CITATION: Peel Standard Condominium Corporation v. Jakacki, 2020 ONSC 3697
COURT FILE NO.: CV-20-1853-00
DATE: 2020 06 15

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
Peel Standard Condominium Corporation No. 1028	)	J. Fine and J. Malchuk, Counsel for the Applicant
	)	
	)	
Plaintiff	)	
	)	
	)	
- and -	)	
	)	
	)	
Filip Jakacki	)	P. Baranowski (Swiderski), Counsel for the Respondent
	)	
	)	
	)	
Defendant	)	
	)	
	)	
	)	**HEARD:** June 1st and 8th, 2020 by teleconference.

REASONS FOR DECISION

LEMAY J

[1] The Applicant, Peel Standard Condominium Corporation No. 1028 is a condominium corporation located in Mississauga at 3975 Grand Park Drive. The Respondent owns a unit in the building where he has lived on and off for the past few years.

[2] The Application is brought to remove the Respondent from the unit under the provisions of the *Condominium Act* S.O. 1998 c. 19 on the basis that he has engaged in disruptive and violent behavior. That Application will have to be adjudicated by the Courts in due course. In the interim, the Applicant seeks an interlocutory injunction to prevent the Respondent from using the condominium's common areas except to enter and exit the building.

[3] The Respondent opposes this injunction on the basis that the Applicant's claim is frivolous and vexatious. The Respondent also argues that any conduct that he has engaged in has resulted from the failure of the Applicant to protect him from a robbery, repair his unit or address his concerns. The Respondent also argues that he suffers from anxiety and depression as a result of the robbery, which took place in his unit. Finally, the Respondent points out that the common areas in the condominium are currently closed.

[4] I determined that the matter was potentially urgent and granted an *ex parte* order on May 21st, 2020. The matter ultimately came back before me on June 1st and 8th, 2020 for a teleconference hearing on the question of whether to continue the interlocutory injunction until trial. At the conclusion of the hearing on June 8th, 2020, I granted an Order continuing the interlocutory injunction until trial and provided brief oral reasons. I advised the parties that more complete written reasons would follow. These are those reasons.

Background

a) The Parties

[5] The Applicant, Peel Standard Condominium Corporation No. 1028, is a high rise condominium building located in Mississauga. It has a Board of Directors as well as a property manager. The property manager, Julia Gentosh,

provided evidence on this motion, as did a number of the security officers who work at the condominium. Ms. Gentosh is employed by a third party property administrator.

[6] The Applicant, like most condominium corporations, has a declaration, by-laws and rules that the residents are expected to adhere to. Significant portions of all of this material were included in the motion record that I reviewed in preparation for the hearing. The provisions that I read include rules respecting behavior, ensuring that owners do not do anything to interfere with other owners or injure them, and other provisions relevant to the alleged conduct of the Respondent.

[7] The Respondent, Mr. Jakacki, is the registered owner of a unit on the 29th floor of the building. He lived there from August of 2017 to June 30th, 2018. He lived elsewhere until he moved back into the building on November 1st, 2019.

b) The Issues Raised by the Applicant

[8] Ms. Gentosh first encountered the Respondent in January of 2020, and had some concerning interactions with him. However, she also provided some history from the Applicant's files in respect of the Respondent's conduct. I note that very little of this history was seriously challenged by the Respondent in his Affidavit. However, I note that I am not finding facts in this case. That is the role of the Applications Judge when the matter proceeds to a full hearing. I am just considering the record in light of the test for an interim injunction.

[9] However, the Respondent does allege that two men in Bell uniforms were admitted to the building and allowed to come up to his unit, where they robbed the Respondent and allegedly took over $25,000.00 in property. The

Respondent alleges that he is suffering from anger, anxiety and depression as a result of this robbery. No medical documentation was attached to his Affidavit.

[10] The Respondent alleges that the door in his unit has not been fixed, and that he is angry and sad with the condominium personnel because “they did not do their job in protecting my safety when they let in individuals to the building who were not screened.”

[11] The pre-2020 incidents outlined by the Applicant are detailed in a letter from Applicant’s counsel, sent July 20th, 2018 to the Respondent and his mother, and include the following:

a) In October of 2017, the Respondent was seen driving over pylons and ripping caution tape. He was alleged to have been intoxicated.

b) In December of 2017, the Respondent kicked the elevator push button out of frustration causing the socket to come loose and a crack to appear in the drywall.

c) Also in December of 2017, the Respondent was involved in a physical altercation with other residents at the condominium.

d) In May of 2018, the Respondent was seen speeding in the underground parking garage, and nearly collided with the property manager’s car. There was yelling and abusive language uttered in the lobby, and the property manager believed the Respondent was in an intoxicated state.

e) Also in May of 2018, the Applicant alleges that the Respondent was seen on video surveillance on two separate occasions selling narcotics at the back entrance to the building.

f) In June of 2018, the Respondent punched, kicked and banged the elevator doors from the inside while being entrapped in the elevator. He was also abusive to the security guard who was attempting to assist him get out of the elevator.

[12] Based on these issues, the Applicant sought the Respondent's removal from the unit and the building within thirty days. The Respondent left the unit and rented it out to another person for a period of approximately a year. In his Affidavit filed as part of this motion, the Respondent states that he has not driven intoxicated or sped in the underground parking garage. He has provided no evidence about the other incidents in spite of the fact that he had the opportunity to respond to them.

[13] This brings me to the most recent series of issues. Ms. Gentosh's first interaction with the Respondent was when he came to the rental office with his mother in early 2020, yelling and demanding that his unit door (which had been damaged by the robbery) be replaced.

[14] The next interaction in February of 2020 was when the Respondent got into an argument with another resident, Kamil, who had parked in his property. Security was able to prevent the two residents from having a dispute. However, when Kamil went back to his car later the same evening, he discovered that it had been "keyed", and that there were significant scratches on the doors and a few on the roof as well. A review of the security camera footage by the security staff resulted in staff identifying the Respondent as having approached the car in a suspicious manner after the altercation with the owner of the car and shortly before the keying was reported to security.

[15] The Respondent denies this claim and says that he has “not been convicted of vandalizing another resident’s car.” However, the Respondent does not deny the altercation with the other resident.

[16] In April of 2020, Ms. Gentosh sent the Respondent a letter respecting oil stains on his parking spot. The letter requested that either the Respondent clean the parking spot or the condominium would clean it for him and charge him for the cleaning. It appears that this request was reasonably made under the by-laws, although I am not making any final conclusions in that regard.

[17] The Respondent sent a response to this e-mail in which he said “I will neither clean nor pay.” This would not be the type of response that would concern the Court. However, shortly after sending this response, the Respondent came to the property office, yelling and demanding answers. He also violated the social distancing requirements of two meters that were in place at the time.

[18] The security supervisor came to the office to assist Ms. Gentosh and asked the Respondent to leave. The Respondent refused and continued to yell at Ms. Gentosh, using abusive language. After a few minutes, the Applicant kicked over one of the office chairs and left the office. There was then a telephone call between Ms. Gentosh and the Respondent, and the Respondent eventually apologized for his behavior.

[19] There was a further incident two days later, in which the Respondent blocked the entrance to an elevator and used it to move furniture without following the proper protocols. When he was asked by security to stop, he ignored them and continued to move items. The result of the Respondent’s

conduct was that the elevator became stuck on the P1 level of the building, and a service technician had to be called.

[20] The Applicant had their counsel write a letter of concern to the Respondent, in which he was advised that he was prohibited from coming within ten feet of the property office, and that he was to communicate any requests in writing. In addition, he was advised to cease and desist with his conduct.

[21] The Respondent sent a reply to counsel's office that read "see you in court. I own the unit and you will not evict me." It ended with a middle finger emoji. The next morning, Ms. Gentosh found two e-mails from the Respondent. The first reads as follows:

> You dumb hoe you wanna try and evict me. LOL GOOD LUCK © IM THE OWNER SO YOU CANT DO SHIT BITCH HAHAHA
> Just cause of this i PROMISE i will make your life rund security's life HELL. You thought i was trouble oh just wait. You wanna play this game. Lets play

[22] The second e-mail, sent an hour and a half later was a much more detailed e-mail. It apologized for the first e-mail, but also included statements such as "I have every right to call you until you answer" as well as saying that while "my behavior in the office may have been excessive you drove me to that by refusing to do your job and speak to me." The e-mail, when read as a whole, is more of a justification than an apology. It ends with the salutation "I wish you a horrible day."

[23] This application was then brought by the Applicant for both an interim *ex parte* injunction and other more permanent remedies under the *Condominium Act*.

c) The Procedural History

[24] The Applicant's counsel wrote to the Brampton Court asking for an urgent hearing on May 6th, 2020. The letter was provided to the triage Judge for Brampton on May 14th, 2020, and I was requested to consider whether it was an urgent matter. The letter from Applicant's counsel sought permission to commence an Application as well as requesting that an *ex parte* injunction be granted on a temporary basis.

[25] I provided a scheduling endorsement to the Applicant's counsel directing that an *ex parte* hearing take place on May 21st, 2020. At the conclusion of that hearing, I determined that a temporary injunction should be granted and that the Respondent should be served with that injunction, along with the Application materials. I also directed that the matter return to Court on June 1st, 2020. The temporary injunction was set to expire at the conclusion of the June 1st, 2020 hearing unless it was renewed. In this respect, Rule 40.02(1) states that an interlocutory injunction may be granted without notice for a period of ten days.

[26] The Respondent retained counsel on the Friday before the June 1st, 2020 hearing. As a result, counsel for the Respondent requested an adjournment until June 8th, 2020. I granted that adjournment, but on the condition that the temporary injunction remain in place until the conclusion of the June 8th, 2020 hearing.

[27] On the morning of the June 8th, 2020 hearing, the Applicant sought to file a videotape depicting events that had taken place in the past couple of days. A copy of the video was sent to both myself and the Respondent's counsel. I was unable to open the videotape.

[28] As a result, at the commencement of the June 8th, 2020 hearing, I asked counsel whether they could stipulate to what the video showed. After some

discussion, counsel were able to agree that the video depicted events on one of the condominium's elevators. Specifically, the Respondent was on the elevator, and it stopped a couple of times on his journey. On exiting the elevator after the elevator doors opened, the Respondent hit the elevator buttons with his hands, backed up and then kicked the elevator buttons with his foot.

[29] Based on those stipulations, the parties then argued the motion. I also had factums from both parties that I considered in making my decision.

Should An Injunction Be Granted?

[30] The question I have to determine on this motion is whether a temporary injunction preventing the Respondent from using the common areas of the condominium except for ingress and egress should be granted. The test for granting an injunction is well-known and is set out in *R.J.R. MacDonald v. Canada (Attorney General)* ([1994] 1 S.C.R. 311 at para 43). The moving party must show:

a) There is a serious question to be tried;

b) The moving party will suffer irreparable harm if the injunction is not granted;

c) The balance of convenience favours the granting of the injunction.

[31] I will deal with each element of the test in turn.

a) There is a Serious Question to be Tried

[32] The Respondent argued that the Applicant's materials contain insufficient evidence to support the allegations that the Applicant has made. The

Respondent also argues that the Application contains material that is intended to humiliate or embarrass the Respondent, and the points are scandalous.

[33] I reject both of these arguments. In my view, there is a serious issue to be tried in this case. I reach that conclusion for two reasons. First, there are the facts that are being alleged by the Applicant. It is not my role to find facts, just to determine whether the facts alleged by the Applicant raise a serious issue to be tried. In my view, they do for two reasons:

a) The Respondent did not seriously challenge many of the facts on this application. For example, there was no denial that he kicked over a chair in Ms. Gentosh's office, or damaged the elevator by kicking it, or has gotten into several altercations with other residents.

b) The facts that are disclosed are of some considerable concern. The Respondent, on the Applicant's version of the facts, has been involved in more than one altercation with other tenants, has damaged condominium property and has engaged in other misconduct. In particular, I note that the two claims of drug dealing at the back door of the condominium set out in the July 20th, 2018 letter to the Respondent went unanswered in his June 3rd, 2020 Affidavit, even though other allegations made in that letter (speeding and driving intoxicated) were addressed.

[34] I should deal with the two facts that the Respondent does challenge. First, there is the incident of keying the car. The Respondent's assertion that he has not been criminally convicted is not relevant to the test I have to apply on an injunction. The question is not whether the Applicant has met the criminal standard of proof beyond a reasonable doubt. The question is whether the

Applicant has demonstrated that there is a serious issue to be tried. On the evidence I have, there is a serious issue to be tried on this point.

[35] Second, the Respondent takes issue with the fact that the Applicant relied upon a Facebook photograph of him allegedly brandishing a gun. In this respect he states that the photograph is not him brandishing a real gun. He then argued at the hearing of the motion that the Applicant was on a fishing expedition when it included this photograph. I disagree. In my view, the photograph was being used by the Applicant to demonstrate that there were risks associated with having the Respondent use the common areas, particularly given the Applicant's obligations to ensure safe working conditions for its employees under the *Occupational Health and Safety Act ("OHSA")* R.S.O. 1990 c. O.1. However, I am also of the view that this photograph was of limited assistance to me in reaching my conclusions, which is why it was not included in my summary of the problems with the Respondent's conduct.

[36] This brings me to the second reason why there is a serious issue to be tried in this case. There is also a serious legal issue to be tried. I have already mentioned the Applicant's obligations to ensure a safe working environment under the *OHSA*. Those obligations include a requirement to protect employees from violence and harassment, as set out in section 32.0.1 of the *OHSA*. The Applicant's obligations would appear to require them to take steps to deal with the alleged conduct of the Respondent.

[37] In addition, however, the Applicant has obligations to the other property owners who have units in the building and any tenants who live in those units. Section 119(1) of the *Condominium Act* requires condominium corporations, owners and occupiers of units to comply with the *Act*, and with the Condominium's declaration, by-laws and rules. Section 17(3) of the

Condominium Act requires the Applicant to take all reasonable steps to ensure that other parties abide by the declaration, by-laws and rules.

[38] In this case, the declaration, by-laws and rules clearly prohibit some of the conduct that the Respondent is alleged to have engaged in. In addition, if the Applicant's evidence is accepted, it would show a pattern of the Respondent continuing to engage in that misconduct, even up to the weekend before the hearing when he (yet again) kicked an elevator control panel. This pattern of conduct, if accepted, could result in the Respondent being removed from the building.

[39] Indeed, in other cases ongoing violent and or abusive conduct has resulted in the resident of the unit being permanently excluded from the building (see, for example, *Waterloo North Condominium Corp. 168 v. Webb* 2011 ONSC 2365). It is noteworthy that abusive language and verbal conduct that are likely to cause psychological harm or threaten physical harm can be found to be violations of section 117 of the *Condominium Act* (see *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh* 2010 ONSC 4448).

[40] The removal of the Respondent would be a drastic remedy. However, that is not the question before me. The question is whether, at this point, a restraining order should be granted against the Respondent. I am of the view that there is a serious issue to be tried on this point.

b) Irreparable Harm

[41] I am also persuaded that the Applicant would suffer irreparable harm if this injunction was not granted. The Respondent alleges that the common areas of the condominium are closed. This is not quite correct. There are areas (such as the gymnasium) that are closed. However, there are other areas such as the

hallways, the lobby, the elevators and the like that are not closed. As a result, there are risks to the Applicant and the other residents if the Respondent is not restrained.

[42] The question is whether the Applicant could suffer irreparable harm if those risks were not restrained. I am of the view that the Applicant could suffer irreparable harm for three reasons:

a) If the Applicant's facts are accepted, the Respondent has engaged in violent conduct that has resulted in damage to the condominium and to the property of other residents.

b) If the Applicant's facts are accepted, the Respondent has engaged in an ongoing pattern of disobedience of the rules in spite of the fact that he has been warned (both in 2018 and 2020) that he is in breach of these rules and to cease and desist.

c) The Respondent has made it clear that he does not intend to be bound by the directions of the either the Applicant or the court. Indeed, when asked to comply with the rules, the Respondent's first reaction was to send a middle finger emoji to the Applicant's counsel. In addition, while subject to the temporary restraining order that I had issued, the Respondent still deliberately kicked an elevator panel.

[43] Given the Respondent's ongoing conduct has allegedly caused damage to property, and given that efforts short of Court intervention to stop this conduct seem to have failed, I am satisfied that the second part of the test is met.

c) Balance of Convenience

[44] This section requires me to engage in a balancing of the interests between the two parties. Specifically, I must balance the rights of the Applicant and all of the other people who either own units in the building or are residents in those units to the quiet enjoyment of their units with the Respondent's rights to enjoy the common elements, of which he is also an owner. I am of the view that this balancing exercise also favours the Applicant's position.

[45] I start by observing that the conduct of the Respondent suggests that, absent a restraining order, he is not going to be bound by the rules (see paragraphs 21 and 22 above). This suggests that the balance of convenience favours the imposition of a restraining order.

[46] Then, there is the nature of the Respondent's conduct. As I have noted above, this is not a one-off incident where the Respondent just lost his temper. On the Applicant's evidence, this appears to be a continued and deliberate pattern of behavior. Although I make no findings of fact at this stage, I must note (as I have above) that the Respondent has not challenged many of the assertions made by the Applicant, at least on the record that I have.

[47] Finally, there are a number of cases that have noted the importance of ensuring that all residents of a condominium adhere to the declaration, by-laws and rules of the condominium. As Strathy J. (as he then was) noted in *York Condominium Corp. No. 26 v. Ramadani* (2011 ONSC 6726 at para 65):

> However, people living in a condominium are required to conduct themselves in a manner that is considerate of the interests of their fellow owners and neighbours. That is part of the bargain one makes on becoming a unit owner.

[48] In this case, the right of the residents to be free from inconsiderate, rude and dangerous conduct outweighs the rights of the Respondent to use the common areas because of his ongoing unwillingness and/or inability to use these

areas without violating the rules and interfering with the rights of his neighbours. As a result, the balance of convenience favours the granting of the injunction.

d) Conclusion

[49] For the foregoing reasons, the injunction that was granted on May 21st, 2020 shall continue in force until the Application is heard.

Next Steps

[50] At this point, I have only resolved the interim injunction application. The main Application remains to be resolved. During the course of the hearing, we discussed the timetable for the Application. The following steps are to be completed:

a) Any additional evidence being advanced by the Applicant on the Application must be served and filed by no later than June 29th, 2020.

b) The Respondent has until July 31st, 2020 to deliver his responding materials to the Application.

c) Any reply materials from the Applicant must be delivered by August 14th, 2020.

d) Any cross-examinations on the Application are to take place by September 30th, 2020.

e) Any extensions to these deadlines are to be requested by June 22nd, 2020, failing which these deadlines will apply.

[51] The parties are to attend on a teleconference at 11:00 a.m. on June 29th, 2020 to discuss a date for the hearing of the Application, as well as any other

scheduling issues that may exist. This appearance is expected to be no longer than fifteen to thirty minutes, and is peremptory to both sides. It will proceed regardless of whether the parties have counsel.

[52] I note that, on Wednesday June 10th, 2020, I received a letter from the Respondent's counsel advising that she was no longer acting for the Respondent in this matter. Mr. Jakacki is to advise my judicial assistant forthwith if he is retaining a new lawyer to deal with the rest of the proceeding.

[53] There was also one further matter that arose after the hearing on June 8th, 2020. Specifically, I received correspondence from the Applicant's counsel advising that they had heard that the Respondent was selling his unit. The Applicant was concerned about this information, because if the unit was sold before the Application was heard, the Applicant would lose its rights to secure its costs against the unit under section 134(5) of the *Condominium Act*.

[54] I am not persuaded that this question is of sufficient urgency to require the scheduling of a separate hearing date. However, I am prepared to give preliminary consideration to the question of whether this should be dealt with on an urgent basis at our next appearance on June 29th, 2020. Counsel for the Applicant is, therefore, to serve his proposed motion materials on the Respondent by June 25th, 2020. We will then discuss whether reply materials are required from the Respondent at our June 29th, 2020 conference call.

[55] Finally, there is the issue of costs for this motion. The Applicant was prepared to accept costs of $900.00 all-inclusive for the appearances on June 1st and June 8th, 2020, and the Respondent's counsel wisely took no issue with the quantum of costs that the Applicant was seeking. As a result, the costs of these

appearances are resolved. The quantum of costs for the underlying application remain to be resolved by the judge hearing the application.

LEMAY J

Released: June 15, 2020

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B E T W E E N:

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Plaintiff

- and -

Filip Jakacki

Defendant

REASONS FOR JUDGMENT

LEMAY J

Released: June 15, 2020