

CITATION: Carleton Condominium Corporation No. 32 v. Yakovlev, 2021 ONSC 3323
COURT FILE NO.: CV-21-00086241-0000
DATE: 2021/05/04

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
Carleton Condominium Corporation No. 32)
Applicant) David Lu and Mohiminol Khandaker, for the
Applicant)
– and –)
)
Mikhail Yakovlev, Svetlana Yakovleva, and) Self-represented
Nastasiya Yakovleva)
Respondents)
)
)
) **HEARD:** April 30, 2021

2021 ONSC 3323 (CanLII)

REASONS FOR DECISION

RYAN BELL J.

Overview

[1] Carleton Condominium Corporation No. 32 (“CCC 32”) applies on an urgent basis for an order requiring the respondents to cease and desist from engaging in conduct that CCC 32 says contravenes the *Condominium Act, 1998*, S.O. 1998, c. 19, the corporation’s governing documents, and the City of Ottawa’s Temporary Mandatory Mask By-law. CCC 32 says that the respondents have created excessive and unbearable noise at unreasonable hours, engaged in aggressive and/or harassing behaviour towards others, failed to comply with mask-wearing requirements, and obstructed entry to the building for other residents by parking their vehicles on the common elements. CCC 32 says that the respondents’ behaviour constitutes a risk to the health and safety of other residents and the staff at the corporation.

[2] The respondents deny some of CCC 32’s allegations. They maintain that they respect the law. The respondents say that they have been harassed by their neighbours and the members of the corporation’s board of directors, and they have been subjected to constant surveillance. In his submissions, Mr. Yakovlev stated that because they have been so ill-treated, they have made the decision to move from the building.

The Evidentiary Record

[3] CCC 32 relies on a detailed evidentiary record that consists of the following:

- the affidavit of Ray Smith, sworn April 22, 2021. Mr. Smith is a member of the board of directors of CCC 32;
- the affidavit of Valerie Macintosh, sworn April 22, 2021. Ms. Macintosh and her husband, Yves Pepin, live in unit 204 of the building;
- the affidavit of Yves Pepin, sworn April 26, 2021;
- the affidavit of Stephen MacKechnie, sworn April 22, 2021. Mr. MacKechnie is the designated property manager for CCC 32; and
- the affidavit of Patricia Filoso, sworn April 26, 2021. Ms. Filoso is the office manager for CCC 32.

[4] At the outset of the hearing, I was provided with affidavits on behalf of each of the respondents. The affidavits are signed, but not commissioned. I was also provided with three other documents, none of which were identified as an exhibit to any of the respondents' affidavits. Having regard to the urgency of the application and the fact that the respondents are self-represented, I admitted the respondents' affidavits into evidence; however, as I will explain, I have placed little weight on the respondents' evidence. I ruled that the three separate documents would not be admitted into evidence.

Background and The Issues

[5] CCC 32 is comprised of 177 residential units in one building, known as the Denbury, located on Riverside Drive, Ottawa. Mr. Yakovlev is the owner of unit 304. His wife, Svetlana Yakovleva, owns unit 208.

[6] Mr. Yakovlev and Svetlana Yakovleva live in unit 208 with four of their five children. The four children are minors. The fifth child is Nastasiya Yakovleva; she is the eldest daughter and resides at unit 304.

[7] Since November 2020, CCC 32 has been attempting to address behaviour on the part of the respondents and their children that the corporation says contravenes the *Condominium Act*, the corporation's governing documents, and the Mask By-law.

[8] I must determine two issues: (i) have the respondents by their conduct, breached the *Condominium Act*, the governing documents of the corporation, and/or the Mask By-Law; and (ii) if so, what is the appropriate remedy.

Statutory and Regulatory Framework

[9] Condominium unit owners and their tenants are required to comply with the *Condominium Act*, and the corporation's declaration, by-laws and rules: *Condominium Act*, s. 119.

[10] As a condominium corporation, CCC 32 has a duty to take all reasonable steps to ensure that owners and the occupants of units comply with the *Condominium Act* and the corporation's governing documents: *Condominium Act*, s. 17(3). CCC 32 also has a duty to ensure that no unsafe condition or activity that is likely to cause harm to persons or property is permitted to continue, either within a unit or in the common elements: *Condominium Act*, s. 117. A condominium corporation may seek an order enforcing compliance with any provision of the statute or the corporation's governing documents: *Condominium Act*, s. 134(1).

[11] Article 2.1 of CCC 32's rules requires each owner to comply with any federal or provincial statute, or municipal by-law. Article 26, dealing with noise, provides:

- 26.1 No owner shall create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the Board, Manager, or Staff, disturbs the comfort and enjoyment of the property by other owners, their families, guests, visitors, servants and persons having business with them.
- 26.2 No noise, caused by any instrument or other device, or otherwise, which in the opinion of the Board may disturb the comfort of the other owners, is permitted.
- 26.3 Owners shall exercise extreme care about making noise which may disturb the quiet enjoyment and comfort of other residents. This includes, but is not limited to, the use of musical instruments, radios, televisions and amplifiers. Furthermore, the use of power tools, hammers, drills, saws, and related items is restricted to the hours between 9:00 a.m. and 6:00 p.m., Monday through Saturday.

[12] Article 29.1 of the corporation's rules provides that no motor vehicle shall be parked or driven on any part of the property other than on a parking space.

[13] The Mask By-law requires, with certain exceptions, each person to wear a mask that covers their mouth, nose, and chin, when they are in an enclosed common area of a condominium: *Temporary Mandatory Mask By-law*, (By-law No. 2020-186), s. 3(1)(c).

Have the Respondents Breached the *Condominium Act*, CCC 32's Governing Documents or the Mask By-law?

(i) Noise Complaints

[14] The evidence establishes that CCC 32 has received multiple reports of excessive noise coming from units 208 and 304, with the noise often occurring in the late evening and becoming

progressively worse through the night. The types of excessive noise reported include loud music and sounds of children fighting, screaming, stomping, and jumping against the walls inside the unit. There have also been complaints about renovation-related noises and sounds of power tools being used at times prohibited under the corporation's rules.

[15] The complaints of excessive noise have escalated since February 2021. For example, on March 14, 2021, Mr. Smith was asked by Mr. Pepin (also a board member) to attend unit 304 to confirm excessive noise. Mr. Smith saw another board member interacting with Nastasiya Yakovleva who stated that she and her siblings were "engaging in cultural music and dancing." She informed them that they would reduce the noise. However, the noise resumed and continued after 10:30 p.m.

[16] More recently, over the Easter long weekend, Mr. Pepin and Ms. Macintosh complained to the board and property management about excessive noises of children fighting and screaming and construction-related activities. Mr. Pepin and Ms. Macintosh were compelled to leave their unit at least eight times in the space of three days because of the noise. In her affidavit, Ms. Macintosh states that she has had to use sleeping aids in order to be able to sleep because of the constant noise.

[17] Despite follow up actions and communications, including letters from CCC 32's solicitor and a warning notice from Ottawa by-law enforcement, the respondents' conduct and the excessive noise has continued.

[18] The respondents do not deny that these incidents occurred. Mr. Yakovlev provides a limited explanation regarding two of the incidents. First, he acknowledges one incident of renovation noise at 8:45 p.m., but he states that a member of the board came by to see their renovation and "we only walked." Mr. Yakovlev's explanation can only be described as vague. In any event, CCC 32's rules are clear as to when power tools may be used.

[19] Second, Mr. Yakovlev states that when Ottawa by-law enforcement attended at their unit, their son was experiencing a psychological crisis and could not sleep "because of the sexual abuse event." In his submissions, Mr. Yakovlev went further and suggested that the complaints and "harassment" by his neighbours were "a revenge thing" for an alleged event of sexual abuse. There is no evidence whatsoever in the record to support this submission by the respondents that those making the complaints were acting out of "revenge." In any event, the other excessive noise incidents are not denied by the respondents.

[20] I accept the largely uncontradicted evidence of the respondents regarding the noise issues. There is also evidence that the excessive noise has adversely affected the ability of some residents to live in their units. Based on the totality of the evidence, I find, on a balance of probabilities, that the respondents created and permitted noise that the board concluded disturbed the comfort and enjoyment of others, and that the respondents were, therefore, in violation of CCC 32's rules: *York Condominium Corporation No. 137 v. Hayes*, 2021 ONSC 4590, at paras. 28-29. On this basis, the respondents are also in breach of s. 119 of the *Condominium Act*.

(ii) *Aggressive and/or Harassing Behaviour*

[21] CCC 32 submits that the respondents have engaged in inappropriate, aggressive, and threatening behaviour towards members of the board of directors, other residents, and contractors working on the property. The corporation's evidence in this regard is detailed and specific.

[22] CCC 32 received a report from Ms. Kirkwood, a member of the board of directors, about an incident that occurred in the afternoon of December 13, 2020. Ms. Kirkwood was getting off the elevator when she was approached by Svetlana Yakovleva who began questioning her about her experience volunteering on the board. Ms. Yakovleva suggested that Ms. Kirkwood had certain "privileges" that other residents did not have and then told Ms. Kirkwood "people want you off and are going to vote you off." Ms. Kirkwood reported feeling harassed and intimidated following this incident and immediately reported it to the board of directors and property management. A copy of her email reporting the incident is included in the evidence.

[23] Svetlana Yakovleva's evidence is that she wanted to confirm for herself that Ms. Kirkwood is a volunteer. Ms. Yakovleva therefore asked Ms. Kirkwood, in a civil tone, what she did for a living. Ms. Yakovleva does not, however, deny the statements she is alleged to have made regarding "privileges" and people wanting Ms. Kirkwood off the board. I accept the corporation's uncontradicted evidence in this regard and find that Ms. Yakovleva behaved in an aggressive fashion when she questioned Ms. Kirkwood.

[24] CCC 32 received a report from a consultant from Morrison Hershfield who was working on the property, about an incident that occurred on March 19, 2021. According to the consultant's report, she was aggressively approached by Svetlana Yakovleva, who began questioning the consultant about the cost of CCC 32's window replacement project. Ms. Yakovleva accused her of "stealing her money" and "being part of the mafia," and then stated "that work in the city is pushed by the mafia." The consultant reported that Ms. Yakovleva then approached the contractors and also questioned them aggressively. The consultant felt concerned for her safety. A copy of the consultant's email reporting the incident is included in the evidence. Mr. MacKechnie, the corporation's property manager, also attests to this incident in his affidavit. There is evidence from Mr. Smith that CCC 32's staff and contractors do not want to engage with the respondents.

[25] Svetlana Yakovleva's evidence is that she spoke respectfully to the contractors; however, she does not deny or even address the evidence regarding what she said to the consultant. I find that her conduct toward the consultant was threatening in nature.

[26] Ms. Macintosh states that she and her husband were subjected to harassment from Mr. Yakovlev and Svetlana Yakovleva after Ms. Macintosh complained to the board of directors and property management about the excessive noise emanating from their unit. Mr. Yakovlev sent an email to CCC 32's solicitor alleging that Ms. Macintosh made "[an] outburst of profanity" and used verbally abusive language directed at the respondents' children. Mr. Yakovlev's allegations are specifically denied by Ms. Macintosh. Mr. Yakovlev does not repeat these allegations in his affidavit. And, contrary to his statement in his email to CCC 32's solicitor, his allegations have not been confirmed by Svetlana Yakovleva.

[27] Ms. Filoso, the office manager, describes an encounter she had with Svetlana Yakovleva on January 13, 2021. Ms. Filoso was in the management office discussing matters for the corporation's open house with board members Mr. Pepin and Ms. Kirkwood. Ms. Yakovleva approached the management office, seemingly to inquire about the cost of plumbing work that had been conducted in her unit. Ms. Filoso asked her what specific information she was looking for, but Ms. Yakovleva continued to ask questions. Ms. Yakovleva was informed that she should look to obtain this information from the property manager because it is not information the board normally keeps. Ms. Yakovleva refused to listen and continued to insist that Ms. Filoso had the information and was refusing to provide it to her. At that point, Mr. Pepin politely requested that Ms. Yakovleva leave the management office.

[28] Mr. Pepin and Ms. Kirkwood left the management office shortly after Ms. Yakovleva's departure. About 20 minutes later, Ms. Yakovleva, accompanied by her daughter Nastasiya, returned and waited outside the office. When Ms. Kirkwood began walking back to the office, Ms. Filoso saw (and heard) Svetlana and Nastasiya Yakovleva asking Ms. Kirkwood questions about whether she is a volunteer, where she works, and how much money she makes. When Ms. Kirkwood declined to share this personal information, Svetlana Yakovleva kept insisting it was her "right to know" because she is an owner. At that point, Ms. Filoso intervened, ushered Ms. Kirkwood inside the office and requested that Svetlana and Nastasiya Yakovleva leave.

[29] Ms. Yakovleva's evidence is that Ms. Kirkwood's "duty is to speak with Owners about concerns and not ignoring and closing the office doors in front of their face." The *Condominium Act* provides a mechanism for Ms. Yakovleva to obtain the information she was seeking. Ms. Filoso advised her to obtain the information from the property manager. I find that Svetlana Yakovleva's behaviour toward Ms. Filoso was inappropriate and aggressive. I also find that Svetlana and Nastasiya Yakovleva harassed Ms. Kirkwood on this occasion.

[30] Ms. Filoso also describes a series of altercations the respondents had with the owner of unit 307, Ms. Szmigielski, a woman in her eighties who has lived at CCC 32 since 1978. Ms. Szmigielski has provided written reports of her experiences to CCC 32, which are attached as an exhibit to Ms. Filoso's affidavit. Due to her circumstances and ongoing concerns with COVID-19, Ms. Szmigielski was unable to provide an affidavit. The most serious incident occurred on December 28, 2020, when the respondents' children were playing with remote-controlled cars in the third-floor hallway, without supervision and without wearing masks. Their toy kept hitting the door of Ms. Szmigielski's unit. Ms. Szmigielski eventually confiscated the toy, resulting in a confrontation between Mr. Yakovlev, Svetlana Yakovleva and Ms. Szmigielski. The respondents removed their masks and screamed at Ms. Szmigielski, telling her "the Denbury is not a retirement home" and that she should be in a retirement home. Ms. Szmigielski closed her door, but the respondents continued to bump it and knock on it. Ms. Szmigielski threatened to call the police and did call the emergency line for CCC 32 twice. Ms. Szmigielski was subjected to similar behaviour later in the day when, after returning to her unit, she found Mr. Yakovlev and Svetlana Yakovleva waiting for her. Ms. Szmigielski gave back the car. Ms. Yakovleva, who was not wearing a mask, reiterated that Ms. Szmigielski should be living in a retirement home and not at the Denbury.

[31] Mr. Yakovlev addresses this incident only briefly in his affidavit: regarding Ms. Szmigielski's confiscation of the car, Mr. Yakovlev states "[n]o comments", and he claims that Ms. Szmigielski only returned the car the following day when he threatened to call the police. Svetlana Yakovleva does not address the incident at all. They do not deny telling Ms. Szmigielski that she should be living in a retirement home. Based on the totality of the evidence, I find that Mr. Yakovlev and Svetlana Yakovleva engaged in aggressive and harassing behaviour toward Ms. Szmigielski.

[32] The phrase "injury to an individual" in s. 117 of the *Condominium Act* includes psychological harm and has been applied to verbal and written forms of abuse: *Ottawa Carleton Standard v. Friend*, 2019 ONSC 3899, at para. 117; *Metropolitan Toronto Condominium Corporation 747 v. Korolekh*, 2010 ONSC 4448, at para. 71; *Carleton Condominium Corporation No. 291 v. Weeks*, 2003 CarswellOnt 1013, at paras. 25-34; *York Condominium Corporation No. 163 v. Robinson*, 2017 ONSC 2419, at para. 10.

[33] Based on the totality of the evidence, much of which is uncontradicted, I am satisfied that the respondents have breached s. 117 of the *Condominium Act* by engaging in aggressive, threatening and harassing behaviour against contractors, board members, and other residents.

(iii) Failure to Wear Masks on Indoor Common Elements

[34] The respondents' evidence describes a number of occasions on which the respondents' children and Nastasiya Yakovleva were seen not wearing masks while on the indoor common elements of the corporation. Ottawa's by-law office has been called to CCC 32 on multiple occasions and has issued warnings to the respondents.

[35] These instances of non-compliance with the Mask By-law are not denied by the respondents. Nastasiya Yakovleva states in her affidavit that "other times that I did not wear a mask is because I was just finishing eating." She states that because of her stomach problems, she must eat many times a day, and explains that she often eats on the way in or out of the building. She does not claim a medical exemption from wearing a mask; indeed, Mr. Yakovlev states that "[m]y family is aware of the crucial importance of following those guidelines."

[36] I find, on the evidence, that the respondents have failed to comply with the Mask by-law, and that such conduct constitutes a breach of s. 117 of the *Condominium Act*: *Halton Condominium Corporation No. 77 v. Mitrovic*, 2021 ONSC 2071, at para. 50. The respondents' conduct in this regard constitutes a risk to the health and safety of other residents and the staff of CCC 32.

(iv) Parking Regulation Breaches

[37] The corporation has received complaints about Nastasiya Yakovleva parking her vehicle on the general common elements of CCC 32, in a manner that prevents other residents from being able to access the condominium complex. Nastasiya admits that on one occasion she left her car for a period of about twenty minutes because she was bringing a plant from her car to her unit. I find that Nastasiya Yakovleva has breached CCC 32's rules prohibiting motor vehicles from being parked on any part of the property other than on a parking space. On this basis, she is also in breach of s. 119 of the *Condominium Act*.

Summary of Findings

[38] In summary, I find:

- the respondents contravened the corporation's rule prohibiting noise that disturbs the comfort and enjoyment of others, and thereby breached s. 119 of the *Condominium Act*;
- the respondents breached s. 117 of the *Condominium Act* by engaging in aggressive and harassing behaviour;
- the respondents have failed to comply with the Mask By-law and have thereby breached s. 117 of the *Condominium Act*; and
- Nastasiya Yakovleva contravened the corporation's rule prohibiting parking on the common elements, and thereby breached s. 119 of the *Condominium Act*.

[39] Living in a condominium community is a special context that requires a balancing of the interests of those who live there. Importantly,

...where someone chooses to live in a condominium community – whether as an owner or a tenant – they do not enjoy unlimited freedom to do as they please. Rather, they must conduct themselves in accordance with the rules of the community and with due respect and consideration for their neighbours and fellow residents. Further, they must govern and limit their personal activities taking into account the impact of those activities upon other residents, as regulated by the condominium rules. Examples of limits that govern all residents include refraining from playing loud music or television shows or otherwise creating noise that may disturb fellow residents during times in the late evening and night when most residents would be expected to be enjoying peace and quiet and be resting or asleep: *Metropolitan Toronto Condominium Corporation No. 933 v. Lyn*, 2020 ONSC 196, at para. 30.

[40] As the court succinctly stated in *Ciddio v. York Region Condominium Corp. No. 730*, [2002] O.J. No. 553, at para. 33,

...the *Condominium Act* exists to make for smooth interaction between the owners of units...Such a project is based on a co-operative life style, and the *Act* sets out procedures to assure that owner's [*sic*] concerns are addressed. *No one owner can run amok* or impose his designs unilaterally on an unwary or ill informed ownership [my emphasis].

[41] Without question, the aggressive and, in some instances, threatening, behaviour exhibited by the respondents is the most concerning. However, the entirety of the respondents' conduct confirms that their non-compliance with the rules is repeated and persistent.

[42] The respondents' behaviour has adversely affected others within the CCC 32 community. There is evidence that the CCC 32 board of directors is spending considerable time and energy trying to address the respondents' behaviour. Other residents are experiencing stress and concern for their safety and well-being. One resident has resorted to using sleeping aids due to the respondents' excessive noise, and the corporation's employees and contractors do not wish to engage with the respondents.

[43] The respondents have not conducted themselves in accordance with the rules of the CCC 32 community. They have failed to show due respect for their neighbours and fellow residents. They have exhibited a pattern of behaviour that fails to take into account the impact of their personal activities on other residents as regulated by the rules of the community.

What is the Appropriate Remedy?

[44] CCC 32 submits that the appropriate remedy in this case is a compliance order requiring the respondents to comply with the *Condominium Act*, the corporation's governing documents, and the Mask By-law, with the opportunity for CCC 32 to seek a forced sale of the respondents' units on the filing of affidavit evidence confirming further breaches.

[45] I agree. CCC 32 has taken all reasonable steps to ensure that the respondents comply with the *Condominium Act*, and the corporation's governing documents, including bringing this application. The respondents' persistent breaches as I have found them must be stopped.

[46] CCC 32 is entitled to the declaratory relief it seeks. This court declares that the respondents are in breach of ss. 117 and 119 of the *Condominium Act* and the governing documents of CCC 32.

[47] This court orders the respondents to comply with the *Condominium Act* and the governing documents of CCC 32. In addition, this court orders that the respondents cease and desist from conduct that contravenes the *Condominium Act* and CCC 32's governing documents, and specifically, that they cease and desist from

- engaging in conduct contrary to s. 117 of the *Condominium Act*, by permitting 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, including, but not limited to, conduct that risks the health and safety of other residents, guests and staff of CCC 32; and
- engaging in conduct that is in breach of CCC 32's governing documents, including,
 - exhibiting inappropriate and threatening behaviour towards members of CCC 32's board of directors, other residents, and contractors working on the property;
 - causing unreasonable noise or nuisance which emanates from the respondents' units and/or disturbs the comfort and quiet enjoyment of other units and/or the common elements, by other owners, residents, and occupants;

- travelling on the common elements and permitting their authorized occupants to travel on the common elements without wearing a mask or face covering, contrary to Ottawa's Mask By-law and the corporation's COVID-19 protocol; and
- parking vehicles on the general common elements in a manner that prevents other residents from being able to access the building.

[48] CCC 32 is not seeking, at this time, the forced sale of the respondents' units. However, in the event the respondents fail to comply with this order, the corporation requests leave to file affidavit evidence attesting as to any future breaches by the respondents and seek an order authorizing CCC 32 to be permitted to sell the respondents' units. Similar relief was ordered by the court in *Ottawa-Carleton Standard Condominium Corporation No. 671 v. Friend*, 2020 ONSC 3515. In my view, having regard to the nature of the respondents' breaches and the effect the respondents' behaviour has had on the CCC 32 community, such an order is appropriate here. Leave is granted to CCC 32 to file additional affidavit evidence of future breaches and to seek an order, on notice to the respondents, authorizing the sale of the respondents' units.

[49] In light of this mechanism for further compliance action, I decline to order a police enforcement clause as requested by CCC 32.

Costs

[50] CCC 32 seeks an order that the respondents pay CCC 32 all costs and expenses incurred by the corporation due to the respondents' breaches and an order that if the amount is not paid within three weeks, the amount will be added to the common expenses for the respondents' units and may be recovered by condominium lien. The basis for the corporation's request is set out in CCC 32's written submissions.

[51] The issue of costs will be determined in writing. CCC 32 is to provide its bill of costs, and any further written submissions on costs (limited to a maximum of three pages) on or before May 13, 2021. The respondents are to provide their responding submissions on costs (limited to a maximum of three pages) on or before May 26, 2021.

Madam Justice Robyn M. Ryan Bell

Released: May 4, 2021

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Applicant

– and –

Mikhail Yakovlev, Svetlana Yakovleva, and Nastasiya
Yakovleva

Respondents

REASONS FOR DECISION

Ryan Bell J.

Released: May 4, 2021