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Case Name:

**Metropolitan Toronto Condominium Corp. No. 932 v.
Lahrkamp**

Between

**Metropolitan Toronto Condominium Corporation 932, and
Michael Lahrkamp**

[2008] O.J. No. 3885

Court File No. 07-CV-343730 PD378

Ontario Superior Court of Justice

N.L. Backhouse J.

Heard: April 22, 2008.

Judgment: April 28, 2008.

(14 paras.)

Counsel:

J. Fine for applicant.

B. Rutherford for respondent.

Endorsement

N.L. BACKHOUSE J.:--

Overview

1 This is an application brought pursuant to sections 17 and 27(1) of the Condominium Act S.O. 1998, C. 19, as amended and s. 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43 as amended. The condominium corporation seeks a long list of relief against the respondent, one of its unit owners. There is no basis to grant some of the relief requested. However, in my view, the respondent's conduct toward the staff of the management office and members of the board of directors amounts to harassment and a remedy need to be fashioned to restrain it. The condominium corporation has the duty to manage the affairs of the corporation. That includes ensuring that its employees and directors are not being harassed in the course of their duties. The respondent has made it clear that short of a court order, he will not stop his harassment.

Background

2 This matter arises as a result of the board of directors' decision to renovate the lobby of the condominium corporation to accommodate access for disabled persons, the elderly and people with packages or bulky items. Although it was submitted on the respondent's behalf that he did not oppose improving handicapped access to the building, his conduct speaks otherwise.

3 The respondent has attempted unsuccessfully to stop the renovation. He commenced an injunction against the board of directors which was dismissed. He has conducted a campaign as the self-appointed watchdog of the renovation. Relying upon his rights under s. 55 of the Condominium Act to examine the records of the corporation, he has requested documents that resemble the kind of production required for an examination for discovery or an affidavit of documents. When he was advised that some of the documents did not exist, he would not accept this. One business day after his request to inspect documents, he requested compensation for the alleged failure of the condominium corporation to produce documents. He failed to pay reasonable photocopying charges for the documents he requested. He pestered the staff of the management office relentlessly about the documents. He requested information and answers to questions and requested the right to attend and address board meetings.

4 The respondent commenced five separate Small Claims Court actions against the condominium corporation, demanding production of the documents that he had requested, together with payment of \$2,500 for failure to provide the requested documents. Four of these actions were abandoned and the fifth was dismissed with costs against the respondent.

5 The respondent complained of alleged improprieties by the board of directors and breach of the Condominium Act.

6 The respondent justifies his conduct on the basis that he did not get the disclosure to which he was entitled and that the board of directors wish to be rid of him whom they consider to be a thorn in their side. No cross-application for relief against the condominium corporation was brought by him.

Harassment

7 During the week of March 19, 2007 when the condominium manager, Mr. Posthumous, was on vacation and the office staff member, Ms. Hodges, was alone in the management office, the respondent inundated Ms. Hodges with emails, telephone calls, and personal attendances. Ms. Hodges advised the respondent that she could not deal with his requests and that he should wait until Mr. Posthumous returned. In her affidavit sworn November 12, 2007, Ms. Hodges states, among other things, that she felt that she was being harassed, she could not carry on her daily activities and she felt that the respondent was trying to intimidate or threaten her into disclosing documents or information which he thought Mr. Posthumous or the board was keeping from him. The respondent advised her that the corporation would have to call the police to remove him from the management office. He threatened to have the management staff terminated.

8 Ms. Hodges deposed that the respondent's conduct has become increasingly belligerent, confrontational and harassing in nature. Between October 29 and 31, 2007 the respondent banged loudly on the management door on several occasions and then requested security personnel to locate management's whereabouts. On October 31, 2007, the respondent blocked the door out of the copy room where Ms. Hodges was working and asked her for information on the owners list. Ms. Hodges had completed an owners list as requested by the respondent together with an invoice for \$5.75 for the copying costs (\$.25 charge per page). The respondent refused to pay so he did not receive the list. She advised him to speak with Mr. Posthumous and the respondent stated that he would "be back later today". On cross examination, Ms. Hodges stated: "Every time he came into the office it was intimidating, bullying harassment ... When somebody continues to bug me over and over and over, that's harassing." She stated that he did this "over and over, day in, day out, without rest." Ms. Hodges deposed that given the confrontational and harassing conduct of the respondent and knowing that he may show up at any time, she did not feel comfortable being alone in the management office. She stated that she does not want to have any further telephone conversations or office confrontations with him.

9 The respondent indicated that he would not stay away from the management office unless there was a court order in place. Ms. Hodge's evidence was:

"It is apparent to me that the respondent's relentless harassment will not cease without outside intervention."

10 On October 20, 2007, the respondent positioned his car partially in front of a female director's car so as to impede it from proceeding and rolled down his window as if he wanted to talk to the director. The director's evidence is that she felt trapped but did not want to roll down her window to engage in a discussion or be harassed by the respondent. Eventually, he allowed her to pass.

11 Letters from the condominium's counsel asking the respondent to desist in his conduct have been ignored by the respondent.

Conclusion

12 The evidence does not establish that it is necessary to order a broad injunction against the respondent. The respondent is entitled to express his opinion about the board of directors and the lobby renovation. There is no basis to order the dismantling of the respondent's website. However, in my view, the respondent's conduct to the staff of the management office and to a member of the board of directors amounts to harassment. The Condominium Act gives the respondent the right to examine the records of the corporation. He is not entitled to abuse that right by conducting a campaign by siege against the management office and directors. Banging on the management door on several occasions, blocking the door where the staff person was working and positioning his car to impede a director from proceeding are examples of conduct which are harassing. There are a number of remedies available to the respondent under the Condominium Act including calling a meeting of owners, removing directors and suing for oppression. Harassment is not one of them. When the respondent has been asked to desist by counsel, he has not done so. He has made it clear that short of a court order he will not stop his harassment. A staff person or director should not have to feel intimidated and harassed by the respondent.

13 The decision of York Condominium No. 60 v. Brown, [2001] O.J. No. 5851 (S.C.J.) is distinguishable from this case. In that case, the condominium corporation sought to restrain a unit owner from making what it considered to be excessive requests for disclosure under a rule to prevent noxious or offensive activities being carried on which may become an annoyance or nuisance to the other owners or occupants. The condominium corporation sought an order requiring the unit owner to sell her unit. There was not evidence of the kind of harassment which I have found in this case. I agree with Justice Kiteley's decision that in that case, the relief requested could not be granted.

14 In these circumstances, I make the following order:

1. The respondent shall be restrained from communicating with any employee of the management office or member of the board of directors other than in writing.
2. The respondent shall be restrained from entering or coming within 25 foot of the management office located at 33 University Avenue, Toronto, Ontario.
3. The respondent shall request any records of the corporation he wishes to receive in writing. He shall not persist in making more than one request with respect to the same record. If he does, the condominium corporation shall not have to provide a further response. Any documents requested by the respondent that he is entitled to shall be produced to him after he has paid the photocopying charges in advance. Having abused the right, he shall not be permitted to attend to review the records in advance of requesting their production to him.
4. The condominium corporation shall make brief written submissions on costs within 14 days of the release of this decision. The respondent shall respond within 14 days of receiving the costs submissions of the condominium corporation.
5. The balance of the claims for relief is dismissed.

N.L. BACKHOUSE J.

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