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Case Name:

Diamantopoulos v. Metropolitan Toronto Condominium Corp. No. 594

Between
Christina and Elizabeth Diamantopoulos, Applicants, and
Metropolitan Toronto Condominium Corp. No. 594, Respondent

[2013] O.J. No. 4275

2013 ONSC 5988

Court File No. CV-12-459074

Ontario Superior Court of Justice

D.L. Corbett J.

Heard: October 19, 2012.
Judgment: September 23, 2013.

(34 paras.)

Counsel:

Benjamin J. Rutherford for the Applicants.

Carol Dirks for the Respondent.

ENDORSEMENT

1 D.L. CORBETT J.:-- The applicants seek to arbitrate a dispute that they say they have with the respondent. The respondent argues that this is not a matter to be sent to mediation or arbitration. Rather, this is a matter to be brought to court.

Summary and Disposition

2 I find myself in the happy position of disagreeing with both parties.

3 The issues raised by the applicants are so minor and incidental to management of the condominium that I conclude they are too insignificant to merit mediation or litigation. The conflicts are, to use the old legal phrase, *"de minimis"*. The application is dismissed with costs payable by the applicants to the respondent fixed at $2500 plus HST, payable within thirty days.

Analysis

4 The applicants own and live in unit 803 at 360 Bloor Street East, Toronto. The respondent owns and manages the common elements of that condominium.

5 This dispute concerns:

(a) historic issues concerning the applicants' use of the common exercise facilities;
(b) more recent disputes between the applicants and the occupants of unit 903 (located directly above the applicants);
(c) conflict between the applicants and security personnel at the condominium;
(d) communications between the applicants and management of the respondent; and
(e) damage to the exterior of the door to unit 903.

(a) Use of the Exercise Room

6 Several years ago, one of the applicants was cautioned by the respondent about her conduct in the common exercise facilities. She was asked not to place sweaty towels on exercise equipment. She was asked to instruct her fitness trainer not to adjust the television and sound equipment in the exercise room.

7 The applicants say that the underlying events never took place, and the requests made by the respondent were without foundation.

8 The respondent says that these issues arose and were dealt with several years ago -- there are no outstanding issues related to these points.

9 There is no outstanding conflict on these issues and so nothing to mediate. Whether the applicants did or did not do the things that led to the written request from the respondent is not material at this point.

(b) Conflict With 903 Neighbours

10 The applicants have had difficulties with the owners of the unit located directly above them (unit 903). Apparently there have been angry confrontations.

11 It is rather difficult to understand what these disputes are about on the materials before me. It is clear, though, that the primary conflict is between the applicants and their neighbours. The respondent is caught in the middle.

12 There has been police involvement. Some of the allegations attributed to the applicants are, frankly, bizarre. It appears that neither police nor the respondent have established a basis for the applicants' complaints about their neighbours.

13 The difficulties between the applicants and the occupants of unit 903 are properly a matter of concern for the respondent. Angry confrontations between residents of the condominium can affect the use and enjoyment of many residents of the building.

14 The respondent has asked the applicants not to contact the residents of unit 903 directly. I do not understand the applicants to be challenging this request. If I have misunderstood their position on this point, nonetheless the respondent's approach to this issue is reasonable.

(c) Conflict With Security Personnel

15 The respondent retains a security company to provide security services at the condominium.

16 The security company has complained to the respondent about the conduct of the applicants. It says that the applicants have been rude and aggressive with security personnel, to the point that one employee asked to be transferred to another facility so that she would not have to endure the stress of dealing with the applicants.

17 The respondent has not purported to determine what happened between the applicants and security personnel. Rather, it seeks to avoid further problems by directing that the applicants not deal with security personnel except in the case of genuine emergency.

18 The applicants have not identified any basis on which this direction has prejudiced them, either specifically or generally.

19 The security company has a duty to protect its employees from mistreatment. The respondent has an interest in facilitating the work of the security company. When faced with this kind of conflict, it is simpler to avoid further conflict than to "get to the bottom" of what may have happened before. The affected employee has been moved. The applicants are asked to avoid dealing with security personnel. This should solve the problem with a minimum of fuss and bother.

(d) Communication With the Respondent's Board's Members

20 The respondent has asked the applicant to use the management office when communicating with members of the board of directors of the respondent. This seems sound policy for two reasons:

(a) it facilitates corporate record-keeping (it is more likely that these communications will be documented properly if they go through the office); and
(b) it protects board members from undue interference with the quiet enjoyment of their own units and the common areas.

21 The applicants have not identified any right that they have to approach board members directly, rather than through the management office. Of course, if board members are routinely inaccessible to unit owners, this may affect their prospects of re-election, but that is not relevant to these proceedings.

(e) Repairs to the Door at Unit 903

22 There was a confrontation at the door to unit 903. Apparently the door to that unit was damaged. The respondent blamed the applicants for that damage and sought to recover the repair costs from them (alleged to have been $136.50).

23 Subsequently the respondent has "waived" its claim for this amount.

24 A disputed charge for these repairs could be taken to mediation. However, since the respondent is not pursuing this issue, there remains nothing to mediate about it.

Summary

25 The respondent has directed the applicants to refrain from:

(a) leaving sweaty towels on exercise machines and to refrain from adjusting television and audio equipment in the exercise room;
(b) direct contact with the residents of unit 903;
(c) communicating with security personnel except in cases of real emergency; and
(d) communicating with members of the board of the respondent, except through the management office.

Legal Analysis

26 The applicants say that the respondent had no proper basis to direct the applicants as it has, and seeks mediation pursuant to s.132 of the *Condominium Act*, 1998, S.O. 1998, c. 19.

27 The respondent denies that s.132 applies to the impugned directions. Section 132(4) provides that the mandatory mediation/arbitration provisions apply to a "disagreement" with respect to "the declaration, by-laws or rules" of the condominium corporation.[1]

28 The respondent adopts a restrictive reading of these provisions: if a matter does not fall squarely within the words of the provisions, then the mediation/arbitration provisions do not apply.

29 With respect, these provisions must be read within the entire context of the *Condominium Act*. The *Act* provides that recourse may be made to the court for a compliance order and an oppression remedy (s. 135). The compliance order may be sought in respect to a matter that has been through mediation and/or arbitration, if notwithstanding that process, non-compliance continues. Various incidents of oppressive conduct may well be matters to be taken through mediation/arbitration. It is the overall allegation of oppression that is reserved to the courts in s.135.

Nature of the Conflict

30 The respondent's directions are part of the day-to-day management of the condominium. They are minor requests, designed to establish and promote peace at the condominium. These are not conclusions of fact, nor are they punishments.

From the respondent's position, it does not matter to it whether the prior incidents were "caused" by the applicants, by others, or whether it is not clear who has acted improperly. So, from the respondent's position, there is nothing to mediate. It has given directions designed to promote harmony.

31 The applicants indicate that they fear the respondent is building a record to try to oust them from the condominium entirely. That is possible. If that happens, then it will be open to the applicants to challenge that decision, including any underlying facts alleged to support it.

32 I conclude that the matters in issue are so minor and incidental that there is nothing to litigate and nothing to mediate. The application is dismissed.

Costs

33 The respondent claims partial indemnity costs of $5800. The claim is reasonable. However, the respondent argued that these matters need to come to court rather than mediation. The r espondent did not raise the *de minimis* argument. This approach fanned the flames of conflict, and is a proper basis to reduce the respondent's costs recovery. I fix costs at $2500, payable by the applicants within thirty days.

Delay in this Decision

34 I regret the long delay rendering this decision. I have been on an extended medical absence following a heart attack in August 2012, a premature return to work in October to December 2012, and I have not yet been able to resume work full-time. Hence the delay.

D.L. CORBETT J.

cp/e/qlnxm/qlpmg

1 See also s.132(1), which provides that mediation / arbitration also applies to disagreements respecting condominium agreements.