

2013 CarswellOnt 8514, 2013 ONSC 3328

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York **Condominium Corp.** No. 17 v. Ge

York **Condominium Corporation** No. 17, Plaintiff and An Ge, Defendant

An Ge, Plaintiff by Counterclaim and York **Condominium Corporation** No. 17 and Sylvester Sequeira, Defendants to the Counterclaim

Ontario Superior Court of Justice

Greer J.

Heard: June 05, 2013

Judgment: June 11, 2013

Docket: CV-10413165

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Counsel: Carol A. Dirks, for Plaintiff

An Ge, for himself

Subject: Civil Practice and Procedure; Corporate and Commercial; Property; Public

Alternative dispute resolution

Civil practice and procedure

Real property

Greer J.:

1. Background

1 York **Condominium Corporation** No. 17, as Plaintiff and one of the Defendants to the Counterclaim, moves for Summary Judgment in this action against An Ge, the Defendant and Plaintiff by Counterclaim. I shall refer to the Plaintiff as "YCC 17", in both the Claim and Counterclaim and "Mr. Ge" for the Defendant and Plaintiff by Counterclaim.

2 YCC 17 is a **condominium corporation**, which administers and manages 115 residential units on 384

Driftwood Avenue. Mr. Ge is the owner of unit #22 in that complex. He bought his unit, a townhouse, from Mr. Luu, the previous owner, in 2008 for \$163,000. It is a single family unit with 3 bedrooms on the second floor, an illegal bedroom on the main floor (formed by blocking a hallway with 2 doors), and 3 bedrooms in the basement, 2 of which are illegal.

3 The history of what took place between YCC 17 and Mr. Ge is legally long and protracted, with Mr. Ge failing to take any steps he was ordered to do by the Board of YCC 17, to return his unit to a single-family dwelling pursuant to Article 17 of the YCC 17 Declaration. Instead, Mr. Ge turned the premises into a boarding or rooming house, with 2 or more tenants occupying the illegal bedrooms at any one time. All bedrooms were fitted with locks on the doors.

4 The YCC 17 Board wrote to Mr. Ge on July 3, 2009 stating that it had observed "tenants" or "roomers" coming and going from his unit. It points to the provision of the Condominium Act, 1998, ("the Act") which states that the owner is obliged to inform the Corporation if the unit is rented out. Mr. Ge was provided with a copy of the House Rules and By-Laws that all unit owners and their families are expected to abide by. The Board gave him 7 days to clarify the status of the unit. Mr. Ge did not reply.

5 On August 3, 2009, the Board again wrote to Mr. Ge about his unit, noting that all units were "single family" units. It pointed out that occupation of a unit by tenants or roomers, is illegal. It ordered Mr. Ge to cease from operating his unit as a "multi purpose rooming house" and to restore the unit to its legal use as a single-family dwelling. The Board said if this demand was not complied with by August 21, 2009, it would take legal action. At the end of the letter, it states that all legal and Court costs will be attached to his unit's charges.

6 On November 2, 2009, Mr Ge was sent a third letter, this time by YCC 17's lawyer, about his behaviour. It included a Notice of Mediation brief to be followed under the Rules. Mr. Ge's response was a note saying he wanted to meet with them. They met on November 6, 2009. He claimed that there were no tenants and thus no breach was taking place. This was not true. Mr. Ge refused to participate in the mediation. That refusal triggered the Arbitration Clause under S.132 of the Act.

7 The Board had, on December 11, 2009, inspected the unit and determined that there were 3 illegal bedrooms in the unit. In a letter dated January 4, 2010, the Board set out the infractions under the Act, also noting these were improperly installed or non-functioning smoke alarms in the unit. Counsel for the Board again wrote about the infractions on January 5, 2010 and February 1, 2010, noting if they were not resolved by April 1, 2010, the Board would proceed to arbitration. Further warnings were sent about the Arbitration and the issue of costs, but were ignored by Mr. Ge.

8 Mr. Ge e-mailed the counsel on April 23, 2010 saying: "I got your mail, but it's difficult to understand for me. I no choice, only one way kill me please." On May 16, 2010, Mr. Ge e-mailed again that he would go to Court.

9 An Arbitration Agreement was sent to Mr. Ge, which he did not complete and send back. He e-mailed counsel again saying he was refusing to arbitrate, "...because protecting basic human right is important..."

10 The Arbitration took place on August 16, 2010 before Arbitrator, Audrey Loeb. Her decision is dated August 24, 2010 in which she found Mr. Ge in breach of the Declaration and By-laws of YCC 17. Her Award reads as follows:

I DECLARE AND AWARD THAT:**1. Breach of the declaration:**

- a. The Unit Owner is in breach of the declaration of YCC 17 which prohibits the use of units for other than single family use.
- b. The Unit Owner shall, within 30 days of the date of the decision, remove all tenants from the unit, remove all unauthorized partitions, being the basement bedrooms and the living room bedroom and restore the unit to its single family use.
- c. YCC 17 may, upon giving reasonable advance notice, make entry to the Unit Owner's unit to inspect the unit and ensure that the obligations in the previous paragraphs have been fulfilled.

The Arbitrator also found that Mr. Ge was responsible for the legal costs of \$5,181.72 and all condominium fees not paid. The Board obtained a lien for \$8,913.92, which it registered on title on September 30, 2010. The mortgage of the unit eventually absorbed these Costs, as it was properly put on notice, and the amount was added to the mortgage.

11 A Statement of Claim was issued in this matter on October 28, 2010, under the Simplified Rule 76, for possession of the unit and for an Order under S.50 of the *Arbitration Act, 1991* to enforce the Arbitration Award. Mr. Ge had issued a Statement of Defence and Counterclaim on November 15, 2010, counterclaiming against YCC 17 and a Board member, Mr. Sequeira. A Defence to the Counterclaim was served and filed by the Board on November 30, 2010.

12 I am told that the matter did not move forward due to changes on the Board and an election of new Board members. Present counsel was only recently retained.

13 I granted Judgment for YCC 17, a copy of which is attached hereto as "Schedule A". I undertook, in my Endorsement, to provide written Reasons. These are those Reasons.

2. Position of Mr. Ge

14 Mr. Ge's e-mails and other correspondence and Court documentation served and filed by him are all in English. He is, by birth Mandarin-speaking and used an Interpreter to assist him. He says the unit is the same as when he bought it from Mr. Luu. He denies having tenants or roomers, yet they were clearly seen by Board members and two were spoken to on one occasion. Another was seen riding his bicycle at 8:00 p.m. one evening. Even the shoe rack in Mr. Ge's own pictures show many pairs of shoes there. These pictures also show the illegal doors on the main floor which he claims were put there by him "to save energy". A bed was observed by a Board member inspecting the unit, in that blocked off area.

15 Mr. Ge admits that he did have tenants for 9 months from December 2011 to September 2012 when he went to China for 3 months, returning in February 2012. He rented a room in a friend's place until the tenants vacated in September 2012. No notice was ever given to YCC 17, so he was in breach of its By-Laws.

16 Mr. Ge complained that Board members, especially Mr. Sequeira, treated him badly. He claims there was an "illegal entry" into his unit. This is incorrect, since each entry made by Board members was on notice and

complied with the by-laws. He says he tried to sell the unit but was prevented from doing so by the Board. Again, Mr. Ge is incorrect. The Board has an obligation, when asked for a Status Certificate, to note that there are illegal bedrooms in the unit.

17 Mr. Ge pleads poverty and unfairness to him because his income is low and he has no money to pay legal costs awarded against him. He presented his 2012 Notice of Assessment from CRA. It appears he has very little left after paying mortgage payments of \$503 per month, taxes, utilities, telephone, insurance, as well as common expenses \$330.75 per month (all absorbed into the lien). The mortgage is now about \$163,000 with the lien added to it so there is little equity, if any, left in the unit.

3. Legal Analysis

18 Under Rule 20.04(2) of the *Rules of Civil Procedure*, a Summary Judgment may be granted if there is no triable issue. The case before me has no triable issue. The Arbitration Award was never complied with nor was it appealed. It stands as it was released on August 24, 2010. Article 10 of the Declaration of YCC 17 has been breached. Subsection 10(a) states that "...Each unit shall be occupied and used as a single-family dwelling residence only." Subsection 10(b) states that no unit or any part of it can be used as a "rooming house".

19 In June and July 2012, YCC 17 inspected the unit as part of an annual fire inspection, and it was determined that the unit continued to be occupied as a rooming house and had not been restored to a single-family dwelling. At the end of the Motion before me, Mr. Ge admitted that he had 2 tenants now living with him, as his wife has returned to China.

20 There is no proper defence to the Arbitration Award, as all the evidence shows. It is not in the interests of justice to allow a Trial to take place. There is no triable issue. The legislation governing condominiums and the By-Laws and Declaration of YCC 17 have been breached. The legal system, under which condominiums operate, has totally been ignored by Mr. Ge. I am of the view he had some help preparing his documentation, but the law was completely ignored.

21 Section 50 of the *Arbitration Act, 1991* deals with the enforcement of arbitration awards. Subsection 50 (3) states that the Court shall give a judgment enforcing an award made in Ontario, unless certain conditions apply. They are listed and none apply to the case at bar.

22 Mr. Ge was also in breach of S. 119 of the *Condominium Act, 1998*, by failing to ensure that all persons occupying the unit, including himself, complied with this Act, the declaration, the by-laws and the rules of YCC 17.

23 The Board of Directors of YCC 17 also has a legal duty to effect compliance with the Act, as well as with the Declaration, the By-laws and the Rules. See: *Metropolitan Toronto Condominium Corporation No. 850 v. Oikle*, [1994] O.J. No. 3055(O.C.J. (Gen.Div.)). There is no discretion for the Board to do otherwise. This is something Mr. Ge kept ignoring. It was only because there was an election for a new Board of Directors and having them in place, that delayed the Board from moving, after the Arbitration in 2010, to have the Claim set down to be heard.

24 Mr. Ge refused to participate in the process that is directed to be taken by the Board when a dispute arises with an owner. He ignored the Board's effort to set up a mediation, as provided under the Rules. He ignored the Arbitration process, although he did correspond by e-mail with the Board's counsel.

25 Mr. Ge, in his Affidavit sworn May 8, 2013, sets out his complaints about the Board, and in particular, Mr. Sequeira, who he has sued by Counterclaim. Mr. Ge said he gave "false information" to the owners for his own personal interest. There is no evidence to show that. Mr. Sequeira is a member of the Board and did nothing in his personal capacity. The claim against him is therefore dismissed, as is the whole Counterclaim.

26 Mr. Ge says the Arbitration Award should not be enforced. It was never appealed and stands as it is. This Summary Judgment Motion is to enforce that Award.

27 In *Nipissing Condominium Corporation No. 4 v. Paul Kilfoyl, Stephanie Kilfoyl and unknown occupiers of Unit 667-7 Gormanville Road, North Bay, Ontario*, released September 9, 2009, Mr. Justice Stong dealt with circumstances similar to this case, where there were non-family occupants in a condominium where the Declaration and By-Law clearly stated a unit was only to be occupied by a "single family". There, although the Board requested an occupancy list from the owner, none was forthcoming, until after the Board had taken legal action by way of an Application. At para. 29 he said:

The condominium project is unique in that individual families have their privacy protected within their own units but at the same time are required to live by the rules of the community as they pertain to common areas used by all members of the individual condominium project.

28 In para. 34 he said:

A "one family residence" is a basic social unit which involves more than merely sharing short term temporary sleeping quarters and shared facilities on a rental basis as is the case here.

29 The above quotes apply to all condominiums with single family restrictions. I am satisfied that while Mr. Ge may not have read the Declaration, By-Laws and Rules, after the first letter to him from the Board, he was aware of this and chose to ignore it.

30 The price for such willful failure to comply is that the Board is entitled to its legal Costs, sought against Mr. Ge. This has been outlined by the Court of Appeal in , [2005 CarswellOnt 1576](#), 31 R.P.R. (4th) 169, 253 D.L.R. (4th) 636, [197 O.A.C. 145](#), in para. 40 of CarswellOnt. It reads:

My review of the terms of s. 134(5) leads me to agree with counsel for MTCC's submissions that the section was intended to shift the financial burden of obtaining compliance orders from the **condominium corporation** and ultimately, the innocent unit owners, to the unit owners whose conduct necessitated the obtaining of the order. Furthermore, the Section was enacted to provide a means whereby the **condominium corporation** could, if necessary, recover those costs from the unit-owner through the sale of the unit.

31 Mr. Ge's continuing stubborn refusal to comply with the provisions set out in the letters of the Board and its counsel, has for a second time, placed the legal costs squarely on his shoulders. I fix those Costs at \$9,671.53 plus HST, being the partial indemnity costs as set out in the Bill of Costs presented by counsel for the Board. YCC 17 will have to pay the actual legal costs, thus putting some of the cost burden on its account, given the lengthy delay in moving the matter forward.

32 Judgment shall issue as signed by me. I undertook to deliver Reasons for the Judgment in my Endorsement of June 5, 2013. It gives Mr. Ge a timeline to comply with and allows a further inspection by the Board on 48 hours notice. If Mr. Ge fails to comply, the Board can take the steps set out in para. 7 of the Judgment.

33 Mr. Ge sees himself as a victim. He is not a victim. He is the author of his own misfortune for his stubborn refusal to comply. He now says he will inform the Board of his two tenants and give them notice to vacate. He has undertaken to remove the 2 illegal doors on the main floor where he has turned a hallway into a bedroom. He now knows he must change the basement configuration so that 2 of the 3 bedrooms are demolished. He must then consider whether he will continue to live in the unit or sell it.

END OF DOCUMENT