1 of 1 DOCUMENT

Case Name:

Kovats v. M.F. Property Management Ltd.

Between
John Robert Kovats and Isabell Helen Kovats,
Plaintiffs, and
M.F. Property Management Ltd. and Waterloo Condominium Corporation 223, Defendants

[2009] O.J. No. 1972

Court File No. 165/09

Ontario Superior Court of Justice
Small Claims Court - Cambridge, Ontario

J.S. Winny Deputy J.

Heard: May 14, 2009.
Judgment: May 14, 2009.

(22 paras.)

Counsel:

John Robert Kovats and Isabell Helen Kovats: self-represented.

Mr. Robert M. Mullin and Ms. A. Anderson (Student-at-Law): counsel for the defendants.

REASONS FOR DECISION

1 **J.S. WINNY DEPUTY J.**:-- The defendants move for a stay of this action pursuant to s. 106 of the *Courts of Justice Act*, R.S.O., 1990, c. C.43, on the basis that the matters raised by the plaintiffs are required to proceed through mediation and then arbitration by virtue of s. 132(4) of the *Condominium Act, 1998*, S.O. 1998, c. 19. That section provides as follows:

> (4) Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1)(a) and (b) respectively.

2 The motion is granted for the following reasons.

3 The plaintiffs are the owners of a condominium known as Unit 7, 110 Beasley Crescent, Cambridge. They appear to have outstanding disputes with both the property management company and the condominium corporation, which are the defendants in this action commenced on March 18, 2009.

4 The defendants jointly filed a Defence objecting to the jurisdiction of the Small Claims Court based on their position that mediation-arbitration is required pursuant to the *Condominium Act, 1998*. They have not pleaded any position as to the claims themselves out of concern that such pleading might amount to attornment to this court's jurisdiction.

5 The first challenge for the court on this motion is to understand what if any cause or causes of action are alleged in the Plaintiff's Claim which might be recognized at law. That document with its attachments is approximately 1 1/2 inches thick. The substantive allegations are contained in four single-spaced typed pages attached to the claim, which is for damages totaling $10,000. Even though there is no request to strike out the plaintiffs' pleading or any part of it, the court must understand it so a determination can be made as whether the subject-matter is required to proceed to mediation-arbitration pursuant to the *Condominium Act, 1998*, as asserted by the defendants.

6 Having reviewed the document and heard the plaintiff's submissions in response to the court's request for an explanation as to the legal claims asserted, the following appears.

7 The first claim is for what the plaintiffs describe in their pleading as "specific damages" of $164, although from the submissions of Mr. Kovats it appears to be a claim for $50 plus certain costs in dealing with this aspect of the dispute. He says it is a claim based on a verbal agreement with the property manager, whose representative authorized him to effect a repair in the condominium and bill it to her company, so long as the bill did not exceed $50.

8 The second and largest single claim is for what is described as "general damages" of $7,000. The pleading in support of this claim is difficult to comprehend from a pleadings perspective. There are somewhat rambling complaints about harassment and intimidation, a threatening letter, aggravation, misleading information and intimidation tactics. It is alleged that the condominium corporation "has not been very nice to us when we have helped out some neighbours."

9 In reviewing the "general damages" claim for$7,000, I have very grave doubts that any legally-recognized cause of action could be found there. Had I been asked to strike out that pleading, with or without leave to amend, I would have granted one or the other of those orders. However, I was not asked to grant any such remedy.

10 As to the amount of these damages claimed at $7,000, when I asked Mr. Kovats to explain the origins and significance of that figure, he appeared to shift his focus to the last claim which is for punitive damages. It seemed from his submissions that essentially the plaintiffs claim what they call "general damages" with the intention to ask that the defendants be punished for what is perceived by the plaintiffs as unsatisfactory or objectionable conduct on their parts.

11 Accordingly, as to the claim for $7,000, for purposes of this motion I can ascertain no reasonable cause of action and no allegation of legally-recognized and provable damages.

12 As to the third claim, which is for punitive damages of $2,835 (and brings the total of the three claims up to this court's maximum monetary jurisdiction of $10,000), the allegations in my view do not constitute a legally-sufficient basis for a punitive damages claim. As I indicated during submissions, our appellate courts have limited such claims to rare and exceptional cases involving conduct that is not only objectionable, sloppy or negligent, but that is deliberately calculated to cause harm that is otherwise independently actionable. I see no pleading here that could theoretically support such an award.

13 Moving on from the legal sufficiency of this pleading, I agree with the submission of defence counsel that the real gist or pith and substance of the claim appears to relate to maintenance and repair of the condominium unit's common elements. That subject is addressed in Article VI of the Declaration (Motion Record, Tab A). In particular, it appears clear that the pith and substance of the plaintiffs' claim relates to the corporation's duty to maintain and repair the common elements, which is addressed in clause 2 of Article VI.

14 Mr. Mullin referred me to a number of authorities but principally *McKinstry v. York Condominium Corp. No. 472* (2003), 68 O.R. (3d) 557 (S.C.J.), a decision of Juriansz J. (as he then was). At paragraph 20 of his reasons, Justice Juriansz states as follows:

> 20. The first issue is whether s. 132(4) [of the *Condominium Act, 1998*] applies where the initiating party wishes to claim damages resulting from the disagreement as well as resolving the dispute. The term "disagreements" in s. 132(4) should be interpreted broadly to encompass claims for damages arising from the subject matter of the disagreement. Such a broad interpretation is most consistent with the provision's objective of resolving disputes by informal procedures rather than by court action. A great many disagreements about declarations, by-laws and rules will be about responsibility for expenditures or about damage caused by failings or neglect. Imposing media-

> tion and arbitration to resolve these disagreements, but requiring court action to claim money somehow at issue because of the disagreement, would frustrate the provision's aim to have disputes resolved quickly and efficiently.

15 Justice Patillo specifically agreed with Justice Juriansz's comments at paragraph 20 just quoted, in *Metropolitan Condominium Corp. No. 1143 v. Peng* (2008), 67 R.P.R. (4th) 97 at para. 15 (Ont. S.C.J.).

16 I am satisfied after a careful review of the pleadings, authorities and submissions made, that this matter is caught by s. 132(4) of the *Condominium Act, 1998*. It is a disagreement with respect to the declaration, by-laws or rules of the condominium corporation. It isclear and beyond doubt that the matter, including the damages issue, must proceed through mediation-arbitration because that is what the legislature has decreed must happen in such cases. The jurisdiction of the court is ousted.

17 In his submissions, Mr. Kovats expressed a preference to remain in this court, and he questioned the cost of arbitration and the time for hearing. The short answer is that the legislature has made a policy determination that these types of disputes must proceed through mediation-arbitration. The court must apply that law and has no power to grant an exception where that law applies as it does here. As to cost, while arbitration is usually more expensive than proceedings in this court, the recovery of costs for the party whichsucceeds through arbitration can be more favourable than in Small Claims Court. The time for hearing might well be sooner for arbitration than in this court, albeit that will depend in part on the schedule of the selected arbitrator.

18 Neither side sought to argue that the fact of the management company being involved as a separate defendant should affect the proper disposition of this motion. In my view no reasonable cause of action and no legally-recognized and provable damages are pleaded as to that company in any event.

19 In submissions, defence counsel suggested that the court could grant a temporary stay which would remain in place only pending further order of the court or until after the mediation-arbitration had taken place. I fail to see any benefit in making such an order. From the perspective of the proper administration of justice generally, and the summary jurisdiction of this court specifically, keeping in mind ss. 25 and 138 of the *Courts of Justice Act*, no useful purpose would be served by leaving this court file open and subject to further proceedings in this court when it is plain and obvious that this is the wrong venue for the dispute.

20 As I understand the law, the only court proceedings which would be available following arbitration, if the matter is not resolved by then, would be an appeal from the arbitrator's award. Such an appeal would proceed not in this court but in the Superior Court of Justice. There is no further need for this court's involvement.

21 Accordingly, I grant a stay of this proceeding and to avoid potential uncertainty, it is a permanent and not a temporary stay.

22 I award motion costs to the defendants, if demanded, fixed at $150 all-inclusive, payable by the plaintiffs within 30 days.

J.S. WINNY DEPUTY J.

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