

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **Yakov Mereshensky**
(as Power of Attorney for Lyudmila Mereshensky and Ahuva
Rozenfeld), Plaintiff

and

Metropolitan Toronto Condominium Corporation No. 879, Defendant

BEFORE: Madam Justice Darla A. Wilson

COUNSEL: *Yakov Mereshensky* in person
Michael Gwynne, for the Defendant

A. Medzviadziuk interpreting in the Russian language

HEARD: April 13, 2010

ENDORSEMENT

[1] The Plaintiff, Yakov Mereshensky, (hereinafter referred to as “Mr. Mereshensky”) brings a motion for default judgment and the Defendant brings a motion to strike the Amended Statement of Claim as frivolous and vexatious. These motions were originally returnable February 12, 2010 and, at that time, Justice Spence made an Endorsement adjourning the matters to today seemingly because the Plaintiff advised that he had not been served with the Motion Record and as well, the Amended Statement of Claim had not been served on Counsel for the Defendant. Justice Spence ordered that the Plaintiff’s motion be made on notice and specifically ordered that the Plaintiff’s motion was to be served on the solicitor for the Defendant.

[2] Today, Counsel for the Defendant provided me with a number of affidavits of service indicating service or attempts of service of materials on the Plaintiff as well as his daughters, Ahuva Rozenfeld and Lyudmila Mereshensky. The Plaintiff indicated before me that he will not accept anything from the solicitor for the Defendant and indeed, when Mr. Gwynne attempted to provide him with copies of various items, Mr. Mereshensky refused to take them. He advised at the outset that he objected to Mr. Gwynne’s acting on behalf of the Condominium Corporation for reasons which were not clear. Mr. Mereshensky asserted that Mr. Gwynne’s retainer was “illegal”. There was no material before me that suggested in any way that there was an issue with respect to the retainer of Mr. Gwynne and I proceeded to hear the motions.

[3] It is to be noted that although Spence, J specifically ordered the Plaintiff to serve his motion materials on Mr. Gwynne in his Endorsement of February 12, 2010, Mr. Mereshensky conceded that he did not do so and thereby did not comply with the Order. His reason for non-compliance was simply that he did not wish to deal with Mr. Gwynne and would prefer to deal

with the Board of Directors at the Condominium. Notwithstanding his breach of the Order, Mr. Mereshensky advised the Court that wished to have his motion heard and I agreed to do so since the parties were present and prepared to proceed.

[4] I note as well for the record that service of documents upon the Plaintiff has been exceedingly difficult, with Mr. Mereshensky refusing to accept service of documents from the Condominium Corporation or from Mr. Gwynne's office, as is evidenced by the numerous affidavits of service provided to me. Justice Spence noted this problem as well in his Endorsement, with the Plaintiff denying service of the Defendant's motion notwithstanding an affidavit of service to the contrary.

[5] The Plaintiff resides in unit 204 of a condominium located at 1131 Steeles Avenue West in Toronto. The registered owners of the unit are his daughters [Ahuva Rozenfeld and Lyudmila Mereshensky] who are not parties to these actions. During the course of his submissions, Mr. Mereshensky provided to me copies of Powers of Attorney from his daughters, although I note only one of them was contained in the materials filed. In any event, it is not contested that Mr. Mereshensky is not the registered owner of the unit.

[6] Mr. Mereshensky brings a motion for default judgment against the Condominium Corporation in the sum of \$10,000 on the basis that the Statement of Defence was not served and filed. The Statement of Claim was issued December 15, 2009 under the *Simplified Rules*. It was amended pursuant to the Order of Master Hawkins to correctly name the Defendant. On December 30, 2009, the Defendant filed a Notice of Intent to Defend.

[7] The Defendant then brought its motion to strike the Statement of Claim which was served personally on January 21, 2010. The Plaintiff then filed a requisition for default judgment and the attendance before Justice Spence followed shortly thereafter.

[8] The essence of the Plaintiff's motion is that the Condominium Corporation has not served its Statement of Defence so he is entitled to judgment. Further, he objects to the lien which has been registered against the unit in November of 2008 for failure to pay common expenses. Having read Mr. Mereshensky's affidavit sworn December 17, 2009, it appears he objects to paying the compulsory common expense payments for items that he does not use. Further, he wished to mediate the matter with a particular mediator and the Condominium refused to use that mediator. He denies responsibility for water damage to the unit below him arising from a leak in the shower in the unit that he occupies. Finally, he asserts that he has paid the common expenses that he owes and argues that the lien that was placed against the unit in which he resides is "improper".

[9] The Defendant noted that the Plaintiff has had the benefit of various counsel over the course of this matter. Currently, he refuses to deal with the solicitor appointed for the Defendant. Mr. Gwynne argued that under section 84 of the *Condominium Act*, an owner must pay his or her proportionate share of the common expenses and upon default, section 85 enables the Condominium Corporation to file a lien against the unit for the unpaid amount, interest and costs. It was submitted that the Defendant is acting in accordance with the provisions of the *Condominium Act*.

[10] Furthermore, Mr. Gwynne argued that the Plaintiff's claim ought to be struck as it is frivolous and vexatious and discloses no reasonable cause of action. He has brought similar proceedings in Small Claims Court, which have been stayed.

Analysis

[11] The Plaintiff's motion must fail. A review of the history of this action makes it clear that after service of the Statement of Claim, the Condominium Corporation retained counsel and filed a Notice of Intent to Defend. There was no undue delay and given the history of this matter, the Plaintiff cannot be heard to say that he believed the Defendant was not going to defend the action. After filing his Notice of Intent to Defend, Mr. Gwynne moved expeditiously to serve his motion to strike out the Statement of Claim. How could he be expected to serve a Statement of Defence when it is the position of the Condominium Corporation that it cannot plead to the action as it is presently constituted? The Plaintiff's motion is therefore dismissed.

[12] The *Condominium Act* provides a method of dealing with disputes between the Condominium Corporation and unit owners and that procedure has not been followed in the case before me. The mediation failed and section 132 of the *Act* provides that the parties must proceed to arbitration under the *Arbitration Act, 1991*.

Conclusion

[13] Thus, the within action is stayed. The parties are to proceed with arbitration pursuant to section 132 of the *Condominium Act* to determine the following issues: what amount, if any, is owed by unit 204 to the Defendant for common expense arrears, interest and chargebacks, including legal fees incurred in the collection or attempted collection of any said arrears, which includes the costs of today's attendance. The arbitrator shall determine how the cost of the arbitration is to be paid.

[14] It is unclear under what authority the Plaintiff purports to act. The Plaintiff is to deliver to the solicitor for the Defendant copies of any and all Powers of Attorney granted to him with reference to unit 204 within fourteen (14) days of the release date of this Endorsement. The unit owners Lyudmila Mereshensky and Ahuva Rozenfeld are to be added as parties to the arbitration. The Plaintiff is to provide to the solicitor for the Defendant the mailing addresses for Ms. Mereshensky and Ms. Rozenfeld within fourteen (14) days of the release date of this Endorsement.

[15] Counsel for the Defendant is to serve the Plaintiff with any further documentation by sending same by regular mail to his address, namely 204-1131 Steeles Avenue West, Toronto, Ontario M2R 3W8 and this shall constitute good and proper service under the *Rules of Civil Procedure*.

D.A. Wilson, J

Release Date: 2010 04 14