

DATE: 20140505

SUPERIOR COURT OF JUSTICE

HEARD: April 14, 2014

REASONS FOR JUDGMENT

[4] The applicant sought significant relief pursuant to the *Condominium Act*, 1998 (the Act) including orders that the respondent vacate her unit and that the unit be sold. The applicant

2014 ONS 258 (Call)

referred to violent, harassing and inappropriate conduct of the respondent that constituted a breach of the *Act* and the declaration and rules of the condominium corporation.

[5] The specific conduct referred to in the application included the following:

- (a) acting violently towards staff of the condominium corporation including physically assaulting the property manager;
- (b) behaving abusively towards condominium staff through insults, foul language aggressive and threatening conduct;
- (c) repeatedly harassing, threatening and behaving aggressively towards unit owners and other residents on the common elements;
- (d) making inappropriate and misplaced threats to fire the property manager, both orally and in writing;
- (e) berating, harassing and intimidating the property manager and following her and other employees of the condominium corporation around the building;
- (f) inappropriate and bizarre gestures, including speaking incoherently, randomly laughing out loud and glaring at staff, unit owners and their children;
- (g) placing and leaving refuse and offensive materials in the common element hallways; and,
- (h) posting notes, pictures and other items on the common elements without prior board approval.

[6] On September 9, 2013, Justice Stinson made an Order that restrained the respondent from the following:

- (a) entering upon the common elements of the condominium corporation except for the purpose of ingress and egress from her unit;
- (b) having any oral or physical contact or communication with any resident or employee of the applicant;
- (c) communicating with, harassing or having any contact, except in the case of an emergency, and then in writing only, with any member of the board directors, any management or security personnel, any other employee of the applicant, or any other person doing business with the applicant, including but not limited to any of the individuals who had sworn affidavits in the proceedings;

- (d) coming within 25 feet for any of the individuals who had sworn affidavits in the proceedings;
- (e) entering or coming within 25 feet for the management office located at 10 Parkway Forest Drive, Toronto, Ontario, except in an emergency, in which case the respondent will only drop off a written communication and then leave without any further communication or contact; and,
- (f) consciously, intentionally, deliberately or unreasonably disturbing the comfort and quiet enjoyment of the units and common elements of the other owners, or their family members, guests and visitors.

[7] The respondent breached Justice Stinson's Order when she:

- (a) started two fires in her unit;
- (b) placed human feces in a newspaper and stuffed it into the mail slot of a unit door for another owner in the building;
- (c) exposed herself to two people while naked and made obscene gestures using her genitalia;
- (d) came within 25 feet of individuals who had sworn affidavits in the proceedings;
- (e) entered the management office for a reason which was not an emergency;
- (f) had oral communications with two person she was not supposed to communicate with; and,
- (g) refused access to her unit which would have, but for the actions of the condominium corporation, caused 34 other unit owners to be without water service or caused a flood in the building.

[8] On October 21, 2013 Justice Morgan ordered the following:

- (a) The respondent was to undergo a mental health examination to be completed no later than January 21, 2014; and
- (b) results of the examination were to be sent to the Court, counsel for the applicant, and the Office of the Public Guardian and Trustee.

[9] The respondent did not comply with that Order.

[10] On February 7, 2014 Justice Morgan appointed the Office of the Public Guardian and Trustee as Litigation Guardian in these proceedings.

[11] On February 11, 2014 the respondent was arrested pursuant to the provisions of the *Mental Health Act*. She was released on March 13, 2014 and returned to her unit. The Litigation Guardian advises that she is currently medicated and there have been no incidents since.

[12] The applicant is spending approximately \$400 per day on security specifically related to the respondent.

THE LAW

[13] The *Act* imposes a positive duty on the condominium corporation to take all reasonable steps to ensure that all unit owners comply with the *Act*, and with the declaration, by-laws and rules of the condominium corporation.

The *Condominium Act*, s. 17(3).

[14] The *Act* also provides that no person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.

The *Condominium Act*, s. 117.

[15] Unit owners have a legal duty to comply with the *Act* and the declarations and the rules of the condominium corporation. The applicant has a right to require compliance.

The *Condominium Act*, s. 119.

[16] The condominium corporation may apply to the Superior Court for an order enforcing compliance by a resident with the provisions of the *Act*, and with the declaration, by-laws and rules of the condominium corporation. The Court may grant such relief as is fair and equitable in the circumstances.

The *Condominium Act*, s. 134.

EVIDENCE RELIED ON BY THE APPLICANT

[17] The conduct of the respondent referred to in support of this application includes the following:

- (a) started two fires in her unit;
- (b) threatened and harassed two persons by leaving human excrement in front of their door within the condominium corporation;
- (c) assaulting a person within the property by punching her in the face;
- (d) exposing herself while naked to two persons within the condominium corporation;

- (e) making obscene gestures, using her genitalia, to two persons;
- (f) forced her way into another person's unit on numerous occasions;
- (g) yelled at and assailed various people, including contractors of the condominium corporation;
- (h) intercepted various people on the common elements; and
- (i) threatened two people within the common elements by saying "you better watch your backs".

[18] Five of the affiants in support of the application expressed either fear or serious concern of running into the respondent in the common elements or near the condominium.

[19] The Litigation Guardian did not file any evidence or take issue with the conduct attributed to the respondent Valerie Victoria James.

PRECEDENTS FOR THE FORCED SALE OF A CONDOMINIUM UNIT

[20] The extraordinary remedy of a vacating order and forced sale of a condominium unit has been made in cases where it has been demonstrated that the resident was unsuited for communal living. That requires respect and consideration for one's neighbours and socially acceptable behaviour.

Metropolitan Toronto Condominium Corp. 946 v. M. (J.V.) (Litigation Guardian of), 2008 CarswellOnt 8111 (SCO).

Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh, 2010 CarswellOnt 5939 (SCO).

Waterloo North Condominium Corp. No. 168 v. Webb, 2011 CarswellOnt 3276 (SCO).

Peel Condominium Corp. No. 304 v. Hirsi, 2014 CarswellOnt 444 (SCO).

York Condominium Corporation No. 82 v. Singh, 2013 CarswellOnt 4183 (SCO).

ANALYSIS

[21] Previous court orders were not sufficient to control the unacceptable and antisocial behaviour of the respondent. Her actions have presented a series of health and safety issues for other residents, management and visitors to the condominium corporation.

[22] Unfortunately, the respondent suffers from a mental illness. I appreciate that it will be a hardship for her to vacate the unit and have the unit sold. However, it must be borne in mind that

while the applicant is a corporate body, it is the men, women and children who live and work in the building and their visitors and guests who have been confronted with behaviour that ranges from disturbing to disgusting to threatening. I do not see remedies short of an order vacating the unit and ordering a sale as sufficient to address the uncontested breaches of the *Act* and the rules of the condominium corporation.

RESULT

[23] My Order dated April 14, 2014 includes the following declarations and terms:

1. The respondent has breached the Orders of Justice Stinson dated September 9, 2013 and Justice Morgan dated October 21, 2013.
2. The respondent is restrained from littering, posting and circulating religious and personal materials on the common elements area of the condominium.
3. The respondent is restrained from harassing and intimidating occupants of other units, their family and friends and visitors anywhere within the condominium building.
4. The respondent is restrained from harassing or intimidating any management or other staff of the applicant anywhere within the condominium building.
5. The respondent is restrained from affixing signs and advertisements anywhere within the common elements of the applicant without prior written consent from the board of directors.
6. The respondent is restrained from placing or leaving debris, refuse and garbage in the common elements or hallways.
7. The respondent is restrained from obstructing unit owners and other persons in hallways, elevators and entrances.
8. The respondent is restrained from disturbing the comfort and quiet enjoyment of the occupants of other units, their family, guests or visitors.
9. The respondent shall immediately cause her unit being Unit 10, Level 6, York Condominium Plan No. 301, to be listed for sale with a realtor and not cause the said listing to end other than by sale of the unit, without leave of the Court; and in this regard, the respondent shall:
 - (a) make all reasonable efforts to effect the sale of the unit, including listing the unit for sale at a reasonable price and permitting unimpeded entry into the unit for the purpose of listing or showing, and accepting any reasonable offer to purchase the unit;

- (b) vacate the unit by the earlier of the closing of the sale transaction or 90 days from the date of this Order and shall remove from such unit, all of her belongings and contents; and,
 - (c) not enter or occupy the unit after the expiry of such time period for vacating the unit, except with leave of the Court or with prior written consent of the applicant.
10. The applicant may, if the respondent does not comply with paragraph 9 herein, or if the unit has not been sold and transferred to a *bona fide* purchaser for value within 90 days from the date of this Order, apply for one or both of an order for possession of the unit and the appointment of a receiver and manager to effect sale of the unit pursuant to this Order.
11. Pending the sale of the unit, the respondent shall not:
- (a) have any contact with any member of the board of directors or property management, except in writing, and except in the case of an emergency affecting the respondent's safety and/or security; and
 - (b) enter the management office of the applicant.
12. In the event that the respondent fails to comply with any provisions of this Order, the applicant may re-attend on two days' notice for a further Order to enforce compliance, or as the Court deems just.

COSTS

[24] The Litigation Guardian has requested further time to assess the financial situation of the respondent before costs are assessed. The Litigation Guardian is to serve and forward any further written submissions on costs no later than May 5, 2014. The applicant will have ten days after receipt of such further written submissions to reply briefly in writing.

[25] Before leaving this matter, I wish to thank counsel for both the applicant and the Litigation Guardian for their thoughtful and sensitive submissions on this matter. I particularly commend Mr. Kim and the Office of the Public Guardian and Trustee for their important participation in cases such as this where an individual is clearly incapable of representing themselves on such important matters.

B. P. O'Marra J.

Released: May 5, 2014

CITATION: York Condominium Corporation No. 301 v. James, 2014 ONSC 2638
COURT FILE NO.: CV-13-487955
DATE: 20140505

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

YORK CONDOMINIUM CORPORATION NO. 301

Applicant

– and –

VALERIE VICTORIA JAMES, by her Litigation
Guardian, THE PUBLIC GUARDIAN AND TRUSTEE

Respondents

REASONS FOR JUDGMENT

B. P. O'Marra J.

Released: May 5, 2014

CITATION: York Condominium Corporation No. 301 v. James, 2014 ONSC 3360
COURT FILE NO.: CV-13-487955
DATE: 20140609

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: YORK CONDOMINIUM CORPORATION NO. 301, Applicant

AND:

VALERIE VICTORIA JAMES, BY HER LITIGATION GUARDIAN, THE
PUBLIC GUARDIAN AND TRUSTEE, Respondent

BEFORE: B. P. O'Marra J.

COUNSEL: *Jonathan H. Fine and Joy Mathews*, for the Applicant

Yeon-Tae Kim, for the Respondent

HEARD: In writing

COSTS ENDORSEMENT

[1] On April 14, 2014 I ordered that Valerie Victoria James vacate her unit and that the unit be sold. On February 7, 2014 Justice Morgan had appointed the Office of the Public Guardian and Trustee as Litigation Guardian for Ms. James.

[2] The applicant now seeks legal fees and other amounts as follows: \$117,769.65 on a partial indemnity scale; and \$125,230.48 on a full indemnity scale.

ADDITIONAL ACTUAL COSTS

[3] Section 134(5) of the *Condominium Act*, 1998 (the "Act") refers to legal costs owed by the condominium corporation to its lawyers and to costs incurred in obtaining the order.

Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc., 2005 CanLII 13778 (ONCA) at para. 45.

[4] A court determining "additional actual costs" under s. 134(5) of the Act must consider what would be a reasonable amount for the condominium corporation to pay its own lawyer to obtain the compliance order. This assessment is based on the principle of *quantum meruit*. A court must then explain how it arrived at the right amount.

Durham Standard Condominium Corp. No. 187 v. Morton [2012] O.J. No. 4375 (Div. Crt.) at para. 16.

[5] Section 134(5) of the Act speaks separately to “an award of costs” on the one hand and “additional actual costs” on the other hand. “An award of costs” refers to the costs that the court orders one litigant to pay another litigant. “Additional other costs” can encompass those legal costs owing as between the client and its own lawyer beyond the costs that the court ordered paid by the opposing party.

Skyline Executive Properties (supra) at para. 8.

[6] The applicant should be able to recoup almost all of what it paid to its lawyers to obtain the order. The focus is on what amount would be reasonable for a client to pay its own lawyer. The principles governing the assessment of legal bills as between a lawyer and a client should govern a claim for “additional legal costs”.

Skyline Executive Properties (supra) at para. 45.

ANALYSIS

[7] The costs submissions for the applicant include the following charges that are neither legal fees nor disbursements. They are as follows:

Locksmith charges	\$ 2,828.05
Security charges	20,868.84
Plumbing charges	1,243.00
Fire inspection and environmental restoration charges	2,886.27
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	\$27,826.16

Those items are real costs incurred by the applicant as a consequence of the respondent’s behaviour but they are not “additional actual cost” within the meaning of the Act. They also cannot be described as having been incurred in obtaining the order. The award of costs will not include those items.

[8] The lawyers for the applicant have submitted for 305.8 hours. That includes 46.1 hours for Mr. Fine (1976 call to the Bar) and 243.4 hours by Joy Mathews (2012 call to the Bar). Both Mr. Fine and Joy Mathews attended and billed for motion scheduling dates as well as hearing dates. The combined court attendance total was 53.3 hours. It was not necessary or reasonable that both senior and new associate attend for the various scheduling dates.

[9] I am satisfied that a considerable amount of work was required to thoroughly prepare the materials filed on behalf of the applicant. However, the number of hours required, particularly attributed to less experienced counsel, was excessive.

[10] The applicant’s lawyers have significant experience and expertise in the area of condominium law. In my view, it is not reasonable expect that the applicant would pay for the excessive number of hours submitted for the lawyer who was called to the Bar in 2012. Most of those hours appear to be dedicated to the training and education of a young associate.

[11] The Court is entitled to sanction reprehensible conduct by a party in a costs order. In granting judgment in favour of the applicant I found that the conduct of Valerie Victoria James was antisocial and unacceptable. However, the misconduct flowed from the uncontested fact that she suffers from a mental illness.

[12] The appointment of the Public Guardian and Trustee as Litigation Guardian was based on a finding that Valerie Victoria James was under a disability. She was incapable of understanding the information and issues in the proceeding.

[13] The applicant presented very thorough materials on the application. The Litigation Guardian did not contest the alleged conduct of Ms. James. Brief oral submissions were directed solely to whether a remedy short of sale of the unit was appropriate.

[14] In my view, the applicant on this record would reasonably expect to pay the following to their own lawyers: 46 hours for Mr. Fine at his actual rate and 120 hours for the associate called to the Bar in 2012 at a partial indemnity rate plus disbursements of \$5,277.11.

RESULT

[15] Costs are payable to the applicant in the amount of \$58,000.00 inclusive of disbursements and HST.

B. P. O'Marra J.

Date: June 9, 2014