COURT FILE NO.: 05-CV-293902PD3
DATE: 2006-06-23

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
EGON NIEDERMEIER,	)	*Benjamin J. Rutherford*, for the Applicant
	)	
	)	
	)	
Applicant	)	
	)	
- and -	)	
	)	
	)	
YORK CONDOMINIUM CORPORATION NO. 50,	)	*Jonathan H. Fine*, for the Respondent
	)	
	)	
	)	
Respondent	)	
	)	
	)	
	)	**HEARD:** April 25, 2006,
	)	at Toronto, Ontario

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Mr. Justice D. C. Shaw

Reasons For Judgment

[1] The respondent ("**the Corporation**") is a residential condominium corporation. Mr. Niedermeier is the owner of a unit in the Corporation, where he has resided since 1984. Mr. Niedermeier claims that he has been oppressed by the Corporation. He seeks compensation for the alleged oppression under s. 135 of the *Condominium Act, 1998* ("**the *Act***").

[2] Mr. Niedermeier claims relief for a variety of events occurring during the period 2000 to 2005. Those claims can be broken down into the following categories:

(1) Reimbursement of common expenses as compensation for denial of access to the common elements of the Corporation;

(2) Reimbursement of legal fees incurred by Mr. Niedermeier arising out of a parking space incident at the Corporation;

(3) Reimbursement of legal fees incurred by Mr. Niedermeier with respect to a criminal charge, on which he was found guilty;

(4) Reimbursement of legal fees incurred by Mr. Niedermeier with respect to a civil action brought against him by the Corporation, which was settled by a consent order;

(5) Compensation for mental anguish and stress;

(6) Compensation for personal expenses incurred by Mr. Niedermeier.

The Oppression Remedy:

[3] Section 135 of the *Act* provides as follows:

> **Oppression remedy**
>
> (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.
>
> **Grounds for order**
>
> **(2)** On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the

applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.

Contents of order

(3) On an application, the judge may make any order the judge deems proper including,

(a) an order prohibiting the conduct referred to in the application; and

(b) an order requiring the payment of compensation. 1998, c. 19, s. 135 (3).

[4] Section 135 came into effect in 2001. While this is a new concept for Ontario condominium corporations, courts in Canada have dealt with oppression remedies for many years in the context of company law. Those cases have considered whether the conduct complained of falls under the three types of conduct enumerated under statute, namely (i) oppression (ii) unfair prejudice or (iii) unfair disregard. The courts have not drawn clear lines between any of the three statutory tests and have often found that conduct may fit into one or more of the categories. Unfair prejudice and unfair disregard are less rigorous tests than oppression.

[5] The following discussion of the law of oppression in a company law context is taken from Markus Koehnen "*Oppression and Related Remedies*", 1st ed. (Toronto: Caswell, 2004), at pp. 79-84.

[6] Oppression is conduct that is coercive or abusive. Oppression has also been described as conduct that is burdensome, harsh and wrongful, or an abuse of power which results in an impairment of confidence in the probity with which the company's affairs are being conducted.

[7] Unfair prejudice has been found to mean a limitation on or injury to a complainant's rights or interests that is unfair or inequitable. Koechnen cites examples of unfair prejudice from corporate cases, including:

- squeezing out a minority shareholder because of a personal desire to exclude her;
- failing to disclose related party transactions in financial statements;
- amalgamating two corporations and thereby transferring the minority's interest from a corporation with a very low debt equity ratio to a very high debt equity ratio;
- paying management fees to certain shareholders to the exclusion of others;
- paying dividends without formal declaration.

[8] Unfair disregard means to ignore or treat the interests of the complainant as being of no importance. Examples cited by Koehnen include:

- failing to prosecute the claims of a corporation diligently where one of the directors benefited from the improper prosecution;
- reducing a shareholder's dividend by setting off the value of other benefits against it when this had not been done in the past;
- failing to deliver property that belonged to the complainant.

[9] Koehnen comments that courts in Ontario have held that the use of the word "unfairly", to qualify the words "prejudice" and "disregard", suggest that some prejudice or disregard is acceptable provided that it is not unfair.

Governance of the Corporation:

[10] The affairs of this Corporation are subject to the provisions of the *Act* and of the Corporation's registered declaration, by-laws and rules.

[11] Section 17 of the *Act* imposes a duty on a corporation to manage the property of the corporation on behalf of the owners and to take all reasonable steps to ensure that owners comply with the *Act*, the declaration, the by-laws and the rules.

[12] Section 119 of the *Act* imposes a duty on, among others, a corporation, the directors and owners to comply with the *Act*, the declaration, the by-laws and the rules.

[13] Section 115 of the *Act* imposes a trust on monies received for the benefit of a corporation.

[14] Section 58 of the *Act* empowers the directors to make rules respecting the use of the common elements and units, (a) to promote the safety of the owners and the assets of the corporation and (b) to prevent unreasonable interference with the use and enjoyment of the common elements and units.

[15] The declaration, the rules and the by-laws each contain indemnification provisions, obligating unit owners to indemnify the Corporation for damage caused by the owners to the common elements. Unit owners are required to pay for repairs within the boundaries of their units.

[16] The Corporation enacted By-law Number 5 in June 2002. This widened the indemnification provisions to include indemnification by unit owners of legal costs incurred by the Corporation, including the cost of legal advice given to the Corporation.

[17] The affairs of the Corporation are managed by the board of directors, pursuant to s. 27 of the *Act*. The board, which is made up of volunteers, is elected by the owners. The board hires a management company to deal with day-to-day matters.

[18] The Ontario Court of Appeal, in *York Condominium Corp. No. 382 v. Dvorchik* (1997), CarswellOnt 219 (C.A.) held that the only limitation on the authority of the board of directors to make rules was that the rules be reasonable and consistent with the *Act*. In making the rules, the board is not performing a judicial role. The board is not obliged to hear evidence in reaching its conclusion and setting down its rules. The courts are to pay deference to the rules deemed appropriate by a board, which the Court of Appeal recognized is charged with the responsibility of balancing the private and communal interests of the unit owners.

[19] I will deal with the claims of Mr. Niedermeier for compensation, following the categories enumerated above.

(1) Reimbursement of common expenses as compensation for denial of access to the common elements of the Corporation:

[20] In 2000, Mr. Niedermeier was directing a cube van under the canopy of the Corporation's building. The van scraped the canopy. The Corporation incurred a cost of $53.50 to repair the damage. In 2000, Mr. Niedermeier brought a used washing machine from the garbage area of the Corporation's building to his unit. Fluid spilled from the machine, staining the carpet of the corridor of the building. The Corporation incurred a cost of $88.10 to clean the carpet. The Corporation requested Mr. Niedermeier to indemnify it for the costs for repair of the canopy and for cleaning the carpet, totalling $141.60. Mr. Niedermeier took the position that the repair costs

of $53.50 for the canopy were excessive and that he should not pay the cleaning cost of $88.10 because he was paying monthly maintenance fees to the Corporation. Mr. Niedermeier did not deny that he was responsible for the damage to the canopy and the staining of the carpet.

[21] As previously noted, the declaration, rules and the by-laws of each contain indemnification provisions, which obligated Mr. Niedermeier to indemnify the Corporation for the damage he caused to the common elements, i.e. the damage to the canopy and the staining of the carpet.

[22] The costs claimed by the Corporation for each of these incidents were paid by the Corporation to third parties. Invoices for the costs are included in the motion materials. Mr. Niedermeier acknowledges that the damage occurred. There is nothing to indicate that the Corporation should not have paid the invoices of $53.50 and $88.10. Mr. Niedermeier admits that he "elected not to pay" the $141.60 when he was asked to do so in 2000. The Corporation wrote to Mr. Niedermeier on March 17, 2000, requesting indemnification. A second letter was sent June 30, 2000. On January 16, 2001, Mr. Niedermeier met with the President of the board of directors to discuss the issue. Mr. Niedermeier did not make any offer as to what he was willing to pay. A third letter was sent May 1, 2001, at which time the Property Manager, Rick Allan, on behalf of the Corporation indicated that if the amount was not paid by May 15, 2001, Mr. Niedermeier's access to the lounge, library, exercise room, and sauna would be cancelled, and a charge back of $141.60 would be filed against his unit.

[23] Mr. Niedermeier did not pay the account. On May 15, 2001, Mr. Niedermeier's striker card was cancelled to deny him access to the above-mentioned rooms.

[24] The Corporation again wrote to Mr. Niedermeier on August 28, 2001, requesting payment and confirming that his access to the rooms would remain cut off until payment was received. Another letter was written by the Corporation on November 27, 2001. The letter confirmed a meeting on that date between Mr. Allan and Mr. Niedermeier, at which time Mr. Allan suggested that if $141.60 was too much to pay in one payment, Mr. Niedermeier could make monthly payments, even as low as $5.00 per month. Mr. Niedermeier stated that the costs were excessive. Mr. Allan suggested that Mr. Niedermeier write to the board to advise what he thought would be a reasonable cost that he would be willing to pay. In anticipation of Mr. Niedermeier's letter to the board, his access to the areas was reinstated. The letter indicates that although Mr. Niedermeier's access to the rooms had been cut off since May 15, 2001, the building superintendent had in fact observed Mr. Niedermeier using the rooms.

[25] On August 19, 2002, Mr. Niedermeier sent the board a letter requesting a meeting to talk about the outstanding payments. The board invited Mr. Niedermeier to a meeting on October 8, 2002. Mr. Niedermeier met with the board on October 8, 2002, and stated his position. The board then offered to reduce the amount of $120.00, if paid within 10 days. On October 25, 2002, Mr. Niedermeier paid the Corporation $100.00. He wrote the board on January 21, 2003 and stated that:

> this amount represents more than an overpayment of the matters in question. After all, the damages that happened to the canopy and the rug in the corridor were accidental and were not willfully caused by me. After all, I am a homeowner in this condominium complex and am paying my monthly maintenance fees and should not be required to pay for repairs and cleaning in addition to those fees.

Mr. Niedermeier refused to pay the remaining $20.00 and stated that "Mr. Allan should pay it out of his own pocket and call the matter closed." The board responded by letter dated February 12, 2003, indicating that the $120.00 was for repairs caused by Mr. Niedermeier's negligence and that repairs were not covered by the monthly maintenance fee. The $20.00 remains outstanding.

[26] It is acknowledged by the Corporation that it did not have a written rule with respect to termination of access to the rooms for failure to pay an outstanding account. Mr. Allan testified in cross-examination that the property managers and the board had decided after discussing Mr. Niedermeier's situation, to terminate his access to the rooms, "out of frustration", to hopefully get Mr. Niedermeier to pay the bill. He further testified that this decision to cut off access to common rooms was implemented in "extreme cases". He cited as an example someone leaving the party room in a mess, resulting in a clean up fee which, if not paid, would result in that room being cut off for a month or so.

[27] Mr. Niedermeier submits that the termination of his access to the rooms for a period of 6 months was "oppressive". He describes the conduct of the Corporation in this regard as harsh, burdensome, an abuse of power, vindictive, high-handed and malicious. It was conduct, he submits, which is not authorized by the *Act*. Mr. Niedermeier contends that the Corporation should have sued him in Small Claims Court instead.

[28] Mr. Niedermeier submits that as a remedy, he should receive reimbursement of his common expenses of $414.00 per month.

[29] The Corporation acknowledges that termination of access to the rooms was a self-help remedy which, although not authorized by the *Act*, was the most practical way of setting the matter right. The Corporation takes issue with Mr. Niedermeier's submission that he had an absolute right to use of the common elements. The Corporation refers to s. 116 of the *Act*, which provides that the owner may make "reasonable use" of the common elements, subject to the *Act*, the declaration, the by-laws and the rules. The Corporation submits that if Mr. Niedermeier's access to the rooms had been cut off for no reason, that would probably amount to oppression. But the Corporation contends this issue was about $141.60 that Mr. Niedermeier was obligated to pay.

[30] I am not satisfied, in the circumstances of this case, that Mr. Niedermeier has established that the action of the Corporation in terminating his access to the common rooms was oppressive within the meaning of the *Act*.

[31] I am satisfied that Mr. Niedermeier did owe the Corporation $141.60 by way of indemnification for damages caused to him to the common elements. He admits he did the damage. The declaration, by-laws and rules require him to reimburse the Corporation. The expenses of $53.50 and $88.10 appear reasonable. They are not arbitrary numbers. They were invoices rendered by third parties retained by the Corporation to remedy the damage caused by Mr. Niedermeier. Mr. Niedermeier was given ample opportunity to indemnify the Corporation before his access was terminated. The Corporation sent four letters over the course of more than a year, requesting payment before terminating Mr. Niedermeier's access. Mr. Niedermeier had a meeting with the President of the board four months before the board took action. He made no offer to pay for approximately 1½ years. In these circumstances, I do not find the Corporation's

actions to be abusive, burdensome or harsh. Those words denote mistreatment, injury, conduct which is excessively severe, hard to bear. Although the Corporation acted without authorization from the *Act*, or an express rule or policy, I am not satisfied that there was the requisite abuse of power or harsh and wrongful conduct to bring the oppression remedy into play. Although Mr. Niedermeier did not argue that the Corporation's conduct amounted to "unfair prejudice" or "unfair disregard", I do not find that the Corporation's conduct met those lesser tests of the oppression remedy having regard by way of analogy to the examples cited by Koehnen from company cases. This is not a situation where an innocent party has been taken advantage of in an unfair way by a dominant party. This is not to say that termination of an owner's access to common elements cannot constitute oppression. However, on the facts of this case, Mr. Niedermeier has not persuaded me that he was oppressed. While the steps chosen by the Corporation may be subject to criticism for not following written policy, Mr. Niedermeier's conduct in this matter is not above reproach, for failing to pay a debt that was, by written policy, due to the Corporation.

[32] With respect to the compensation claimed, there is no evidence before me to support the claim that Mr. Niedermeier should be refunded his common expenses for six months. The common expenses include many matters, other than the 5 rooms in question, for example, utilities, insurance, maintenance, repairs, a reserve fund, waste disposal, cable television, snow removal, landscaping, management fees. There is no estimate provided as to what portion of the common expenses can be attributed to the rooms. Moreover, it appears that Mr. Niedermeier did in fact have some access to at least the lounge during the six months.

2. Reimbursement of legal fees incurred by Mr. Niedermeier arising out of a parking space incident at the Corporation:

[33] On June 12, 2003, Ms. Shoales, a unit owner at the Corporation, advertised a parking space for rent. Mr. Niedermeier left a message for Ms. Shoales that he was interested in renting the parking space. On June 13, 2003, Ms. Shoales attended at the management office and stated she did not want to rent her space to Mr. Niedermeier. Later that afternoon Ms. Shoales re-attended and told Mr. Allan of the management office that Mr. Niedermeier had parked his car in her space and she wanted it removed. Mr. Allan left a message on Mr. Niedermeier's telephone and told him to remove his vehicle. Mr. Niedermeier called Mr. Allan the next day and told him it was not his vehicle. He says he was called an idiot and told he had committed a criminal offence. Mr. Allan explained that he had been called by Ms. Shoales and had acted on her information. Mr. Allan apologized twice for the inconvenience. Mr. Allan indicates that Mr. Niedermeier then left a series of threatening telephone messages. Mr. Allan wrote to Mr. Niedermeier on July 3, 2003, explaining how he had come to contact Mr. Niedermeier on the complaint by Ms. Shoales. On July 15, 2003, Mr. Niedermeier wrote to the board, requesting a meeting. On that day, July 15, 2003, Mr. Niedermeier met with the President of the board after Mr. Niedermeier, by telephone, requested a meeting. On July 16, 2003, the board wrote a letter of apology to Mr. Niedermeier. Mr. Niedermeier testified in cross-examination that he understood that the board was apologizing to him for any inconvenience as a result of the mistake concerning the car parked in Ms. Shoales' spot. Mr. Niedermeier wrote a letter on July 19, 2003, again asking for a meeting with the board, having received the July 16, 2003, letter of apology. He wrote, in part:

> Mr. President; once more I have to waste my precious time, begging you again for a serious Collective Board of Directors discussion.
>
> How on earth can the Board of Directors reach a conclusive resolution without my presence?
>
> Quite frankly, It speaks for itself that there is a huge Pattern of serious ill decisions, Cover up, Brain wash, Fabrications, Not to mention illicit activities throughout some time on a Army of Egomaniacs in this Corporation.

[34] On August 14, 2003, the board replied by letter to Mr. Niedermeier. The letter stated:

> Dear Mr. Niedermeier:
>
> Your letter dated July 19th to Bob Girard was addressed at our board meeting last week. It would appear that you do not believe the Board of Directors had all the facts concerning the incident of the indoor parking space. Such is not the case.
>
> Your meeting with Mr. Girard on July 15th confirmed the facts that led to a false assumption concerning the car parked in 1350 parking garage. There was certainly no "cover-up" or "fabrication". We acknowledge that an error was made.
>
> We apologized for any inconvenience that this situation caused. More we cannot do. We now consider this matter closed and trust you will do so too.
>
> Yours sincerely,

[35] By letter dated September 19, the board wrote to Mr. Niedermeier, again acknowledging and apologizing for the error over the parking issue. The letter advised him that the issue was closed and that a meeting with the board would serve no purpose. Mr. Niedermeier responded with a letter dated September 29, 2003, threatening litigation against the Corporation "for their actions of cruelty and illicited action". The Corporation responded by letter dated October 29,

2003, stating that the parking space incident was no longer open to discussion; but if there were other issues, Mr. Niedermeier could submit those in writing. A director of the Corporation, Mr. Fuller, met with Mr. Niedermeier on November 12, 2003.

[36] In December 2003, Mr. Niedermeier hired a paralegal, Legal Concepts Inc., who raised the parking issue again, and among other things, renewed the request to meet with the board.

[37] Mr. Niedermeier again wrote the board on September 30, 2004 requesting an opportunity to present his version of the parking incident in person.

[38] The board agreed by letter dated October 6, 2004, to have Mr. Niedermeier attend the meeting of the board on November 3, 2004. On October 7, 2004 Mr. Niedermeier advised that he intended to bring legal counsel to the directors' meeting. The board decided that it would not meet with Mr. Niedermeier and his counsel unless the board also had its lawyer present, and unless Mr. Niedermeier advised the board in writing of the specific issues he wanted to address at the meeting. The board so informed Mr. Niedermeier by letter dated October 13, 2004. On November 2, 2004, Legal Concepts Inc. wrote to the board, advising that Mr. Niedermeier no longer required a lawyer at the board meeting, but would have a paralegal present. The board replied November 2, 2004, advising it was too late for the board to reconsider its decision not to invite Mr. Niedermeier to its November 2, 2004 meeting.

[39] On November 2, 2004, the board commenced its meeting. Mr. Niedermier appeared at the door of the room and began pounding on the door, demanding access. After approximately 15 minutes, Mr. Niedermeier left the area.

[40] I recite this lengthy background regarding the parking space incident to give context to the claim by Mr. Niedermeier for reimbursement for legal fees which he states were incurred by him arising out of the incident.

[41] On August 21, 2003, the Corporation sent to Mr. Niedermeier an account from the Corporation's lawyer, Fine & Deo, for $429.47, rendered by the solicitors to the Corporation on July 31, 2003. The services were stated by the Corporation to have been rendered due to harassment of Mr. Allan and a unit owner (Ms. Shoales). The amount was described as a charge back fee to Mr. Niedermeier's unit. On February 26, 2004 the Corporation sent another letter to Mr. Niedermeier, this time with an account from the solicitors for the Corporation for $338.66, regarding Mr. Niedermeier's request for a meeting.

[42] Mr. Niedermeier had retained his own solicitor, Sara Zakir, who wrote the Corporation on March 24, 2004, denying Mr. Niedermeier's responsibility for the two accounts. She ended her letter by stating:

> Because of the position taken by the Board and Management, Mr. Niedermeier has had to incur legal fees of his own. Should the Corporation and Management continue to take the position that Mr. Niedermeier is liable for the aforementioned chargeback, Mr. Niedermeier will be seeking to recover his legal costs from the Corporation.

[43] On April 29, 2004, the Corporation wrote to Mr. Niedermeier, referring to Ms. Zakir's letter. The Corporation stated:

> We have sought counsel and it is their opinion that these costs do not fall within the areas recoverable by placing a lien. Therefore,

> we are placing them in abeyance and not proceeding with the legal action.

[44] Mr. Niedermeier submits that the Corporation has been guilty of oppressive conduct and unfair disregard of his interests in trying to levy as charge-backs the Corporation's legal fees arising out of the parking lot issue. He seeks $1,735.00 for the account of Legal Concepts Inc. and $2,475.00 for the account of Sarah Zakir, as compensation under the oppression remedy. Mr. Niedermeier submits that the oppression remedy can be used as a tool to bring back balance where one party has been able to leverage its position.

[45] The Corporation submits that there is no obligation on the board to meet with unit owners. In fact, the President and a Director met with Mr. Niedermeier on this issue and there were several letters of apology from the board. The Corporation also refers to Mr. Niedermeier harassing Ms. Shoales, including multiple messages left by Mr. Niedermeier on her answering machine, together with four to five occasions when Mr. Niedermeier attended at her unit and knocked on her door, and a strongly worded letter of April 22, 2004, where Mr. Niedermeier demanded that Ms. Shoales pay his legal fees for wrongly accusing him (of parking in her parking space), failing which he would commence action against her for libel and slander.

[46] The Corporation submits that it was reasonable for the Corporation to seek legal advice within the context of Mr. Niedermeier's conduct over this issue. The Corporation contends that it would be remiss in its duties if it did not seek legal advice on the question of harassment of Ms. Shoales. The Corporation submits that it is beyond dispute that it had a right under the by-laws to claim indemnification for its legal costs. The only issue was whether it could impose a charge-back or lien for those costs. The Corporation in fact could not lien those costs.

[47] I am of the opinion that Mr. Niedermeier's claim for reimbursement for his legal and paralegal fees as compensation for oppressive conduct and unfair disregard cannot succeed. Mr. Niedermeier submits that the oppression complained of consisted of the attempt to charge back to his unit the amounts of the two accounts of the solicitors for the Corporation. Given the tortured history of the parking space issue and Mr. Niedermeier's unrelenting demands, it was reasonable for the Corporation to seek legal advice. It was also within the rights of the Corporation to seek indemnification for its costs, as provided for by By-law No. 5. The fact that the indemnification could not be enforced by a charge-back, as it had once claimed, does not mean that it therefore acted in an abusive, burdensome or harsh manner, or that it unfairly disregarded the rights of Mr. Niedermeier. There is no reasonable parallel here to the examples of oppressive conduct and unfair disregard from the company law cases.

[48] The accounts of Legal Concepts Inc., for which Mr. Niedermeier claims compensation are almost entirely devoid of detail. One cannot determine what the charges relate to, even to the extent of determining whether they relate to Mr. Niedermeier's dealings with the Corporation. The account of Ms. Zakir which is presented by Mr. Niedermeier for reimbursement under the oppression remedy consists in large part of entries regarding one Marc Richard and litigation in which he was involved, none of which has been related to the matters in issue here. There is one reference in Ms. Zakir's account, to a meeting of 1.3 hours on March 23, 2004, with Mr. Niedermeier, at which Mr. Richard's case was discussed and at which Ms. Zakir reviewed the issue of the charge-back and received instructions to write to the Corporation. There is no breakdown of how much of the 1.3 hour meeting concerned itself with the issues here. I also note that Ms. Zakir's letter of March 24, 2003 indicated that if the Corporation continued with the

charge-back, Mr. Niedermeier would seek to recover his legal costs. The Corporation responded that it would not pursue the charge-back.

3. Reimbursement of legal fees incurred by Mr. Niedermeier with respect to a criminal charge on which he was found guilty:

[49] On November 18, 2004, at about 6:45 a.m., Mr. Girard, the President of the Corporation, went to the Corporation's underground garage to pick up a box from his car. While he was picking up the box from the back seat of the car, Mr. Niedermeier approached him. Mr. Niedermeier stood less than a meter away and yelled at Mr. Girard. Mr. Niedermeier then said "How much longer you want to live for?" Mr. Girard yelled for help. Mr. Niedermeier then called him a coward, spit in Mr. Girard's face and headed towards his own vehicle. Mr. Girard, who was fearful for his safety, reported the incident to the police. The police charged Mr. Niedermeier with assault. Mr. Niedermeier was convicted of assault on December 1, 2005.

[50] Mr. Niedermeier now claims that he should be compensated by the Corporation for his legal fees of $930.00, incurred with P.A.I.N.S. and Associates Inc., for his criminal charge, on the basis that he has been oppressed. As I understand the submission, it is this:

1. After the police charged Mr. Niedermeier, Mr. Girard did not show sufficient interest in the charge to follow-up with the police (although he attended at the trial and Mr. Niedermeier was convicted).

2. The Corporation brought a civil action against Mr. Niedermeier about one month after the criminal charge, for a restraining order.

3. Mr. Niedermeier consented to an order in that civil action on April 8, 2005, restraining him from contacting Mr. Guard and his wife.

4. Therefore it was not necessary to proceed with the criminal charge and Mr. Niedermeier should not have had to incur legal fees in relation to the charge.

[51] I am at a loss to understand the merits of this submission. The police, not Mr. Girard and not the Corporation, charged Mr. Niedermeier with assault. Mr. Niedermeier was convicted of the offence. Mr. Niedermeier consented to the restraining order. There is nothing to indicate he did so on some understanding that the criminal charge would not proceed. Because the charge was laid by the police, and not by private information, any decision to withdraw the charge was for the police and the Crown to make. The Corporation had no authority to "withdraw" the charge. There is nothing remotely suggestive of oppression by the Corporation as regards this issue.

4. Reimbursement of legal fees incurred by Mr. Niedermeier with respect to a civil action brought against him by the Corporation which was settled by a consent order:

[52] This pertains to the restraining order referred to immediately above. The Corporation brought an application against Mr. Niedermeier, for an order that he comply with s. 117 of the *Condominium Act*. Section 117 provides:

> No person shall permit a condition to exist or carry on an activity in a unit or in the common element ... if the condition or the activity is likely to damage the property of or cause injury to the individual.

[53] On consent, the Corporation and Mr. Niedermeier agreed to an order, granted by Klowak J. on April 8, 2005, restraining Mr. Niedermeier from harassing or intimidating the staff and directors of the Corporation, and in particular Mr. Girard and his wife. Mr. Niedermeier was prohibited for a period of 24 months from coming within 5 meters of those individuals or talking to them. Of particular significance to the claim before me, the order provided that the parties would bear their own legal costs.

[54] It is unclear to me how Mr. Niedermeier can now claim his costs of that application, incurred with one Jennifer Morgan, Law Clerk, apparently in the sum of $3,860.00. The matter is *res judicata*. In any event, I can find no oppressive conduct by the Corporation related to that application.

5. Compensation for mental anguish and stress:

[55] Mr. Niedermeier submits that the Corporation engaged in a pattern of conduct, beginning in 2000 with the Corporation's attempts to recover the $141.60 for the damage to the canopy and the staining of the carpet, termination of access to the 5 rooms, progressing through the parking incident, and ending with the civil and criminal proceedings, as a result of which he has suffered stress and anguish and for which he wants compensation in addition to reimbursement of his legal fees. Mr. Niedermeier submits he should recover $5,000.00 to $10,000.00 under the oppression remedy, for what he says has been "a difficult situation".

[56] No medical or psychological evidence was presented. The only evidence appears to be the allegations by Mr. Niedermeier that this was all very stressful for him and that anger and

resentment built up in him over the failure or refusal of the board and management to respond as he believed they should.

[57] By reason of the fact that I have found that Mr. Niedermeier has not proven oppressive conduct on the part of the Corporation, there is no basis for me to award compensation or damages for stress and anguish.

6. Compensation for personal expenses incurred by Mr. Niedermeier.

[58] Mr. Niedermeier had sought $1,500.00 on May 6, 2005 for loss of four days work, plus correspondence and typing services in connection with these matters. He now claims to have missed another two days of work, which he says brings his claim to $2,000.00.

[59] This claim must fail because I have found no oppressive conduct by the Corporation.

Conclusion:

[60] For the reasons given, I dismiss the application of Mr. Niedermeier.

[61] If the parties are unable to agree upon costs, I will receive written submissions by July 15, 2006, delivered to Thunder Bay.

The Hon. Mr. Justice D. C. Shaw

Released: June 23, 2006

COURT FILE NO.: 05-CV-293902PD3
DATE: 2006-06-23

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

EGON NIEDERMEIER,

Applicant

- **and –**

YORK CONDOMINIUM CORPORATION NO. 50,

Respondent

REASONS FOR JUDGMENT

Shaw J.

Released: June 23, 2006

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