

COURT FILE NO.: 06-CV-310801PD3

DATE: 20060825

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

YORK CONDOMINIUM CORPORATION NO. 136

Applicant

- and -

MARSHALL ROTH

Respondent

COUNSEL:

Jonathan Fine, for the Applicant
Marshall Roth, in person

HEARING DATE: August 15, 2006

REASONS FOR DECISION

PERELL, J.

[1] This is an application pursuant to s. 134 of the *Condominium Act*, 1998, S.O. 1998, c. 19 by York Condominium Corporation No. 136 for, amongst other things, an order requiring the Respondent, Marshall Roth, who is the owner of a unit in the condominium, to sell his unit and an order restraining him from interfering with the operation of the condominium corporation and its board of directors.

[2] The Condominium Corporation also seeks an order that Mr. Roth be restrained from communicating with or having any contact with any of the affiants in these proceedings and/or an order that he be restrained from doing anything which in the opinion of the board of directors is disturbing to or otherwise interferes with any other person lawfully entitled to be on the condominium's property. The prayer for relief contains 15 paragraphs of similar requests.

[3] The Condominium Corporation says that it requires and is entitled to this extraordinary relief because Mr. Roth has shown himself to be antisocial and, more particularly, he has made alarming threats and committed a few acts of actual violence

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that make him a danger to the community that is comprised by the unit holders of the condominium.

[4] This application was originally made returnable on May 23, 2006, and Mr. Roth attended, and he was granted an adjournment to retain counsel and to file material.

[5] On May 23, 2006, the application was adjourned to June 15, 2006, at which time another adjournment was sought and granted to Mr. Roth, who appeared without council. The order made on June 15, 2006 established a timetable, and the application was adjourned to be heard on August 15, 2006.

[6] On August 15, 2006, Mr. Roth attended again in person, and again he requested an adjournment to file material. He explained that because of stress associated with having relatives living in Israel during the recent warfare, he had not been able to prepare material.

[7] I denied Mr. Roth's request for an adjournment, and, in any event, he was content to argue the application, when I told him, and Mr. Fine, counsel for the Condominium Corporation, that based on my initial review of the record that it was unlikely that I would be making an order requiring Mr. Roth to sell his unit in the condominium.

[8] After hearing argument from Mr. Roth and from Mr. Fine, I reserved judgment, and I am now satisfied that my initial assessment was correct and that this is not an appropriate case to make the draconian orders sought by the Condominium Corporation. However, based on the uncontradicted evidence before the Court, the Condominium Corporation is entitled to some relief, which I will describe and explain below.

[9] I will begin with the easiest matter. The Condominium Corporation requests an order that Mr. Roth provide it with a series of post-dated cheques dated the first day of each month on account of common expenses in respect of his unit from the date of the order, the next following 31st day of December, being the end of the Condominium Corporation's fiscal year and also an order that thereafter, for as long as Mr. Roth remains an owner of the unit, if at all, he shall provide annually to the Condominium Corporation, in advance, a series of post-dated cheques dated the first day of each month on account of the common expenses for each subsequent year which commences on January 1.

[10] The evidence establishes a long and very sorry history of late payments by Mr. Roth of his common expenses. This has been a source of friction and animosity between the parties, and based upon the uncontradicted evidence properly put before the Court, Mr. Roth's conduct in response to the demands for prompt payment has been inappropriate. Condominium unit owners are obliged to comply with the *Condominium Act, 1998* and the condominium corporation's declarations, by-laws, and rules: see s.119 of the Act. In the case at bar, the Condominium Corporation is entirely justified in making the request for post-dated cheques.

[11] Under s. 134 of the Act a condominium corporation may apply to the Court for a compliance order. See *Re Peel Condominium Corporation No. 78 and Harthen* (1978), 20

O.R. (2d) 225 (Co. Ct.); *Metropolitan Toronto Condominium Corp. No. 776 v. Gifford* (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.); *Re Carleton Condominium Corporation No. 279 and Rochon* (1987), 59 O.R. (2d) 545 (C.A.); *Peel Condominium Corporation No. 499 v. Hogg*, [1997] O.J. 623 (Gen. Div.); *Metropolitan Toronto Condominium Corp. No. 776 v. Gifford* (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.); *Marafioti v. Metropolitan Toronto Condominium Corp. No. 775*, [1997] O.R. No. 1899 (C.A.). The Court may make an order enforcing compliance with any provision of the Act, the declaration, the by-laws, or the rules of the Condominium Corporation. Pursuant to this authority, I grant the orders set out in paragraph [9] above.

[12] The next matters, and these raise much more difficult questions, concern what relief should be granted to the Condominium Corporation in light of the evidence submitted to the Court that Mr. Roth has violated the rules of the condominium corporation and has engaged in unmanageable and antisocial behaviour.

[13] 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.)

[14] Under s. 117 of the *Condominium Act, 1998* 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.

[15] Having reviewed the evidence about the conduct of Mr. Roth, I find the evidence to be problematic as to whether and to what extent Mr. Roth is a serious threat or likely to cause damage to property or injury to a person. It is unfortunate that Mr. Roth did not retain counsel or exercise his rights to cross-examine the witnesses and to file his own affidavit material. I find the evidence to be troublesome and of doubtful quality because some of it is hearsay and much of it relates to incidents that happened many years ago and some (but not all) of the incidents appear trivial.

[16] Moreover, in weighing the evidence, there obviously is personal animosity between the chief complainant, Mr. Abela, who is the manager of the condominium, and Mr. Roth. Based on the evidence, Mr. Abela may be quite justified in how he feels about Mr. Roth, but given the emotive tone of Mr. Abela's affidavit, I was concerned that Mr. Abela could not be expected to provide and did not provide objective evidence about Mr. Roth's conduct.

[17] That said, there is uncontradicted evidence that Mr. Roth disrupted an owner's meeting on June 13, 2006 and physically assaulted the Condominium Corporation's president. There is also uncontradicted evidence of rude, aggressive, abusive, and dismissive behaviour by Mr. Roth in his relations with his neighbours, contractors that provide services to the condominium, and with the staff that manages the Condominium Corporation.

[18] Accepting this evidence, and there is no basis for me not to do so, the Condominium Corporation is justified in seeking an order that Mr. Roth cease and desist

from his uncivil, improper and illegal conduct that violates the *Condominium Act, 1998* or the by-laws and rules of the Condominium Corporation.

[19] The issue then is how should the court exercise its discretion under s. 134 of the Act to require Mr. Roth to conduct himself only in accord with his rights and obligations under the *Condominium Act, 1998* and the declarations, by-laws, and rules of the Condominium Corporation.

[20] The Condominium Corporation sought the extreme order of requiring Mr. Roth to sell his unit. I have not been able to find any reported cases where such an order has been made, but Mr. Fine provided me with two orders that include this type of relief. The orders were made in *York Condominium Corporation No. 202 and Redican*, June 3, 1994, court file no. RE3905/94 (Gen. Div., O'Brien, J.) and *Peel Condominium Corporation No. 148 and Patrick*, July 18, 1997, court file no. A5053/97 (Gen. Div., Webber, J.)

[21] In all the circumstances and, in part, because it would, in my opinion, not be just to require Mr. Roth to sell his home without providing him with an opportunity to show that he can abide by the rules that govern in his community, I believe the appropriate order is to direct him to control his behaviour, especially his manner of communicating with the officers and employees of the Condominium Corporation, so as to comply with the Act, declarations, by-laws and rules of the Condominium Corporation in default of which the Condominium Corporation may apply to the court: (a) pursuant to rule 60.11 for a contempt order; (b) pursuant to s. 134 of the *Condominium Act, 1998* for such a further order to enforce compliance as the Court deems just; or (c) pursuant to both rule 60.11 and s. 134 of the *Condominium Act, 1998*.

[22] I further order Mr. Roth to pay the costs of this application on a substantial indemnity basis, which I fix at the sum of \$9,600 all inclusive of counsel fee disbursements and GST, this sum to be paid in 24 monthly installments of \$400 per month to be added to the amount of the postdated cheques referred to in paragraph [9] of these Reasons for Decision. (I note here parenthetically that the Condominium Corporation had claimed costs in the amount of \$12,018.99).

[23] I appreciate from what Mr. Roth submitted during his argument (but not from the evidentiary record) that he has concerns about the management of the Condominium Corporation and that he did not want to be disenfranchised or exiled from participation in the condominium community. The above orders allow him to exercise his rights as a owner of a condominium unit provided that he complies with his obligations.

Perell, J.

Released: August 25, 2006

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