CITATION: *Ottawa-Carleton Standard Condominium Corporation No. 671 v. Friend*, 2020 ONSC 3515
COURT FILE NO.: CV-20-83673
DATE: 2020/06/04

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Ottawa-Carleton Standard Condominium Corporation No. 671	)	C. Wood, for the Applicant
Applicant	)	
	)	
– and –	)	
	)	
	)	
Anthony Marcus Friend	)	
	)	Self-represented
Respondent	)	
	)	
	)	
	)	
	)	
	)	**HEARD:** April 27, 2020

REASONS FOR JUDGMENT

KANE J.

[1] Ottawa-Carleton Standard Condominium Corporation No. 671 (the "Condominium") is a seven-storey condominium which contains some 50 residential and parking units. Mr. Friend and his spouse own and reside in one of the residential units and one parking unit in the Condominium.

[2] The Condominium brought this urgent application against Mr. Friend for his alleged continuing and escalating conduct in contravention of prior court orders:

a. for an order that Mr. Friend cease-and-desist conduct that contravenes the Condominium Act, 1998 (the "Act"), the Condominiums' governing documents and prior orders of this court against him; and

b. for a permanent injunction against Mr. Friend containing the terms of the Court's June 28, 2019 interlocutor injunction (the "Interlocutory Injunction" and "Interlocutory Decision") granted in proceedings brought by the Condominium against Mr. Friend and his spouse Henriette Friend in Court File No. 18-78035 (the "Lien Action").

[3] The Condominium specifically seeks:

a. an order that Mr. Friend cease and desist conduct that contravenes the Act, and the Condominium's governing documents, including but not limited to:

   i. conduct which results in damage to the units or common elements of the Condominium;

   ii. conduct which risks the health and safety of other residents of the Condominium;

   iii. conduct which violates previous Court orders;

b. an order that the Condominium has leave to submit an affidavit to the court seeking the forced sale of Mr. Friend's Condominium units should he fail to comply with the above orders;

c. an order that Mr. Friend shall comply with the terms of the Interlocutory Injunction, namely that he is prohibited from communicating verbally or in writing, directly or indirectly, with employees, contractors, members of the Board of Directors of the Condominium ("Director") and the spouses and family members of such Directors, subject only to the following specific exceptions, namely that Mr. Friend may only:

   i. Communicate, if demonstrably necessary, as follows:

      1. by email to or with the Condominium's property manager at 260bess@Gmail.com, as to matters regarding the general affairs of the Condominium;

      2. in the case of an emergency, by telephoning the Condominiums emergency telephone number, and

3. by writing or emailing the Condominium's solicitor, Davidson Houle Allen LLP, but only in relation to legal proceeding; and

ii. attend and, subject to the direction of the Chairperson, speak at any meeting of the Condominium unit owners called pursuant to its governing documents, provided he conducts himself in a polite manner, is not critical of other persons then present and obeys the directions of the Chairperson;

d. an order that Mr. Friend pay the Condominium's costs of this proceeding on a full indemnity basis and that such costs award to be added to the common elements payable by him to the Condominium and be recoverable as such, including by way of a Condominium Lien against his Condominium units.

Adjournment Denied

[4] Argument of this application proceeded on April 27, 2020, by videoconference given the current Covid-19 pandemic and on an urgent basis given the history in this case and the allegations that Mr. Friend on April 3, 2020 used the social distancing requirements of the pandemic to block or interfere with another unit owner's access to his unit in the Condominium, namely Mr. Garceau who is a Director and President of the Condominium.

[5] Mr. Friend's April 27, 2020 request for an adjournment at the commencement of argument until the matter could be argued in open court and until he had retained legal counsel was denied. Mr. Friend in arguing for the adjournment indicated he had been unable to find a lawyer who knew as much about condominium law as he did.

[6] Mr. Friend has been involved in numerous legal proceedings with the Condominium dating back to at least 2011. He had legal counsel during some of those proceedings and recently.

[7] Mr. Friend in May 2019, similarly sought an adjournment to retain legal counsel of the Condominium's application in the Lien Action which resulted in the June 28, 2019 Interlocutory Injunction.

[8] The Friends retained legal counsel by July 2019 in the Lien Action.

[9] Macleod J. on October 3, 2019 denied the Friend's request in the Lien Action for an adjournment of the Condominium's summary judgment motion scheduled for October 23, 2019.

[10] Counsel for Mr. Friend on October 3, 2019 communicated his undertaking to Macleod J. that he would not interfere with Condominium contractors engaged to perform exterior caulking repairs. Pursuant to that undertaking, Macleod J. ordered that Mr. Friend was not to be present on the balcony outside of his unit or other common elements during such scheduled caulking repair work and confirmed argument of the summary judgment motion would proceed on October 23, 2019.

[11] Mr. Friend then sent an email to his lawyer on October 7, 2019, in which he repeats his challenge as to the need for the exterior caulking work and criticizes his counsel's failure before Macleod J. on October 3 to support his opposition to such caulking work. That email states his intention to communicate with the caulking contractor and determine whether such scheduled work is required. Mr. Friend copied that email to the Condominium. The Friends thereupon filed notice that they would be self-represented in the Lien Action.

[12] Mr. Friend on October 23, 2019, without legal counsel, then again sought to adjourn argument of the summary judgment motion. His adjournment request and the Condominium's summary judgment motion were denied by James J. who ordered a two-day summary trial of the Condominium's claims in the Lien Action on a date to be set which has not yet occurred.

[13] James J. by way of case conference endorsement dated December 6, 2019 as to the pending summary trial before hm in the Lien Action, ordered Mr. Friend to retain and instruct legal counsel by December 20, 2019. It now appears Mr. Friend has not complied with that order made over five months ago to retain legal counsel.

[14] The present is but one of a pattern of adjournment requests by Mr. Friend. That combined with the seriousness of the current allegations, the troubling history of his acrimonious interventions with Condominium contractors and his physical applications of force against Condominium residents and Directors resulted in the denial of this latest adjournment request.

Materials on Application

[15] The Condominium filed several affidavits on this application by its Property Manager, by Mr. Garceau and affidavits filed upon obtaining the Interlocutory Injunction in the Lien Action.

[16] Mr. Friend filed no affidavit on this application and instead provided the court with his slide presentation, his written comments to some of the allegations in the application and his seven paragraph, October 2, 2019 affidavit in the Lien Action. Much of the above materials filed by Mr. Friend do not respond to the issues on this application and instead recite his disputes with the Condominium dating back to 2011 and unrelated matters such as the Condominium's 2019 Auditor's Report.

Prior Events and Orders Relevant to this Application

[17] The Condominium brought an application in 2012 as Mr. Friend was denying access to his unit to install a new water meter which eventually got installed in 2013 at a cost of some $3,000, which cost the Friends denied liability for. On October 9, 2013, Maranger J.:

a. granted the Condominium's application and dismissed the Friends' cross-application;

b. held the Friends liable for the installation cost of the new water meter and past due water charges;

c. ordered the Friends to comply with all Condominium by-laws and rules and cited their two specific contraventions thereof; and

d. awarded $15,000 costs against the Friends.

[18] In granting the above orders, Maranger J. made the following findings of fact:

a. the Friends had repeatedly denied access to their unit to install the water meter unless the Condominium accepted their terms;

b. the Condominium's Board of Directors as to the matters in issue had consistently acted fairly and reasonably; and

c. Mr. Friend had simply decided that the Condominium rules were not going to apply to him.

[19] Mr. Friend's disregard of the Condominium rules and the authority of its Board of Directors has continued since 2013. Such disregard in fact has expanded as he now considers himself entitled to disregard or choose which court orders he will and will not comply with.

June 28, 2019 Interlocutory Injunction

[20] The application for an interim injunction was argued on May 3, 2019. In granting the June 28, 2019 Interlocutory Injunction, the Court:

a. declared that Mr. Friend's physical misconduct and campaign of aggression within the Condominium constituted workplace harassment as defined in the *Ontario Health and Safety Act* of the Property Manager; and

b. determined that Mr. Friend's conduct including harassment, intimidation, verbal abuse and physical assault of Directors, personnel associated with and residents of the Condominium, breached s. 117 of the Act; and

c. ordered Mr. Friend to cease conduct which contravenes the Act and the Condominium's declaration, by-laws and/or rules, which risked the health and safety of employees, contractors and residents of the Condominium; Injunction Decision, paras 126 and 127.

[21] Pursuant to the Interlocutory Injunction, Mr. Friend was prohibited from communicating verbally or in writing with Condominium employees, contractors, members of its Board of Directors and the spouses and family members of Directors.

[22] Mr. Friend's communication rights to and within the Condominium governing structure were limited in the Interlocutory Injunction:

a. to communicate, if demonstrably necessary:

i. by email to or with the Condominium's property manager at 260bess@Gmail.com, as to matters regarding the general affairs of the Condominium;

ii. in the case of an emergency, by telephoning the Condominiums emergency telephone number, or

iii. by writing or emailing the Condominiums solicitor, Davidson Houle Allen LLP, but only in relation to legal proceeding; and

b. to attend and, subject to the direction of the Chairperson, speak at any meeting of the Condominium 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: Injunction Decision, paras 128 and 129.

[23] In granting the Interlocutory Injunction, the court made findings of fact against Mr. Friend which include the following:

a. he had used physical force towards Condominium Directors in 2016, 2018 and 2019: Injunction Decision, paras. 50-52, 64-66, 71 and 79;

b. he had committed outbursts of anger towards and verbal harassment of Condominium Directors and a spouse of one such Director in 2015, 2016, 2017 and 2019: Injunction Decisions, paras. 38, 40, 44, 58, 84-87 and 96 to 98;

c. he had attempted to direct and interfere in the services or work to be or being performed by Condominium contractors in 2014 and 2016 to 2019: Injunction Decision, paras 36, 37, 42, 45, 47, 49, 54, 55, 57, 59, 62, 66, 73€ and 75; and

d. he had breached Condominium rules and the directives of the Board of Directors on multiple occasions since 2010: Injunction Decision, paras. 29, 30, 49, 56, 59-61, 64-66, 75, 81-83, 94 and 95.

[24] Contrary to Mr. Friend's assertions, the Interlocutory Injunction granted became effective upon and since June 28, 2019. The Interlocutory Decision fully recites the declaration and the terms of the interlocutory injunction granted and were not conditional upon the repetition of those same terms in the form of a settled order.

June 26, 2019

[25] On June 26, 2019, two days prior to the June 28 Interlocutory Injunction which prohibited his communicating with Condominium Directors, Mr. Friend attended the Condominium residence of one such Director, Mr. Lamontagne. Upon opening his front door, Mr. Friend demanded that Mr. Lamontagne read the unopened and returned correspondence Mr. Friend had sent to all of the Directors. Mr. Friend thereupon ignored Mr. Lamontagne's requests that he leave.

[26] In response to Mr. Lamontagne's attempt to close his door, Mr. Friend used his foot and then his arm to prevent Mr. Lamontagne from closing the front door of his unit. Mr. Lamontagne in his report indicates he used all his force, eventually was able to overcome Mr. Friend's physical resistance and closed the door to his residence however Mr. Friend then continued yelling his demand that his correspondence be read immediately.

[27] Mr. Lamontagne in his report indicates he felt harassed and intimidated by this conduct by Mr. Friend. That reaction is understandable given this event and Mr. Friend's history of anger, lack of self-control, his prior uses of force against other Directors and the common, continuing proximity amongst condominium residents.

[28] This is the kind of misconduct and inappropriate use of force which led to the conclusion in the Injunctive Decision that Mr. Friend lacks the civility and capacity to live appropriately within the confines and structured decision-making environment of a residential condominium.

Exterior Caulking Contract - July to October 2019

[29] The Condominium on the advice of an engineer engaged a contractor in 2019 to replace the caulking on the exterior of the Condominium building. That work included the exterior wall area adjacent to the balcony outside the Friends' residential unit. Exterior balconies on this Condominium building are common elements and not the property of unit owners.

[30] Mr. Friend, as stated, believed this exterior caulking work was unnecessary and he disagreed with the Board of Directors' decision to proceed with such work. He demanded he be provided with proof contrary to his opinion and has repeatedly spoken to the caulking contractor as to his belief that such work is unnecessary, even after and in contravention of the Interlocutory Injunction and the October 3, 2019 order of Macleod J.

[31] Although not appealed, Mr. Friend as stated adopted the position that the Interlocutory Injunction was invalid and did not restrict his actions. Mr. Friend subsequently argued, incorrectly, that the dismissal of the Condominium's October 3, 2019 summary judgment motion effectively

set aside the Interlocutory Injunction. These arguments conveniently ignore the same prohibition as to the caulking contractor in the October 3, 2019 order of Macleod J.

[32] The caulking work adjacent to the Friends' balcony, with prior notice to them, was scheduled for September 27, 2019, however Mr. Friend came onto the balcony and prevented the work from proceeding without his involvement. Mr. Friend's October 2, 2019 affidavit in the Lien action omits to address the allegation, as confirmed by the Condominium's Engineer, that he on this occasion came onto and remained on his balcony which prevented the caulking work from proceeding.

[33] Macleod J. on October 3, 2019 ordered the Friends:

> "…. to adhere to their undertaking to their undertaking to not interfere with the contractor retained by the plaintiffs to effect repairs. They are not to be present on the balcony or other exclusive use common elements at any time or times when they are advised that repairs will be proceeding."

[34] In making the above order, Macleod J. records Mr. Friend's then undertaking communicated by his counsel to not be present on the balcony and not interfere with the work of the caulking contractor.

[35] Relying upon Mr. Friend's undertaking and the October 3, 2019 order of Macleod J. that he not interfere with the caulking contractor, not come onto the balcony during such work and the Friends' counsel's October 4, 2019 written confirmation that Mr. Friend would comply with that order, the Condominium, with prior notice of the date to the Friends, re-scheduled the caulking work adjacent to the Friends balcony to proceed on October 8, 2019.

[36] Mr. Friend then sent his critical October 7, 2019 email to his lawyer about the scheduled caulking work which he copied to the Condominium.

[37] Despite:

a. the Interlocutory Injunction prohibiting his communication with Condominium contractors;

b. his October 3, 2019 undertaking to the court and the resulting order of Macleod J. that he not interfere with the scheduled caulking work and not come on the balcony during the performance of that work; and

c. the Property Manager on October 8, 2019 repeatedly asking him to cease his interference, to leave the balcony and remain inside his unit;

Mr. Friend on October 8, 2019, twice came onto his balcony during the caulking work being performed and spoke to the contractor in challenging the need for such work. The contractor thereupon halted their work due to Mr. Friend's refusal to comply with the court orders, to cease his intervention and to leave the balcony.

[38] The caulking work outside the Friend's unit was rescheduled a third time, with resulting added cost to the Condominium, and completed at the end of October 2019.

[39] Mr. Friend's blatant disregard of the Interlocutory Injunction, the October 3, 2019 order of Macleod J. and the Condominium's right to contract such work is evidenced in his December 18, 2019 email in which he states:

a. Despite the cost to the Corporation to obtain the Kane Injunction, it was ineffective. For instance, on October 31, 2019, the Property Manager, Kimberly Renwick, despite legal threats of contempt of the Court Order, the presence of privately hired "security" and Andrew Stobbe (Keller Engineering), she could not forbid my presence at the exclusive use common element while the "contractors" removed/replaced perfectly good caulking from the Penthouse windows, doors and other exterior extrusions.

b. Further, the hired private security had nothing to do, other than a pleasant discussion with the owner of the business providing security services to condos. I also discussed with Andrew Stobbe, albeit somewhat more intensely, the reasons for removing/replacing the perfectly good caulking in the PH4 Unit. (emphasis added)

[40] In contravention of the Interlocutory Injunction's prohibition that he not communication with Condominium Directors or its service providers and despite repeated written requests from the Condominium's Property Manager and its legal counsel that he comply with that order, Mr. Friend:

a. copied the Directors with his emails to the Property Manager on July 10, 16 and 17, August 6, 7, 19, November 19, December 10, 12, and 14, 2019 and on several occasions between February 20 and April 6, 2020;

b. spoke to two Condominium Directors on August 20, 2019; and

c. communicated to or spoke to the Condominium's service contractors, including its roof contractor, on August 20, September 25 and 27, October 8, November 19, 28 and December 10, 11, 12, 14 and 18, 2019.

April 3, 2020

[41] Mr. Garceau, a Director and President of the Condominium, by affidavit states that he exited his vehicle inside the Condominium garage on April 3, 2020, whereupon Mr. Friend appeared in the garage. Mr. Garceau's intention was to walk to one of two exit doors to access the Condominium elevators and proceed up to his unit. He states that:

a. Mr. Friend positioned himself between Mr. Garceau and the garage exit doors which blocked his access to the elevators, particularly given the then health requirements that people remain two meters apart;

b. That as Mr. Garceau attempted to move in different directions to access one of the garage's exit doors, Mr. Friend responded by moving to block his passage and came closer towards him;

c. Mr. Garceau told Mr. Friend to move away, to maintain the two-meter health distancing required, that he did not wish to talk with Mr. Friend and reminded him of the Interlocutory Injunction prohibition that he notspeak to Directors;

d. Mr. Friend then asked Mr. Garceau why he was not going to speak to him and stated that the Interlocutory Injunction was not valid and had been cancelled;

e. Mr. Garceau told Mr. Friend to let him go but instead of moving aside to permit his passage, Mr. Friend instead responded that Mr. Garceau was stupid, that there was something wrong with him and that he was a weird human being;

f. Mr. Garceau thereupon shouted at Mr. Friend to let him pass however Mr. Friend continued to interrupt his passage to the elevators;

g. Mr. Gasrceau then telephoned another Condominium Director who suggested he call the Police, which recommendation Mr. Garceau then repeated aloud to Mr. Friend;

h. Mr. Friend continued to verbally insult Mr. Garceau, but eventually moved aside and allowed him to proceed to the elevator.

[42] Mr. Garceau in the concluding paragraphs of his affidavit expresses concern about Mr. Friend's escalating behaviour, his disregard of the prohibitions in the Interim Injunction, the risk of such continuing conduct to himself and other Condominium residents particularly during this pandemic and the resulting impairment of his use and enjoyment of his home in the Condominium.

[43] Mr. Garceau reported this April 3, 2020 incident in writing to the Condominium and to police. Those written reports are consistent with his above allegations.

[44] Counsel for the Condominium emailed a copy of this application and Mr. Garceau's supporting affidavit to Mr. Friend on April 17, 2019, returnable on April 2019.

[45] Despite his years of litigation experience with the Condominium, Mr. Friend elected to file no affidavit on this application in response to Mr. Garceau's allegations.

[46] Mr. Friend instead emailed his detailed response to this application on April 19, 2019. He admits therein that on April 3, 2020, he wanted to speak to Mr. Garceau in the garage about "issues that concerned the financial and social well-being of the Corporation", but states that the two-meter distancing requirement was observed throughout that encounter. He admits therein to telling Mr. Garceau during this encounter that his behaviour "appeared to show symptoms of mental disturbance … was somewhat weird", which he now believes constituted paranoia. This response corroborates such elements of this April 3 event as alleged by Mr. Garceau.

[47] In this email response, Mr. Friend also states he has "no comment" regarding Mr. Garceau's affidavit allegation that Mr. Garceau shouted to let him go without success, that Mr. Garceau repeated aloud the recommendation that he call Police and that Mr. Friend thereafter continued to insult him for several minutes until eventually letting him go. These allegations by Mr. Garceau accordingly are not challenged.

[48] Mr. Friend's April 19, 2017 email response accordingly corroborates the essential elements of Mr. Garceau's allegations. That, combined with Mr. Friend's acknowledged contravention of the Interlocutory Injunction on April 3, 2019 in speaking to a Condominium Director and his long and proven history of anger and physical outbursts in attempting to control and over-rule decisions of the Condominium Directors, leads the court to accept Mr. Garceau's description of the April 3, 2019 garage encounter as accurately describing Mr. Friend's once again inappropriate threatening conduct to control, dominate and pursue his objectives.

[49] Mr. Friend on April 3, 2020, used verbal aggression and physically positioned himself during a pandemic in order to interrupt Mr. Garceau's freedom of movement and force that Director to respond to his demands. Such aggressive behavior reasonably caused fear and apprehension as alleged by Mr. Garceau, particularly during this pandemic period.

[50] As with previously reported incidents, Police initiated no action against Mr. Friend regarding this April 3, 2020 incident.

Relief Claimed

[51] The Condominium as indicated seeks:

a. A declaration;

b. A permanent injunction;

c. Leave in the event of any similar future misconduct by Mr. Friend, to file an affidavit and seek the forced sale of the Mr. Friend's units; and

d. Costs of this application on a full indemnity basis, enforceable as common expenses payable by Mr. Friend and recoverable as such, including by way of lien against his Condominium units.

Proceeding by Application

[52] The relief sought by the Condominium may be brought by application pursuant to s. 134 (1) of the Act and r. 14.05(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which state:

> **134** (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.
>
> **14.05** (2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. (emphasis added)

[53] The following cases support the conclusion that the relief sought herein may be brought by Notice of Application: *Toronto Standard Condominium No. 2395 v. Wong*, 2016 ONSC 8000, paras 38-42, *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448, paras 55, 56 and 61 and *York Condominium Corporation No. 137 v. Hayes*, 2012 ONSC 4590, paras 35 and 36.

Duty to Enforce Compliance

[54] The Condominium pursuant to ss. 17(2) and (3) of the Act has a duty to:

a. control, manage and administer the common elements and assets of the corporation; and

b. to take all reasonable steps to ensure that the owners comply with the Act, the declaration, the by-laws and the rules of the Condominium.

Compliance with Act

[55] Section 119 of the Act requires compliance with the Act as well as to the Condominium's declaration, by-laws and rules by unit owners as follows**:**

> **119** (1) A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (1). (emphasis added)

Dangerous Activities

[56] Mr. Friend's physical aggression towards others including Directors in the Condominium risks injury and breaches s. 117 of the Act, which states:

> **117** No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual. 1998, c. 19, s. 117. (emphasis added)

[57] Mr. Friend's repeated insistence and attendance on the roof of the Condominium risks injury to himself and others. That contravenes s. 117, as well as the s. 119 (1) requirement that he comply with the Condominium rules which forbid his presence on the roof of the building. Such misconduct also constitutes a breach of Article 3.01 of the Condominium's Declaration which repeats the requirement in s. 119 of the Act that owners must comply with the Act as well as the declaration, by-laws and rules of the Condominium.

[58] Mr. Friend's use of his physical presence to prevent Mr. Garceau's passage during this period of pandemic and his accompanying verbal outburst on April 3, 2020, constituted harassment and threatened psychologically harm to a Condominium Director.

[59] In granting an interlocutory injunction, the court in *Toronto Standard Condominium Corporation No. 2395 v. Wong*, 2016 ONSC No. 6742 stated:

> **32** Second, I am satisfied that the moving party has demonstrated that irreparable harm will result if the injunction is not granted. Irreparable harm may include the increased risk of personal injury or assault: see Ivaco Rolling Mills (2004) LP v. LeBlanc, (2005), 144 A.C.W.S. (3d) 82 at paras. 22-24. Irreparable harm also includes psychological harm that is more than transient or trifling: see *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, (2010) 322 D.L.R. (4th) 443 at para. 71.(emphasis added)

[60] Despite the numerous breeches by Mr. Friend of the Interlocutory Injunction, the Condominium is not seeking an order of contempt pursuant to R. 60.05 and 60.11. The numerous breaches by Mr. Friend of that Interlocutory Injunction, of the order of Macleod J. prohibiting his interference with the caulking contract and his October 8, 2019 balcony attendance are however

relevant as to the veracity of the latest allegations against him, the risk of injury and as to the need for the relief sought on this application.

[61] Mr. Friend's continuing conduct in opposing decisions of the Board of Directors, his ongoing confrontation and his use, or threatened use, of force against Directors risks injury to himself and others. The court pointed to that risk in granting the Interlocutory Injunction: Interlocutory Decision, paras 108 and 122.

Declaration and Permanent Injunction

[62] The Condominium has attempted to exercise its obligation under the Act to control and manage Mr. Friend in a reasonable manner. It has as required in response to his continuing opposition and breaches, taken reasonable steps to obtain Mr. Friend's compliance with the Act and its declaration, by-laws and rules, including obtaining the 2019 Interlocutory Injunction and in bringing this application.

[63] Mr. Friend's persistent and ongoing breeches with aggression of the Act and the Condominium's declaration and rules must be halted.

[64] The court according:

1. declares and orders Mr. Friend to cease and desist in conduct that contravenes the Act and/or the Condominiums' declaration, by-laws and rules, including but not limited to:

    a. conduct which results in damage to the Condominium units or common elements;

    b. conduct which risks the health and safety of other residents of the Condominium; and

    c. conduct which violates previous orders of this court.

2. grants a permanent injunction against Mr. Friend, namely that he is prohibited from communicating verbally, in writing, directly or indirectly or in any way with Condominium employees, contractors, service providers, members of its Board of Directors or Officers, or such persons' spouses and family members, except as hereinafter permitted.

3. orders that Mr. Friend's only right to communicate with or about Condominium matters with any of the above individuals is limited to occasions where it is demonstrably necessary, but is restricted to the following:

    a. by email or in writing only to or with the Condominium's Property Manager at 260bess@Gmail.com, as to matters regarding the general affairs of the Condominium;

    b. in the case of an emergency, by telephoning the Condominium's emergency telephone number;

    c. by writing or emailing the Condominium's solicitor, Davidson Houle Allen LLP, but only in relation to legal proceedings involving himself and/or his wife and the Condominium; and

    d. to attend and, subject to the direction of the Chairperson, speak at any meeting of the Condominium unit owners called pursuant to its governing documents, provided he conducts himself without aggression, in a polite manner, is not critical of other persons present and obeys the direction of the Chairperson at that meeting.

Leave to File Affidavit Upon Non-Compliance for Forced Sale of Units

[65] The court is unwilling to order that the Condominium may seek the forced sale of his units should Mr. Friend breech the above orders in the future, upon filing an affidavit evidencing such misconduct.

[66] The forced sale of an owner's condominium unit is an available but an ultimate remedy in response to such owner's continuing and serious misconduct: *York Condoiminium Corporation No. 137 v. Hayes*, 2012, ONSC 4590: paras 55 and 57 and *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*, 2010 ONSC 4448: paras. 13-17, 32-34, 38 and 86.

[67] Forced sale of Mr. Friend's units however is not a remedy sought in this application. The Condominium instead submits that the court's past and present findings of Mr. Friend's physical and verbal harassment, his breaches of the Act, the Condominium governing documents and past court orders have caused considerable risk and distress to Condominium members and that:

a. such misconduct to date ".may have met, or is very close to meeting the legal threshold " for obtaining an order for forced sale of his units;

b. Mr. Friend nonetheless should "be given one final opportunity to comply with his responsibilities as an owner …".

[68] The court does not disagree with the Condominium's submission that "Mr. Friend's misconduct may have met or is very close to meeting the above legal threshold justifying an order requiring the forced sale" of his Condominium units.

[69] The absence of a request for the remedy however prevents the determination of such forced sale issue, particularly conditional upon some future unknown act of misconduct by Mr. Friend.

[70] The current absence of a request for an order for the forced sale remedy may have limited Mr. Friend's response to this application. As stated in argument, the court is also concerned as Mrs. Friend is a co-owner of the units, is therefore an interested party and is not currently a party to this application.

[71] Mr. Friend should understand however that this court would have seriously considered the need for an order for the forced sale of their units given his history of repeated serious breaches of the Act and governing Condominium documents, had that relief been requested and had Mrs. Friend been a party to this application.

[72] For the above reasons, the court instead grants leave to the Condominium to amend this Notice of Application to:

a. Add Mrs. Friend as a respondent; and

b. Seek an order for the forced sale of the subject units based upon Mr. Friend's past misconduct and any future breaches by Mr. Friend of the Act or the Condominium's declaration, by-laws or rules and/or the declaratory order and permanent injunction granted herein.

Application Costs

[73] The Condominium seeks full indemnity costs of this application in the amount of $12,239, including HST, on the grounds as stated in its factum.

[74] The Condominium has been almost fully successful on this application. Cost normally should follow that result and be awarded to the Condominium.

[75] The Condominium at the conclusion of argument thereupon forwarded its draft Bill of Costs and docket entries, which Mr. Friend is entitled to respond to.

[76] The other issues as to costs includes what level of costs is appropriate and whether such cost award should be added to the common expenses owed against the units owned by Mr. Friend.

[77] The Condominium by email shall serve supplementary cost submissions by June 14, 2019, and address whether the time docketed for correspondence to Police regarding the April 3, 2020 confrontation with Mr. Garceau are recoverable costs on this application.

[78] Mr. Friend shall have until June 30, 2019, to serve his reply by email to the costs sought by the Condominium, including the above issue. Any such reply by Mr. Friend shall not exceed four pages.

Justice Kane

Released: June 4**,** 2020

CITATION: *Ottawa-Carleton Standard Condominium Corporation No. 671 v. Friend*, 2020 ONSC 3515
COURT FILE NO.: CV-20-83673
DATE: 2020/06/04

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Ottawa-Carleton Standard Condominium Corporation No. 671

Applicant

– and –

Anthony Marcus Friend

Respondent

REASONS FOR JUDGMENT

Justice Kane

Released: June 4, 2020