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This document: 2006 CanLII 13565 (ON S.C.)

Citation: *Jordan v. Durham Condominium Corporation No. 23*, 2006 CanLII 13565 (ON S.C.)

Date: 2006-04-28

Docket: 38133/05

[\[Noteup\]](#)

COURT FILE NO.: 38133/05

DATE: 2006/04/28

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Randall Jordan

Applicant

- and -

Durham Condominium Corporation No 23

Respondent

)
)
) James A. Scott, for the Applicant
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) George F. Vella, for the Respondent
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) **HEARD:** November 30, 2005

SUPPLEMENTARY REASONS

D. S. Ferguson J.:

[1] I have considered the parties' supplementary evidence and submissions.

Further Findings

[2] The further evidence related to the 2005 annual general meeting of the corporation. I find it was originally called for March 2005. On the date of the meeting there was no a quorum. The property manager or the directors sought legal advice and decided to announce a further meeting. They sent out notices for the 2005 annual general meeting to be held on October 4, 2005. At that meeting the chair took the position that there was a quorum consisting of persons present and proxies. Mr. Jordan asked to examine the proxies and the chair refused. The meeting proceeded.

[3] Following the meeting the board consulted with counsel and were informed that some of the proxies were faulty. The board then called a further 2005 annual general meeting for January 31, 2006.

[4] There is no evidence as to what happened at that time.

[5] I conclude the evidence shows that except for the one occasion when the chair refused to permit the Applicant to review proxies there is nothing the Applicant can complain about. I do not think it was inappropriate for the chair to decline his request review proxies.

Affirmation of previous tentative findings

[6] I affirm all the findings I made in my reasons of December 2, 2005.

Analysis

Review of findings

[7] The Applicant alleged fraud but adduced no evidence capable of supporting the allegation.

[8] He alleged improper charging for repairs but the evidence he relied on had no probative value.

[9] He alleged carelessness with respect to the 2002 and 2003 annual meetings. The evidence he adduced about the 2002 meeting had no significance. The evidence about the 2003 meeting did not show carelessness.

[10] He made allegations about unsigned financial statements. His affidavit evidence was misleading and the allegation had no merit.

[11] He alleged that an invalid notice had gone out announcing a meeting to elect directors. There was an error in the notice but the evidence did not show that the error was the result of carelessness by the Board.

[12] He made allegations about a reserve fund study and claimed the circumstances showed mismanagement. The evidence did not show mismanagement.

[13] He alleged mismanagement about the construction of a pool shed. The evidence failed to show mismanagement.

[14] He complained that a pool shed had been constructed at a cost exceeding the approved cost. The evidence showed this happened but that the Board had provided an explanation and that long ago the Applicant had voted with the other owners at a meeting to retroactively approve the expenditure.

[15] He alleged that the Board was holding meetings without a quorum. There was no dispute about that but the evidence showed that the Board was repeatedly re-scheduling meetings in an attempt to obtain a quorum.

[16] In summary, the Applicant made 9 allegations which he contended showed fraud, mismanagement and carelessness. He failed to prove the facts concerning 8 of the allegations and the facts on the remaining issue were not really in dispute. He failed to prove any fraud, mismanagement or carelessness.

Conclusion

[17] The Applicant sought an order appointing an inspector and an administrator.

[18] He concedes that in order to obtain such an order he has to establish negligence or carelessness on the part of the Board. He has failed to prove either.

[19] In my view the Application is frivolous and was brought in bad faith.

[20] The Applicant made numerous allegations including fraud and failed to adduce evidence which could support his allegations. He failed to adduce all the relevant evidence available to him.

[21] He raised many complex issues and in combination with the paucity of evidence this resulted in an unnecessarily long hearing and written submissions.

[22] He has dredged up minor, stale incidents going back several years and with respect to one of his complaints he had formerly voted to approve the very conduct he now complains about.

[23] The material before me leads me to conclude that the Applicant is a troublemaker who has repeatedly complained about all manner of inconsequential issues for no purpose other than to be obstructive and critical. He seems to make no effort to co-operate with his fellow owners who have volunteered to try to manage the corporation.

[24] I note that there is only one Applicant in the proceeding and that there is no evidence that any other owner supports his complaints.

[25] I dismiss the Application.

Costs

[26] The parties shall make written submissions on costs in accordance with the following timetable:

- (a) From the Respondent by May 8.
- (b) From the Applicant by May 15.
- (c) Any reply from the Respondent by May 22.

[27] The submissions may be faxed or mailed to me at the Whitby Courthouse.

Released: April 28, 2006.

COURT FILE NO.: 38133/05
DATE: 2006/04/28

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SUPERIOR COURT OF JUSTICE

B E T W E E N:

Randall Jordan

Applicant

- and -

Durham Condominium Corporation No. 23

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SUPPLEMENTARY REASONS FOR JUDGMENT

D.S. Ferguson J.

Released: April 28, 2006.

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