

CITATION: TSCC No. 1724 v. Evdassin, 2020 ONSC 1520
COURT FILE NO.: CV-19-00624020
DATE: 20200310

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Toronto Standard Condominium Corp. No. 1724)	John De Vellis and Inderpreet Suri, for the Applicant
)	
Applicant)	
)	
– and –)	
)	
Evgeni Evdassin)	Jonathan Shulman, for the Respondent
)	
Respondent)	

HEARD: February 5, 2020

DAVIES J.

REASONS FOR JUDGMENT

A. Overview

[1] Mr. Evdassin owns and lives in a unit in the condominium building operated by Toronto Standard Corporation No. 1724 (“the Condominium”).

[2] In 2017, the Condominium discovered that it was constructed using Kitec pipes, which are known to fail prematurely, creating a serious risk of catastrophic water damage. To mitigate against that risk, the Condominium developed a program to replace all the defective pipes. Unit owners were responsible for the cost to replace the pipes in their unit but the Condominium coordinated the engineers and contractors to complete the work in a cost-effective manner.¹

¹ Unit owners were given an opportunity to opt out of the program but were required to replace the pipes in their unit themselves if they did. If they did not opt out by a particular date, they were deemed to have consented to the Condominium contractors doing the work in their unit. Mr. Evdassin did not opt out of the program.

[3] Mr. Evdassin was given notice that the work to replace the pipes in his unit would start on January 25, 2019. When the contractors arrived that day, Mr. Evdassin refused to let them into his unit. The Condominium re-scheduled the work to commence on March 4, 2019. The work was not completed on March 4, 2019 either. The Condominium says that Mr. Evdassin was rude and again refused to let the contractors into his unit. Mr. Evdassin denies this. Either way, the pipes in Mr. Evdassin’s unit have not been replaced.

[4] The Condominium says this is not the only time Mr. Evdassin has been abusive to its employees or interfered with work being done by the Condominium. Mr. Evdassin denies these allegations as well.

[5] The Condominium now seeks an order requiring Mr. Evdassin to replace his pipes or, in the alternative, requiring Mr. Evdassin to pay for the Condominium to replace his pipes. The Condominium is also seeking an order that Mr. Evdassin refrain from interfering with anyone authorized by the Condominium to replace his pipes, if the work is going to be done by the Condominium rather than by Mr. Evdassin. Finally, the Condominium seeks various orders that would have the effect of prohibiting Mr. Evdassin from abusing, harassing, threatening or intimidating anyone employed by or at the Condominium or interfering with work in the future. The Condominium also seeks its costs of this application on a full indemnity basis.²

[6] The *Condominium Act, 1998* (“the Act” or “the *Condominium Act*”) requires unit owners to maintain their units.³ If an owner fails to complete work necessary to maintain their unit and that failure presents a potential risk of property damage, the Condominium can complete the work itself and the owner is responsible for the associated costs.⁴ Under s. 134(1) of the *Condominium Act*, this Court can order a unit owner to comply with any provision of the *Act*, including completing required maintenance.

[7] I accept that the continued presence of Kitec pipes in Mr. Evdassin’s unit creates a risk of serious property damage if they fail. This is not in dispute. The Condominium is, therefore, entitled to an order that Mr. Evdassin replace the pipes in his unit.

² The Condominium sought other orders in its factum, including an order that Mr. Evdassin “cease from taking photographs, videos and audio recordings of the board of director members, property management personnel, workers, contractors, residents, and other individuals affiliated with the Condominium without the permission of the person being recorded” and an order directing Mr. Evdassin “to only communicate his issues and concerns to the Condominium’s property manager via email, except in the case of an emergency” in which case he could communicate by telephone. At the hearing of this application, the Condominium abandoned its request for these orders.

³ *Condominium Act, 1998*, S.O. 1998, c. 19, s. 90(1)

⁴ *Condominium Act*, s. 92(3) and 92(4)

[8] Although framed as an alternative position in its factum, during oral argument counsel for the Condominium said that the Condominium is prepared to complete the work in Mr. Evdassin's unit so long as the court orders the work to be done.

[9] Mr. Evdassin does not dispute that the pipes in his unit should be replaced. In fact, he wants the pipes replaced and acknowledges that he is responsible for the costs associated with having the work done so long as the costs are reasonable. Mr. Evdassin does oppose an order that he do the work himself. He made a number of legal and factual arguments about why he could not have the work done privately. Given the position taken by the Condominium, I do not have to address those arguments. I accept that it would be difficult for Mr. Evdassin to make arrangements himself to have the work done. Because the Condominium is prepared to arrange to have the pipes replaced in Mr. Evdassin's unit, I will not order him to complete the work himself. Rather, I will order that Mr. Evdassin allow the Condominium's agents and contractors to enter his unit to complete the pipe replacement work and that Mr. Evdassin pay all costs incurred by the Condominium to complete the work.

[10] There are two remaining contested issues on this application:

- a. Did Mr. Evdassin interfere with contractors hired to replace the Kitec pipes such that an order is required to prevent him from interfering with the contractors hired in the future to complete the pipe replacement?
- b. Should Mr. Evdassin be ordered to refrain from verbally harassing, abusing, threatening or intimidating people employed by the Condominium and from interfering with the Condominium's performance of its objects and duties in future?

[11] For the reasons that follow, I find that Mr. Evdassin did interfere with the contractors hired in 2019 to replace the Kitec pipes throughout the Condominium. I will, therefore, grant the Condominium's request for an order that Mr. Evdassin not interfere with the contractors hired to replace the Kitec pipes in his unit.

[12] There is evidence that Mr. Evdassin has been rude to Condominium staff and contractors in the past and has been difficult to deal with on other repair projects. For the reasons that follow, I find that his past conduct has contravened the *Act* and the Condominium rules. However, the Condominium has not satisfied me that broad indefinite orders restricting Mr. Evdassin's future conduct is necessary in this case, particularly because there is no evidence that Mr. Evdassin's misconduct has persisted. As a result, I decline to exercise my discretion to make any compliance orders other than those necessary to ensure the Kitec pipes get replaced in Mr. Evdassin's unit. My ruling is made without prejudice to the Condominium's right to renew its application if Mr. Evdassin's misconduct resumes.

B. Did Mr. Evdassin interfere with contractors hired to replace the Kitec pipes such that an order is required to prevent him from interfering with the contractors hired in the future to complete the pipe replacement?

[13] The *Act* permits the Condominium or anyone authorized by the Condominium to enter a unit with reasonable notice “to perform the objects and duties of the corporation.”⁵ The Condominium’s Declaration also provides a right of entry on reasonable notice to inspect the unit, make repairs or remedy conditions that might result in property damage, among other things.

[14] The Condominium argues that Mr. Evdassin denied the contractors access to his unit on two occasions, January 25, 2019 and March 4, 2019, and thereby violated the *Condominium Act* and the Declaration. The Condominium, therefore, seeks an order under s. 134(1) of the *Act* directing Mr. Evdassin to not interfere with the contractors hired to replace the Kitec pipes in his unit.

[15] Mr. Evdassin takes the position that he did not refuse to allow the contractors into his unit and did not interfere with the Condominium’s pipe replacement project. He argues that he wanted the work done. He also takes the position that the Condominium acted unreasonably by failing to properly accommodate him during the project. He, therefore, takes the position that there is no basis to make a compliance order under s. 134(1) of the *Act* in relation to the Kitec pipe replacement work.

[16] To resolve this issue, it is necessary to set out in some detail the events leading up to and during the pipe replacement project.

[17] In January 2018, unit owners were told about the problem with the Kitec pipes. In June 2018, unit owners were given details about the Condominium’s plan to replace all the pipes, including the likely start date and the estimated cost. In December 2018 and January 2019, the Condominium provided a number of additional updates and held a town hall meeting for unit owners about the project.

[18] In early January 2019, a notice was posted in the Condominium with a schedule for when construction would start in each unit. Work was scheduled to start in Mr. Evdassin’s unit on January 25, 2019. Through various notices and information bulletins, unit owners were told that the construction would occur between 9:00 am and 5:00 pm each day for five to seven days. The unit owners were also told that if the contractors were denied entry to the unit on the day scheduled for construction, the unit owner would be charged \$1,000 for the contractor to return at another time.

⁵ *Condominium Act*, s. 19

[19] Approximately two weeks before the work was to start in Mr. Evdassin's unit, the property manager called him. Mr. Evdassin had still not paid the first installment for the pipe replacement work, which was due on September 14, 2018. According to the property manager, when she asked Mr. Evdassin to pay the outstanding money, he swore at her and hung up the phone. Mr. Evdassin did eventually pay the first installment on January 25, 2019.

[20] When the contractors arrived on January 25, 2019, Mr. Evdassin refused to let them into his unit because he was sick. According to the concierge, who was accompanying the contractor that day, Mr. Evdassin yelled at them through the door not to enter his unit.

[21] On January 30, 2019, the property manager emailed Mr. Evdassin and told him the pipe replacement work would be rescheduled. On January 31, 2019, Mr. Evdassin responded and asked the Condominium to accommodate him during the construction because of ongoing health issues. The property manager inadvertently overlooked Mr. Evdassin's email and did not respond to it.

[22] On February 26, 2019, the property manager emailed Mr. Evdassin again and told him the contractors would be starting the work in his unit on March 4, 2019. The email said that the contractors would need access to his unit for five days between the hours of 9:00 am and 4:00 pm only. The email also said, "If access is refused again, this matter will be forwarded to the Corporation's solicitor for further enforcement action, and all costs incurred will be added to the common expenses for your unit." Mr. Evdassin responded to this email and noted he had not received an answer to his January 31, 2019 request for accommodation. Mr. Evdassin said that he would need to stay at a hotel during the construction because of his disability.

[23] On March 1, 2019, counsel for the Condominium wrote to Mr. Evdassin and said that the Condominium was willing reimburse him \$200 per night for the cost of staying in a hotel for up to five nights during the construction. Counsel also told Mr. Evdassin that the Condominium would only reimburse him if he provided medical documentation to support his claim for accommodation.

[24] On March 4, 2019, the property manager went to Mr. Evdassin's unit with a representative from the construction company and the concierge for the building. Mr. Evdassin videotaped part of their interaction. The video was filed by Mr. Evdassin as part of the record on this application.

[25] The video shows that as Mr. Evdassin opened his door, he asked the property manager for identification. She introduced herself and said she did not have identification with her but she could come back with her business card. When she asked if he was going to let the contractors into his unit, Mr. Evdassin said, "I will let you do it, but you have to provide me a schedule. How many hours, what date, okay?" He also said that the money offered to reimburse him for a hotel was not enough. When the property manager said the work would not start that day, Mr. Evdassin said, "It's up to you. I am offering you to come." The property manager then said

“Okay, we’re coming and you can go to a hotel with \$200.” Mr. Evdassin responded, “\$200 you can shove into your ass, okay.” He continued to demand identification and a schedule.

[26] The video ends abruptly and does not capture the full encounter between Mr. Evdassin, the property manager, the concierge and the contractor on May 4, 2019. The Condominium filed affidavits from the property manager and concierge, who described their interaction with Mr. Evdassin on March 4, 2019. They both say that Mr. Evdassin yelled and swore at them, making them both feel uncomfortable. After the interaction with Mr. Evdassin at his door, the contractor refused to work in his unit. Neither was cross-examined on their affidavit and I accept their evidence on this issue.

[27] On March 8, 2019, counsel for the Condominium wrote to Mr. Evdassin to tell him that the contractors hired by the Condominium would not be completing the work in his unit and he was required to replace the pipes himself by May 31, 2019. The letter summarized the events of March 4, 2019. Counsel took the position that Mr. Evdassin’s conduct on March 4, 2019 amounted to a violation of the Condominium’s Declaration, by-laws and rules. Counsel cautioned Mr. Evdassin that if he continued to engage in abusive or threatening conduct towards employees of the Condominium, they would pursue legal action against him. The letter advised Mr. Evdassin that the charge for the two failed attempts to enter his unit plus the cost to revise the building permit issued for the project would be added to his common expense account. Finally, the letter demanded that Mr. Evdassin pay the Condominium’s legal expenses for dealing with his refusal to cooperate.

[28] Mr. Evdassin’s lawyer sent an email to counsel for the Condominium on March 13, 2019. Counsel said that Mr. Evdassin denied the allegations in the Condominium’s March 8, 2019 letter. Counsel also said he would provide a substantive response within 96 hours, but he never did respond.

[29] On April 29, 2019, counsel for the Condominium wrote to Mr. Evdassin’s lawyer asking whether Mr. Evdassin had made arrangements for the pipes to be replaced. Counsel for the Condominium advised that the payment made by Mr. Evdassin towards the pipe replacement project had been applied to the fees charged by the contractor for the two failed attempts to access Mr. Evdassin’s unit and there was a small balance owing, which had been added to Mr. Evdassin’s common expense account. Counsel advised that the legal fees incurred by the Condominium had been added to Mr. Evdassin’s common expense account as well.

[30] On May 29, 2019, two days before Mr. Evdassin was to have completed the pipe replacement, his lawyer wrote to counsel for the Condominium. Counsel advised that Mr. Evdassin was not in a position to replace the pipes himself and that the Condominium was required to complete the work *at its own expense*. Counsel said that Mr. Evdassin had cooperated and would continue to cooperate with the Condominium. Finally, counsel demanded that the Condominium reverse the charges on Mr. Evdassin’s common expense account for the failed attempts to complete the work and for the Condominium’s legal fees. Counsel said that he would commence legal proceedings if the Condominium did not comply with his demands.

[31] On July 19, 2019, the Condominium commenced this application to require Mr. Evdassin to comply with the *Condominium Act* and to refrain from interfering with the Condominium when it is carrying out its duties under the *Act*.

[32] Mr. Evdassin now takes the position that he did not refuse to let the contractors into his unit on March 4, 2019. He says the Condominium decided on its own not to proceed with the work despite being given access to his unit.

[33] I find that Mr. Evdassin did interfere with the Condominium's efforts to complete the Kitec pipe replacement work in his unit. He refused to let the contractors into his unit on January 25, 2019, the first date scheduled for the work to start.

[34] When the work was rescheduled, he insisted that the Condominium pay for him to stay at a hotel. The Condominium agreed to reimburse Mr. Evdassin for the cost of a hotel if he gave them documentation to support his request for accommodation. Mr. Evdassin never complied with the requests for supporting documentation.

[35] When the contractor arrived on March 4, 2019, Mr. Evdassin demanded a schedule for when the work would be done, which had been provided to him in writing six days earlier. He also demanded identification from the property manager. Finally, using rude and foul language, Mr. Evdassin told the property manager that the offer made by the Condominium to reimburse him for a hotel was insufficient. Mr. Evdassin did say that he would let the contractors into his unit on March 4, 2019. However, his tone and conduct were anything but cooperative. In the part of the interaction that was videotaped, Mr. Evdassin did not invite the contractors into his unit. Rather, he stood in his doorway and argued with the property manager, using rude language about several issues he wanted resolved before the work started.

[36] Mr. Evdassin continued to try to put conditions on the completion of the work even after March 2019. In May 2019, Mr. Evdassin's lawyer insisted that the work be done and paid for by the Condominium. Counsel also took the position that the Condominium could not access Mr. Evdassin's unit unless he was properly accommodated, but counsel did not provide any documentation to support the request for accommodation. Again, this conduct belies the argument that Mr. Evdassin was cooperating with the Condominium and its efforts to replace the faulty pipes.

[37] In all the circumstances, I am satisfied that Mr. Evdassin interfered with the ability of the Condominium to replace the Kitec pipes in his unit, contrary to s. 19 of the *Act*. The question is whether a compliance order is necessary to ensure the Condominium is able to complete the work in future. The authority to make a compliance order under the *Act* is discretionary.⁶ Given

⁶ *Re Peel Condominium Corp. No. 73 and Rogers*, (1978) 21 O.R. (2d) 521 (C.A.), *York Condominium Corp. No. 135 v. Roth*, [2006] O.J. No. 3417 (S.C.) at para. 13

the persistent difficulties encountered by the Condominium over the course of several months and given that the work has still not been completed in Mr. Evdassin's unit, I am satisfied that a compliance order is appropriate in relation to the Kitec replacement project. Mr. Evdassin is ordered not to interfere with the contractors hired by the Condominium to complete that work in his unit.

C. Should Mr. Evdassin be ordered to refrain from verbally harassing, abusing, threatening or intimidating Condominium employees or from interfering with the Condominium's performance of its objects and duties in the future?

[38] The Condominium is also seeking several orders that are not related to completing the Kitec replacement work, all of which are designed to control Mr. Evdassin's future behaviour:

- a. An Order that upon 24 hours' written notice, the Condominium or a person authorized by the Condominium be allowed to enter Mr. Evdassin's unit at any reasonable time to perform the objects and duties of the Condominium or to exercise the powers of the Condominium;
- b. An Order directing Mr. Evdassin to refrain from interfering with any person, authorized by the Condominium, who requires access to his unit;
- c. An Order directing Mr. Evdassin to comply with s. 117 of the *Act* by ceasing to engage in threatening, abusive, intimidating, or harassing behaviour towards the Condominium board of directors, property management personnel, workers, contractors, residents, and other individuals affiliated with the Condominium;
- d. An Order directing Mr. Evdassin to cease and desist from uncivil or illegal conduct in violation of s. 119 of the *Act* and the Workplace Violence and Harassment provisions of under the *Ontario Health and Safety Act*;
- e. An Order directing Mr. Evdassin to cease from verbally abusing, harassing, threatening or intimidating any individual employed by or at the Condominium, including but not limited to property management personnel, workers, contractors, residents, and other individuals affiliated with the Condominium and from verbally abusing, harassing, threatening or intimidating any member of the Condominium's board of directors;
- f. An Order directing Mr. Evdassin to communicate with the Condominium's property manager in a civil manner and strictly limited to an issue or topic of concern that relates to the Condominium; and
- g. An Order directing Mr. Evdassin to be of good behaviour and keep the peace while on the common elements and on any property associated with the Condominium.

[39] To decide whether to exercise my discretion to grant some or all of these orders, I must address two discrete issues. First, has Mr. Evdassin breached the *Act* or any provision of the Condominium's Declaration, by-laws or rules in the past? Second, is a compliance order necessary or appropriate to prevent future breaches?

a. *Has Mr. Evdassin breached the Act or any provision of the Condominium's Declaration, by-laws or rules in the past?*

[40] In addition to the issues arising out of the Kitec pipe replacement, the Condominium alleges that Mr. Evdassin has breached several provisions of the *Act*, the Condominium's Declaration and its rules in the past.

[41] As set out above, the *Act* and the Condominium's Declaration provide a right of entry into units on reasonable notice to the owner to make repairs or otherwise carry out the objects of the corporation. The *Act* also prohibits unit owners from engaging in any activity in their unit or the common areas that is likely to damage property or cause personal injury, including psychological harm.⁷ The Condominium rules prohibit unit owners from creating any nuisance which "may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners or their respective families, guests, visitors, servants or person having business with them."

[42] The Condominium takes the position that Mr. Evdassin has repeatedly refused to allow contractors into his unit to perform repairs and has repeatedly harassed or abused its employees and contractors. The Condominium relies on four incidents in which they alleged that Mr. Evdassin has breached the *Act* or Condominium rules, in addition to the events surrounding efforts to replace the Kitec pipes in Mr. Evdassin's unit.

[43] First, the Condominium alleges that Mr. Evdassin refused to allow maintenance workers and contractors into his unit to investigate a water leak that was discovered on June 21, 2018. The Condominium alleges that Mr. Evdassin initially let the maintenance workers into his unit to inspect the leak but then told them to leave. The Condominium also alleges that Mr. Evdassin swore at, threatened and pushed the maintenance workers. Notwithstanding any difficulties the maintenance workers and contractor encountered, the leak in Mr. Evdassin's unit was fixed the day it was discovered. After the work was completed, however, Mr. Evdassin refused to return the fans that had been put into his unit to prevent mould growth and it is alleged he used insulting language with the contractor who tried to retrieve the fans. Mr. Evdassin denies these allegations.

⁷ *Condominium Act*, s. 117, *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, 2010 ONSC 4448, [2017] O.J. No. 3491 at para. 71

[44] Second, the property manager described an incident on May 27, 2019 where Mr. Evdassin is alleged to have threatened a contractor hired by the Condominium as part of a large-scale project to repair the balcony railings and windows on the building. It is alleged that Mr. Evdassin got upset when the contractor told him it might take a few weeks to complete the work on his balcony and he started threatening the contractor, using profane language. The contractor was concerned for his safety and reported the incident to the property manager, who called the police. The police did not respond to the call for several days. After Mr. Evdassin was provided with information by the Condominium about when the contractors would be working on his balcony and how long the process would take, the work on his balcony was completed without further incident. Mr. Evdassin denies he threatened the contractor in any way.

[45] I have concerns about the evidence tendered by the Condominium about these two incidents. The Condominium's evidence is hearsay. The property manager's affidavit describes what she heard about these events from others. No affidavit evidence was filed from any of the contractors who dealt with Mr. Evdassin directly.

[46] An affidavit filed in support of an application can contain hearsay statements based on information received by the affiant from others.⁸ However, R. 39.01(5) limits the admissibility of hearsay evidence on an application to "facts that are not contentious." Mr. Evdassin's conduct is a contentious issue on this application. It is the only issue in dispute in relation to the Condominium's request for a compliance order. The hearsay statements in the property manager's affidavit are, therefore, inadmissible on this application.

[47] In addition to the hearsay problem with the property manager's affidavit, there are inconsistencies between her description of events and the police report from the May 27, 2019 incident. The property manager wrote in her affidavit that Mr. Evdassin threatened to throw the contractor and his tools off the balcony and also threatened to throw himself off the balcony if the work on his unit was not completed that day. By contrast, the police report says that Mr. Evdassin used profane language and told the contractor to complete the work as quickly as possible. The police report also states that the contractor was concerned because Mr. Evdassin could put his own life at risk and could endanger the contractor's life if Mr. Evdassin went out on his balcony while the work was being done. There is no mention of any threat being made by Mr. Evdassin to harm the contractor or throw his tools off the balcony. The police report is much less inflammatory than the hearsay version in the property manager's affidavit. These inconsistencies raise concerns for me about the reliability of the property manager's description of other interactions she has had with Mr. Evdassin that are not corroborated by other evidence.

[48] Without relying on the inadmissible hearsay, I am nonetheless satisfied that Mr. Evdassin failed to cooperate with the Condominium and its contractors in June 2018. I also accept that

⁸ *Rules of Civil Procedure*, R. 39.01(5)

there was some sort of interaction between Mr. Evdassin and the contractor in May 2019 that caused the contractor sufficient concern that he reported the incident to the property manager.

[49] In addition to the June 2018 and May 2019 incidents, the Condominium relies on evidence from a member of the Condominium Board that on July 9, 2019, Mr. Evdassin made a comment that suggested the board member was taking bribes from the contractors hired by the Condominium. This comment was overheard by the Condominium concierge, who also swore an affidavit. The board member says that he was upset and offended by Mr. Evdassin's comments.

[50] Finally, the Condominium received complaints in July 2019 that Mr. Evdassin was leaving garbage in the hallway and stairwell outside his unit contrary to the Condominium rules. The Condominium sent Mr. Evdassin a letter on July 10, 2019 reminding him that it was a violation of the Condominiums rules to place or leave "debris, refuse or garbage" in the common areas. The letter asked him to "cease from doing so immediately." The property manager received complaints after the first letter was sent. A second letter was sent to Mr. Evdassin on July 23, 2019 by email and by registered mail. Again, Mr. Evdassin was asked to "desist from further violating the Corporation's rules." There is no evidence that Mr. Evdassin continued to leave garbage in the common areas since July 24, 2019.

[51] On balance, I find that Mr. Evdassin's past conduct, including on March 4, 2019, violated the *Act* and the Condominium rules. By being rude to the property manager, contractors and the member of the Board, Mr. Evdassin has violated the rule that prohibits owners from creating a nuisance. By frustrating the Condominium's efforts to complete necessary repairs to the building and his unit, Mr. Evdassin has also breached the provision of the *Act* and the Declaration that grants the Condominium a right of access to his unit on reasonable notice.

[52] The Condominium also takes the position that Mr. Evdassin's conduct towards the property manager and contractors amounts to workplace harassment, which is defined in the *Occupational Health and Safety Act, 1990* as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome."⁹ Under the *OHS Act*, the Condominium has a duty to protect its workers from workplace harassment. While Mr. Evdassin was rude to the property manager in January 2019 when she called to ask for payment for the pipe replacement work and on March 4, 2019 when she went to his unit with the contractor who had been hired to replace the pipes and made a rude comment to a member of the Board on July 9, 2019, these seem to be isolated incidents. I am not satisfied that he has engaged in a "course of vexatious comments or conduct" towards the property manager, or any other employee of the Condominium, that would constitute workplace harassment.

⁹ R.S.O. 1990, c. O.1, s. 1(1)

b. Are the requested compliance orders necessary or appropriate in this case?

[53] Under s. 134(1) of the *Condominium Act*, this Court has the discretion to order a unit owner to comply with any provision of the *Act*. The issue, therefore, is whether I should exercise my discretion to grant a compliance order in this case.

[54] Compliance orders of the sort sought here have been granted in other cases, which provide some guidance on how I should exercise my discretion in this case.

[55] In *TSCC No. 2395 v. Wong*, Akbarali J. made an interim compliance order prohibiting the respondent from having direct contact with certain people associated with the Condominium, disturbing the comfort and enjoyment of the common elements of the property and entering the management office.¹⁰ In that case, there was evidence of a “pattern of behaviour that has escalated, and is now threatening and dangerous.”¹¹ Ms. Wong disrupted the annual general meeting, assaulted the property manager, violently banged on and kicked the door to the property management office and made serious accusations against employees of the Condominium. Ms. Wong also engaged in bizarre behaviour in the common areas, including re-arranging the furniture and sleeping in the lobby and repeatedly dialing the same unit on the building intercom system. The Condominium had already taken the step of hiring security for the property manager before seeking a compliance order. The Court found that Ms. Wong’s conduct raised “serious concerns about the physical and emotional safety, security, comfort and enjoyment of the other unit owners and residents in the building, and of TSCC 2395 Personnel.” The Court also found that Ms. Wong had already caused irreparable harm and would continue to do so if a compliance order was not granted. Finally, the Court held that Ms. Wong would not be inconvenienced by being prohibited from engaging in harassing and threatening conduct.

[56] Similarly, in *York Condominium Corp. No 136 v. Roth*, Perell J. made an order that Mr. Roth “cease and desist from his uncivil, improper or illegal conduct that violates the *Condominium Act, 1998* or the by-laws and rules of the Condominium Corporation.”¹² In that case, there was uncontradicted evidence that Mr. Roth disrupted an owner’s meeting and physically assaulted the president of the board. There was also uncontradicted evidence that Mr. Roth had been “rude, aggressive, abusive and dismissive” of his neighbours, contractors and staff that managed the Condominium. The Court held that on the basis of the uncontradicted evidence, the Condominium was justified in seeking a compliance order.

[57] In *York Condominium Corp. No. 163 v. Robinson*, Morgan J. ordered Ms. Robinson to “cease and desist from uncivil and illegal conduct that violates the *Condominium Act* or the

¹⁰ *Toronto Standard Condominium Corp. No. 2395 v. Wong*, 2016 ONSC 8000, [2016] O.J. No. 6742 (S.C.J.) at paras. 1 and 35

¹¹ *Toronto Standard Condominium Corp. No. 2395 v. Wong*, *supra* at para. 7

¹² *York Condominium Corp. No. 136 v. Roth*, *supra* at para. 18

Rules.”¹³ Ms. Robinson was also ordered to refrain from abusing, harassing, threatening, or intimidating any employee or representative of the Condominium. In that case, there was evidence that Ms. Robinson emailed employees of the Condominium virtually every day. In her emails, she called the employees vile and degrading names. She often copied other employees and members of the Board in her emails discussing her complaints and insults about the employees. In response, the Condominium tried to establish a protocol to limit Ms. Robinson’s email communication, which proved ineffective. The Court held that “under these circumstances of antisocial, degrading and harassing communications aimed at the Applicant’s employees, a legal remedy is appropriate.”¹⁴ The Court noted that by seeking a compliance order, the Condominium was not seeking to silence Ms. Robinson or create a situation where she was unable to complain about the building. They were merely trying to get her to communicate in a civil, non-harassing manner.

[58] Finally, in *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, Code J. made an order requiring Ms. Korolekh to sell her unit because no other order would be effective at having her comply with the *Act*. The Court acknowledged this was an extremely unusual order but held that it was justified in light of Ms. Korolekh’s behaviour, which the court described as follows: “it includes physical violence, use of a large aggressive dog to frighten and intimidate, extraordinary verbal abuse of residents, interference with enjoyment of property as well as actual damage to property.”¹⁵ The Court also described Ms. Korolekh’s misconduct as “devious, persistent and vindictive.”¹⁶ The Court also noted that efforts by the Condominium to stop Ms. Korolekh’s violent, aggressive and abusive behaviour had been unsuccessful. In the end, the Court held that this case was “a ‘perfect storm’ where the misconduct is serious and persistent, where its impact on a small community has been exceptional and where the Respondent appears to be incorrigible or unmanageable.”¹⁷

[59] Dealing first with the requests for an order that Mr. Evdassin not unreasonably refuse entry into his unit and not interfere with the Condominium in carrying out its duties and objects, I am not satisfied that such an order is necessary or appropriate. As set out above, I have made such an order in relation to the completion of the Kitec pipe replacement. I am not satisfied that a broader compliance order is required. While Mr. Evdassin caused some problems in June 2018 and May 2019 in relation to work being done in his unit or in the building, the evidence before me is that those projects were not delayed in any meaningful way by his initial lack of cooperation. In those circumstances, I am not satisfied that a broad indefinite compliance order to address future requests to access Mr. Evdassin’s unit or to complete future repairs on his unit is required.

¹³ *York Condominium Corp. No. 163 v. Robinson*, 2017 ONSC 2419, [2017] O.J. No 1918 (S.C.) at para. 17

¹⁴ *York Condominium Corp. No. 163 v. Robinson*, *supra* at para. 16

¹⁵ *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, *supra* at para. 86

¹⁶ *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, *supra* at para. 86

¹⁷ *Metropolitan Toronto Condominium Corp. No. 747 v. Korolekh*, *supra* at para. 87

[60] Turning then to the request for various orders to prevent Mr. Evdassin from engaging in conduct that is abusive, illegal, uncivilized or would otherwise amount to a nuisance contrary to the Condominium rules. Mr. Evdassin has been rude and discourteous on a number of occasions in the past. His conduct, as set out above, violated the *Act* as well as the Condominium's Declaration and rules. Nonetheless, I am not satisfied that his conduct, particularly when compared to the conduct of the unit owners in other cases in which compliance orders have been made, warrants a broad, permanent compliance order. I reach this conclusion for two reasons.

[61] First, much of the conduct complained of by the Condominium is not particularly serious.

[62] The most serious complaints about Mr. Evdassin's conduct relate to the replacement of the Kitec pipes. I have already addressed those concerns by ordering that Mr. Evdassin cooperate with the Condominium on that project. The rest of the allegations made by the Condominium about Mr. Evdassin's conduct have either not been proven or are not sufficiently serious to warrant a further compliance order. For example, the allegations that Mr. Evdassin left garbage outside his unit are trivial. The photographs filed show an empty box on a trolley outside his unit on one occasion and a small bag outside his unit on three other occasions. Similarly, the comment made to the member of the board was relatively minor. While undoubtedly unwelcome, the comment was neither threatening nor menacing. There is no evidence of a pattern of conduct towards this or any other member of the board.

[63] Second, I have no evidence of any problems or concerns since July 2019. In fact, the evidence shows that Mr. Evdassin ultimately responded to the requests by the Condominium to stop leaving garbage outside his unit. While I am concerned about Mr. Evdassin's conduct on May 27, 2019 when work was being done on his balcony, once Mr. Evdassin was given or reminded of the information about how long the work on his balcony would take, he did not interfere further with those contractors.

[64] On this record, I am not satisfied that Mr. Evdassin's conduct has been so persistent, egregious or intransigent that an order is required to compel him to comply with the *Act* or the Condominium Declaration, by-laws and rules.

[65] There are two additional observations that are important in this case.

[66] First, by declining to exercise my discretion to issue a compliance order, I do not want to be seen as condoning Mr. Evdassin's conduct. Mr. Evdassin's conduct has been unacceptable in many respects and has violated the *Act*, the Condominium's Declaration and the rules. Everyone who moves into a condominium, including Mr. Evdassin, must comply by the rules of the community they have joined.¹⁸ Each unit owner is not only bound to comply with the rules and

¹⁸ *Toronto Standard Condominium Corp. No. 2395 v. Wong, supra* at para. 36

regulations but is entitled to insist that the other unit owners are held to the same standard.¹⁹ If Mr. Evdassin does not want to follow the requirements the *Act* or the Condominium's Declaration, by-laws and the rules, he is free to move. So long as he is living in the Condominium, this Court expects him to comply with the *Act* as well as the Condominium's Declaration, by-laws and rules in the future.²⁰

[67] Second, I have concerns about the breadth of the compliance orders sought by the Condominium in this case. Many of the orders sought were not responsive or proportionate to the conduct alleged. For example, the request for an order that Mr. Evdassin only communicate with the property manager in writing in a civil manner and strictly limited to an issue or topic of concern that relates to the Condominium is not a proportionate response to the allegation that Mr. Evdassin has been rude to her on one or two occasions in the past. There is also no evidence that Mr. Evdassin was communicating with the property manager about irrelevant matters. Similarly, the request for an order that Mr. Evdassin not photograph, video record or audio record anyone affiliated with the Condominium without consent is excessive in the circumstances of this case. There is no admissible evidence that Mr. Evdassin recorded anything other his interaction with the property manager and contractor on March 4, 2019.²¹ Of course, repeated videotaping could become a nuisance and a form of harassment. However, in circumstances where repeated allegations have been made about Mr. Evdassin's conduct, which he denies, it would be unreasonable to prohibit him from making an accurate record of his conduct to defend himself against what he feels are false accusations. While the Condominium abandoned its request for these Orders in oral argument, the overly broad scope of the Orders it initially sought was disproportionate to the conduct alleged and likely added to the animosity between the parties.

[68] Notwithstanding the issues that have arisen in the past, I am not satisfied based on the admissible evidence that it is necessary in the circumstances to make compliance orders in this case. As a result, the Condominium's request for compliance orders is dismissed, without prejudice to its ability to renew its application in the event that the rude, uncooperative or disruptive conduct exhibited by Mr. Evdassin before July 2019 resumes.

D. Conclusion

[69] The Application is granted in part. An order shall issue on the following terms:

1. Mr. Evdassin shall allow the Condominium's agents and contractors to enter his Unit as often as the Condominium deems reasonably necessary, on an ongoing basis between 9:00 am and 5:00 pm on any Monday through Friday on 7 days'

¹⁹ *Carleton Condominium Corporation No. 279 and Rochon et al.* (1987), 59 O.R. (2d) 545 (C.A.) at 522

²⁰ *York Condominium Corp. No. 137 v. Merle Hayes*, 2012 ONSC 4590 at paras. 22 - 23

²¹ There is a reference in the property manager's affidavit to Mr. Evdassin videotaping a contractor who came to his unit on June 22, 2018 to remove fans placed in his unit after the leak. This evidence is hearsay and inadmissible.

written notice to replace all the Kitec pipes in the Unit in accordance with s. 92(3) of the *Condominium Act, 1998*; and

2. Mr. Evdassin shall pay all costs incurred by the Condominium in furtherance of this Order, including all costs to access the Unit and all costs to replace the Kitec pipes in the Unit, the payment of which may be enforced by adding the costs to the common expenses for the Unit and putting a lien on his Unit for the costs; and
3. Mr. Evdassin shall refrain from interfering with any person authorized by the Condominium who requires access to any part of the Unit in order to replace the Kitec pipes.

[70] I encourage the parties to try to reach an agreement on the issue of costs. If they are unable to do so, the Condominium may serve and file written submissions on costs of no more than three (3) pages together with its cost outline, any offer to settle and any supporting authority on or before March 27, 2020. Mr. Evdassin may serve and file written responding submission on costs of no more than three (3) pages together with his cost outline, any offer to settle and supporting authorities on or before April 10, 2020. These submissions may be filed by delivery to my attention at Judge's Administration, Room 170, 361 University Ave. If I do not receive any cost submissions by April 17, 2020, I will deem the issue of costs to have been settled.

Davies J.

Released: March 10, 2020

CITATION: TSCC No. 1724 v. Evdassin, 2020 ONSC 1520
COURT FILE NO.: CV-19-00624020
DATE: 20200310

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Toronto Standard Condominium Corp.) John De Vellis and Inderpreet Suri, for the
No. 1724) Applicant
Applicant)
)
- and -)
)
Evgeni Evdassin) Jonathan Shulman, for the Respondent
Respondent)

HEARD: February 5, 2020

REASONS FOR JUDGMENT

DAVIES, J.

Released: March 10, 2020