

CITATION: Carleton Condominium Corporation No. 348 v. Chevalier, 2014 ONSC 3859
COURT FILE NO.: 13-56466
DATE: 20140625

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CARLETON CONDOMINIUM
CORPORATION NO. 348

Applicant

– and –

YVES CHEVALIER and GEORGE
BASMADJI

Respondents

Craig O'Brien, Nelligan O'Brien Payne, for
the Applicant

Elaine Rufiange, The Public Guardian and
Trustee for the Respondent, Yves Chevalier

George Basmadji, self-represented

HEARD: June 20th, 2014

ADDITIONAL REASONS FOR DECISION

BEAUDOIN J.

[1] On June 20, 2014, I issued an Order permitting the Applicant, Carleton Condominium Corporation No. 348 ("CCC 348") to evict the Respondent, Yves Chevalier, from his unit at CCC 348 effective July 4, 2014. I provided a brief endorsement at that time and I indicated that additional reasons would follow. These are those reasons.

Procedural History

[2] This matter originally commenced by way of Application issued on January 10, 2013. At that time, the Applicant sought an order that the Respondents cease and desist in conduct that contravened the provisions of the *Condominium Act*, S.O. 1998, c. 19 and CCC 348's Declaration, Bylaws and Rules including but not limited to:

1. engaging in conduct which resulted in damage to the common units of CCC 348;
2. engaging in conduct which alters any portion of the common elements of CCC 348;
3. engaging in conduct which risks the health and safety of other residents of CCC 348; and
4. engaging in conduct which necessitates police intervention.

[3] Initially, the Applicant sought the immediate removal of the Respondent, George Basmadji, from the premises but also sought any such further and/or other relief as this Court would deem just.

[4] The Respondent, Yves Chevalier, is the registered owner of the unit known municipally as 262A Presland Drive, Ottawa, Ontario (“the unit”). In support of its Application, CCC 348 filed two affidavits.

[5] The first affidavit is that of Rhonda Bradley. Ms. Bradley is the past President of the Board of Directors of CCC 348. She identified that there have been numerous breaches of the *Condominium Act* and the Corporation’s Declarations, Bylaws and Rules by Mr. Chevalier and Mr. Basmadji.

[6] Problems arose from the use of that unit since 2005. At that time, the building manager had asked Mr. Chevalier to stop removing salt and grit that was spread on the walkway and stairs at CCC 348. The salt and grit had been placed by the snow contractors in order to minimize the possibility of someone falling and hurting themselves. The removal of such was a risk to the safety of other residents.

[7] According to Ms. Bradley, the Board of Directors had consistently been required to discuss Mr. Chevalier’s unit and the conduct of both Respondents at its regular Board of Directors meetings. The Board of Directors had serious concerns about the safety of the Board, the building manager and other residents as a result of threatening behaviour towards members of the previous Board, other residents, contractors and the Corporation Property Management

staff. As a result, the CCC 348 had their solicitors direct a letter to Mr. Chevalier on November 9, 2007. Ms. Bradley's affidavit sets out that the problematic behaviour had continued and that there had been incidents in 2012.

[8] A second Affidavit was filed by Dan Fried, the property manager of CCC 348 at that time. He noted that Mr. Chevalier is the current registered owner of the unit but added that the Respondent, George Basmadji, is a "tenant or occupant" of Mr. Chevalier's unit. He outlined some of the problems that CCC 348 had experienced as a result of the activities of the Respondents. As noted in 2005, Mr. Chevalier was asked to stop removing the salt and grit from the walkways of the Corporation. In 2007, Mr. Chevalier was asked to remove a vehicle parked in the common element parking space that was assigned to his unit. The vehicle was not in working condition and it did not have license plates, seats or a steering wheel. This was a violation of Rule 15 of the Corporation. This triggered a series of letters to and from Mr. Chevalier. Mr. Chevalier alleged that the owners of CCC had engaged in criminal actions along with their solicitors and the previous property manager, and he threatened to charge them with criminal conspiracy.

[9] On November 19, 2007, the CCC 348 caused a further letter to be written to Mr. Chevalier advising him that a contractor, sent to carry out work on behalf of the Corporation, had endured a "barrage of extreme profanity and abuse" from Mr. Chevalier.

[10] In June of 2012, the CCC became aware that the Respondents had tiled the steps in front of unit 262A. These steps are used to access four units and are part of the common elements. The Respondents did not seek permission to make these changes. As a result of the unauthorized modification of the common elements, a further letter was written to the Respondents. It was hand delivered to Mr. Basmadji. Mr. Basmadji took the letter then proceeded to rip it in front of Mr. Fried. Mr. Fried was further verbally abused and when he took a picture, Mr. Basmadji physically approached him in a threatening manner.

[11] On June 20, 2012, the Corporation sent contractors to remove the tiles. In anticipation of a possible confrontation from the Respondents, the Corporation hired security to accompany the contractors. The contractors were subject to verbal abuse and intimidation from Mr. Basmadji.

Mr. Basmadji called the police. When the police arrived, Mr. Basmadji yelled at the police for approximately 45 minutes. Despite the difficulties, the tiles were eventually removed. Mr. Basmadji filed a complaint with the Ottawa Police Services against one of the police officers.

[12] On June 18, 2012, the Respondents again painted the bottom steps of the front unit without authorization. On August 7, 2012, they installed the fence/gate in front of 262A. Once again, this was an unauthorized modification of the common elements. The Respondents were advised that the fence/gate had to be removed. The fence/gate was removed by CCC 348 on August 13, 2012; however, it was reinstated by the Respondents seven days later. The fence/gate has been removed twice and has been reinstated each time.

[13] In response to original Application, an Application Record was filed on behalf of Yves Chevalier by his guardian of property, the Public Guardian and Trustee (“OPGT”). It was disclosed that the OPGT was appointed guardian of the property for the Respondent, Yves Chevalier, pursuant to the Order of Justice Kershman dated January 21, 2010. That Order was made pursuant to a separate Application (No. 09-47103) brought by the OPGT as Mr. Chevalier was in danger of losing his house due to non-payment of a relatively small amount of condominium fees. Mr. Chevalier had stopped making common expense payments as a result of his disputes with CCC 348. CCC 348 was concerned about Mr. Chevalier’s ability to represent himself and brought a motion to have the OPGT appointed as Litigation Guardian of Mr. Chevalier for the purpose of the condominium eviction/common expense arrears claims.

[14] Daniel Raymond, investigator with the OPGT filed an affidavit in those proceedings which provided details about that Office’s dealings with Mr. Chevalier and Mr. Basmadji. Mr Raymond cites correspondence from Mr. Chevalier to Ms. Elaine Rufiange, counsel with the Ottawa Regional Office of the OPGT. In his letter, Mr. Chevalier stated he was the victim of organized crime whose offenders are “the law firm of Nelligan, O’Brien, Payne (solicitors for the Condo Corp.), the Board of Directors of CCC 348 and the CCC 348’s property management company. In one of the letters addressed to Nelligan, O’Brien, Payne, Mr. Chevalier wrote:

The Members of Parliament, the Members of Provincial Assembly, and the city Counsellors have lost their rights because Dr. Basmadji did invalidate our entire political governing system.

[15] As a result of Mr. Chevalier's behaviour and the nature of the letters he directed to their attention, the OPGT determined that he needed to undergo a capacity assessment but quickly determined that Mr. Chevalier would not agree to undergo such an assessment. Mr. Raymond's lengthy affidavit provided details of Mr. Chevalier's disturbing behaviour which made it very clear that Mr. Chevalier was taking all of his advice and direction from Mr. Basmadji. Nevertheless, the OPGT was able to arrange to have Dr. Janet Munson contact Mr. Chevalier by phone on March 3, 2009.

[16] Dr. Munson wrote the following about her observations about Mr. Chevalier's capacity:

I saw no evidence that Mr. Chevalier was memory impaired or unable to actually understand information relevant to circumstances. What did seem apparent to me, however, was his lack of appreciation for the situation confronting him and his total denial of the imminent adverse consequences of his decision to withhold his condo fees. His choices and decisions that lead up to this point appear to be predicated on a complex of interrelated beliefs of a persecutory nature that are not amenable to reason nor are they plausible in the larger scheme of things. He could not contemplate any other outcome than one favorable to him and his unrealistic demands. He viewed any legal actions to quash his claim as null and void.

In my opinion, Mr. Chevalier is not just "angry and aggrieved", there is a possibility he is mentally ill. Had I been conducting a clinical psychological exam, I would have focused on his persecutory beliefs to see if he satisfies all of the criteria for a diagnosis of delusional disorder, persecutory type.

[17] As a result of that first Application, then Regional Senior Justice Hackland issued an Order refraining the Respondents from engaging in conduct which resulted in damage to the units or common elements of CCC 348; refraining from engaging in conduct which altered any portion of the common elements of CCC 348 including exclusive use of common elements; refraining from engaging in conduct which risks the health and safety of other residents of CCC 348 and refraining from engaging in conduct which necessitated police intervention. The Order provided that if the Respondents failed to comply with the above noted Order, the Corporation

had leave to return the Application to the Court requesting immediate removal of George Basmadji from the premises and the permanent prohibition of George Basmadji on the premises. The Court ordered costs in the amount of \$5000 inclusive of HST and these costs were to be added to the common expenses payable by Mr. Chevalier.

[18] Following the initial Order made by then Honourable Senior Justice Hackland, the Application was returned seeking the immediate removal of George Basmadji from the premises of CCC 348. An affidavit of Dana Pandolfi, then President of the Board of Directors of CCC 348, was filed. The issue concerned the removal of the fence. Although, the fence was removed by the Respondents on March 14, 2013; they reinstalled it the very next day contrary to the Order of Justice Hackland. As a result, on April 19, 2013, I granted an Order providing for the immediate eviction of the Respondent, George Basmadji, from the unit. I also ordered a permanent prohibition of George Basmadji from occupying the unit and entering upon the common elements of CCC 348 and a further order for costs in the amount of \$2000.00 to be added to the common expenses charged to Mr. Chevalier's unit.

[19] The Applicant then brought a motion on July 10, 2013 seeking a finding of contempt against the Respondents and other relief. Despite my Order of April 19, 2013, there was evidence that Mr. Basmadji continued to attend the premises of the unit at CCC 348 with the knowledge of the Respondent, Mr. Chevalier.

[20] The Court was further advised that on June 25, 2013, CCC 348 had contractors on site to remove the unauthorized fence installed by the Respondents. While the contractors were removing the fence, Mr. Basmadji struck one of the contractors with a crow bar. Once again, the police were summoned and the Court was advised that the police were reluctant to take any action against Mr. Basmadji because he provided them with what appeared to be a transfer of title from Mr. Chevalier to himself. Given that my uncertainty as to whether either of the Respondents had any capacity to understand the previous orders and to appreciate the consequences of their conduct, I concluded that the finding of contempt was problematic. Therefore, I made an Order pursuant to Rule 60.11 (5) which permitted the Court to make any Order "as is just" in disposing of this motion without of the necessity of making a finding of contempt. I ordered that any purported transfer of any interest in the condominium unit from

Yves Chevalier to George Basmadji was void and hereby set aside given that the OPGT had exclusive authority to deal with Mr. Chevalier's property and that Office had not agreed to the transaction. I further authorized the police authorities to enter into such premises; both common elements and the unit owned by Mr. Chevalier, and use as much force as may be necessary to remove Mr. Basmadji from the premises. I made a further Order for costs in the amount of \$6000.00 which amount was gain to be added to the common expenses to be paid by Mr. Chevalier. Finally, I ordered that CCC 348 was at liberty to bring a motion to evict the Respondent, Yves Chevalier, from the unit should he continue to allow Mr. Basmadji on the premises.

[21] As a result, the Applicant brought this return of the Application and filed further affidavit evidence confirming that Mr. Basmadji had been seen by residents of CCC 348 attending at Mr. Chevalier's unit on five different occasions. In fact, this second Supplementary Application was served on Mr. Basmadji at the unit on Presland Road.

[22] It is evident that the Respondents have no intention of complying with previous court orders. I have been referred to and rely on the decision of B.P. O'Marra J. in *York Condominium Corporation No. 301 v. James*, 2014 ONSC 2638. In that case, the Applicant was seeking a vacating order and a forced sale of the condominium unit in that O'Marra J. referred to a number of decisions where the courts have granted such relief where it has been demonstrated that it was unsuited for communal living.¹ He noted that the communal living requires the respect and consideration for one's neighbors and socially acceptable behaviour.

[23] In this case, it is obvious that previous court orders have been insufficient to control the unacceptable and antisocial behaviour of the Respondents. Their actions have presented a series of health and safety issues for other residents, management, visitors and contractors at the Condominium Corporation.

¹ *Metropolitan Toronto Condominium Corp. 946 v. M. (J.V.) (Litigation Guardian of)*, 2008 CarswellOnt 8111 (SCO); *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, 2010 CarswellOnt 5939 (SCO); *Waterloo North Condominium Corp. No. 168 v. Webb*, 2011 CarswellOnt 3276 (SCO); *Peel Condominium Corp. No. 304 v. Hirsi*, 2014 CarswellOnt 444 (SCO); *York Condominium Corporation No. 82 v. Singh*, 2013 CarswellOnt 4183 (SCO).

[24] It is apparent that the Respondent, Yves Chevalier, suffers from a mental illness. I appreciate that it would be a hardship for him to vacate his unit which will probably be sold. Nevertheless, I am advised by the OPGT that he is not without resources. There have been at least three previous court orders for costs which have been added to the common expenses for his unit. These have been paid by the OPGT on behalf of the Respondent. Further orders for costs will continue to jeopardize his remaining assets and make his continued occupancy of the unit impossible in any event.

[25] In these circumstances, it must be recalled that other residents of CCC 348 have been confronted with behaviour that ranges from disturbing to threatening. Notwithstanding previous attempts by this Court to contain the behaviour of the Respondents, there is no other choice but to issue the Order evicting Mr. Chevalier from the premises. I have previously made an endorsement as to costs.

Mr. Justice Robert Beaudoin

Released: June 25, 2014

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ADDITIONAL REASONS FOR JUDGMENT

Beaudoin J.

Released: June 25, 2014