CITATION: WENTWORTH CONDO CORP. and BRENDAN TAYLOR, 2014 ONSC 59
COURT FILE NO.: 13-40506
DATE: 2014-01-09

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
Wentworth Condominium Corporation No. 34	Robert W. Dowhan, for the Applicant
Applicant	
- and -	
Brendan Taylor, also known as Brenden Taylor, Brandon Taylor, Brendon Taylor, and Samantha Johns	Brendan Taylor, also known as Brenden Taylor, Brandon Taylor, Brendon Taylor, self representative
	Samantha Johns, self representative
Respondents	
	HEARD: October 24, 2013

The Honourable Madam Justice J. A. Milanetti

REASONS FOR JUDGMENT

BACKGROUND

[1] The Wentworth Condominium Corporation No. 34 ("Wentworth") brings this application pursuant to Sections 117, 119 and 134 of the *Condominium Act*. They allege that the

respondents Brendan Taylor and Samantha Johns have failed to abide by the *Act* as well the *Condominium Corporation Declaration, Bylaws and Rules.*

[2] Ms. Johns (aka Ms. Taylor) is the registered owner of unit #131-10 Angus Road, Hamilton. Mr. Taylor is her husband and resides there with Ms. Johns and her children.

[3] The application is derived from the behaviour of Mr. Taylor.

[4] The affidavits filed by Rosy Montini (unit #58 as well a director of the corporation), and Dolorosa Hurley and Bill Bucher (unit #61) outline complaints of aggressive and threatening behaviour towards them and other unit holders; and as well, assaultive behavior against other tenants and a contractor attending the property. There are also complaints of loud noise and vandalism.

[5] Ms. Montini maintains that her problems with Mr. Taylor began after she called police when witnessing a fight between Mr. Taylor and another occupant. It seems the police attended and spoke to both men. It is the position of Ms. Montini that Mr. Taylor's attitude towards her thereafter became confrontational, aggressive and threatening including rude gestures, menacing behaviour and aggressive insulting language. Her subsequent affidavit maintains that such a pattern continued even at a court attendance.

[6] It is clear that the three affiants most particularly Ms. Montini are the driving force behind this dispute. While there are references to disputes of other tenants, I see this as hearsay only in the absence of any evidence in this regard.

[7] Ms. Montini's affidavit contains significant hearsay about the complaints and positions of other unit holders. She references having witnessed an assault on Roman Kucirek when Mr. Taylor grabbed his arm on June 16, 2012. Ms. Montini states that Mr. Kucirek installed surveillance cameras on his property as a result; a step that seems to have decreased the incidents of vandalism for them both. I do not have an affidavit from Mr. Kucirek. Similarly, while the affidavits include emails from the property manager Dan Webb, I have no affidavit from this individual either.

[8] Ms. Montini suggests that people were too afraid to come forward, or have moved already as a result of Mr. Taylor's behaviour. Again, this is in the nature of hearsay, some of which is refuted by Ms. Johns in her responding material (in a document which I would say was erroneously labeled as a "affidavit of documents") setting out Ms. John's responses to the allegations of the applicants, some email correspondence, letters of reference from numerous other unit owners/occupants, and a letter from Mr. Taylor. None are in affidavit format.

[9] The respondents who initially had this matter adjourned a couple of times to "seek legal representation" ultimately chose to represent themselves.

[10] They made a preliminary argument regarding the lack of mediation as contemplated in Section 132 of the *Condominium Act*.

[11] In this regard I would adopt as my own, the reasoning of Justice Code in *Metropolitan Toronto Condominium Corporation No. 747 vs. Korolekh* (2010) O.J. No. 3491, most particularly paragraphs 48 through 51 thereof. Breaches of the *Act* are alleged in this application

and thus the mandatory requirement to attempt mediation does not apply. Moreover, given the materials filed and approach taken by the respondents, I see mediation as merely setting another layer of unnecessary expense in this matter.

[12] I am somewhat perplexed about the position of the respondents. Ms. Johns and Mr. Taylor refute some of the allegations and points out (fairly in my view) that the allegations of vandalism for instance are un-witnessed despite the presence of the aforementioned surveillance cameras placed on some of the units under discussion. (Cameras the applicants say were installed as a result of the vandalism and actions of Mr. Taylor). This also points to Ms. Montini's role as a parent spokesman for many; something I have noted as well.

[13] That being said, it is clear from the evidence before me, including that preferred in letter form from Ms. Johns Taylor that Mr. Taylor has been at least confrontational and verbally aggressive to contractors and other tenants as well as Ms. Taylor herself. Ms. Taylor herself describes Mr. Taylor as "verbally abusive", "verbally attacking" her, for instance. Ms. Taylor's letter is in response to the allegations made by the affiants particularly those that suggest that her as a unit holder has done nothing to control the behaviour of another occupier of her unit. She effectively states that she has tried to control Mr. Taylor; get him to get help, but he has not done so. Her letter initially says she would ask him to leave as her home is important to she and her children. (I wonder about this contention particularly as I note that they are married and thus seemingly it would be categorized as matrimonial property jointly owned).

[14] The order sought by the corporation as this stage is not terribly onerous. They seek:

a) A Declaration that the Respondents have acted in a manner that is contrary to the *Condominium Act*, 1998, and the Applicant's Declaration and Rules;

b) An Order requiring the Respondent, Brendan Taylor, to be of good behaviour and keep the peace while on the property;

c) An Order requiring the Respondent, Brendan Taylor, to cease and desist from uncivil, improper or illegal conduct that violates the *Condominium Act, 1998*, or the Applicant's Declaration, By-Laws and Rules;

d) An Order requiring the Respondent, Brendan Taylor, to refrain from assaulting, verbally abusing, swearing at, harassing, threatening or intimidating any of the other occupants, their families, guests or invitees, and any of the directors, employees, or contractors serving the Condominium, including without limitation, any person who has sworn an affidavit or provided evidence of any kind in this application;

e) An Order requiring the Respondent, Brendan Taylor, to refrain from communicating with or approaching, within 15 feet, except as duly authorized meeting of the owners, the following persons: Rosi Montini, Dolorosa ("Dolores") Hurly, William Bucher, Roman Kucirek; and

f) An order that the Respondent, Samantha Johns, ensure the occupants of her unit, including Brendan Taylor, comply with the *Condominium Act, 1998,* and the Applicant's Declaration, By-Laws and Rules.

[15] It will however, serve as a starting ground for any further complaints. As such, I understand the reluctance of the respondents to agree to the offer sought. Moreover, the applicant seeks significant costs payable on a full indemnity basis. This will be dealt with later in the decision. This may well have significant consequences for the Respondents.

[16] It would appear to me that this is a significant contest between Ms. Montini and Mr. Taylor. That being said, Ms. Montini's version of the events is supported by other information including emails and police occurrence reports. There are contemporaneous notes of the incident and verifications of such as the approach taken by Mr. Taylor to the independent contractors who happened to park in his driveway.

[17] Add to the mix, while not in affidavit form, there are significantly more letters from other condo owners who apparently are supportive of Mr. Taylor. It is tough to reconcile these sentiments with those articulated by Ms. Montini, Ms. Hurley and her partner Mr. Bucher. That being said, Ms. Johns' own evidence substantiates the verbal altercations with the neighbours and the contractors as well as Mr. Taylor's aggressive nature.

[18] This could be cast as a personal conflict between Ms. Montini and Mr. Taylor (he says that Bucher/Hurley are her friends), but the contractor complaint does not fit that bill. Moreover, the emails from the property manager suggest something greater than a personal dispute between Mr. Taylor and Ms. Montini.

[19] Most importantly however, Ms. Taylor's evidence itself (while purportedly refuting some of the statements of the affiants) serves to confirm the allegations generally described by the

affiant. None of the individuals have been cross-examined; perhaps as the respondents are self-represented, but this too was a choice they made after having being alerted by previous justices of the significance of this application.

[20] Given that the order sought is not terribly onerous and really should present as no problem for condo owners/occupants who are content to live amicably and peacefully in a cooperative environment which they chose to be a part of, the application shall be granted.

Costs:

[21] The applicant provided both a Bill a Costs and a Factum on Costs for my review. They seek full indemnity costs of $28,281.71 ($24,060.00 of fees plus disbursements and HST).

[22] I note that the affidavit of Stephanie Burnett (law clerk) attaches letters from August 21, 2012 and September 27, 2012 to the respondents dealing with the complaints of Mr. Taylor's conduct. Both letters ask that he cease and desist and warn that if an application were necessary, the costs could exceed $10,000 and would be sought to be paid by the applicants on a full indemnity basis. Despite these legal warnings, it appears that Mr. Taylor continued to act inappropriately.

[23] Ms. Taylor argues that she should has done all she can to continue her spouse's unruly behaviour; the costs consequences should not be visited upon her for his behaviour. At the hearing, both were in attendance and appeared as a team. I do not accept that she as title holder to the property (although a difficult position given we are dealing with an occupant who is her husband), cannot avoid responsibility for the consequences of his actions. Part of their family

unit is, I find, a disruptive, difficult, aggressive and threatening force in this cooperative community. They were both warned that there would be financial consequences of failure to "turn this ship around". Not only did that not occur, but this matter was adjourned from its first appearance in April 2013 five times until it was heard. They had plenty of opportunity to try and resolve it without further attendance and expense of court itself.

[24] It is clear to me that the balance of the condominium owners should not be faced with the legal expense of the intransigence of one of the unit holders. When people choose to live in a close community neighbourhood, they are bound to accept the responsibility of fairness and decency to their neighbours.

[25] I find that costs shall be payable on a full indemnity basis.

[26] The question becomes how much should those costs be. It is apparent from the Bill of Costs filed that much of the spade work was done by a junior lawyer at fees of less significant rates. This is a reasonable approach to take. That being said, given that the nature of these complaints are not at the most egregious end of the scale (as seen in the *Korolekh* decision and reflected by the most significant order made-sale of the unit/vacating the premises), and reflect the order sought and granted herein, I find the fees to be quite excessive. While numerous court attendances were required (partly I understand due to scheduling issues at court), the case has not substantially changed since the application was filed.

[27] As such, I have a tough time forcing an unsuccessful litigant to pay significant costs that reflect repeated preparation and review of the same narrow subject matter. Lead counsel spent

significant hours preparing for the initial attendance in April 2013 (10 hours). He then spent another 5.5 hours preparing for each of the subsequent attendances over and above the 2 hour review of the respondent's materials. I find this to be excessive both in the circumstances of this case, in the context of the order being sought. I also find the time spent by Ms. Kelly (albeit at a more reasonable rate) to be excessive given the factual context. In terms of the clerk, I find many of the hours to be clerical in nature (but for the .2 hours to prepare a draft judgment that I did not see and a prior Bill of Costs for .6 hours on May 28, 2013).

[28] I would thus eliminate hours attributable to Ms. Delaney (13.3) and reduce the hours of Mr. Dowhan and Ms. Kelly by approximately one-third. I would thus allow an aggregate sum of $15,048.00 inclusive of fees, disbursements and HST as the costs that are payable. This in my view is more in line with what an unsuccessful litigant would expect to pay; most particularly when they had been warned of the significant financial consequences of failure to address the problematic behaviour more than a year in advance of the hearing.

[29] I understand that this will present a significant financial hardship to the respondents, but impecuniosity is not an adequate excuse for failing to deal with matters in their own control. This is particularly so when the alternative is to force innocent property owners to pay the costs of enforcing statutory and regulatory laws of which all condo owners are deemed are aware.

[30] These costs shall be added to the common expenses for unit #131 in 36 monthly installments in the amount of $418.00.

Released: January 9, 2014

MILANETTI J.

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Milanetti J.

JAM:km

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