

CITATION: Ottawa Carleton Standard v. Friend, 2019 ONSC 3899
COURT FILE NO.: 18-78035
DATE: 20190628

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Ottawa Carleton Standard The)
Condominium Corporation No. 671) C. Wood and D. Lu, for the Plaintiff
)
Plaintiff)
)
– and –)
)
Anthony Marcus Friend and Henriette)
Suzanne Friend) Self-represented
)
Defendants)
)
)
)
) **HEARD:** May 3, 2019 (at Ottawa)

2019 ONSC 3899 (CanLII)

REASONS FOR JUDGMENT

KANE J.

[1] The Ottawa Carleton Standard Condominium Corporation No. 671 (the “CC 671”) on this motion seeks:

- (a) a declaration that Mr. Friend’s past conduct constitutes:
 - (i) workplace harassment, as defined in *the Occupational Health and Safety Act*, RSO 1990, c. 0.1 (the “OHS A”); and
 - (ii) a breach of s. 117 of the *Condominium Act*, 1998 (the “Act”) as his conduct includes harassment, intimidation, verbal abuse and physically assault of personnel associated with and residents of CC 671;

- (b) an order that Mr. Friend cease conduct that contravenes the *Act* and CC 671's Declaration, By-Laws and/or Rules, namely conduct which risks the health and safety of employees, contractors and residents of CC 671;
- (c) an interlocutory injunction prohibiting Mr. Friend, directly or indirectly, from communicating verbally or in writing with employees, contractors, members of the Board of Directors of CC 671 (the "Board" and "Director(s)") as well as the spouses and family members of its Directors, for the duration of this proceeding. The only exceptions to such interim injunction are Mr. Friend's ability to communicate, if demonstrably necessary, as follows:
 - (i) by email to and with CC 671's Property Manager, Kim Renwick, at 260bess@gmail.com, as to matters regarding the general affairs of CC 671;
 - (ii) in the case of an emergency, by telephoning CC 671's emergency telephone number; and
 - (iii) by writing or emailing CC 671's solicitor, Davidson Houle Allen LLP, but only in relation to this legal proceeding; and
- (d) costs of this motion on a scale of full indemnity, with any cost award to CC 671 to be added to the common expenses and recoverable as a lien under the *Act* against the defendants' Unit 4, Level 7 in CC 671, known municipally as unit PH-4 – 260 Besserer St., Ottawa, ON (the "Unit").

The Proceeding

[2] CC 671 by amended statement of claim dated October 5, 2018 seeks judgment for arrears of common expenses in accordance with the Notice of Sale under Lien and CC 671's Bylaws and a Writ of Possession of the Unit. It is alleged that the defendants have failed to contribute and are in arrears of common expenses resulting in the registration of a certificate of lien against the Unit which may be enforced in the same manner as a mortgage pursuant to section 85 (6) of the *Act*.

[3] CC 671 in its claim also seeks recovery from the defendants of approximately \$15,000 for unpaid past special assessments, common expenses and costs claimed, including legal costs.

[4] The defendants filed a Statement of Defence on November 27, 2018. CC 671 filed its Reply on December 3, 2018.

[5] The Master on February 21, 2019 scheduled CC 671's summary judgment motion to proceed on October 23, 2019 and set prior dates for cross examinations on affidavits on that summary judgment motion.

Issues

[6] CC 671 identifies the following four issues on this motion are:

- (1) whether Mr. Friend's conduct constitutes a breach of the *OHSA*;
- (2) whether Mr. Friend's conduct constitutes a breach of the *Act*;
- (3) what is the appropriate remedy if Mr. Friend's conduct constitutes a breach of the *OHSA* or the *Act*; and
- (4) responsibility for CC 671's costs of this motion.

Matters As To This Motion

[7] The focus of this motion is the past and ongoing conduct of Mr. Friend. CC 671 in the proceeding has broader issues with but does not allege inappropriate conduct by Mrs. Friend on this motion.

[8] Mr. Friend in his submissions, despite the defendants having filed no affidavits, denied that he had ever used physical force or harassed anyone associated with CC 671.

[9] Mr. Friend during his submissions:

- (a) emphasized he has always acted appropriately and with restraint towards other unit owners and CC 671's service providers;
- (b) stated he and his wife have always paid what he considered to be valid indebtedness owed to the CC 671, but that he for example disagreed with the calculation formula CC 671 used to allocate service expenses amongst condominium unit owners;

- (c) giggled as he recounted his attempt to pay one liability at a meeting with CC 671's representatives when he tendered payment of \$5.25 using \$0.05 coins;
- (d) recounted one instance when he, upon learning that Mrs. Friend had decided to pay some \$18K liability they owed to CC 671 and had gone to the bank to withdraw such funds, rushed to the bank to dissuade his wife and continued to oppose her payment to CC 671 upon their return home;
- (e) stated that CC 671 could not prohibit his leaving his boots to dry during the winter in the corridor outside his Unit; and
- (f) sought assurance from the court at the end of argument that he had a right of appeal of its decision on this motion.

[10] The evidence including correspondence and the submissions by Mr. Friend indicates that he disagreed with the analysis and position of:

- (a) the Directors of CC 671;
- (b) CC 671's auditor;
- (c) CC 671's Property Manager;
- (d) CC 671's legal counsel;
- (e) some of his neighbours on his floor; and
- (f) a prior court decision against the defendants in favour of CC 671.

[11] The allegation that all others are wrong and only Mr. Friend is correct raises a cautionary flag as to his credibility in denying during his submissions that he has harassed, been confrontational and used physical violence against Directors, residents and others associated with CC 671. That doubt is reinforced by:

- (a) the defendants' failure to file responding affidavits on this motion as to the allegations against Mr. Friend; and

- (b) the fact that one of Mr. Friend's principle complaints against CC 671 is his rejection of a previous court decision and cost award against the defendants which he did not successfully appeal but continues to attempt to reverse.

Defendant's Consent to Proceed with This Motion

[12] CC 671 on April 2, 2019 requested an urgent appointment for this motion to prohibit Mr. Friend from communicating with and harassing its Directors, their spouses, its contractors and employees.

[13] May 3, 2019 was set for this motion and communicated by the Trial Coordinator to the parties on April 16, 2019. Mr. Friend responded in writing thereto by citing several arguments why the relief to be sought by CC 671 on this motion should not be granted.

[14] Mr. Friend was advised by the Trial Coordinator on April 16 and 22, 2019, that his arguments as to the merits would be dealt with in argument of this motion on May 3, 2019.

[15] Mr. Friend responded on April 22, 2019, that May 3 was not convenient, that "a later date would have been better" and that the action by CC 671 should proceed to mediation rather than CC 671's pending motion for summary judgment. CC 671's summary judgment motion was scheduled on February 21, 2019 to proceed on October 21, 2019. Mr. Friend requested that that the Local Administrative Judge respond directly to the merits of his arguments as to this motion which he sent to the Trial Coordinator in response to her April 16, 2019 notice of today's motion date.

[16] CC 671 served the defendants on April 24, 2019 with its Motion Record, Factum and the Book of Authorities on this motion.

[17] Argument of this May 3, 2019 motion was scheduled for 2 hours and lasted for just under 5 hours. At 14:30 during the course of his submissions, the court asked Mr. Friend whether the defendants were seeking an adjournment to retain counsel or to file reply affidavits in which case the court would grant a short 2 to 3 week adjournment. Mr. Friend responded that he had travel plans in the near future, that an adjournment would increase costs, that he wished to continue and complete his submissions on this motion that day and was not requesting an adjournment.

[18] The evidence before the court therefore is limited to allegations in the affidavits filed by CC 671 and the defendants' oral argument as to the accuracy of those allegations. Although not evidence per se, the court has reviewed and considered numerous pieces of prior written correspondence which the defendants filed as part of their written "brief" and referred to in argument of this motion.

[19] The court twice received documents from Mr. Friend subsequent to the conclusion of argument of this motion, which were unaccompanied by an affidavit as to their being served on the plaintiff.

[20] The court on the first occasion returned the documents to Mr. Friend and indicated that he was out of time to provide additional documents which the court could not be considered. Mr. Friend ignored this notice as he later filed and then sent the court additional documents. He was again notified that the court would not consider this second round of documents.

[21] The court has not for the above reasons reviewed or relied upon such post argument documentation sent by Mr. Friend.

Background

[22] The defendants have owned their Unit in this high rise residential condominium tower since 2006. The Unit consists of a residential unit where they live and a basement parking space(s).

[23] Condominium living offers many advantages but is more regulated as compared to ownership of a single family home. The *Act's* creation of condominium Boards of Directors and their authority to make decisions binding on unit owners limits the authority of unit owners as to condominium matters and limits or compromises a unit owner's personal preference as to what he or she considers appropriate or correct.

[24] Decisions by duly elected condominium Directors on matters within their jurisdiction are enforceable and are not subject to the whims of individual unit owners like Mr. Friend. His contrary belief as to these principles is incorrect and threatens, if accepted, the Ontario legislative framework of this condominium corporation.

[25] CC 671 must pay for services it obtains from third party contractors. Unit owners ultimately are liable for such expenses through their monthly condominium fees or special assessments. That ultimate liability normally is the common incentive amongst unit owners and Directors that the condominium not incur expenses, such as the legal fees in this and prior proceedings against these defendants, unless absolutely necessary.

[26] Residential condominium living places unit owners in close physical proximity to one another, which can be difficult when a unit owner like Mr. Friend adopts an aggressive and confrontational campaign to defy Board decisions and policy as he has done in this case.

[27] Mr. Friend either lacks the capacity or simply refuses to accept the legal and practical realities of living in a condominium environment.

2010

[28] The evidence indicates Mr. Friend has been harassing Directors of CC 671 during the past decade. His conduct resulted in a 2010 request by CC 671's now past President that he cease harassing Board members.

[29] CC 671's legal counsel, on instructions from the Board, wrote to Mr. Friend in February 2010 and advised that:

- (a) portions of his communications with Directors was inappropriate and unacceptable;
- (b) he was directed to not communicate directly with Board members about CC 671 matters due his rude, demeaning and inappropriate comments; and
- (c) his future communication regarding CC 671 matters must be in writing and sent solely to and with CC 671's Property Manager.

[30] Mr. Friend thereupon responded that:

- (a) he rejected these directions from the Directors;
- (b) the Board should not involve the Property Manager in CC 671 governance issues; and

- (c) he opposed any limitation on his right to communicate directly with the Board.

2013

[31] CC 671 by application sought payment of \$3,000 from the defendants for the cost of installation of a water meter and outstanding water charges as to the Unit. The defendants brought a cross application for a declaration that CC 671 as to the installation of the water meter had not complied with s. 97 of the *Act* and they therefore sought in oppression remedy pursuant to s. 135 of the *Act*.

[32] The court on September 9, 2013 in the above proceeding:

- (a) granted CC 671's application which included judgment for some \$3,000;
- (b) dismissed the Friends' cross-application;
- (c) awarded \$15,000 costs against Mr. and Mrs. Friend; and
- (d) ordered Mr. and Mrs. Friend to comply with the bylaws and rules of CC 671, including not storing a kayak or other items in their parking spaces.

[33] The defendants in December 2013 attended the offices of CC 671's legal counsel whereupon a dispute arose between the defendants as Mr. Friend attempted to prevent his wife's payment of \$18,542 to CC 671, namely payment of the September 9, 2013 damage and cost award against them.

[34] Mr. Friend subsequently advised CC 671 that he intended to appeal that September 9, 2013 court decision, however there is no evidence such appeal was ever successfully pursued.

[35] Mr. Friend since 2013 has pursued a collateral campaign or attack within CC 671 of that September 9, 2013 decision in his attack of Directors and his insistence that CC 671 refund his wife's payment of the September 2013 court award including costs.

2014

[36] Mr. Friend wrote to the auditors of CC 671 on April 15, 2014, in anticipation of the pending annual audit report. He sought a meeting with the auditor to discuss his requirement

that the auditor review the appropriateness of the Board initiating prior litigation against the defendants which resulted in legal costs to CC 671 which exceeded the amount of judgment recovery against the defendants. He also sought the auditor's review and report of CC 671's calculation of the defendants' \$860 share of energy cost versus his position that the CC 671 owed the defendants \$14.59 on that issue.

[37] This was an attempt by Mr. Friend to engage service providers at the cost of CC 671 and challenge the September 9, 2013 court decision ordering the defendants' payment of arrears and costs.

2015

[38] Mr. Friend on November 23, 2015 used the brief moments in an elevator with two CC 671 Directors to complain about the cost award made by the court against the defendants and accused Ms. Pare who was present of acting improperly as a Director. Mr. Friend ignored the Directors repeated requests that he not speak to them.

[39] The second Director present at this encounter states that Mr. Friend has repeatedly maligned and defamed Ms. Pare as a Director during the previous six years.

2016

[40] Mr. Friend disrupted a meeting between the Board and unit owners on January 21, 2016, regarding CC 671's 2016/2017 budget and the Board's decision to issue a special assessment. Mr. Friend on this occasion repeatedly interrupted a Director's presentation on these subjects, demanded reimbursement of the 2013, \$18,542 court award paid by his wife and stated he was seeking to appeal that award which could cost CC 671 up to \$100,000 in legal fees. Mr. Friend as he spoke walked Chairperson in an attempt to take over the meeting. The Chairperson thereupon terminated the meeting to avoid Mr. Friend's escalating confrontation.

[41] Mr. Friend's continuing obsession in 2016 with the 2013 court award of damages and cost demonstrates his use of aggression against Directors and fellow unit owners in attempting to reverse that decision which he did not successfully appeal.

[42] The Fire Inspector accompanied by the Property Manager in February, 2016, asked Mr. Friend for permission to enter his Unit as part of the annual fire inspection of units. Mr. Friend refused entry stating it was against the law. Mrs. Friend attempted to allow entry for the inspection however Mr. Friend opposed her efforts, made derogatory comments about his wife's stability and then closed his front door which struck his wife in the process. Mrs. Friend then demanded her husband allow entry to permit the fire inspection failing which she would call the police. Mr. Friend thereupon allowed the inspection to proceed but continued to comment as the inspection proceeded.

[43] Mr. Friend has had several encounters with Mr. Garceau who is President of and a CC 671 Director since 2014.

[44] Mr. Friend called Mr. Garceau a liar as they rode a CC 671 elevator on July 4, 2016.

[45] In his May 25, 2016 email to the auditors of CC 671, Mr. Friend requested the auditor conclude that CC 671's 2014 energy claim of \$860 against the defendants was invalid. Mr. Friend then stated that the cost of the Board's past litigation against the defendants exceeded the amount it recovered, which thereby constituted a fraud and that the auditors, in breach of its obligation, were refusing to confirm such fraud.

[46] Unit owners do not have authority to engage or incur charges by CC 671 service providers. Like other unit owners, Mr. Friend was entitled to ask questions of the auditor at CC 671's annual general meeting.

[47] CC 671 in August 2016, had a contractor install new smoke detectors in each CC 671 unit. The contractor attended with the Property Manager who asked for permission to enter the defendants' Unit to replace the smoke detector therein. Mr. Friend refused entry and stated the smoke detector in his unit was fine and did not need replacement. He then partially relented but denied entry to the accompanying Property Manager, who accordingly asked that the Unit front door be left open during the installation. Mr. Friend refused that request. The Property Manager then heard Mr. Friend argue with the contractor inside the Unit. He insisted the contractor first perform a decimal test on the existing smoke detector to prove his position that it did not need to

be changed. That argument extended the contractor's installation time and resulted in an increased service charge for the defendants' Unit.

[48] Mr. Friend then refused to pay the smoke detective's \$384 invoice as he stated it exceeded the charge to other unit owners and insisted the invoice be paid by CC 671 which he alleged owed the defendants \$18,542, being the September 2013 court award including cost, previously paid by Mrs. Friend to CC 671.

[49] Mr. Friend subsequently disputed the Board's authority to require replacement of unit smoke detectors. On that occasion, he rejected the contractor's statement that the Fire Code required new smoke detectors every 10 years and insisted the contractor provide him with proof of such code requirement. This is clear example of Mr. Friend's confrontational personality, rejection of the legislated authority of condominium Directors and his incapacity to adapt to the legal and practical realities of condominium living.

[50] Mr. Garceau and the Property Manager escorted the fire alarm technician during the semi-annual inspection of unit fire alarms on October 20, 2016. Mr. Friend again refused entry other than to the fire alarm technician. Mr. Garceau and the Property Manager therefore remained in the condominium corridor outside the Unit while the technician inspected the defendants' fire alarm.

[51] Mr. Friend on this occasion tendered cash in payment of the defendants' heating bill which was not accepted as cash payments were not permitted and no one present for CC 671 had receipt forms with them.

[52] Mr. Garceau on this occasion reminded Mr. Friend of the prior notices from CC 671 that the defendants must remove the vines they were growing on their balcony as they posed a risk of damage to exterior building elements to which they were attached. Mr. Friend thereupon grabbed Mr. Garceau's arm with force and attempted to pull him into the defendants' Unit.

[53] This use of force against Mr. Garceau, independent of whether it constitutes a criminal assault, clearly demonstrates the need for court intervention.

2017

[54] On April 5, 2017, Mr. Friend reported a water stain on the ceiling of his unit which he stated was, absence other indicators, as a result of a roof leak which CC 671 was responsible for.

[55] The Property Manager and CC 671's roofing contractor repeatedly sought and were denied access to the defendants' Unit to examine their ceiling as to the reported water damage, to determine the cause thereof and to carry out any needed repairs.

[56] The Property Manager and that contractor on this occasion went onto the roof of CC 671 to examine for possible water infiltration in response to Mr. Friend reporting water damage to his ceiling. Mr. Friend sought roof access to involve himself in the contractor's roof examination. He rejected the Property Manager's direction that pursuant to Board policy, he was not permitted on the roof and must return inside the building.

[57] Mr. Friend repeatedly called upon and was critical of the CC 671's insurer in requiring it provide proof that the insurance policy did not insure unit owner roof access liability. That demand included that the insurer provide Mr. Friend with proof of historical facts as to statements in that insurer's marketing logo. Mr. Friend in relation thereto, then appealed to the General Insurance OmbudService based on his interpretation of s. 99(8) of the *Act*.

[58] Mr. Friend rudely and physically interrupted Mr. Garceau's June 3, 2017 conversation in the lobby with a new unit owner to complain about the date selected by the Board for the upcoming AGM as he stated he was unavailable that date. He later that day encountered Mr. Garceau in the condominium hallway, became confrontational and stated that Mr. Garceau did not know what he was doing and that the Directors were liars.

[59] Mr. Friend on June 19, 2017 attended at the office of CC 671's auditor prior to the upcoming AGM and requested a meeting for the auditor's review of his documentation and concerns regarding past Board decisions. He repeatedly wrote and sent documents to the auditors regarding past decisions of the Board and the auditor's lack of investigation and reporting thereof, despite Mr. Friend being requested by the Directors to stop such communications with the auditor.

[60] Contrary to the CC 671 rules, Mr Friend “stored” his kayak for the winter against the wall of his condominium garage parking space in the fall of 2017. Mr. Friend then ignored the subsequent notices from CC 671 that he was prohibited from storing such articles in his parking stall and that the kayak must be removed and stored elsewhere. Mr. Friend incorrectly considers himself entitled to elect which CC 671 regulations he will comply with.

[61] CC 671 eventually placed the kayak in commercial storage, notified Mr. Friend of that and indicated he would be responsible for the resulting storage charges. Mr. Friend in response reported the “theft” of his kayak to police and has repeatedly demanded its return, without storage charge. He now alleges the storage charges incurred as a result of his repeated refusal to store his kayak properly, constitute “extortion” by CC 671.

2018

[62] Mr. Friend has repeatedly:

- (a) sought to engage CC 671’s legal counsel as to issues he disagrees with, which would result in additional costs to CC 671;
- (b) challenged the accuracy of minutes of CC 671’s AGM and accused one Director of falsely recording events in the minutes of such meetings;
- (c) challenged conduct at CC 671’s AGM by the Chairperson, by election scrutineers, by Directors and by the Property Manager;
- (d) demanded that the Board provide him with a transcript of AGM meetings; and
- (e) ignored CC 671’s February 2013 notice that legal recourse would be sought if such conduct continued.

[63] Mr. Friend on February 21, 2018 sent a 16 page email to the Directors with a broad list of complaints, including:

- (a) he again sought a key to allow him access to the condominium roof to enable him to investigate the cause and determine the appropriate manner of repair regarding a 2017 leak in the ceiling of his Unit, despite CC 671’s contractor concluding the source of the Unit ceiling leak was not a roof leak and was likely caused by

leakage from a common element under the roof and above the ceiling of the defendants' Unit;

- (b) notice that he had filed complaints against four lawyers representing CC 671, who he alleged had breached their Rules of Professional Conduct regarding the 2013 court proceeding which determined the defendants owed arrears of common expenses and awarded costs, which Mr. Friend continued to challenge; and
- (c) he wanted the Property Manager to be “respectful and professional in her conduct” and “instructed” her to provide him with a key and access to the condo roof.

[64] CC 671's roofing contractor, accompanied by Mr. Garceau, conducted work on the roof of the building on February 22, 2018. Mr. Friend seized that opportunity to come onto the condominium roof and thereupon requested that the contractor measure the ceiling watermarks in his Unit to determine where the contractor should carry out the roof repairs. Mr. Garceau requested Mr. Friend to return inside the building. Mr. Friend refused and stated that Mr. Garceau should return in the building.

[65] The contractor took the ceiling measurements inside Mr. Friend's Unit as requested, took photographs thereof and then offered to show and explain the repair work to Mr. Friend. Mr. Garceau went to Mr. Friend's Unit and communicated the contractor's offer to meet and explain with the proviso but stated that that meeting would take place inside Mr. Friend's Unit and not on the roof. Mr. Friend instead followed Mr. Garceau and attempted to go onto the roof of the building.

[66] A struggle and name calling thereupon occurred as Mr. Garceau attempted to close the door onto the roof while Mr. Friend pushed that door open to gain access onto the roof. Mr. Garceau ultimately relented and allowed Mr. Friend onto the roof. Mr. Friend thereupon discussed several matters with the contractor and requested the contractor provide him with a copy of his written report. When advised that report would be sent to the Property Manager, Mr. Friend stated he would seek the report from the contractor's supervisor.

[67] Mr. Friend's unauthorized use of force and his non-compliance to CC 671's regulations prohibiting his presence onto the roof are inappropriate, legally wrong and warrant court intervention as sought on this motion.

[68] Mr. Garceau thereupon reported the above incident to the Board and offered his resignation as President and Director of CC 671. His resignation was not accepted. Mr. Garceau thereafter attempted to avoid communication with Mr. Friend.

[69] CC 671's Property Manager wrote to Mr. Friend on March 1, 2018, indicating:

- (a) his accessing the roof on February 22, 2018, despite previously being instructed not to and his refusal to then leave the roof on that date were in breach of article 4.04 of the Declaration;
- (b) he again was advised that he was prohibited from leaving his footwear in the corridor outside his unit;
- (c) his persistent emails to Directors containing multiple demands and criticizing their motives, integrity and competence must cease. As advised on multiple prior occasions, he was advised that his future communication regarding Board matters must be sent in writing to the Property Manager who would refer the same to and for decision by the Board;
- (d) his ongoing verbal confrontations and abusive behaviour towards Directors would not be tolerated;
- (e) he was directed to halt his communication, on and off site, with contractors of CC 671 and stop interfering with their work;
- (f) he was reminded of the September 9, 2013 court order directing him to comply with the by-laws and rules of CC 671; and
- (g) that if his above misconduct continued, CC 671 would consider legal action and would claim full cost indemnity against him.

[70] Mr. Friend on April 5, 2018 wrote to Mr. Garceau and other Directors. He attached 10 pages of his prior emails to the Board. He stated that:

- (a) Mr. Garceau's refusal to speak to him the previous day in the CC 671 elevator was unhelpful and disrespectful;

- (b) his unit ceiling required repair due to a February 2018 roof leak;
- (c) the inadequate 2017 roof repairs demonstrates the “incompetence” of CC 671 and the Property Manager;
- (d) he sought the return of his kayak which he had left for the winter in his parking space;
- (e) he complained about the failure to repair a damaged wall in the garage adjacent to his parking space and the refusal by the Directors to conduct an investigation to determine who caused that damage. Mr. Friend had previously accused Ms. Pare’s husband of causing that wall damage;
- (f) he sought a copy of the CC 671’s insurance policy as its insurer refused to provide it to him;
- (g) in response to the Property Manager advising him that CC 671’s contractor’s examination determined that the leak to the defendants’ ceiling was not caused by a roof leak, Mr. Friend objected to that roof examination and determination as he was not given a roof key and was not invited to be present during the contractor’s inspection;
- (h) CC 671 had improperly directed work in opening the ceiling of his unit to examine a possible source of the water leak from internal common elements during the absence and without the consent of the defendants and that such inspection work was unnecessary as the only work required was painting when the ceiling stain was reported in April 2017;
- (i) in response to the Property Manager’s statement that CC 671 had engaged a contractor to determine the cause of the leak, he wanted to know who the contractor was;
- (j) as a 2.46% unit owner, he insisted he be provided with a key to access the condominium roof so he could determine the cause of the leak, as he was sufficiently qualified to determine “if a bucket of tar” could remedy any required roof repair;
- (k) his correspondence regarding the roof leak is addressed to the Directors and it is they who must respond and not the Property Manager as occurred;
- (l) questions and answers between owners and Directors at AGM’s need to be open and involve full discussion, not just short questions and answers;

- (m) CC 671's lawyer lied in the September 2013 legal proceeding against the defendants and misled that court. Mr. Friend accordingly filed a complaint of professional misconduct against that lawyer, two members of her law firm and one of CC 671's Directors;
- (n) he had commenced legal proceedings against CC 671 alleging its non-compliance of sections 23, 29, 33(10), 33(2), 34, 37, 55(3), 66 to 68, 76, 85, 97, 115, 116, 118, 119, 130, 132, 134(2) and 135 of the *Act*; and
- (o) CC 671's motion to dismiss his claim in Small Claims Court, in which he sought repayment of the \$18,542 his wife paid to CC 671 in 2013, was inappropriate and resulted in added legal costs to CC 671.

[71] Mr. Friend in the spring of 2018 raised his voice and physically placed himself between Mr. Morency, a Director, who was talking to a unit owner and demanded a meeting with Mr. Morency. Mr. Morency requested that Mr. Friend stop interrupting. He and the other unit owner told Mr. Friend to move away.

[72] Mr. Friend sent an email to each Director on May 5, 2018 in which he faults the Property Manager for not providing him with the personal email address of each unit owner of CC 671 as he wished to advise all unit owners as to his position on a number of issues prior to the upcoming AGM. He requested that the Directors instruct the Property Manager to provide him with such email addresses, or their authority for not doing so which will thereupon form the basis for his appeal to the Condominium Authority Tribunal. He attached thirteen pages of his previous emails on various subjects to the Directors and the Property Manager.

[73] The Property Manager sent preliminary materials to unit owners for the upcoming AGM on May 14, 2018. Mr. Friend responded with a five page email to the Directors in which:

- (a) he objected that the Property Manager had not included his above May 5, 2018 letter in the AGM documentation distributed to owners;
- (b) he states that his May 5 2018 letter was the first of several he will be sending to unit owners to inform them as to CC 671 matters not dealt with at prior AGMs;
- (c) he demanded that the CC 671 lawyers provide the legal basis for denying his request that he be provided with the email addresses of all CC 671 owners;

- (d) he lists fourteen subjects which he states require full discussion at the upcoming AGM, including events regarding past legal proceedings against the defendants, the legal expense of such proceedings and various past decisions by the Board of Directors;
- (e) he states he will be obtaining a report from the CC 671 auditors as to the legal expenses between 2011 and 2016 which necessitated the issuance of a special assessment;
- (f) he alleges the auditors of CC 671 failed to meet the standards of the Canadian Institute of Chartered Accountants as to the reporting of CC 671's past legal expenses; and
- (g) he alleges that the Directors and the CC 671's auditors are guilty of collusion in that past audit reports do not disclose that the legal costs of CC 671 incurred by the Directors far exceeds what was recovered from the defendants and such legal costs were hidden in budget surpluses.

[74] CC 671 in May 2018 demanded payment from the defendants of \$9,246 for alleged arrears, failing which this proceeding would be commenced for relief including a request that the defendants' Unit be sold under the Act for such outstanding arrears.

[75] Mr. Friend sent a seven page email to CC 671's auditors on May 17, 2018, despite repeated requests by CC 671 that he stop communicating with and attempting to engage the auditor's involvement in his issues. Mr. Friend in this communication requests the auditors to conduct a full audit, namely a cost benefit analysis of all of CC 671's legal expenses between 2011 and 2017, as the Directors he states were ignoring his attached analysis of such expenses and continuing their practice of litigation against the defendants. He once again repeats his argument why prior meter readings and resulting charges to his unit were invalid.

[76] Mr. Friend via email in June 2018, continued his campaign in insisting that CC 671 must refund the defendants' payment of the 2013 court award in the amount of \$18,542, which he described were fictitious, overstated arrears against their Unit which did not exceed \$1,466.

2019

[77] On January 31, 2019, Mr. Friend attended the offices of CC 671's lawyer and served documents in this proceeding. He then refused to leave those offices until spoken to by the building commissionaire and then refused to leave the building until police were called.

[78] Mr. Friend reported water leaking from his ceiling on February, 19, 2019. The Property Manager of CC 671 responded it would have a contractor attend to examine the issue.

[79] Mr. Garceau and Ms. Pare spoke with CC 671's legal counsel in the courthouse hallway following a case conference in this proceeding on February 21, 2019. Mr. Friend thereupon approached those Directors and grabbed the arm of Mr. Garceau who refused to speak to him. Everyone thereupon left the courthouse.

[80] This is a third illegal application of force by Mr. Friend which requires court intervention.

[81] Mr. Friend continued to leave his boots in the hallway corridor outside his Unit during the winter of 2018/2019, despite the many prior written notices of contravention and directions not do so pursuant to CC 671's Rule 12, the *Fire Code* and despite the October 9, 2013 court order that he comply with the by-laws and rules of the CC 671.

[82] The boots in the hallway, like the kayak storage in his parking space, are not just breaches of CC 671's by-laws and/or rules. Such continuing and prohibited conduct breaches the October 9, 2013 court order that Mr. Friend comply with CC 671's by-laws and rules. Breach of court orders can result in fines or a period of incarceration.

[83] Mr. Friend left his boots in the hallway outside his Unit on February 23, 2019. Mr. Garceau noted the presence of the boots on this occasion, as had occurred on 16 prior occasions that winter. Mr. Garceau pursuant to a prior Board decision which the defendants had notice of, then placed the boots in CC 671's common room.

[84] As occurred on those previous occasions, Mr. Garceau then placed a written notice from CC 671 citing the non-compliance in leaving his boots in the hallway contrary to the *Fire Code*

and the 2013 court order directing him to comply with CC 671 by-laws and rules. That notice indicates his boots have been placed in the common room on the first floor.

[85] Mr. Friend then telephoned Mr. Garceau and left an angry voicemail message demanding to know where his boots were and then slid the notice he had received under Mr. Garceau's door. Mr. Garceau then placed the notice back at Mr. Friend's door with highlighting of the sentence as to where his boots had been placed and added a note directing that Mr. Friend stop harassing Mr. Garceau. Mr. Friend then telephoned Mr. Garceau at approximately 1 a.m.

[86] Mr. Friend knocked on Mr. Garceau's door the following morning. Mr. Garceau elected to avoid further confrontation, did not open his door and instead reported to police that Mr. Friend was harassing him. Police spoke to both individuals. No charges were laid.

[87] Mr. Garceau's telephone records indicate telephone calls from Mr. Friend on February 10, 11, 21, 22, three on February 13 and one at 12:51 a.m. on February 24, 2019, despite the prior notices that he was not to communicate with Directors and to limit his communication to the Property Manager.

[88] The above typifies Mr. Friend's obstinacy and bullying behaviour.

[89] In his affidavit, Mr. Garceau states the past and the escalating conduct in 2019 by Mr. Friend has caused him stress, anxiety and concern for his safety and that of his spouse.

[90] CC 671's legal counsel wrote the defendants on February 26, 2019 and directed that Mr. Friend cease his repeated communication with Directors and their spouses, in person, by email, by telephone and knocking on their doors. The letter stated that CC 671 intended to seek a court order to prohibit Mr. Friend from communicating directly with any Director or their spouse.

[91] Mr. Friend was advised in the above letter that his continuing practice of leaving his footwear in the hallway outside his Unit, despite the many prior requests and directions not to do so, breached the Ontario Regulation 213/07 - *Fire Code*, for which the CC 671 could be fined, as well as sections 117 and 119 (1) of the *Act*, articles 3.01 and 8.01 of the Declaration and sections 5.4 and 7(3) of the CC 671's Handbook/Rules. He was advised that the defendants will be billed

for the resulting cost to clean the carpet of residual salt and repair the baseboard damage caused by his boots outside the Unit's front door.

[92] In his six-page March 1, 2019 response to legal counsel, several CC 671 unit owners and the Master, Mr. Friend denies harassing anyone and faults others who he alleged were harassing him.

[93] Mr. Friend ignored this February 26, 2019 direction to stop communicating with CC 671's Directors and their spouses. He instead sent three lengthy, aggressive and critical emails on March 18 and 21, 2019 to a general email address used by Directors for CC 671 affairs and to several unit owners, wherein he criticized many issues, including:

- (a) the improper scheduling by the Master in October, 2019, of CC 671's motion for summary judgment in this proceeding;
- (b) his being directed to get off the condo roof on February 23, 2019;
- (c) CC 671's recent leak repair to the ceiling of his unit;
- (d) the Property Manager's incompetence in failing to ensure adequate roof repairs were performed in 2017 and 2018 to prevent water penetration;
- (e) CC 671's lawyer's February 26, 2019 letter directing him to cease communicating with Board members;
- (f) the President's recent complaint to police alleging he had harassed Mr. Garceau; and
- (g) his demand that his kayak be returned without charges for storage fees.

[94] Mr. Friend again followed a roofing contractor onto the roof of the building in March, 2019 and then rejected that contractor's request pursuant to CC 671's instructions that he re-enter the building. Mr. Friend then told the Property Manager that she as an employee of CC 671, that she was to follow his instructions and that he wanted access to the building roof.

[95] Mr. Friend on March 22, 2019, banged on the access door to the roof and yelled at the roofing contractor then working on the roofs to grant him roof access. He then yelled at the

Property Manager demanding roof access and then telephoned that same demand to the office of the roofing contractor.

[96] Mr. Butler reported being harassed by Mr. Friend to police on March 26, 2019 and specifically that:

- (a) Mr. Friend spoke to Directors and their spouses in an aggressive and critical manner each time he encountered them on CC 671 property and continues to disregard notices from the Board and its legal counsel that he cease such communication;
- (b) Mr. Friend attempted to speak to Mr. Butler on March 1, 2019, however Mr. Butler walked away;
- (c) upon encountering Mr. Butler in the CC 671 garbage room on March 22, 2019, Mr. Friend accused Mr. Butler of damaging the garage wall beside his parking stall. Mr. Butler denied causing such damage. Mr. Friend told him to prove he had not caused such damage; and
- (d) Mr. Butler advised police that he was reporting this harassment as CC 671 was bringing this motion for an injunction and he wanted the police report as documentation in support of a future injunction motion.

[97] Mr. Friend remained dissatisfied despite CC 671's repair of the damaged garage wall. He would not drop the issue and repeatedly criticized the Board for not conducting an investigation to identify the person responsible for this damage.

[98] Mr. Friend on April 16, 2019, encountered Mr. Butler in the CC 671 lobby. Despite Mr. Butler's request that he not speak to him, Mr. Friend again verbally accused him of damaging the CC 671 garage wall and reportedly stated: "You admitted that you did it. You're the one. You are going to be in deep trouble".

[99] By April 24, 2019, Mr. Friend had sent 74 lengthy critical emails during the previous 12 months to CC 671's Directors. Those email evidence his aggressive and obsessive conduct.

[100] Mr. Friend in his recent correspondence to the Directors stated that the issues between himself and the CC 671 are resolvable if the parties demonstrate goodwill and respect towards

one another. It is clear on the evidence that Mr. Friend lacks goodwill and is incapable of acting with respect towards others he disagrees with.

[101] Mr. Friend has repeatedly ignored requests in 2010, February 2013 and on March 1, 2018 that he cease confronting, criticizing and harassing Directors, in person and in writing. As previously indicated would occur, CC 671 has now brought this motion seeking the relief the Board previously indicated it would pursue for his failure to cease and desist.

Analysis

Evidenced Misconduct

[102] Mr. Friend refuses to accept the legislated authority of CC 671's Board of Directors to make and enforce decisions which he disagrees with. When he disagrees with Board decisions, policies or rules passed by the Board, which has often occurred, Mr. Friend has repeatedly used chance encounters with Directors in the condominium to argue his opposition to Board decisions and does so in a confrontational and aggressive manner, including him making derogatory, insulting, condescending and personal comments in expressing his opposition.

[103] Mr. Friend similarly communicates in the above manner through repetitive, lengthy and insulting emails, by telephone calls or by knocking on the door to speak to Directors.

[104] Some of the Directors are female. Mr. Friend is a tall, very outspoken, persistent and a domineering male who has used such traits in an attempt to bully and intimidate Directors and some of their spouses.

[105] Mr. Friend's use of physical force against Directors and a Condominium unit owner who is a spouse of a Director, in pursuing his disagreement of Board decisions and policies is entirely unacceptable.

[106] Mr. Friend has attempted without authorization to instruct and engage the services of CC 671's lawyers and accountants to the cost detriment of CC 671 and its unit owners.

[107] Mr. Friend's verbal and physical assaults of Directors are causing fear to those individuals and their spouses.

[108] If Mr. Friend continues his escalating, confrontational and aggressive misconduct towards Directors and unit owners, further physical altercations are likely, including the real possibility of physical injury.

[109] Mr. Friend's rejection of the legislated authority of the Board of Directors, his ongoing intentional contravention of provisions of the Declaration, Fire Code, and condominium rules and his rejection and attempts to reverse the 2013 court award against him are irrational, legally incorrect and must cease immediately.

Condominium Act and Requirements of CC 671

[110] S. 119 of the *Act* and article 3.01 of CC 671's Declaration oblige CC 671 unit owners to comply with the *Act* and the CC 671's Declaration, Bylaws and Rules.

[111] Sections 17(3) and 117 of the *Act* provides that CC 671 has a duty to:

- (a) ensure that unit owners comply with the *Act* and CC 671's governing documents; and
- (a) ensure that no unsafe conditions or activity within a unit or the common elements likely to cause harm to persons or property, is permitted to continue.

[112] S. 134(1) of the *Act* permits CC 671 to obtain an order enforcing compliance with the *Act* and its governing documents.

Ontario Health and Safety Act

[113] S. 1 of the *OHS Act* defines workplace harassment as "engaging in a course of vexatious comment or conduct against the worker in a workplace that is known or ought reasonably to be known to be unwelcome".

[114] S. 1 of the *OHSA* defines workplace harassment as “engaging in a course of vexatious comment or conduct against the worker in a workplace that is known or ought reasonably to be known to be unwelcome, or workplace sexual harassment”.

[115] Pursuant to s. 37.07 (1) to (d) of the *OHSA*, CC 671 has a legal duty to investigate and protect its workers from workplace harassment and to remedy by implementing and enforcing appropriate anti-harassment policies.

[116] Actions constituting *OHSA* workplace harassment by Mr. Friend include:

- (a) him making unwarranted allegations of misconduct against the Property Manager of CC 671;
- (b) him physically applying physical force without consent to Directors of CC 671: *Toronto Standard CC 671 Court No. 2395 v. Wong*, 2016 ONSC paras. 7-8, 11 and 13;
- (c) his constant aggressive emails and complaints to CC 671 personnel; and
- (d) his correspondence to the Property Manager as an employee of CC 671, which contain “insults, . . . , name-calling, coarse language and rudeness” as well as his verbal abuse of such employees: *York CC 671 Corp. No. 163 v. Robinson*, 2017 ONSC 2419, paras 2, 3 and 13.

S. 117 Breach of *Condominium Act*

[117] The phrase “injury to an individual” pursuant to s. 117 of the *Act* includes psychological harm and verbal and written forms of abuse: *CC 163 v. Robinson*, para. 10, *Metropolitan Toronto CC 671 Corp. No. 747 v. Korolekh*, 2010 ONSC 4448, para. 71, and *Carlton CC 671 Court No. 291 v. Weeks*, 2003 CarswellOnt 1013, paras. 25-34.

[118] Repeated glaring in an aggressive manner and aggressive, threatening and demeaning language breach s. 117 of the *Act*: *CCC 291 v. Weeks*, para. 32-34.

[119] The refusal of Mr. Friend to refrain from such misconduct and the reasonable apprehension and fear by some Directors and their spouses warrants intervention by the Court pursuant to s. 134 of the *Act*.

Interlocutory Injunction

[120] The test whether an interlocutory injunction should be granted requires CC 671 to establish that:

- (a) there is a serious issue to be tried;
- (b) irreparable harm will result if the relief is not granted; and
- (c) the balance of convenience favours the moving party: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, paras 83-85.

[121] Mr. Friend's repeated refusals to comply with the Declaration, By-Laws and rules of CC 671, his resulting breach of a court order directing his compliance therewith, his use of physical force against Directors, his verbal temper outbursts against Directors, other unit owners and CC 671's contractors constitute serious legal issues.

[122] Irreparable harm includes psychological harm that is more than transient or trifling: *Wong*, para. 32, citing *CC 747 v. Korolekh*, para 71. There is evidence of several Directors, their spouses and other unit owners' fear for their safety within their residential building due to the physical, verbal and written tantrums towards them or their spouses by Mr. Friend. Such continuing and escalating misconduct by Mr. Friend is causing psychological harm due to fear for one's safety, and will likely result in future physical injury given the lengthy history of his misconduct and its escalating pattern in 2018 and 2019.

[123] An interlocutory injunction is appropriate relief in response to Mr. Friend's physical assaults and harassing behaviour: *Wong*, para.s 25-35 and *Weeks*, paras. 45-50.

[124] An interlocutory injunction may be granted on a motion and on an application, provided the court has jurisdiction and the moving party has a known cause of action: *Canadian Encyclopedia Digest – Injunctions III.1*, para 84. Both of those elements exist in this case.

[125] An interlocutory injunction is appropriate in this case.

Conclusion

[126] The court declares that Mr. Friend's above physical misconduct and his campaign of aggression constitute:

- (a) workplace harassment of the Property Manager as defined in the *OHSA*; and
- (b) a breach of s. 117 of the *Act*, as his conduct includes harassment, intimidation, verbal abuse and physically assault of Directors, personnel associated with and residents of CC 671.

[127] Mr. Friend is once again ordered to cease conduct that contavenes the *Act* and CC 671's Declaration, By-Laws and/or Rules, namely conduct which risks the health and safety of employees, contractors and residents of CC 671.

[128] An interlocutory injunction is granted for the duration of this proceeding prohibiting Mr. Friend, directly or indirectly, from communicating verbally or in writing with employees, contractors, members of the Board of CC 671, the spouses and family members of its Directors, subject to the exceptions stated hereafter.

[129] The only exceptions to such interlocutory injunction against Mr. Friend are his right to:

- (a) communicate, if demonstrably necessary, as follows:
 - (i) by email to and with CC 671's Property Manager, Kim Renwick, at 260bess@gmail.com, as to matters regarding the general affairs of CC 671;
 - (ii) in the case of an emergency, by telephoning CC 671's emergency telephone number; and
 - (iii) by writing or emailing CC 671's solicitor, Davidson Houle Allen LLP, but only in relation to this legal proceeding; and

- (b) attend and, subject to the direction of the Chairperson, speak at any meeting of CC 671 unit owners called pursuant to its Declaration or By-Laws, provided he conducts himself in a polite manner, is not critical of other persons present and obeys the direction of the Chairperson.

Costs

[130] CC 671 seeks costs on a full indemnity scale regarding this motion.

[131] CC 671 has been fully successful on this motion which thereby would normally entitle it to costs. There are no circumstances by which the defendants are entitled to costs of this motion.

[132] CC 671 is entitled to costs. The issues are what is the appropriate scale of costs and the quantum thereof.

[133] A condominium corporation has a duty and is required under the Act to take all reasonable steps to ensure compliance by unit owners with the Act, the Declaration, the Bylaws and the Rules and should therefore be fully indemnified: S. 17(3) of *the Act and Metropolitan Toronto CC 671 Corporation No. 985 v. Vanduzer*, [2010] O.J. No. 571, paras. 27 and 28.

[134] Article 8 of CC 671's Declaration provides that each unit owner is responsible to indemnify the corporation for all damages and losses suffered due to an act or omission of that unit owner. Mr. Friend's above misconduct has been repetitive over a lengthy period, has continued despite numerous requests that he cease such conduct and despite several warnings that court intervention would be requested if such conduct continued.

[135] Owners ordered to comply with their obligations under the Act, the Declaration, Bylaws and Rules of the corporation should pay all costs of the condominium as unrecovered which expenses would otherwise be borne by innocent unit owners through their common expenses or levies: *York Region Standard CC 671 Corporation No. 1076 v. Anjali Holdings Limited*, 2010 ONSC 1607, paras. 1 and 2.

[136] Courts have upheld contractual obligations in a condominium's governing documents as in this case which provide for indemnification of all costs resulting from a unit owner's breach of

the governing documents: *Metropolitan Toronto CC 671 Corporation No.1067 v. 1388020 Ontario Corp.*, 2017 ONSC 4793, para. 16.

[137] Protection of compliant owners for the expenses caused by defaulting owners should be provided, as intended and provided for in the Act and the condominium's governing documents: *Ottawa-Carleton Standard CC 671 Corporation No. 997 v. Li*, un-reported.

[138] S. 134(5) of the *Act* provides for payment of additional actual costs in excess of an award of damages or costs to CC 671, with such damages, costs or additional actual costs to be added to a unit's common expenses and payment thereof within a specified time.

[139] The intention of s. 134(5) of the *Act* is to keep CC 671 whole for reasonable costs incurred to protect it and non-defaulting owners: *Croton CC 671 Corporation No. 396 v. Burdet*, 2015 ONSC 1361, paras. 41-46.

[140] CC 671 on the above authorities is awarded costs on a scale of full indemnity for all of its reasonable costs of this motion.

Quantum of Costs

[141] CC 671 provided its cost outline at the conclusion of argument which indicates that its legal fees including disbursements and HST for this motion are \$14,321.96.

[142] The division of work between senior and junior counsel, their respective hourly rates given their year of call and the total time docketed are reasonable.

[143] There is no conduct by CC 671 as to this motion which would negatively impact its cost entitlement.

[144] CC 671 are awarded costs against the defendants on a scale of full indemnity in the amount of \$14,321, inclusive of disbursements and HST, payable forthwith.

[145] The level of costs claimed and awarded are what a reasonable unsuccessful party should have anticipated in this case.

Costs Recoverable As Lien

[146] Damages or costs awarded to a condominium corporation, including any additional actual costs in obtaining such an order if so ordered, should be added to the common expenses of the defendant unit owner: s. 134(1), (3) and (5) of the *Act* and *Metropolitan Toronto CC 671 Corporation No. 1385, et al v. Skyline Executive Properties Inc.*, [2005] O.J. No. 1604 (Ont. C.A.), paras 34 and 35.

[147] The damages incurred by a condominium corporation in obtaining compliance by a unit owner and any cost award in relation thereto, may be added to the common expenses of the defendant unit owner if the Declaration so allows and in conjunction with an award made pursuant to s. 134(5) of the *Act*: *Pearson v. Carleton CC 671 Corporation No. 178*, 2012 ONSC 3300, paras 18, 19 and 22.

[148] The \$14,321 costs awarded herein against the defendants may be added to the common expenses of their Unit.

Mr. Justice Paul Kane

Released: June 28, 2019

CITATION: Ottawa Carleton Standard v. Friend, 2019 ONSC 3899
COURT FILE NO.: 18-78035
DATE: 20190628

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Ottawa Carleton Standard The Condominium
Corporation No. 671

Plaintiff

– and –

Anthony Marcus Friend and Henriette Suzanne Friend

Defendants

REASONS FOR JUDGMENT

KANE J.

Released: June 28, 2019