

CITATION: York Region Condominium Corporation NO. 794 v. Watson, 2021 ONSC 6574
NEWMARKET COURT FILE NO.: CV-21-00002615
DATE: 20211004

ONTARIO

SUPERIOR COURT OF JUSTICE

APPLICATION UNDER Section 134 of the *Condominium Act, 1998*, S.O. 1998, c. 19

BETWEEN:)	
)	
YORK REGION CONDOMINIUM)	
CORPORATION NO. 794)	
)	
Applicant)	J. Wright and M. Molloy, for the Applicant
)	
– and –)	
)	
LOVINA WATSON, JENNILYN)	
FIDDLER-ROBERTS, and JADE)	
ROBERTS)	No one appearing for the Respondents
)	
Respondents)	
)	
)	HEARD: September 29, 2021

HEALEY J.

Nature of the Application

- [1] The applicant seeks various relief under the *Condominium Act, 1998*, S.O. 1998, c.19 (the “Act”). Specifically, it requests an order requiring all respondents to comply with the Act, and the Declaration, Bylaws and Rules of York Region Condominium Corporation No. 794 (“YRCC 794”). It further request an order requiring the occupants, Jennilyn Fiddler-Roberts and Jade Roberts, to immediately cease and desist from various behaviours, including a prohibition against having any contact or communication with YRCC 794’s Board of Directors, management or other staff.
- [2] Most significantly, the applicant seeks an order requiring the occupants to vacate the unit occupied by them within 30 days, and be permanently prohibited from occupying, visiting or attending on the common elements or any unit on YRCC 794’s property. The applicant further seeks an order providing it with authority to engage the Sheriff or any other legal enforcement officer to perform all duties reasonably necessary to ensure that effect is given to the orders made by this court.

- [3] The applicant's counsel advised the court that they sought and booked this hearing date on an urgent basis. The respondents were served with the applicant's material on September 20, 2021. The respondents did not file a notice of appearance or responding material, and none of them attended the scheduled Zoom hearing despite having been provided with the particulars.

The Parties

- [4] The respondent Lovina Watson is the registered owner of unit 802 (the "unit"). She does not live there. The respondent Jennilyn Fiddler-Roberts is her daughter, and Jade Roberts is her granddaughter. The latter two respondents currently occupy the unit (the "occupants").
- [5] The applicant is a non-profit condominium corporation created pursuant to the Act. It was created for the purpose of controlling, managing and administering the condominium development located on Bayview Avenue in Thornhill, comprised of 337 residential units, locker storage and parking units, and appurtenant common elements.
- [6] The applicant has not received a tenancy or lease agreement for the unit from the owner, which would be required by s. 83 of the Act if the unit was leased to the occupants.

The Evidence

- [7] The primary source of the applicant's evidence comes from Randee Korman, who has been a resident at YRCC 794 since 1996 and who has held the position of vice president and treasurer of the Board of Directors of the applicant since 2001.
- [8] The evidence filed by YRCC 794 establishes that since approximately August, 2020 the occupants have engaged in conduct of a disturbing nature, which has escalated over time and shows no sign of abating.
- [9] While the occupants' conduct initially began with a more minor infraction of not wearing a mask or face covering in common areas, it has risen to a far more serious level. The occupants are now subjecting the community in which they live to an ongoing barrage of threatening, highly disruptive and illegal behaviour. Multiple residents, staff, and volunteers at YRCC 794 have expressed fear and concern for their safety. Some have asked not to be identified out of concern for their safety.
- [10] The conduct of the occupants documented by YRCC 794 includes:
- (i) creating excessive noise throughout all hours of the late evening and early morning such as loud screaming, chanting, yelling, and swearing;
 - (ii) approaching other residents and/or staff on the common elements and exhibiting threatening behaviour, including yelling obscenities, racial slurs, and uttering death threats, some of which occurs in YRCC 794's lobby;

- (iii) issuing repeated and voluminous harassing and defamatory emails to YRCC 794's board members, property manager, security staff, and other agents, which accuse YRCC 794's staff and volunteers of, *inter alia*, "malicious evil crimes" and of being racist, unfair, biased, ignorant, privileged, and deliberately targeting the respondents;
 - (iv) leaving repeated threatening and defamatory voicemails for YRCC 794's staff, which include death threats;
 - (v) issuing harassing and threatening emails to YRCC 794's counsel and staff;
 - (vi) shouting defamatory, harassing and homophobic words to the Board's president from their unit;
 - (vii) shouting obscenities and inappropriate comments from their unit aimed at 794's security staff and residents; and
 - (viii) yelling "death to you" at police officers who were responding to complaints about the occupants' behaviour.
- [11] The conduct of the occupants has generated repeated complaints from multiple unit owners, residents, agents, and staff at YRCC 794. Most of these complaints relate to concerns with respect to health, safety, and quiet enjoyment of the property, which stem from the ongoing disruptive, dangerous, harassing, and/or threatening behaviour of the occupants.
- [12] A video recording captured by YRCC 794's surveillance camera on June 11, 2021 confirms that such incidents have occurred as late as 11:20 p.m.
- [13] After being notified of the applicant's concerns with the occupants, Lovina Watson initially retained counsel, Michael Suria. He provided a response to the applicant's concerns about the behaviour of the unit's occupants. In correspondence dated June 11, 2021, Mr. Suria provided the following information:
- (i) that although Lovina Watson holds title to the unit, one of the occupants (her daughter) is the beneficial owner. As such, there is no tenancy relationship nor is there a tenancy agreement, and Lovina Watson has no recourse to apply to the Landlord and Tenant Board for assistance in removing the occupants from the unit;
 - (ii) that it is the belief of Lovina Watson that the occupants are suffering mentally and "are not in their right state of mind at the moment to understand the consequences of their actions";
 - (iii) that Lovina Watson proposed to make an application under the *Mental Health Act* for an order that the occupants be assessed, in order to assist in having the occupants "committed to an institution" and removed from the unit, and also to make an application under the *Partition Act* for assistance in having the unit sold; and,

- (iv) that Lovina Watson would take these steps to address the applicant's need to have the occupants removed from both the unit and its premises permanently, and that she was attempting to reach an amicable resolution to what was a "very traumatic and stressful situation for her to deal with, considering her age and relationship to the occupants".
- [14] Lovina Watson has not taken any of these steps. Mr. Suria has advised the applicant's counsel that his retainer ended in August, 2021.
- [15] The occupants' behaviour has also necessitated the attendance of the police at the property on several occasions. On or about October 23, 2020, YRCC 794 was served with a production order for documents relating to the unit on the basis that "there are reasonable grounds to believe that an offence has or will be committed under s. 264 of the *Criminal Code*, R.S.C. 1985, c.C-46". The occupants were taken into custody for questioning on November 8, 2020.
- [16] Section 264 of the Code is the criminal harassment provision. Establishing the offence requires proof of conduct that could cause a person to reasonably fear for their own safety or the safety of anyone known to them.
- [17] Jade Roberts was arrested at the unit on both March 12, 2021 and May 15, 2021. It is not known why.
- [18] GPM Property Management Inc. ("GPM") is the property management company hired to manage YRCC 794. In an early attempt to repair the deteriorating relationship with the occupants, on October 9, 2020, Mo Killu, the Vice President of GPM, issued correspondence to Ms. Fiddler-Roberts seeking to schedule a meeting between the occupants, the applicant's counsel, management, and security staff to discuss the ongoing issues. On October 15, 2020, Mr. Killu issued a further email following up on his request to schedule a meeting. Ms. Fiddler-Roberts did not respond to either invitation. Instead, on October 17, 2020, she began sending further emails to management, counsel, Mr. Killu, and the board, demanding to know Mr. Killu's identity and alleging racism and targeted conduct by YRCC 794. On October 22, 2020, Mr. Killu issued a letter to Ms. Fiddler-Roberts confirming her failure to respond to his invitations for a meeting, and advising that her recent emails to management containing defamatory allegations were unacceptable and would not be tolerated further.
- [19] There is ample evidence here that the occupants have levelled threats amounting to threats of bodily harm or death on more than one occasion. For example, on March 12, 2021 one of the occupants came down to the main lobby and began yelling at security and property management staff, calling them criminals and making a spiritual declaration of death, chanting "in the name of Jesus death to you" several times, while singing hymns. On that same day, Jade Roberts was arrested by York Regional Police. Both occupants were shouting and screaming in the unit and out of the window, yelling words such as "murder". After Jade Roberts was removal from the building, her mother continued to scream and

yell up and down the hallway and in the unit. After this event, the applicant arranged for additional security to be present in the main lobby, at additional expense.

- [20] On May 7, 2021 one of the board members was walking on the common elements and heard one of the occupants yelling from the unit “Robert Hogan, death, Robert Hogan, death, death”. On May 11, 2021 one of the occupants left a voicemail on the security phone, which included the statement “we’re calling death, death, death upon you, security guard and every single person that is involved in any capacity in planning crimes against us. Listen, we’re here, we’re staying here, on this planet, so you guys have got to die, okay, you have to die, and you have been caught for all your crimes...”.
- [21] On May 16, 2021 the occupants were heard by a variety of other residents, yelling from the window of the unit “death to you and probably prison and fat ass” and “death, death, death to you”.
- [22] These and other similar events have caused other residents to look for assurance from the Board and management that they will not be harmed by the occupants, and to express fear for their safety.
- [23] The applicant’s counsel has sent repeated correspondence to the respondents detailing the occupants’ disturbing behaviour and requiring the respondents to take steps to effect compliance with the Act and the applicant’s governing documents. This has done nothing to alter the occupants’ behaviour.
- [24] The evidence is clear that the occupants’ behaviour is escalating. If Lovina Watson’s view is accurate – that the occupants require mental health treatment - then they appear to be decompensating over the last year, to the detriment of the community in which they reside.
- [25] The applicant’s material filed in this application is filled with examples of the type of verbal and written communications to which the occupants have subjected YRCC 794’s board members, management, staff, volunteers and residents over the past 14 months. Any reasonable person would find the content of these communications vexatious and upsetting to hear or read, and to cause concern for their personal safety. As one example of many, on July 19, 2021, Jennilynne Fiddler-Roberts issued email correspondence to YRCC 794’s property manager containing various further harassing allegations as follows:

Wicked murderous soul Lynn Samuels, Your plan for murder by injections is just a reminder to yourself that it is you, demon devil cockroach that is already dead. You MUST succumb to your devastating excruciating consequences for planned crimes against innocent Black Canadian Queens. It is you [sic] evil dark soul demon that must suffer severe penalties for horrendous crimes. We don't die in our story... And you have tried, remember that! Death returned to you and yours! Amen! Praise God Almighty for justice!!! Jenn.

- [26] After notice of this application came to her attention on August 18, 2021, Jennilynne Fiddler-Roberts sent two emails to counsel for the applicants, both similar in tone and content. The second reads:

You dirty slimes. You are caught for crimes against innocent Black Brilliant Powerful Spiritual Queens. And you ALL MUST DIE!!! You don't get a choice in the forward movement of Canada, and you certainly can't touch me. I call brimstone and fire on you! Death to you and your family, Death!!!! In the Powerful BLOOD & Might of Jesus Christ, Almighty God".

- [27] A law clerk at Elia Associates Professional Corporation who prepared an affidavit in this proceeding was also a recipient of the above email. She deposed that as a law clerk carrying out her duties in the normal course of her employment and having been threatened in response, she feels afraid for her personal safety. As such she did not state the city in which she resides, but rather set out the office location of her employer due to her own concerns with respect to the threatening nature of the occupants.
- [28] When the process server attended the unit to serve the Notice of Application on the occupants, he was screamed and shouted at by the occupants from within the unit after knocking on the door. They did not open the door, and screamed "death" at the process server.
- [29] As the occupants have ignored all requests for compliance with the Act and the applicant's governing documents, the applicant's position is that it has had to resort to this court for resolution.

The Law

- [30] Section 134(1) of the Act permits the applicant to apply to this court for an order enforcing compliance with any provision of the Act. While s. 134(2) of the Act prohibits such an application prior to submitting a disagreement to mediation and arbitration in certain circumstances, such prohibition does not apply in the case of breaches of the Act.: *Metro Toronto Condo Corp. No. 747 v. Korolekh*, 2010 ONSC 4448, at paras. 49-51. In this case, the applicant claims relief primarily on the basis of the respondents' breaches of s. 117 of the Act, and accordingly is entitled to bring this application directly to the court.
- [31] Section 134(3) of the Act grants the court broad powers to enforce compliance. It provides:
- (3) On an application, the court may, subject to subsection (4),
- (a) grant the order applied for;
- (b) require the persons named in the order to pay,

- (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
- (ii) the costs incurred by the applicant in obtaining the order; or
- (c) grant such other relief as is fair and equitable in the circumstances

[32] Where a unit is leased, the court may not terminate that lease unless it is satisfied that certain other preconditions are met, as set out in s. 134(4). The preponderance of evidence demonstrates that the occupants are not lessees, and so subsection (4) does not apply.

[33] Section 117 of the Act states:

No person shall permit 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.

[34] Pursuant to s. 17(3) of the Act, the applicant is under a statutory duty to seek compliance with s. 117, along with the other provisions in the Act. Section 17(3) provides:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the Corporation comply with this Act, the declaration, the by-laws and the rules.

[35] This provision places a positive obligation on the applicant to enforce compliance with the Act. The applicant must ensure that no conditions exist or activities are carried out in its units or on its common elements that could cause injury to an individual or damage to its property, including, but not limited to, conduct which risks the safety of its owners or impacts the use and enjoyment of their units. The inclusion of the words “*likely to cause injury*” indicates that the Board is required to take proactive steps to prevent a dangerous condition before an incident occurs.

[36] Where reasonable, good-faith efforts to secure compliance have no effect on the persons in contravention, condominium corporations such as the applicant must resort to the court to ensure compliance. This is necessary and reasonable in order to safeguard the owners’ collective interests, as well as the safety of board members, staff, volunteers and members of the public entering the premises.

[37] The Court has broad ameliorative authority to enforce compliance with the Act and YRCC 794’s governing documents, as well as the ability to craft an order that will ensure compliance with s. 117 of the Act: *Davis v. Peel Condominium Corp. No. 22*, 2013 ONSC 3367, at para. 1

- [38] Section 119 of the Act requires that the owners and occupiers of YRCC 794's units comply with the Act and its governing documents, as well as that owners take all reasonable steps to ensure that the occupiers of their units comply with those authorities. As the owner of the unit, Lovina Watson has a statutory obligation to ensure that the occupants comply with the Act and its governing documents. Both the applicant and its counsel have notified her on multiple occasions of its concerns with respect to the behaviour of the occupants.
- [39] The applicant through its Board has created Consolidated Rules and Regulations (the "Rules"), passed pursuant to the Act. Such Rules provide that they "shall be observed by all owners and any other person(s) occupying the unit with the owner's approval, including, without limitation, members of the owner's family, his/her tenants, guests, and invitees".
- [40] Rule 9.01 of the Rules provides that "owners, tenants, and their families, guests, visitors, servants and agents shall not create or permit the creation or continuance of any noise or nuisance which, in the opinion of the Board or the Manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners or tenants or their respective families, guests, visitors, servants and persons having business with them".
- [41] In *Re. Carleton Condominium Corporation No. 279 v. Rochon et al* (1987), 59 O.R. (2d) 545 (C.A.), at p. 552, the Ontario Court of Appeal has held that a unit owner is bound by the terms and provisions of the declaration, description and bylaws, including the rules, which are "vital to the integrity of title" acquired by the unit owner.
- [42] Additionally, pursuant to the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the applicant has an ongoing obligation to its staff to ensure that their work environment is safe and free from harassment.
- [43] In *Korolekh*, Code J. noted that there is little case law interpreting and applying the s.117 statutory duty concerning "likely" damage to property or injury to persons. In *Korolekh* the owner's behavior included physical assaults and threatening behavior, using her dog as a tool of aggression. As in this case, there was also a great deal of evidence of racist and homophobic slurs, some of which include shouted threats of bodily harm captured within the meaning of s. 264.1 of the *Criminal Code*. Citing *R. v. McCraw* (1991), 66 C.C.C. (3d) 517 (S.C.C.), at para. 524, Code J. noted that "bodily harm" has been held to mean "any hurt or injury" and "to include psychological harm", provided it is more than "transient or trifling".
- [44] The court's authority to make a compliance order is discretionary, and the court may consider the quality of the evidence in exercising its discretion: *Re Peel Condominium Corp. No. 73 and Rogers* (1978), 21 O.R. (2d) 521 (C.A.)
- [45] Where appropriate, the Court's discretion extends as far as compelling an owner to sell and vacate their unit. The court has previously exercised this discretion in circumstances where other owners or occupants of a condominium community have had their basic safety and/or the quiet use and enjoyment of their units or the common elements compromised: *Korolekh*, 2010 ONSC 4448; *Waterloo North Condominium Corporation No. 168 v. Webb*,

2011 ONSC 2365. Sometimes a court will find it just to give an owner the opportunity to prove compliance before ordering a sale: *York Condominium Corporation No. 136 v. Roth*, 2006 CarswellOnt 5129.

Analysis

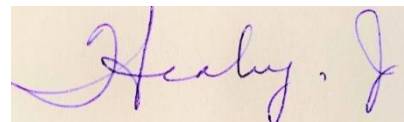
- [46] The applicant has met its onus of establishing that the respondents have violated the Act *and* Rule 9.01. The respondents have not contested any of the allegations made against them. The evidence provided by the applicant is corroborated by the occupants' own emails, video evidence and transcriptions of the occupants' speech as they are taunting and harassing others.
- [47] I find that the purpose of the occupants' communications and threats is to intimidate and instill fear, and that such communications constitute threats of bodily harm and death threats. Their behavior has also been criminally harassing, as it causes others to reasonably fear for their safety. As such, it violates s. 117 of the Act. This aspect of conduct of the occupants also violates Rule 9.01 of the applicant's Rules.
- [48] The applicant is justified in seeking an order that the occupants cease and desist from their uncivil, disruptive and illegal conduct that violates the Act and the Rules of YRCC 794.
- [49] The remaining question is whether it is necessary and appropriate to make compliance orders, including an order that the occupants vacate the unit in order to enforce compliance.
- [50] The occupants have been given repeated warnings and have had the opportunity to alter their behavior. They have had 14 months in which to do so. They appear to be unmotivated or unable to do so. Whatever the reason may be behind their behavior, their behavior is unsuitable for living collectively within a condominium complex. It causes both actual harm and risk of harm. Even receipt of notice of this application has not caused them to curtail their behavior. I conclude that this is not a case in which the court should afford the occupants further time to show a change in conduct, as the evidence satisfies the court that that time would likely be spend continuing the conduct.
- [51] At para. 88 of *Korolekh*, Code, J. stated:
- ...People join condominium corporations voluntarily on the basis that they agree to share certain collective property and to abide by a set of rules and obligations that protect the collectivity. There is no right to continue membership in this corporation or this community, once a clear intention to harm it and a persistent refusal to abide by its rules have been exhibited in the extreme ways seen in this case....
- [52] Those words aptly apply to this case. The applicant is not seeking the harsh order of sale of the unit. The only evidence that the court has of registered ownership is that contained

in the parcel register, showing Lovina Watson as the registered owner. No evidence has been provided to explain why she described her daughter as the beneficial owner. I conclude that court is being asked to evict occupants who have no leasehold or ownership interest in the unit. In any event, the letter from Ms. Watson's former counsel suggests that she would be content to see the occupants forced from the unit in order to effect a sale. However, in the event of continued non-compliance, future breaches may require this court to order that the unit be sold.

- [53] Until such time as the occupants leave or are removed from the unit, there will be an order that all respondents comply with the Act and the declaration, by-laws and Rules of YRCC 794, and that the occupants cease and desist from the type of conduct that has been so offensive to the community as a whole.
- [54] The occupants will have 30 days from today within which to vacate the unit, failing which the Sherriff or his designate shall take all steps reasonably necessary to ensure that effect is given to this order.
- [55] The applicant asks this court to hold the respondents responsible for the costs of this application on a full indemnity basis. Section 134(5) of the Act provides for recovery of costs incurred in obtaining compliance orders. It also states that the "award of costs" and the "additional actual costs" may both be added to the common expenses for the unit. If unpaid, the applicant may register a lien against the unit.
- [56] I agree that the innocent owners should not be forced to bear the costs of this application. It is the respondents who have created the necessity of this application by their own actions or inaction. It is fair that they alone bear the full financial burden.
- [57] The applicant has filed a Bill of Costs seeking the amount of \$21,442.49 for fees, disbursements and HST on a full indemnity basis. The hourly rate of \$330 for the two counsel involved, Mr. Wright and Ms. Malloy, is reasonable given that they have nine and seven years of experience respectively. The bulk of the time spent was in drafting affidavits and the factum. The factum and authorities filed were comprehensive and assisted this court greatly. These costs shall be added to the common expenses for the unit, and the applicant may specify a time for payment of these costs by the owner of the unit, pursuant to Section 134(5) of the Act.
- [58] Judgment is granted in the following terms:
 - (1) the Respondents are required to comply with the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "Act"), and the Declaration, By-Laws, and Rules of YRCC 794.
 - (2) Pursuant to s. 134 of the Act, the Respondents, Jennilyn Fiddler-Roberts and Jade Roberts, who are the occupants (the "occupants") of Unit 802 at YRCC 794 (the "unit"), immediately cease and desist from:
 - (a) Engaging in threatening, harassing, intimidating, inappropriate, disturbing, and/or illegal conduct against YRCC 794's other residents, owners, visitors,

directors, property management, superintendent, and/or other employees/staff on YRCC 794's property, including the common elements and/or within any unit;

- (b) Creating excessive noise within the Unit and on YRCC 794's common elements, such as loud screaming, yelling, chanting, swearing, and uttering death threats;
 - (c) Traversing or loitering on the indoor common elements without masks or face coverings as required; and
 - (d) Breaching the Act or the governing documents of YRCC 794 by engaging in any further harassing, intimidating, inappropriate, disturbing, and/or illegal conduct on the common elements or within any unit of YRCC 794.
- (3) The occupants are prohibited from having any contact and/or communication with YRCC 794's Board of Directors, property management, superintendent, and/or other staff whatsoever, subject to emergency circumstances arising, whereby, *inter alia*: the life safety of an individual is in jeopardy; imminent potential damage to property may occur; and/or it is necessary to immediately contact first responders. In such circumstances, the occupants are permitted to communicate with YRCC 794's staff and/or property management, provided that they act in a civil manner.
- (4) The occupants are to vacate the unit by no later than thirty (30) days from the date of this order.
- (5) The occupants of the unit are permanently prohibited from occupying the unit, visiting, and/or attending on the common elements or any unit at YRCC 794 after thirty (30) days from the date of this order.
- (6) In the event that any of the respondents breach any term of this order, a further order that YRCC 794 may apply to this Court on two (2) days' notice in accordance with the *Rules* and be granted a further order forcing the sale of the Unit.
- (7) YRCC 794 may engage the Sheriff, or any other legal enforcement officer of the Province of Ontario, and direct same to perform all duties reasonably necessary to ensure that effect is given to the order granted.
- (8) Pursuant to s. 134(3)(b)(ii) of the Act, the respondents are required to indemnify YRCC 794 for its legal costs incurred in enforcing against their non-compliance with the Act and the governing documents, including YRCC 794's legal costs of this application, on a full indemnity basis (the "costs"). These costs shall be added to the common expenses for the unit, and YRCC 794 may, within thirty (30) days of the date of this order, specify a time for payment of these costs by the owner of the unit, pursuant to s. 134(5) of the Act.



HEALEY J.

Released: October 4, 2021