CITATION: TSCC 2204 **v.** Panagiotou 2021 ONSC 8199
COURT FILE NO.: CV-21-659199
DATE: 20211214

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
TSCC 2204	)	*Jordan Cowman*, for the Applicant
	)	
Applicant	)	
	)	
– and –	)	
	)	
THEOTHOTA TINA PANAGIOTOU	)	*Self-represented party* Respondent
	)	
Respondent	)	
	)	
	)	
	)	
	)	**HEARD:** December 13, 2021

S.F. DUNPHY J.

REASONS FOR DECISION

[1] This motion and proceeding should never have happened.

[2] The plaintiff condominium corporation asks me to grant it immediate vacant possession in mid-December of a condominium unit so that it can proceed to sell it. It seeks to do so for a dispute whose origins arise out of a demand that the unit owner pay approximately $1,000 in legal fees for having received a single "cease and desist" letter that the corporation decided it needed to send instead of attempting to work out a reasonable resolution of simmering friction between two neighbours, via mediation if necessary. Almost two years and more than $20,000 in claimed fees later, this dispute has landed before me in court instead of being resolved informally long ago as both the law and common sense require. If an object lesson in how *not* to resolve disputes in a communal living situation were needed, this is surely it.

[3] The defendant is the owner and occupant of a condominium unit. Her neighbour has made a number of noise complaints over time against her. It appears that there are other sources of friction between them. I have grave doubts that the conduct of the defendant is anywhere near nightmarish quality the plaintiff's motion record would have me believe, particularly given the

limited quality of the largely derivative and unattributed evidence tendered by the plaintiff on this motion. The defendant has done herself no favours by not actually filing any evidence of her own in the form of a sworn statement. She did appear at the hearing and addressed me directly. However, I cannot decide any factual disputes on the basis of unsworn testimony tendered in that fashion. I am resolving this motion today but not the underlying factual disputes that gave rise to it.

[4] While stating that the complaints were unreasonable, Ms. Panagiotou did allow that some of them may have been justified. Nevertheless, she maintained that she was always willing to work to resolve them and to pay what was reasonably owing. The time frame covered by the complaints was approximately six months and the complaints ranged from dog barking, three allegations of loud music in the early morning hours and on one occasion a drill being heard during the dinner hour allegedly contrary to a rule about ceasing construction after 5:00pm. There is not much of a pattern evident in that with the possible exception of two of the music complaints that were separated by only a few days.

[5] The property management company sent largely standard-form warning letters after each incident and in October 2020 decided on its own to send a lawyer's "cease and desist" type letter for which it demanded payment of legal fees of $1,369.34. Ms. Panagiotou disputed her liability to pay the bill as presented and says that it was unreasonable for management to have proceeded in this high-handed way.

[6] As is often the case in such situations, both sides then retreated to their respective corners and things snowballed downhill (and not in a good way) from there.

[7] A further series of complaints – not in any way related to the first complaints – generated a second lawyer's letter and a second bill early the following month with a further invoice for $1,099.03 added to the corporation's demands for immediate payment. A third letter with a similar invoice emerged after this proceeding was commenced and was simply added to the claimed lien as well.

[8] The plaintiff asks me to find that the costs of sending the lawyers letters were "damages" arising from alleged breaches of the corporation's rules. I am not remotely persuaded that this is so. It is clear to me that whatever their intent, the lawyer's letters plainly inflamed the situation rather than helping to resolve it. The actual existence of established breaches of the rules and the causal link between any established breach and the invoice in question both remain to be proved.

[9] Section 132(1) of the *Condominium Act* S.O. 1998, c. 19 establishes a process for resolving disputes such as this if they have not been informally resolved in the first instance. It provides that every agreement "shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to (a) mediation….and (b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration". The fees and expenses of the parties to the mediation are allocated as agreed if a settlement emerges or as specified by the mediator if the mediation fails (s. 132(6)).

[10] There can be no doubt that there are multiple disputes regarding the application of the rules as between the plaintiff and defendant: the defendant disputes the allegations of breach that preceded the letters at least in part and certainly disputes that the lawyer's letters were a necessary or reasonable reaction to the first series of disputes in particular. The two lawyers letters that followed are plainly connected to the first – I have no doubt that the poisoning of the relationship between owner and management that was came in the aftermath of the first letter created the conditions of tension and friction that contributed greatly to the two that followed.

[11] What is plain and obvious to me is that these disputes have been escalated almost on autopilot instead of being sensibly de-escalated and resolved. The plaintiff moved from lawyer's letters with demands for payment of the resulting invoices to filing a lien to bringing this law suit to evict the defendant from her unit to sell the unit to satisfy the lien with barely a pause to consider whether this was in any way the most efficient and proportional way of defusing the situation. Each step was taken on a unilateral basis and it is hard to step back and describe any of this as being in any way preferable or more efficient than *following the agreement that the law mandates* and submitting the dispute to mediation instead. Arguments that there are no "disputes" here are nothing but the purest of sophistry.

[12] The defendant has paid all of what I might term the "normal" common charges. In effect, a unilateral decision to send a bill for over $1,000 for a lawyer's letter has escalated to more than $20,000 in alleged liens and a motion to gain vacant possession for the purpose of enforcing the lien. A mountain has been erected out of what began as a mere molehill. None of this was necessary.

[13] This fiasco has gone on long enough. The root of the problem is the ill-advised decision to escalate this dispute to an "on the meter" legal level with an ever-increasing conveyer belt of demands for legal fees instead of deescalating it through mediation as the Legislature plainly intended to occur.

[14] Ms. Panagiotou was unaware of her right to mediation prior to the hearing today. That is not surprising. She is not a lawyer and nobody ever pointed this out to her. She readily agreed that the mediation route is eminently sensible and re-iterated her willingness to work things out but for what she felt were entirely unreasonable demands being loaded upon unreasonable demands. She also requested a stay of these proceedings in favour of pursuing that dispute resolution procedure.

[15] It is hard to disagree with her lay assessment of the reasonableness of the peremptory monetary demands made upon her just as it is hard to fathom why this dispute was allowed to escalate in the way that it did with the consequent spinning meter of legal fees instead of proceeding informally and at lower cost to mediation to get to the root of the problem and resolve it.

[16] The Legislature plainly intended mediation to be the FIRST and not the last choice to tackle and resolve disputes that arise in the communal living context of a condominium. Prudence ought to have dictated that a plaintiff who is experienced in the field and knows full

well what the requirements of mediation are ought to have offered this alternative to an lay owner/occupant BEFORE turning on the rapidly-spinning legal fee meter. I find it lamentable that management companies seek to take advantage of the fact that so many condominium owners are quite unaware of their right to proceed through mediation despite the obvious priority the Legislature intended to give to this dispute resolution mechanism. This owner, once informed of her rights, immediately asked for its benefit. A lot of time, money and trouble might have been avoided if this far more sensible road had been taken from the outset. Perhaps a few examples like this one will bring the message home to property managers and condominium boards that there is not only a better way but the corporation's constating documents are *required to provide for it* and there are consequences to ignoring it.

[17] I am dismissing the motion for judgment and staying this proceeding in favour of mediation and, if necessary, arbitration as mandated by s. 132 of the Act. The defendant orally requested this at the hearing and all or substantially all of the time and costs thrown away to date might well have been avoided had the corporation followed that route in the first place.

[18] It shall be for a mediator and/or arbitrator to determine what if any expenses can reasonably be added to the common charges payable by the defendant. Any amount remaining unpaid at the end of that process – should there be such an amount – can of course be made the object of fresh enforcement proceedings if necessary.

[19] I am sending the parties to mediation but I do not wish to be perceived as stoking unreasonable expectations on either side. It seems quite likely that the defendant's conduct has not been blameless and everyone would do well to put a little water in their wine before toasting themselves. A skilled mediator should be well able to bring a common-sense solution to the fore and if the parties are unable to grasp it, an arbitrator can reach a binding decision faster and more efficiently than our courts are able to do.

[20] The motion for summary judgment is dismissed and the proceeding is stayed pending the outcome of mediation and if necessary arbitration. I decline to award costs to either party.

S.F. Dunphy J.

Released: December 13, 2021