**CITATION:** Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp, 2018 ONSC 286
**COURT FILE NO.:** CV-17-583829
**DATE:** 20180115



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **BETWEEN:** | ) | |
| | ) | |
| METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 932 | ) | *Jonathan Fine*, for the Applicant |
| | ) | |
| Applicant | ) | |
| | ) | *Timothy M. Duggan*, for the Respondent |
| **– and –** | ) | |
| | ) | |
| MICHAEL B. LAHRKAMP | ) | |
| | ) | |
| Respondent | | |
| | ) | |
| | ) | |
| | ) | **HEARD:** November 17, 2017 |

**KOEHNEN J.**

[1] This an application for an order pursuant to section 140(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, prohibiting the respondent from commencing further proceeding against the applicant and persons affiliated with it, in any court except by leave of a judge of the Superior Court of Justice.

[2] The applicant, Metropolitan Toronto Condominium Corporation No. 932 ("MTCC 932" or the "Corporation") is a condominium corporation comprised of 224 dwelling units, located at 33 University Ave. in the City of Toronto.

[3] The respondent, Michael Lahrkamp, is a unit owner and resident of MTCC 932. Mr. Lahrkamp sought election to the Corporation's board of directors on numerous occasions. In the course of elections between 2008 and 2015, he received between 0 and 11 votes while other candidates received between 70 and over 100 votes.

[4] The dispute between the parties was most recently summarized as a "long, tortuous, labyrinthine and costly litigation saga": *Lahrkamp v. Metropolitan Toronto Condominium*

*Corporation No. 932,* SC-13-31717, unreported Reasons of Prattas DJ dated June 8, 2017 ("Reasons of Prattas DJ) at para. 1.

[5] For the reasons set out below, I have granted the Corporation's application.

## A. Summary of the Litigation

[6] Mr. Lahrkamp moved into his unit in MTCC 932 in approximately 2004.

[7] Difficulties arose in approximately 2006 when Mr. Lahrkamp raised issues about a proposed renovation of the lobby to better accommodate handicapped residents. Mr. Lahrkamp began making requests for information and documentation from the Corporation which the Corporation initially tried to accommodate. The property manager met with him many times to provide information and documentation. Mr. Lahrkamp never seemed satisfied with the answers he received and demanded ever more voluminous documentation. When that documentation was not forthcoming Mr. Lahrkamp commenced a lawsuit: Reasons of Prattas DJ at para. 71.

[8] At some point between 2007 and 2008, he sought an injunction against the Corporation's Board of Directors to restrain the lobby renovation which was dismissed: referred to in *Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp*, unreported reasons of Backhouse J. dated April 20, 2008 ("Reasons of Backhouse J.") at para. 3.

[9] By April 2008, Mr. Lahrkamp had commenced five separate Small Claims Court actions against the Corporation demanding production of various documents. Those actions were consolidated into one proceeding before Sabol DJ, based on the allegation that the Corporation had not provided all records responsive to Mr. Lahrkamp's demands. In dismissing the claim, Sabol DJ held that: "There is no evidence adduced by Mr. Lahrkamp that the defendant has failed to produce all records." *Lahrkamp v. Metropolitan Toronto Condominium Corporation No. 932*, SC 44254/06 unreported reasons of Sabol DJ dated September 28, 2007.

[10] In April 2008, Backhouse J. granted a broad injunction at the Corporation's request to restrain Mr. Lahrkamp from harassing the Corporation's property management staff and its directors.

[11] Although the Ontario Court of Appeal varied Justice Backhouse's order to materially limit its scope, it held that Mr. Lahrkamp's conduct nevertheless justified a court order: *Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp*, 2009 ONCA 362 at para. 9. The Court of Appeal specifically noted that the *Condominium Act, 1998* S.O. 1990, c. 19 required Mr. Lahrkamp to exercise his rights reasonably: at para. 12.

[12] In 2009, Mr. Lahrkamp commenced a further Small Claims Court action against the Corporation demanding further documentation. In reasons dated October 29, 2010, Justice M. D. Godfrey dismissed Mr. Lahrkamp's claims for: (i) documents surrounding the lobby renovation; (ii) the 2006 general ledgers; (iii) records relating to Mr. Lahrkamp's suite from 2003 onward;

and (iv) a copy of the list of owners. Godfrey J. granted Mr. Lahrkamp's request for copies of (i) minutes of directors meetings between December 2007 and the date of his reasons for judgment; and (ii) proxies and ballots used at the 2009 and 2010 annual general meetings. ("2010 Reasons of Godfrey J.") By reasons dated March 22, 2011, Godfrey J. amended his judgment to direct that the proxies made available to Mr. Lahrkamp be redacted to remove the name, signature and unit number from each proxy. Mr. Lahrkamp appealed the issue of redactions to the Divisional Court which dismissed his appeal: 2012 ONSC 6326 (CanLII).

[13] In 2015, Mr. Lahrkamp moved before the Small Claims Court in the 2009 action to vary the order of Justice Godfrey. That motion was dismissed.

[14] In 2016, Mr. Lahrkamp moved before Godfrey J. for additional relief arising out of his 2009 action which motion was dismissed.

[15] In addition to the foregoing, in each of 2013, 2014 and 2015 Mr. Lahrkamp commenced further Small Claims Court actions against the Corporation. All three actions were tried over the course of 12 days by Prattas DJ. In unreported reasons dated June 8, 2017, Prattas DJ dismissed Mr. Lahrkamp's claims, except those to which the Corporation had already agreed ("Reasons of Prattas DJ").

[16] While I will deal with the particulars of those actions in greater detail later in these reasons, I note at the outset that, in his costs endorsement arising out of the trial, Prattas DJ concluded:

> "In short, these proceedings were unnecessary and were wholly without merit and a complete waste of time and money…
>
> The unreasonable behaviour of the plaintiff cries out for a significant cost penalty to the plaintiff – a penalty on the high side of what would be acceptable within the cost framework of our court."
>
> *Lahrkamp v. Metropolitan Toronto Condominium Corporation No. 932*, Court file number SC-133-1717; SC-14-9565; SC-15-10143, unreported Reasons of Prattas DJ dated October 27, 2017, ("Costs Endorsement Prattas DJ") at paras. 38 and 40.

[17] In the face of this application to have him declared a vexatious litigant, Mr. Lahrkamp has commenced a further application against the Corporation. This latest proceeding is an application in the Superior Court of Justice for, among other things, an order restraining the Corporation from communicating with unit owners in a way that discourages them from voting for Mr. Lahrkamp in an election to the Corporation's board and for the appointment of an independent chair of such a meeting. While the notice of application has been issued, it has not yet been served and Mr. Lahrkamp has filed no affidavits in support of it.

## B. Applicable Legal Principles

[18] Section 140(1) of the *Courts of Justice Act* allows a judge of the Superior Court of Justice to order that an individual may not institute any further proceeding in any court except by leave of a judge of the Superior Court of Justice.

[19] An order under section 140(1) is an extraordinary remedy that alters a person's right to access the courts: *Kalaba v. Bylykbashi*, 2006 CarswellOnt 749 (C.A.) at para. 31. As such, it should be exercised sparingly: *Howie, Sacks & Henry LLP v. Chen*, 2015 CarswellOnt 5700 (S.C.J.) at para. 27.

[20] A litigant's actions can be aggravating, annoying, expensive and a source of frustration for the opposing party without it amounting to grounds for an order under section 140: *Clarington (Municipality) v. Ward*, 2004 CarswellOnt 1731 (S.C.J.) at para 20; *Graham v. 10 Tecumseh Ave. West Inc.*, 2016 CarswellOnt 21036 (S.C.J.) at para. 3.

[21] The class of litigants to which s. 140(1) orders apply is "small in the extreme": *Canada (Attorney General) v. Mennes*, 2012 ONSC 3918 (OSCJ) at para 67.

[22] That said, there is a strong public interest in limiting access to the courts of those individuals who abuse the justice system.

[23] Vexatious litigants misuse public resources and deny or delay access to justice for those with legitimate claims. In this light, an order declaring someone to be a vexatious litigant serves the public interest in access to justice. The court has an interest in, and a duty to ensure that its processes are not abused by vexatious litigants to the detriment of others: *Mennes* at para. 65. Courts have increasingly recognized that they must adopt a greater role as gatekeepers to ensure that the administration of justice is not abused: *Mennes* at para. 66; *Ontario v. Coote*, [2011] O.J. No. 697; *Terracorp. v. Becky*, 2016 CarswellOnt 1665 (OSCJ) at para. 68-70; *Gao v. Ontario (Workplace Safety and Insurance Board)*, 2014 CarswellOnt 15695 at para. 5-7.

[24] With these general principles in mind, I turn to the specific legal test applicable to declare someone a vexatious litigant. Section 140(1) of the Courts of Justice Act provides:

> 140(1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,
>
> (a) instituted vexatious proceedings in any court; or
>
> (b) conducted a proceeding in any court in a vexatious manner,
>
> the judge may order that,

> (c) no further proceeding be instituted by the person in any court; or
>
> (d) a proceeding previously instituted by the person in any court not be continued,
>
> except by leave of a judge of the Superior Court of Justice.

[25] Section 140 requires two elements:

(i) to persistently and without reasonable grounds

(ii) commence or conduct proceedings in a vexatious manner.

**(i) Persistently and Without Reasonable Grounds**

[26] I turn first to the element of persistently instituting or conducting proceedings without reasonable grounds. The litigation history recited above is replete with such examples.

[27] In the Small Claims Court action before him, Sabol DJ noted that Mr. Lahrkamp alleged that the Corporation had failed to produce all relevant records, yet he failed to adduce any evidence to that effect. To commence and pursue litigation without any evidence of the principal allegation is to do so without reasonable grounds.

[28] In his 2010 Reasons, Godfrey J dismissed Mr. Lahrkamp's claims for all documents concerning the lobby renovation expenditures as well as the 2006 general ledgers because, it was a "pure fishing expedition without a shred of evidence to support his suspicion of impropriety". Commencing and prosecuting a proceeding "without a shred of evidence" is doing so without reasonable ground.

[29] Although Godfrey J. ordered the Corporation to produce minutes of directors' meetings and redacted proxies used in the 2009 and 2010 elections, Mr. Lahrkamp did not examine or pick up those documents for over five years because he refused to pay the photocopying costs which other courts had already ordered him to pay: Reasons of Prattas DJ at paras. 17, 82.

[30] In my view, seeking relief that one never exercises when awarded is tantamount to commencing or prosecuting a proceeding without reasonable grounds.

[31] The motion Mr. Lahrkamp brought before Godfrey J. in 2016 was also brought without reasonable grounds. That was a motion in the 2009 action for an order: (i) declaring that the Corporation's dealings with proxies for the 2009 and 2010 meetings were contrary to the *Criminal Code*; and (ii) appointing a third party to verify that the proxies which Godfrey J. had ordered be produced five years earlier, were in fact issued by the owners of the units in question.

[32] Godfrey J. dismissed the motion noting: (i) the Small Claims Court was a purely civil court and had no jurisdiction in criminal matters; (ii) there was no evidence to support any suspicion of impropriety with the proxies or ballots; (iii) Mr. Lahrkamp could have, but did not seek third party verification at the trial in 2010 as a result of which that matter was effectively *res judicata*; and (iv) Mr. Lahrkamp appeared to be on a fishing expedition: Unreported Reasons of Godfrey J. dated January 25, 2016 ("2016 Reasons of Godfrey J.").

[33] Mr. Lahrkamp represented himself on the 2016 motion. While one might excuse a self-represented litigant for failing to know that the Small Claims Court has no jurisdiction over criminal matters, a self-represented litigant should know that it is unreasonable to pursue litigation in the absence of any evidence to support one's allegations. The unreasonable nature of Mr. Lahrkamp's conduct is underscored by the fact that, he had not even bothered to inspect the proxies in respect of which he was alleging criminal conduct, even though he had five years to do so.

[34] The three Small Claims Court actions tried before Prattas DJ were also brought and conducted without reasonable grounds. Examples of findings by Prattas DJ that support this conclusion include the following:

(i) Mr. Lahrkamp's document requests amount to a fishing expedition "without a focus and **without a rational reason**": at para. 55 (emphasis added).

(ii) Mr. Lahrkamp sought documentation because he wanted to go behind audited financial statements even though the test of materiality adopted by the Corporation's auditors was more stringent than that recommended by the Canadian Institute of Chartered Accountants of Ontario: at para 59 and 61. Mr. Lahrkamp presented no evidence of any impropriety and "**presented no discernible reason for this position**": at para. 59 (emphasis added).

(iii) Mr. Lahrkamp demanded all board minutes back to 1990 without providing any persuasive evidence of the need for those board minutes: at para. 96.[1]

(iv) Mr. Lahrkamp sought production of the general ledgers of the Corporation from 2007 to 2014 "to see how money is and was being spent." Prattas DJ concluded this was pure fishing expedition without "a shred of evidence to support any of his alleged suspicions of impropriety": at para. 107

(v) Mr. Lahrkamp sought bank statements between 2008 in 2014 "to verify that the duties and obligations of the Corporation are being met with appropriate and

[1] Prattas DJ did order that board minutes between 2012 and 2015 be produced because the Corporation had already agreed to produce those.

> proper disposition of owners' money". The bank statements would not, however, give any insight into that. Bank statements contain numbers without any description of transactions. Mr. Lahrkamp gave no credible evidence about what information he might find in such bank statements: paras. 118 and 119. Prattas DJ concluded that this request was a "fishing expedition to cause maximum annoyance to the board": at para. 122.

[35] Demanding relief without a rational reason, pursuing allegations without evidence and mounting fishing expeditions all amount to instituting and conducting proceedings without reasonable grounds.

[36] Section 140 of the *Courts of Justice Act* requires that an individual not only commence or conduct proceedings without reasonable cause but that he do so persistently. The foregoing examples provide ample evidence of persistence. Indeed, Mr. Lahrkamp boasts about his persistence. In a resume circulated for one of the elections in which he was running for a seat on the Corporation's board, he states under the heading "Degrees, Education":

> "Graduate of the School of Hard Knocks, majored in Common Sense with a minor in No Quit."

[37] As Prattas DJ noted:

> "[54] While such tenacity may be virtuous in some situations, the plaintiff's **relentless pursuit** in legal proceedings over the years against the defendant and the plaintiff's conduct and numerous record requests made is, in my view, in the context of condominium living, anything but virtuous." (emphasis added)

**(ii) Vexatious Manner**

[38] The second element of the test under s. 140 is that the proceeding be vexatious or be conducted in a vexatious manner.

[39] The case law surrounding the meaning of "vexatious" in association with a litigant or a proceeding was usefully summarized in *Lang Michener Lash Johnston v. Fabian*, 1987 CarswellOnt 378 (Ont. H.C.) at para. 20 where Justice Henry listed numerous characteristics of a vexatious litigant or a vexatious proceeding including the following:

(a) Re-litigating issues that have already been determined.

(b) Actions that obviously cannot succeed or would lead to no possible good.

(c) Actions containing issues that have been rolled forward from previous litigation.

(d) Actions and complaints against the lawyers who have acted for or against the litigant in earlier proceedings.

(e) Actions brought for an improper purpose.

(f) Persistent unsuccessful appeals from judicial decisions.

[40] All but the last of the factors listed by Henry J. in *Lang Michener* apply to Mr. Lahrkamp.

[41] In determining whether proceedings are vexatious, Henry J. also noted that the Court must look at the whole history of the matter and not just whether there was originally a good cause of action: *Lang Michener*, at para. 20(e).

[42] While these factors are useful indicia of a vexatious litigant, they are not exhaustive nor do they constitute a checklist of prerequisites all of which must be satisfied before an order can be made: *Terracorp* at para. 71.

**(a) Re-litigating Issues That Have Already Been Determined**

[43] Mr. Lahrkamp Appears to have a practice of re-litigating issues that have already been determined. By way of example:

(i) Mr. Lahrkamp stated at the trial before Prattas DJ that he would not accept the decision of Sabol DJ of September 28, 2007, and would not agree to refrain from raising those issues again.

(ii) Although in 2010, Godfrey J. dismissed his claims for documents surrounding the lobby renovation, Mr. Lahrkamp re-litigated the issue before Prattas DJ: 2010 Reasons of Godfrey J. at page 3-4; Reasons of Prattas DJ at paras. 69-72.

(iii) Although Godfrey J. rejected Mr. Lahrkamp's request for third-party verification of proxies, Mr. Lahrkamp raised that issue again before Prattas DJ: 2016 Reasons of Godfrey J. pp. 3-4; Reasons of Prattas DJ at paras. 79 – 80.

**(b) Actions That Cannot Succeed or Would Lead to No Possible Good**

[44] Where it is obvious that an action cannot succeed, or if the action would lead to no possible good or if no reasonable person could reasonably expect to obtain relief, the action is vexatious: *Lang Michener* at para. 20(b).

[45] Apart from bringing claims that have already been resolved and are therefore *res judicata* (and could therefore not succeed), Mr. Lahrkamp appears to have a habit of bringing numerous other claims that fall into this category.

[46] It was obvious from the outset that a number of Mr. Lahrkamp's complaints could not succeed because they were brought long after the expiry of the limitation period. By way of example:

(i) In 2014 Mr. Lahrkamp brought an action requesting production of bank statements from 2008 onward which Prattas DJ found to be statute barred under the *Limitations Act,* 2002, SO 2002, c 24, Sch. B*:* Reasons of Prattas DJ Para. 123.

(ii) Mr. Lahrkamp claimed production of general ledgers from 2007 to 2014 which Prattas DJ found was also statute barred: Reasons of Prattas DJ at para. 109.

(iii) Mr. Lahrkamp sought production of a prepared statement made at the annual meeting in 2012 after the expiry of the limitation period: reasons of Prattas J at paras. 125, 128 – 129.

[47] In addition, Mr. Lahrkamp's claims for production of proxies for elections from 2012 onward in order to validate the election results, would also not lead to any possible good. Those elections are long past. The tenure of the boards elected at those meetings is long over. As Prattas DJ found, there would be no practical purpose to validate those elections because there is no practical way to change them: Reasons of Prattas J at paras. 73-75.

[48] Moreover, the only person raising any issue about those elections is Mr. Lahrkamp. He received between 0 and 11 votes in those elections while other candidates received between 70 to over 100 votes. If Mr. Lahrkamp truly had an expectation of increasing his vote count so as to win against candidates who received between 7 and 10 times more votes than he did, one would expect that he could introduce some evidentiary basis for that belief. Instead, Godfrey J. noted there was no present or prior evidence to support any suspicion of impropriety in relation to the proxies: 2016 Reasons of Godfrey J., p. 4.

**(c) Actions Rolled Forward**

[49] It is a general characteristic of vexatious proceedings that grounds and issues tend to be rolled forward into subsequent actions and repeated and supplemented: *Lang Michener*, at para. 20(d).

[50] That too, is a characteristic of Mr. Lahrkamp's litigation. Apart from issues that are *res judicata* that have been discussed above, Mr. Lahrkamp has re-litigated several claims he has failed on in the past by repeating the claim for a different time frame. By way of example:

(a) Although Godfrey J. rejected Mr. Lahrkamp's request for owners lists in the 2009 action, Mr. Lahrkamp brought a new claim for production of the owners lists for subsequent years before Prattas DJ.

(b) Although Godfrey J. dismissed Mr. Lahrkamp's request for the 2006 general ledger, Mr. Lahrkamp brought a further claim for production of the general ledgers between 2007 and 2014 before Prattas DJ.

(c) While the issue of proxies does not follow a precisely identical pattern, it too demonstrates a practice of rolling actions forward. Although Mr. Lahrkamp obtained an order for the production of proxies for the 2009 and 2010 board elections, he failed to examine them but then, 5 years later, sought to have a third party validate the very proxies he had failed to examine.

(d) Although when Prattas DJ released his reasons in June of 2017, Mr. Lahrkamp had still not examined the proxies for the 2009 and 2010 elections, he claimed production of additional proxies for elections from 2012 onward: Reasons of Prattas DJ at para. 17.

**(d) Claims against Others**

[51] Vexatious litigation is also frequently marked by the pursuit of proceedings against those who have acted contrary to the interests of the vexatious litigant: *Lang Michener*, at para 20(d).

[52] Mr. Lahrkamp has tried unsuccessfully to lay perjury charges against the Corporation's long serving property manager and has made an unsuccessful complaint to the Law Society of Upper Canada against the Corporation's counsel.

**(e) Actions Brought for Improper Purpose**

[53] Actions brought for an improper purpose, including the harassment and oppression of other parties are vexatious: *Lang Michener* at para. 20(c).

[54] Three decisions have noted that Mr. Lahrkamp was mounting a "fishing expedition" without "a shred of evidence" to support his suspicions of impropriety: 2010 Reasons of Godfrey J., p. 4 ; 2016 Reasons of Godfrey J., p. 4; Reasons of Prattas DJ at paras. 55, 107, 117 and 122.

[55] A fishing expedition is by definition an improper purpose. Courts exist to provide a forum for the adjudication of complaints that people *actually* have. Mr. Lahrkamp has no complaint. He seeks to use the court system to enable him to conduct a forensic examination of the records of the condominium Corporation to determine *whether* he has a complaint.

[56] Prattas DJ found that Mr. Lahrkamp:

> "was not genuinely interested in looking into specific aspects of the financial operations of the defendant but was either oblivious to the fact that he was wasting other people's time and money or, more likely, that he took a certain delight in pestering the board and others with his demands." Reasons of Prattas DJ at para. 50

[57] A desire to pester the board is not a valid reason to litigate. Similarly, litigating for the production of proxies and board minutes but taking no steps to examine those documents over five years is, in my view, compelling evidence that Mr. Lahrkamp was litigating to harass, not to vindicate a legitimate right.

[58] The very nature of Mr. Lahrkamp's requests is oppressive. While condominium owners have the right to request documents, those requests must, as the Court of Appeal noted, be exercised reasonably. Requests like Mr. Lahrkamp's for all board minutes back to 1990, third-party verification of proxies to validate elections going back to 2012, bank statements, general ledgers and accounts receivable ledgers are, in the absence of even a suggestion of wrong doing, designed to harass.

[59] The board is also understandably concerned that Mr. Lahrkamp may be using the courts as part of an overall strategy of harassment and abuse. The court must be vigilant to protect its process from being misused in that way: *Roskam v. Jacoby-Hawkins*, 2010 ONSC 4439 (CanLII) at para 25.

[60] The extent of that harassment is evident in the fact that the Corporation's board spends between one third to one half of its time addressing Mr. Lahrkamp's issues, who, in addition to the litigation he initiates, also sends a "voluminous number of emails" to the property manager and the board.

[61] In a similar vein, Mr. Lahrkamp has communicated with the Corporation's suppliers and service providers to harangue them about their services so they would want to stop servicing the condominium: Reasons of Prattas DJ at para. 66. In addition, he has contacted auditors about tendering quotations to the Corporation even though he has no authority to do so and even though unit members have reappointed the same auditors at their annual general meeting since the Corporation's inception: Reasons of Prattas DJ at para. 67

[62] Mr. Lahrkamp appears to view himself as a self-appointed, *de facto* director (and given the nature of his demands, property manager and auditor) of the Corporation and uses documentary requests and the court process to further that end. Whether Mr. Lahrkamp should be a director is for the condominium unit holders to decide. They have consistently and resoundingly rejected Mr. Lahrkamp's overtures in this regard. He should not be permitted to use the courts to subvert the unit holders' consistently and clearly expressed views.

## C. Mr. Lahrkamp's Defence

[63] Mr. Lahrkamp submits that, when considering an application under s. 140(1) of the *Courts of Justice Act,* the court should consider whether previous proceedings instituted by the litigant were dismissed as vexatious: *Barnwell v. Markowa*, 2015 CarswellOnt 10508 (S.C.J.) at para. 33; *Graham v. 10 Tecumseh Ave. West Inc.*, 2016 CarswellOnt 21036 (S.C.J.) at para. 33.

[64] Mr. Lahrkamp submits that the judges before whom he appeared were in a better position to evaluate the vexatious or legitimate nature of his proceedings than I am, that they did not dismiss his claims on that basis, and that some of those judges awarded him relief which, if anything, demonstrates the legitimacy of his claims. That, Mr. Lahrkamp submits, makes this case more similar to *Roskam* where the court noted that just because a plaintiff had initiated 12 lawsuits in Small Claims Court over five years, one of which was successful, did not make him a vexatious litigant: at para. 20 – 21.

[65] I agree that the findings of previous judges are relevant, but they cannot be determinative. Each judge will tend to address the matter before him or her as an isolated proceeding. It may, depending on the circumstances, be improper for judges to grant or refuse relief because of their view of a party's conduct in a prior proceeding. A section 140 application differs in that it requires the judge to view prior proceedings as a contextual whole. Moreover, judges in the prior proceedings, with the exception of the proceeding before Prattas DJ, were not asked to make a finding that Mr. Lahrkamp was behaving vexatiously.

[66] Whatever success Mr. Lahrkamp may have had in earlier proceedings must be viewed against three intertwined contextual elements that I will refer to as proportionality, frustration and judicial restraint.

[67] By proportionality I refer to the concept that a plaintiff who brings a claim for a long list of relief but receives only limited relief can still be vexatious.

[68] By frustration I refer to the concept that consistently disproportionate demands can lead a reasonable counter-party to throw up its hands in frustration and refuse potentially reasonable portions of an otherwise unreasonable request.

[69] By judicial restraint I refer to the courts' reluctance to make vexatious litigant orders. As a result, they will tend to give a vexatious litigant the benefit of the doubt for some time before acting to restrain his conduct.

[70] In my view, all three contextual elements are present here and put the limited relief that Mr. Lahrkamp was awarded in the past into its proper context.

[71] As noted earlier, the difficulties with Mr. Lahrkamp arose with the lobby renovation in 2006. He sought to enjoin the renovation and failed. The Corporation's property manager met with Mr. Lahrkamp on several occasions to provide him with information. On each occasion, Mr. Lahrkamp simply demanded more and more information. When the Corporation told him it did not have particular information, Mr. Lahrkamp refused to believe them and initiated a Small Claims Court action which was dismissed. The disproportionate, aggressive and harassing nature of Mr. Lahrkamp's conduct was noted in Justice Backhouse's reasons. The Court of Appeal did not interfere with any of those findings. Indeed, the Court of Appeal noted that Mr. Lahrkamp's conduct justified a court order to restrain him. By that point Mr. Lahrkamp's demands were disproportionate.

[72] After enduring this conduct for almost four years, the board took the position before Godfrey J. in 2010 that Mr. Lahrkamp was not entitled to the information he requested. Justice Godfrey agreed with the board with respect to documentation concerning lobby expenditures, the 2006 general ledger, records relating to Mr. Lahrkamp's suite and the owners list. He disagreed with the board's position with respect to proxies and ballots for the 2009 and 2010 annual general meeting and minutes of board meetings between 2007 and 2010.

[73] That Godfrey J. made those limited orders does not mean Mr. Lahrkamp is not a vexatious litigant. From my vantage point, Mr. Lahrkamp's disproportionate demands and harassing conduct over a prolonged period of time led the Corporation to reject all of his demands in frustration.

[74] In addition, in his 2010 reasons, Godfrey J. was not looking at the entire history of the dispute between the parties. He was looking at the relief requested before him. In that narrower context, a demand for two years of ballots and four years of minutes, although already broad, is one where a court would readily give Mr. Lahrkamp the benefit of the doubt and award limited relief.

[75] At the time, Godfrey J. was obviously not aware of Mr. Lahrkamp's subsequent conduct of: (i) refusing to inspect the documentation when it was made available to him; (ii) demanding third-party validation of board elections five years later; and (iii) making increasingly extravagant demands including a request for all minutes back to 1990.

[76] As noted in *Lang Michener* at para. 20, when determining whether proceedings are vexatious, courts should look at the whole history of the matter and not just whether there was originally a good cause of action. As a result, the fact that Godfrey J. awarded Mr. Lahrkamp limited relief in 2010 is not determinative of whether Mr. Lahrkamp's cumulative conduct in 2017 warrants an order under s. 140.

[77] Mr. Lahrkamp also points to the fact that Prattas DJ did not dismiss the three actions before him on the basis that they were vexatious even though the Corporation had asked him to do so.

[78] It should be noted that it is not within the power of Prattas DJ to declare Mr. Lahrkamp to be a vexatious litigant. That power is reserved to judges of the Superior Court.

[79] Although Prattas DJ did not specifically use the word vexatious in his reasons and did not dismiss Mr. Lahrkamp's claims on the specific ground that they were vexatious, he made numerous underlying findings that demonstrate Mr. Lahrkamp had commenced and/or conducted the proceedings in a vexatious manner.

[80] His reasons are replete with references to the effect that Mr. Lahrkamp had no legitimate cause of action, was on a fishing expedition, did not have a "shred of evidence" to support his claims, was being unreasonable in his requests and was being unreasonable in the prosecution of the action.

[81] In his Costs Endorsement, Prattas DJ noted that Mr. Lahrkamp had behaved unreasonably in the conduct of the proceedings which unduly prolonged the trial (at para. 2) and enumerated examples of that conduct in para. 37(a) – (n). He concluded stating:

> "In short, these proceedings were unnecessary and were wholly without merit and a complete waste of time and money." (Costs Endorsement of Prattas J. at para. 38)

[82] Mr. Lahrkamp's counsel summarized his position in argument by saying that he simply wants to ensure that the directors are managing the condominium properly and that there is nothing untoward going on. While condominium owners have the right to oversee a board in that manner, they do not have the right to use the court process to appoint themselves as *de facto* directors, property managers and auditors in the absence of any evidence of misconduct.

[83] Apart from concerns about misuse of the judicial process, there are good reasons for courts to intervene in matters of a communal nature.

[84] First, there is already a statutory structure in place by which unit holders can exercise oversight of the Corporation. Unit holders elect a board each year, they receive budgets and audited financial statements, they can ask the board questions and, if they wish, they can make *reasonable* requests for documentation. Mr. Lahrkamp has exercised those rights to an obstructive degree which not only undermines the court process but which has caused his neighbours expense and frustration.

[85] Second, failure to intervene may lead responsible individuals to decline to stand for board election because dealing with individuals like Mr. Lahrkamp is simply not worth the headache. That would in turn undermine the object of the *Condominium Act* and potentially deprive owners of good candidates for election to the board.

[86] Third, allowing Mr. Lahrkamp to continue unabated, forces other unit holders to devote time and expense to a crusade of which they want no part as their consistent rejection of him as a director demonstrates.

[87] The expense to which Mr. Lahrkamp has put his co-residents is significant. The Corporation's actual costs of defending the proceedings before Prattas DJ Came to $158,114.81. Ordinarily, cost orders in Small Claims Court shall not exceed 15% of the amount claimed. Mr. Lahrkamp claimed $1,500. In other proceedings he has claimed similarly minimal amounts. Prattas DJ felt sufficiently strongly that Mr. Lahrkamp's conduct "cries out for a significant cost penalty," on the high side of what would be acceptable within the cost framework of the Small Claims Court: Costs Endorsement of Prattas DJ at para. 40. Even then, Prattas DJ felt constrained by principles involving the law of costs to limit his award to $19,000 plus HST. This represents only a small fraction of actual costs and is wholly inadequate to compensate the Corporation. None of this is intended to be in any way critical of Prattas DJ. He was limited by

principles applicable to cost awards. It does, however, demonstrate that costs orders do not prevent vexatious litigants from causing financial harm to others through their litigation.

## D. Disposition

[88] For the reasons set out above I grant the application and order that Mr. Lahrkamp is prohibited from commencing any proceeding in any court against the Corporation, its present, future or former directors, or its property manager, except by leave of a judge of the Superior Court of Justice. Similarly, Mr. Lahrkamp is prohibited from commencing any action in respect of services provided to the Corporation against any service provider to the Corporation without notice to the Corporation *and* leave of a judge of the Superior Court of Justice. This order shall also apply to the oppression proceeding that Mr. Lahrkamp has issued but not yet served. If Mr. Lahrkamp wishes to proceed with that matter he will need leave to do so.

**Costs**

[89] The Corporation seeks costs on a partial indemnity scale of $9,442.80, plus an estimated counsel fee based on a two hour attendance of $690, plus disbursements of $1,332.81. The attendance ended up taking the entire day. I therefore award the Corporation a counsel fee for the attendance of $1,500. Mr. Lahrkamp was represented by counsel in this matter. Mr. Lahrkamp's counsel behaved responsibly and efficiently throughout. While I would like to award the Corporation full indemnity costs to act as a financial discipline on Mr. Lahrkamp's future conduct, principles of cost limit me to considering the conduct of this particular application rather than considering Mr. Lahrkamp's conduct as a whole. I therefore feel myself constrained to order costs against Mr. Lahrkamp on a partial indemnity basis which I fix at $13,592.87 including HST and disbursements.

Koehnen J.

**Released:** January 15, 2018

**CITATION:** Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp, 2018 ONSC 286
**COURT FILE NO.:** CV-17-583829
**DATE:** 2018015



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 932

Applicant

**– and –**

MICHAEL B. LAHRKAMP

Respondent

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**REASONS FOR JUDGMENT**

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Koehnen J.

**Released:** January 15, 2018