CITATION: York Condominium Corporation No 41 v. Schneider et al., 2015 ONSC 3919
COURT FILE NO.: CV-14-514647
DATE: 20150625

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: York Condominium Corporation No 41, Applicant

AND:

Neil Schneider and Linda Schneider, Respondents

BEFORE: Carole J. Brown, J.

COUNSEL: *Christopher J. Jaglowitz*, for the Applicant

Neil Schneider and Linda Schneider did not appear

HEARD: June 17, 2015

ENDORSEMENT

[1] The applicant brings this motion for a finding that the respondents, Neil and Linda Schneider, have failed to comply with the judgment of Faieta J dated February 2, 2015, and for an order that the respondents vacate and sell their unit as they have failed to comply with that judgment.

[2] The respondents appeared today for the first time and sought to adduce evidence. No evidence was previously served or filed. Further, they seek to vacate the Order of Faieta J, although no notice of motion or motion record for such relief were served or filed. Accordingly, I make no determination in this regard. There is no evidence on which to vacate the said Order.

[3] Mr. Schneider, on behalf of both defendants, states that he was given to understand that the application would not proceed on February 2. However, the evidence indicates that on February 2, he e-mailed counsel for the plaintiff indicating that he would not be present due to ill health and the weather. He had previously e-mailed her indicating that he would be undergoing angioplasty. This was brought to the attention of Faieta J, who determined that the matter would proceed.

[4] Mr. Schneider further states that the foul odours complained of did not emanate from his unit, but rather from the unit across the hallway, unit 203 where, he stated, the unit holders cooked curry all day. He stated that the odours were of curry. There is no evidence to support this. Indeed, the evidence is that foul odours, due to uncleanliness, emanated from the Schneider's unit. Further, he denied that his unit was unclean, or that it was infested with

cockroaches. He submitted that the photographs of the unit adduced by the applicant were "staged". When I asked if he was asserting that they were not true, he confirmed this. He further stated that they were taken by the condominium corporation which had illegally broken into and entered his unit. The photographs in evidence comprise "screen grabs" or "screen captures" taken from a video. taken by the extermination company, Orkin, which was retained by the corporation to exterminate pests, including those in the Schneider's unit. There are no photos in evidence other than the "screen captures", and therefore, no photos taken by the applicant. There is no evidence that the corporation illegally entered the Schneider's unit, or that it was staff from the condominium rather than Orkin that took the video. I do not accept this submission.

[5] Mr. Schneider states that, if the exterminator must enter and conduct treatments, they should not do the "flush and vac" treatments, but rather should conduct "steam and vac" treatments, due to his health. He has further stated in e-mails and in submissions to this Court that if such treatments are not effective, he will agree to undergo the "flush and vac" treatments. It is of note that Orkin, the extermination company retained, has, as late as June 11, recommended the "flush and vac" treatments, given the extent of the infestation. I have, in determining the issues before me, considered Mr. Schneider's submissions regarding his health.

[6] I am satisfied, based on all of the applicant's evidence before me, that the respondents have failed to comply with the judgment of Faieta J. They have failed to comply with the Orders set forth in that judgment, including permitting the applicant to enter and clean the unit, discard unsanitary items and carry out cockroach insecticide treatments as necessary to eradicate the serious cockroach infestation; refrain from creating and permitting intense odours to emanate from the unit into the common elements of the condominium and into the surrounding units; and to clean and maintain the unit as required to prevent pest infestations and odours. Faieta J. further ordered that the applicant may return to court for an order requiring the respondent to vacate and sell the unit in the event of further non-compliance.

[7] The evidence indicates that the respondents are in non-compliance of Faieta J's judgment. They continue to refuse to permit the applicant entry to clean and de-infest the unit; they continue to fail to clean their unit in order to eradicate the severe infestation of cockroaches and prevent further infestations to continue; and they continue to prevent the transmission of offensive odours into the common elements and surrounding units. The respondents are in breach of the judgment of Faieta J., as well as the provisions of the *Condominium Act*, sections 90 and 117. The continuing conditions pose health risks and a dangerous condition for the respondents, the residents of the surrounding units and the common elements of the condominium. The respondents' behaviour to date shows the clear lack of compliance with the responsibilities placed on each unit holder pursuant to the *Act*, declaration and rules. It further shows a lack of any consideration or concern as regards their fellow unit holders and the condominium corporation itself.

[8] The respondents' continued refusal to permit the applicant entry to the unit to address the maintenance and infestation issues is not only in breach of the court Order of Faieta J but is also contrary to the provisions of the *Condominium Act, 1998*, sections 19 and 92, as well as the

Condominium's Declarations, Articles IV, section 1 (b), Article VII, section 1, Article XI, section 1 and Article XIV, and the Condominium's Rule 27.

[9] The evidence indicates that due to the severity of the infestation and the unclean state of the unit, the unit will have to be treated on multiple occasions by an extermination company. The extermination company retained, Orkin, attended at the unit on one occasion to administer initial treatment and on two subsequent occasions to administer follow-up treatment, and was only able to conduct treatments in some rooms due to the fact that the respondents failed to clean and remove items from the unit to permit said treatments. The respondents thereafter refused further entry to the applicant and the retained extermination company.

[10] The infestation and odours continue and the applicant continues to receive complaints from surrounding neighbours.

[11] A compliance order pursuant to sections 134 and 135 of the *Act* is justified in the circumstances of this case. The applicant is entitled to enter the unit within seven days of this order, after giving reasonable notice, to perform the necessary cleaning and the "flush and vac" extermination treatments recommended by Orkin, and is entitled to enter thereafter as necessary, with proper notice, to conduct all necessary follow-up treatments, until the infestation is eradicated. The respondents are to permit the applicant and their agents to enter as many times as are necessary to fully eradicate the infestation and thereafter, periodically, to ensure that the unit remains clean and pest-free The cleanup costs are all to be covered by the respondents pursuant to the *Act*, section 92(4).

[12] In the event that the respondents' non-compliance with the Order of Faieta J continues, that the respondents continue to prevent the ordered treatments by barring entry to their unit, and persist in living in unhealthy, unclean, cockroach-infested surroundings, the applicant will be entitled to return to court to obtain an Order pursuant to section 134 of the *Act* requiring the owners to vacate and sell their unit.

[13] The applicant is entitled, pursuant to the *Act*, section 134(3)(b) to the costs incurred by the applicant in obtaining this Order, to be added to the common expenses of the unit. In all the circumstances of this case, it is appropriate to order costs on a full indemnity basis. The other unit owners in the building should not have to bear the legal costs of securing compliance due to the intransigence of the respondents: *Wentworth Condominium Corporation No 34 v Taylor*, 2014 ONSC 59; *Peel Condominium Corporation no 304 v Hirsi,* 2014 ONSC 346, citing *Metro Toronto v Skyline Execute,* (2005) OJ No 1604 (OCA) . To have the applicant's and the other unit holders bear the legal costs of this application, which are incurred due to the conduct of the respondents, would be unfair: *Wentworth Condominium Corporation No 34 v Taylor.*

[14] The respondents have continued to breach the conditions of the *Act*, Declaration and Rules of the condominium and are in non-compliance with the judgment of Faieta J. Their conduct has negatively affected their fellow unit holders, as well as the condominium corporation. I find their conduct to be oppressive and unfairly prejudicial toward the applicant and its unit holders: *Peel Condominium Corporation v Pereira,* 2013 ONSC 7340.

[15] The applicant is granted its motion. The applicant is to provide proof of its legal costs pursuant to paragraph 13, above. Further, it is to provide a revised judgment for my signature. I dispense with the requirement for approval of said judgment

Carole J. Brown, J.

Date: June 25, 2015