

In the Court of Appeal of Alberta

Citation: Ryan v Condominium Corporation No 0610078, 2021 ABCA 96

Date: 20210315
Docket: 1901-0234AC
Registry: Calgary

Between:

Peter Ryan

Appellant

- and -

Condominium Corporation No. 0610078

Respondent

The Court:

**The Honourable Madam Justice Myra Bielby
The Honourable Madam Justice Ritu Khullar
The Honourable Madam Justice Dawn Pentelchuk**

Memorandum of Judgment

Appeal from the Decision by
The Honourable Madam Justice S.L. Hunt McDonald
Dated the 25th day of June, 2019
Filed on the 8th day of July, 2019

(Docket: 1901 07920)

Memorandum of Judgment

The Court:

[1] The appellant, Peter Ryan, appeals an order made against him under s 67 of the *Condominium Property Act*, RSA 2000, c C-22 (the Act), following a finding that he had engaged in “improper conduct” within the meaning of the Act. The respondent Condominium Corporation is comprised of 376 residential units located in Calgary, and Mr Ryan is a registered co-owner of one of the units. By agreement of the parties, this appeal proceeded without oral argument and solely on written materials.

[2] The disagreement between Mr Ryan and the Condominium Corporation seems to have begun when he disputed his responsibility to pay a charge-back invoice for replacement of a gas valve shut-off located on the balcony of his unit. A provincial court decision eventually determined that Mr Ryan was responsible for the cost of the repair. In the meantime, however, Mr Ryan engaged in a pattern of harassing behaviour against members of the condominium board, including the board president, against whom he took “specific and unrelenting action”, in the words of the chambers judge. Mr Ryan took issue with the board’s management of the Condominium Corporation and the board’s handling of proxies at the Corporation’s annual general meeting, but the chambers judge found that his allegations of improper conduct by board members were without foundation.

[3] Through counsel, the board issued a cease and desist letter to Mr Ryan, and then brought an application under s 67 of the Act for a declaration that his actions amounted to improper conduct and for a remedy pursuant to s 67(2).

[4] The Act defines “improper conduct” to include:

- Non-compliance with the Act, regulations or bylaws by a member of a board or an owner: s 67(1)(a)(i), and
- Conduct of an owner that is oppressive or unfairly prejudicial to the corporation, a member of the board, or another owner: s 67(1)(a)(iii.1).

[5] Section 67(2) provides for the court to issue directions where it is satisfied that improper conduct has taken place, including directing that the person cease the improper conduct (s 67(2)(b)) and “any other directions or ... order that the Court considers appropriate in the circumstances” (s 67(2)(f)).

[6] The chambers judge found Mr Ryan’s actions to be “oppressive and unfairly prejudicial”. With respect to the president of the board, in particular, she found that he “made disparaging

comments about her in public, ... sent her threatening emails, and accused her of improper behaviour ..., and has targeted her for permanent removal from the board in correspondence to other condominium owners”, all of which was conduct she described as “over the top”. The chambers judge noted the evidence of the board president that Mr Ryan was “threatening and routinely aggressive” in his actions toward her. The chambers judge found this behaviour to be improper conduct under the Act and issued an order pursuant to s 67(2) that, in part, limits Mr Ryan’s interaction with board members and other owners of the Condominium Corporation.

[7] The factual findings of the chambers judge are given deference on appeal, and will not be overturned absent palpable and overriding error. No such error has been demonstrated here, and the findings regarding Mr Ryan’s actions are not challenged on appeal. Rather, the appellant submits that the conduct complained of does not amount to improper conduct within the meaning of s 67 of the Act. He also argues, in the alternative, that the chambers judge interpreted s 67(2) too broadly in crafting the remedy and that the order granted is neither incremental nor proportional.

[8] As noted, s 67 of the Act provides for a court-ordered remedy in situations of “improper conduct”, defined to include non-compliance with the Act, regulations or bylaws by an owner, and conduct of an owner that is “oppressive or unfairly prejudicial” to the corporation, a member of the board, or another owner.

[9] The chambers judge found that Mr Ryan breached the bylaws of the Condominium Corporation. This finding is supported by the record, which indicates that his actions have interfered with the president’s use and enjoyment of the common areas of the building, as provided for in paragraph 3(h) of the bylaws of the Condominium Corporation. This can constitute improper conduct under s 67(1)(a)(i).

[10] Section 67(1)(a)(iii.1) is a relatively new addition to the Act. In concluding that Mr Ryan’s actions as owner were oppressive and prejudicial against a board member or other owner, within the meaning of s 67(1)(a)(iii.1), the chambers judge referred to the description of oppressive conduct in the exercise of the powers of a board in *934859 Alberta Inc v Condominium Corporation No 0312180*, 2007 ABQB 640 at paras 93-94:

Oppression or oppressive conduct has been defined and discussed in a number of the cases cited above. It has been defined to be conduct that is burdensome, harsh, wrongful or which lacks probity or fair dealing.

The term “unfairly prejudicial” has been defined to mean acts that are unjustly or inequitably detrimental.

[11] We agree that this is an appropriate description of oppressive conduct for the purposes of s 67(1)(a)(iii.1) of the Act. It is not every questionable or offensive action by a condominium owner that would be captured by this provision. However, in this case, Mr Ryan’s targeted

harassment of the volunteer board president, in particular, was aimed at her because of her position on the board, bringing it within the purview of the Act. The nature of the harassment found by the chambers judge included threatening emails, allegations of improper behaviour in her position as board president, and unfounded allegations against volunteer board members in correspondence to other owners. The chambers judge described the tenor of the correspondence to be “over the top”; her findings would place the conduct beyond the reasonable expectations of volunteer condominium board members in their dealings with owners: *Laakso v Condominium Corporation No 8011365*, 2013 ABQB 153 at paras 25-26.

[12] We see no error in the chambers judge’s conclusion that Mr Ryan’s actions constituted improper conduct in breach of s 67 of the Act in these circumstances, and this ground of appeal is dismissed.

[13] Mr Ryan also submits that, even if the Condominium Corporation was entitled to a remedy, the order granted by the chambers judge was overly broad and not proportionate. He takes issue, in particular, with the following paragraphs of the order:

5. The Respondent, Peter Ryan, shall NOT engage in any of the following:

(b) Enter onto or into any floor of the property ... but for the floor upon which the [Unit] is located, ... except by express invitation to do so or for the purpose of attending the Condominium Corporation’s Annual General Meeting; and

(c) Attend at, upon or enter into any other Condominium Unit within the Corporation but for the [Unit] unless expressly invited, authorized or permitted to do so by the Owner, tenant or Occupant of the Unit in question.

6. Any and all communication from Peter Ryan to any other Owner, including Board Members, must be done in writing, must be respectful and is to be forwarded to the Property Manager and he shall be forbidden from any direct communication with any other Owner, tenant, occupant, agent or authorized attendee at the Corporation except in the case of emergency.

[14] In challenging the breadth of the order, Mr Ryan relies on *Condominium Plan No 822 2909 v 837023 Alberta Ltd*, 2010 ABQB 111, where it was held at para 68 that the Act proposes an “incremental approach to improper conduct”, and suggests that remedies under the Act should be proportional to the circumstances.

[15] The application brought by the Condominium Corporation pursuant to s 67 of the Act was part of an incremental enforcement of the bylaws, following as it did a cease and desist letter issued to Mr Ryan that did not alter his behaviour. However, we agree that parts of the order go beyond what was necessary to address the improper conduct found by the chambers judge. In particular,

the record does not indicate complaints of harassment by other owners so as to support a prohibition on direct contact with those owners and restriction of Mr Ryan's movement within the building. In our view, paragraphs 5 (b) and (c) of the order, are overly broad and unnecessarily restrictive and should be struck.

[16] Similarly, we view paragraph 6 of the order, as it pertains to other owners, as unnecessary. We therefore substitute the following for paragraph 6 of the order:

6. Any and all communication from Mr Ryan to any member of the Board must be done in writing and must be forwarded to the Property Manager.

[17] Finally, we note that the order, pronounced June 25, 2019, is in effect indefinitely. The relief granted is akin to a permanent restraining order, which is rarely issued by the courts. Accordingly, the order will remain in effect a further six months, until September 25, 2021. We trust that the passage of time will permit the parties to co-exist without further conflict.

Witten submissions received January 17, 2020 and March 16, 2020.

Memorandum filed at Calgary, Alberta
this 15th day of March, 2021

Authorized to sign for: Bielby J.A.

Authorized to sign for: Khullar J.A.

Pentelechuk J.A.

Appearances:

K.W. Stenner
for the Appellant

S.D. Whyte
for the Respondent