under the *Condominium Act* (the *Act*), Declaration and Rules and remove the dog. In addition, I granted a declaration that the applicant had not discriminated against the respondents in violation of the *Code*.

Positions of the Parties

Applicant's Position

[2] The applicant was successful and is entitled to costs jointly and severally against the respondents on a full indemnity scale in the amount of $48,430.41 inclusive of HST and disbursements. It would be unfair to innocent neighbours to have to bear any costs because of the respondents' actions. The principle of proportionality does not apply in the context of an application for compliance as no monetary award of damages was imposed. The respondents were warned of the cost consequences if they were unsuccessful; they refused an early offer to resolve the matter and increased costs by filing an application before the Human Rights Tribunal. The respondents had no realistic prospect of success. The financial position of the respondents, for which there is no evidence, and the consequences of the court order are not factors for the court to consider. Costs should be payable within 20 days so that a special assessment of owners is not required. The costs sought are not "additional costs" within the meaning of s. 134(5) of the *Act*.

Respondents' Position

[3] The respondents ask the court to keep in mind their limited financial resources, the challenge of moving and their legitimate belief of potential success. Ms. Labranche was at the mercy of her doctor's advice, advice with which she agreed, that it was not necessary for her to disclose her personal and confidential medical information. The application was premature as the applicant did not wait to confirm whether the respondents would permanently remove their dog. The applicant's costs are disproportionately large, especially considering a similar ongoing proceeding, and would result in "double recovery" if granted in full. Some entries in the Costs Summary are inaccurate and the applicant's counsel lengthened the hearing by making unnecessary submissions. The costs for the Human Rights Tribunal application should not be allowed, or, if allowed, should be significantly reduced. Any award of costs should encompass "additional costs" as set out in s. 134(5) of the *Act* and be apportioned on an equal basis to each respondent. Costs of $20,000 inclusive of additional costs as set out in s. 134(5) would be fair and reasonable.

Legal Principles

[4] The award of costs is governed by s. 131 of the *Courts of Justice Act,* R.S.O. 1990 c. C. 43 and by Rule 57.01 of the *Rules of Civil Procedure.* Section 131 clothes the court with its general discretion to fix costs. Rule 57.01 provides a measure of guidance in the

exercise of that discretion by enumerating certain factors that the court may consider when assessing costs.[1]

[5] In particular, the court may consider any of the following factors:

> (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
>
> (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
>
> (a) the amount claimed and the amount recovered in the proceeding;
>
> (b) the apportionment of liability;
>
> (c) the complexity of the proceeding;
>
> (d) the importance of the issues;
>
> (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
>
> (f) whether any step in the proceeding was,
>
> (i) improper, vexatious or unnecessary, or
>
> (ii) taken through negligence, mistake or excessive caution;
>
> (g) a party's denial of or refusal to admit anything that should have been admitted;
>
> (h) whether it is appropriate to award any costs or more than one set of costs where a party,
>
> (i) commenced separate proceedings for claims that should have been made in one proceeding, or

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[1] *Zandersod Company Limited v. Solmar Development Corp.*, 2011 ONSC 3874 at para. 11

> (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
>
> (i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1.

[6] Ultimately, in fixing an amount for costs, the overriding principles are fairness and reasonableness.[2]

[7] Generally, the court ought not to second guess the time spent by counsel. As the court held in *Basedo v. University Health Network*[3]:

> It is not the role of the court to second guess the time spent by counsel unless it is manifestly unreasonable in the sense that the total time spent is clearly excessive or the matter has been overly lawyered.

[8] It is important to recognize that the assessment process is ultimately not a mechanical exercise.[4] Instead, the court must take a contextual approach applying the principles and factors enumerated above, to determine a figure that is fair and reasonable in all the circumstances.

Analysis

[9] The applicant was entirely successful. As such, it is presumptively entitled to its costs. The respondents were warned early on in the proceedings of the costs consequences should they be unsuccessful. The respondents refused the applicant's offer to take a reduction in costs if they would consent to early judgment. The respondents were notified of the evidence required to establish a case of discrimination under the *Code* but decided to follow the opinion of Ms. Labranche's doctor as to the evidence necessary to succeed in their claim of discrimination rather than the principles established in the case law. Ms. Labranche's position that she would not remove the dog without a court order was unreasonable. The respondents' evidence was far from sufficient to support their claim of discrimination. There is no evidence before me as to the financial resources of the respondents.

[10] Courts have addressed the scale of costs on a condominium application and accepted that full indemnity costs in cases such as this are appropriate. The respondents' neighbours

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[2] *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d)291 (C.A.); *Moon v. Sher* (2004), 246 D.L.R. (4th)440 (Ont. C.A.)
[3] [2002] O.J. No. 597 (S.C.J.)
[4] *Gratton-Masuy Environmental Technologies Inc. (c.o.b. Ecoflow Ontario) v. Building Materials Evaluation Commission,* [2003] O.J. No. 1658 at para. 17

are blameless in this matter; it is not fair or equitable for other unit owners to have to subsidize the costs of the condominium corporation in pursuing a legal proceeding against a unit owner for their breach of the condominium rules.[5]

[11] I have thoroughly reviewed the applicant's counsel's dockets. I find that the costs are not so disproportionately high as to be manifestly unreasonable. The applicant's counsel has fairly indicated areas where she reduced costs due to duplication with another proceeding. The only duplication of time by the applicant was in the repetition of submissions on the second day of the application, which resulted in at most 3 hours of additional time, for which there will be some reduction in the costs awarded. I find that the costs related to the respondents' application to the Human Rights Tribunal are properly claimed and recoverable as costs related to this application. There is no principled reason to depart from the usual award of costs on a joint and several basis. I find it would not be appropriate to deal with additional costs under s. 134(5) of the *Act*.

[12] Proportionality is a difficult concept to apply given that declaratory relief was sought and there is no monetary award of damages. Having said that, I am satisfied that a review of the time spent and the steps necessary in this application demonstrate that the costs sought, subject to my comment above concerning some duplication of court time, are reasonable and fair in all the circumstances.

[13] Accordingly, this court orders that the respondents shall pay the applicant $47,000 in costs including HST and disbursements within 20 days of the date of this Order.

[14] This court orders that pursuant to s. 85 and s. 134(5) of the *Condominium Act,* 1988 the costs so fixed and unpaid by the respondents within that time shall be added to the common expense charges for the subject unit and shall be a lien and charge upon the subject unit owned by the respondents.

[15] This court orders that interest is payable on the amounts outstanding in accordance with the applicant's bylaws with respect to unpaid common expenses.

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[5] *Chan v. Toronto Standard Condominium Corporation No. 1834,* [2011] ONSC 108 at para. 36; *Metro Toronto v. Skyline Executive,* [2005] 197 O.A.C. 144, [2005] O.J. No. 1604 (C.A.); *Muskoka Condominium Corp. No. 39 v. Kreutzweiser,* [2010] ONSC 2463, 2010 Carswell Ont. 2504 (S.C.J.) ; *Grey Standard Condominium Corp. No. 50 v. Grey Standard Condominium Corp. No. 46,* [2013] ONSC 1145.

QUINLAN J.

Released: July 13, 2015