

CITATION: Toronto Condominium Corp. No. 1445 v. Catalli, 2023 ONSC 967
COURT FILE NO.: CV-22-00677144-0000
DATE: 20230208

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1445,
Applicant

– and –

Luigi Catalli, Respondent

BEFORE: Justice E.M. Morgan

COUNSEL: *Natali Polis*, for the Plaintiff
Luigi Catalli, on his own behalf

HEARD: February 8, 2023

APPLICATION UNDER SECTION 134 OF THE CONDOMINIUM ACT

[1] The Applicant seeks to evict the Respondent from his condominium residence pursuant to section 134 of the *Condominium Act, 1998*, SO 1998, c.19 (the “Act”). A number of other condo owners in the building have advised the management that as a result of erratic conduct by the Respondent, they feel unsafe.

[2] Applicant’s counsel submits that the Respondent has a history of dangerous behaviour in the building. The one dangerous incident specifically identified by the Applicant is a fire that was started in the Respondent’s unit on January 16, 2022. That fire caused extensive damage to the unit and to the building more generally, and has resulted in an increase in the Applicant’s insurance premiums.

[3] The Respondent was apparently charged criminally for the fire incident. On January 3, 2023, he pleaded guilty to arson by negligence. The Respondent states that he did not cause the fire intentionally. Rather, it started because of faulty wiring and an electrical box. He was himself injured in the fire when he tried to put it out, and was forced to flee the unit to his rooftop balcony. The Respondent has produced a letter from an electrical contractor that effected repairs in his unit that verifies that the electrical box and wiring was not up to code and was wired in a faulty way.

[4] The Respondent advises that he is on disability leave from his job as assistant principal of a school. He suffers from mental health issues and has a background as a victim of sexual abuse and trauma, but has no history of violence. In fact, he has never been given notice of any behavioural issues by the Applicant prior to the fire incident, except for one noise complaint relating to playing loud music. The Applicant also indicates that any conduct of his that has caused concern among the other owners in the building has been a result of medical issues, not behavioural ones.

[5] The Respondent relates that he is under medical care and that for the past year has been stable. His doctor at CAMH has provided a letter indicating that he has been under care since March 14, 2022. The doctor's letter indicates that he is on new medication that has stabilized him. The Respondent has been staying with a friend since the fire, but the fire damage has now been repaired and he would like to return to his residence. Among other things, his condo is within walking distance of CAMH which makes it easier for him to get the consistent care that he needs.

[6] Section 117 of the Act prohibits any dangerous activity on condominium property that could cause harm to persons or damage to property. Further, under section 26 of the Act, the Applicant is deemed to be the owner of the common elements and, as such, is under a duty to keep them safe.

[7] Applicant's counsel submits that given the Respondent's previous conduct, the Applicant has a right to have him removed from the building. Counsel relies on a number of reported decisions, including that of the Court of Appeal in *Carleton Condominium Corporation No. 19 v. Rochon*, 1987 CarswellOnt 665, for the proposition that it is important for all condo residents to adhere to the condominium corporation's declaration and rules.

[8] Applicant's counsel submits, and I would agree, section 117 of the Act is breached by conduct causing physical harm. That said, the evidence does not establish that the Respondent is likely to be an ongoing source of harm; the only evidence that the Applicant points to in this respect is that of the fire, which now appears to genuinely have been due to faulty wiring rather than to anything actually done by the Respondent to start it.

[9] As indicated, the Respondent's physician states that his current regime of medication has stabilized his behaviour. The Respondent has to live somewhere, and I am reluctant to stigmatize him for his past mental health problems by evicting him permanently from his condo residence. While I understand the Applicant's concern for safety of all in the building, that concern must be based on evidence of ongoing conduct, not past conduct alone.

[10] The Respondent appears to have now found the right medication to treat his mental health problems. He is confident that any past erratic behaviour on his part has ceased to be a problem.

[11] I am not prepared to grant the order sought by the Applicant. The Application is therefore dismissed, without prejudice to the Applicant reviving it and seeking a new return date should the Respondent's actions warrant it.

[12] I will not remain seized. Should the Applicant seek to have the matter re-visited by the court at some future time, it must be scheduled through the Motions Office in the usual way.

[13] There will be no costs of this Application for or against either party.

Date: February 8, 2023

Morgan J.