

CITATION: Peel Condominium Corporation No. 12 v. Gill, 2021 ONSC 7529
COURT FILE NO.: CV-21-00659938
DATE: 20211007

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **PEEL CONDOMINIUM CORPORATION NO. 12** Applicant
AND:
MARGARET GILL and EVELYNE GILL Respondents

BEFORE: Mr. Justice Chalmers

COUNSEL: *D. Levitt*, for the Applicant
No one appearing for the Respondents

HEARD: September 16, 2021, by videoconference

ENDORSEMENT

Overview

[1] The Applicant, Peel Condominium Corporation No. 12 (PCC 12) brings this Application pursuant to s. 134(1) of the *Condominium Act, 1998*, S.O. 1998, c.19 (the *Act*) for an order to enforce compliance with the *Act* and the Condominium’s Declaration, By-Laws and Rules. PCC 12 states that the Respondents, Margaret and Evelyne Gill are hoarding an excessive and dangerous amount of clutter in their condominium unit located at 2485 Woking Crescent, Unit 102, Mississauga Ontario.

[2] PCC 12 states that the clutter includes combustible materials which pose a significant fire and safety risk to the residents, contractors and its employees. PCC 12 also states that the hoarding of clutter poses a risk of pest infestation, property damage and disease.

[3] I am satisfied on the evidence before me that the Respondents’ conduct has resulted in a hazardous condition at the condominium building. I grant the relief sought and order that PCC 12 is permitted to enter Unit 102 and remove and dispose of the excessive accumulation of clutter.

Background Facts

[4] PCC 12 is a condominium located at 2484 Woking Crescent in Mississauga. Margaret and Evelyne Gill are the owners of Unit 102.

[5] As owners of a unit in the condominium, the Respondents agree to be bound by the Condominium’s Declaration, By-laws and Rules. Rule 2 provides that no person shall permit or keep anything in his or her unit that increases the risk of fire, that contravenes the laws relating

to fire of regulations of the fire department, or that obstructs or in any way injures or harms the property.

[6] Article XII of the Declaration provides that unit owners are prohibited from doing anything in the unit or keeping anything in the unit which increases the risk of fire or other perils. Article XXVII provides that each unit owner shall save harmless the corporation from all costs, charges and expenses incurred by the corporation in taking action against the unit owner.

[7] In May 2019, the PCC 12 conducted an inspection of all units in the building. It discovered there was an excessive amount of clutter in Unit 102. A photograph of the unit taken on May 28, 2019 is included in the Application Record at Exhibit E of the affidavit of Lori Dunlop sworn May 27, 2021. The photograph depicts a significant amount of clutter consisting of plastic grocery bags, paper and clothing. The pile of clutter almost reaches to the ceiling.

[8] A fire inspection of the unit was carried out on October 7, 2019. Photographs of the unit taken on the day of the inspection are included in the Application Record at Exhibit G of Ms. Dunlop's affidavit. The photographs depict items piled in the rooms. The clutter had not been removed from the unit and the unit remained in the same condition as it was in May 2019. PCC 12 again wrote to the Respondents and asked that they return the unit to a safe condition.

[9] In August 2020, PCC 12 retained a fire safety consultant, Fire Consulting Services (FCS), to inspect Unit 102 and to provide the corporation with a report regarding the state of the unit. FCS reported that:

- a. a high volume of accumulated miscellaneous items and storage, mostly combustibles, were dispersed throughout Unit 102;
- b. the second bedroom was not accessible due to the amount of accumulation;
- c. due to the amount of accumulation, the heaters in Unit 102 were not visible;
- d. the egress pathway throughout Unit 102 was impeded or restricted by miscellaneous items in the hallway, living room and bedroom areas;
- e. the accumulation was not stacked in an orderly manner and appeared to be unstable;
- f. plastic containers were placed directly on top of the stove top;
- g. the area accessing the master bedroom contained a large amount of accumulation restricting any access or view to the master bedroom;
- h. the front door did not self-close or appear to latch properly; and
- i. the majority of rooms and spaces within Unit 102 are not accessible and movement was extremely restricted due to the amount of accumulation.

[10] The FCS Report concluded in section 4, among other things, that:

The conditions within the suite during the assessment pose a considerable fire and life safety risk and proactive measures are to be taken. The combustible load must be viewed as a life safety concern to the occupant, neighbours, and emergency fire responders. The combustible materials within the suite are being stored in a manner that constitutes a fire hazard. The amount of accumulation poses a significant fire load and must be reduced.

[11] Section 5 of the FCS Report recommended a three-phase action plan be implemented to address the state and condition of Unit 102.

[12] On September 8, 2020, PCC 12 wrote to the Respondents and advised them of the requirements of the action plan. They were advised that they were to comply with the first phase of the action plan by September 18, 2020. When PCC 12 attempted to inspect the unit on September 18, 2020, the Respondents refused them entry.

[13] On October 16, 2020, PCC 12's superintendent inspected Unit 102. The Applicant states there was no improvement in the state of the unit.

[14] PCC 12 obtained a quote from Spectrum Building Services Inc. with respect to the cost to clean the unit. The estimated cost of the cleaning was \$18,357.51. Several photographs are included in the Spectrum estimate. Additional photographs were taken during an inspection on January 5, 2021. The photographs are shocking. They depict piles of clothing and clutter in various rooms of the unit. There are books, paper, plastic containers, decorations and games. The clutter covers almost every surface of the unit. In some areas, the clutter is piled close to the ceiling. It is not clear how the Respondents can move within the unit.

[15] PCC 12 offered to work with the Respondents to remove the clutter. PCC 12 offered to have Ena Papp, a Hoarding Support Coach with the Canadian Mental Health Association assist the Gills. The Respondents ignored the offer.

[16] Due to the ongoing failure to improve the condition of the unit, PCC 12 arranged to have the unit professionally cleaned. Evelyne Gill requested an extension of the deadline to clean the unit. PCC 12 granted the extension to February 7, 2021. The Gills were advised that if they failed to carry out the necessary work, the unit would be professionally cleaned during the week of February 15, 2021.

[17] PCC 12 carried out the follow-up inspection on February 8, 2021. There had been no improvement in the condition of the unit. When the professional cleaners attended at the unit, they were refused entry. The Gills installed additional locks on the unit which prevented PCC 12 from carrying out any further inspections.

[18] Although a further inspection of the interior of the unit was not possible, PCC 12 could see the condition of the balcony/patio. A photograph was taken of the balcony on February 26, 2021. The photograph depicts piles of full green garbage bags and other clutter on the balcony.

The Issues

[19] The three issues in this Application are as follows:

- a. Is the conduct of the Respondents contrary to the *Condominium Act* and the Condominium Declarations?
- b. What is the appropriate relief? and
- c. Is the Applicant entitled to its costs of the Application?

Analysis

Is the conduct of the Respondents contrary to the Condominium Act and the Condominium Declarations?

[20] I am satisfied on the evidence before me that the Respondents failed to maintain their unit in a proper state of repair. There is excessive clutter in their unit. The clutter covers almost every surface. The photographs taken at various times from May 2019 to February 2021 do not show any change or improvement in the condition of the premises.

[21] The FCS report from August 2020 states that most of the items stored in the unit were combustible. Heaters were not visible because items were piled on top of them. There were plastic containers stored directly on the stove top. The report concludes that the condition of the unit is a safety risk.

[22] PCC 12 takes the position that the unsafe condition of Unit 102 poses a risk of damage to the property, a risk to the life and safety of the Respondents along with the other residents of the building and the employees of the Condominium Corporation. PCC 12 further states that the accumulation of clutter is contrary to the *Fire Code*.

[23] I am satisfied that the condition of the unit is likely to damage property or cause injury to an individual and represents a dangerous activity pursuant to s. 117 of the *Act*.

[24] Sections 90-92 of the *Act* and Article XVI of the Declaration provide that unit owners are responsible for maintaining and repairing their units. I find that in allowing the unit to become excessively cluttered and unsanitary, the Respondents are in breach of the *Act* and the Declarations: *Carleton Condominium Corp. No. 35 v. Eagan*, 2015 ONSC 4353, at para. 11.

[25] The Respondents have piled clutter on top of the heaters and the stovetop. As noted in the FCS report, much of the clutter is combustible. I am satisfied that the accumulation of clutter in the unit amounts to a fire hazard: *Grandravine Drive Inc. v. Tereshko*, 2014 ONSC 5523, at paras. 8-14, 81, 90, 92 and 96.

What is the appropriate relief?

[26] The Applicant provided several opportunities for the Respondents to remedy the condition of their unit. The Respondents did not take any steps to remove the clutter from their unit. Rather than work with the Applicant, the Respondents refused to allow the Applicant to inspect the unit and changed the locks on the door to the unit. I am satisfied that the Respondents will not voluntarily clean the unit.

[27] PCC 12 seeks an order permitting it to enter into Unit 102 to remove and dispose of the clutter. PCC 12 states that pursuant to the Condominium's Declaration, the Respondents are responsible for all costs associated with the work. If the costs are not paid by the Respondents on demand, PCC 12 seeks an order that the costs be added to the common expenses attributable to Unit 102.

[28] Article XXVII of the Declaration provides as follows:

All costs, charges and expenses and all solicitors' charges (as between a solicitor and his client) which may be incurred by the Corporation in taking any action, including the institution of an action or summary proceeding against an owner, shall immediately become due and payable by such owner and may be added to and recovered in the same manner as recovery of an owner's default in his obligations to contribute to the Corporation towards the common expenses.

[29] I am satisfied that the Respondents are fully responsible for the cost of the remediation of their unit. If the expenses are not paid by the Respondents, the cost of remediation shall be added to the Respondents' common expenses.

[30] The Applicant also seeks a permanent injunction to allow PCC 12 to enter Unit 102 on an ongoing basis to assess any unsafe condition. I am satisfied that the test for a permanent injunction set out in *Labourers' International Union of North America, Local 183, v. Castellano*, 2020 CarswellOnt 71 (CA) at para. 25 are met. In any event., PCC 12 has the right to enter the unit to ensure compliance pursuant to paragraph (f) of Article XII of the Declarations.

Is the Applicant entitled to its costs of the Application?

[31] The Applicant is successful on this Application and is entitled to its costs. The Applicant seeks payment of its costs on a full indemnity basis. The amount claimed is \$35,772.25 inclusive of counsel fee, disbursements and HST.

[32] As noted in paragraph 28, the Condominium Declarations provide that the costs incurred in taking action to ensure compliance, including solicitor's charges, are payable by the owner.

[33] PCC 12 was required to incur the costs of this Application to compel the Respondents to comply with the *Act* and the Corporation's Declarations. The Applicant argues that it is not fair that the "innocent" unit owners be responsible for the costs to compel the "guilty" unit owners to comply with the rules.

[34] Section 134(5) of the *Act* allows the Condominium Corporation to claim its actual legal costs in obtaining compliance. As a result, the financial burden associated with obtaining a compliance order falls on the unit owner whose conduct necessitated the order: *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, 2005 CanLII 13778 (CA) at para. 46.

[35] The Respondents were given every opportunity to remedy the situation in their unit. The Respondents were warned that if action was not taken it would be necessary for PCC 12 to bring this Application. There is no reason why the other unit owners should be responsible for the costs of the Application which were required as a result of the Respondents' conduct.

[36] I award costs of the Application payable by the Respondents to the Applicant, fixed in the amount of \$25,000 inclusive of counsel fee, disbursements and HST. The Respondents are jointly and severally liable for payment of the costs. The costs are payable within 30 days of the date of this endorsement. If the costs are not paid by the Respondents, the costs shall be added to the Respondents' common expenses.

Disposition

[37] I grant the Application for a compliance order under s. 134 of the *Act*.

[38] If the Respondents fail to restore the unit to a safe and liveable condition within seven days of this endorsement, the Applicant has the right to enter the unit and dispose of all excessive clutter and clean the unit. The Respondents are responsible for all costs associated with the remedial work. If the Respondents fail to pay the costs of the remedial work, the costs shall be added to the common expenses attributable to the Respondents' unit and shall be recovered in accordance with s. 92(4) of the *Act*.

[39] I award costs of the Application payable by the Respondents to the Applicants, fixed in the amount of \$25,000 inclusive of counsel fee, disbursements and HST. The costs are payable within 30 days of the date of this endorsement. If the Respondents fail to pay the costs, the costs shall be added to the common expenses attributable to the Respondents' unit and shall be recovered in accordance with s. 92(4) of the *Act*.

[40] Order to go in accordance with the draft judgment filed and signed by me.

DATE: October 7, 2021