CITATION: *York Condominium Corporation No. 26 v. Ramadani*, 2011 ONSC 6726
COURT FILE NO.: CV-11-420416
DATE: 20111115

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **YORK CONDOMINIUM CORPORATION NO. 26,** Applicant

– AND –

DANIELA RAMADANI, Respondent

BEFORE: G.R. Strathy J.

COUNSEL: *Christopher J. Jaglowitz*, for the Applicant

Douglas H. Levitt, for the Respondent

DATE HEARD: November 10, 2011

E N D O R S E M E N T

[1] This is an application by York Condominium Corporation No. 26 ("YCC 26") for an order under section 134 of the *Condominium Act, 1998*, S.O. 1998, c. 19, requiring the respondent, Daniela Ramadani, to permanently remove her dog, a Yorkshire terrier, from her condominium unit and from the YCC 26 premises. YCC 26 also asks that certain cleaning and legal costs be charged to the respondent's common expense account. Alternatively, YCC 26 asks for an order that an arbitrator be appointed, so that the dispute resolution process prescribed by section 132 of the *Condominium Act* can proceed.

[2] This matter originally came before me on April 11, 2011. It was adjourned on consent to permit mediation in accordance with the *Condominium Act* and the rules of the condominium corporation. The parties failed to resolve the matter and it has been returned to me for a hearing.

[3] YCC 26 is comprised of 305 residential units, located in a single high-rise building at 551 The West Mall, Toronto. Ms. Ramadani is the owner of unit 209 on the second floor. She lives in the unit with her fiancé, her son and her dog. Her suite is directly over unit 109 and her balcony is located directly over the terrace of unit 109, which is on ground level. There is a metal

fence surrounding the terrace of unit 109 and a gate permits entrance to that unit from the ground level.

[4] To summarize the conclusions I have reached, I find, on the evidence detailed below, that the respondent has persistently allowed her dog on the balcony of her suite, where it barks at passers-by and relieves itself from time to time. The urine flows off the balcony, runs down the front of the exterior wall of the balcony and falls onto the terrace of unit 109, below, and on the common elements of the condominium corporation. The urine frequently lands on the top of the gate of unit 109, directly in the area one would use to open the gate. I find that the dog is a nuisance and that it has interfered with the use and enjoyment of unit 109 and with the common elements associated with it.

[5] I also find that the respondent has failed to respond appropriately to reasonable requests by YCC 26, through its property manager, asking her to address this unpleasant situation. I find that the property manager, acting reasonably and in the proper exercise of his discretion, deemed the respondent's dog to be a nuisance and ordered that the respondent remove it from her unit. I find she has refused to do so and has refused to participate in the statutory procedure for mediation which might have found a sensible way of resolving the issue before each party incurred thousands of dollars of legal costs. I find that the offensive conduct has continued in spite of the requests of the property manager and in spite of these proceedings.

[6] Having reviewed the extensive evidence filed by the parties, and their factums, and having heard the submissions of counsel, my findings of facts, analysis of the law, and conclusions are set out below.

The Facts

[7] The affidavits of William Colucci, property manager of YCC 26, clearly establish that YCC 26 received complaints from the occupants of unit 109 concerning the respondent's dog and that Mr. Colucci himself observed the dog's constant barking while it was apparently left alone in the respondent's unit. He also observed the presence of urine on the railing of the fence of suite 109, immediately underneath the respondent's balcony.

[8] The rules of YCC 26, described in more detail below, prohibit the making of noise, including noise by a pet, which in the opinion of the board or manager, disturbs the comfort or quiet enjoyment of the property by another owner. The board, or the manager, has authority to deem a pet to be a nuisance and to require that it be removed from the condominium property.

[9] As a result of receiving the complaints and making those observations, the property manager wrote to the respondent on September 27, 2010 raising concerns about the dog barking and the dog's urine spraying onto the balcony below. The letter asked how the respondent intended to deal with these issues.

[10] Counsel for the respondent described the letter as threatening and frightening to the respondent. I do not agree. The letter began with the statement:

> As I am sure you are aware, when people live within close proximity to each other one person's actions can greatly affect the comfort of their neighbours. We have such situations at hand.

[11] The letter ended with the following statements:

> Please advise me by Thursday, September 30th, 2010 how you intend to deal with these issues. If we do not hear from you by that date, I will have no choice but to proceed to call the [animal welfare and health] authorities. We understand that many of these issues are just a matter of realizing the impact things can have on our neighbours and we are available to help if you have any questions or concerns but we request that you act immediately.

[12] The respondent contacted the management office, denied the allegations and said that she would be speaking to her lawyer. No lawyer ever contacted the property manager in response to the letter and there was no further contact from the respondent until after these proceedings were commenced.

[13] After the respondent failed to do anything to correct the situation, and having received no further communication from the respondent or her lawyer, Mr. Colucci wrote to her on October 4, 2010, setting out the applicable rules of YCC 26, advising her that the dog was considered to be a nuisance and requiring that it be removed from the property within two weeks. An additional letter, dated October 6, 2010, advised the respondent that if legal proceedings were necessary, the costs would be recoverable and charged to her account. She was also directed to clean her balcony and informed that the costs of cleaning the urine from other units and from the common elements would be added to the common expenses attributable to her unit.

[14] The respondent failed to reply to either of these communications and failed to remove her dog.

[15] On November 2, 2010, counsel for YCC 26 wrote to the respondent, setting out the fact that she had failed to remove the dog and stating that the Corporation was invoking the dispute resolution procedures under the *Condominium Act.* The letter notified her that the dispute was being submitted to mandatory mediation and identified four mediators, one of whom she was entitled to select.

[16] The respondent failed to respond to this letter and failed to appoint a mediator.

[17] Having received no response to the proposal for mediation, counsel for YCC 26 wrote to the respondent on January 5, 2011, initiating arbitration proceedings pursuant to s. 132(1)(b) of the *Condominium Act* and identifying three potential arbitrators. The letter concluded:

> Please let us hear from you with your choice of arbitrator within ten days, failing which the matter will move forward without further notice to you. We are sorry that arbitration is necessary in

> this situation but your neighbours continue to experience escalating damage, nuisance and discomfort in and around their units, the Corporation continues to incur costs to clean up after your pet. In the circumstances, your inexplicable failure to respond to this situation is both inappropriate and unfortunate.
>
> If you have any questions about your legal rights or obligations, you are well-advised to obtain the advice of a qualified lawyer. That small investment might save you thousands of dollars in unnecessary legal costs. If you require a brief indulgence to obtain a lawyer's advice, please ask us for a short delay. If we do not hear from you within ten days, the application to the court will be commenced without further notice. [Emphasis added].

[18] The respondent failed to respond to this letter and failed to appoint an arbitrator.

[19] This application was commenced on February 16, 2011, returnable April 11, 2010.

[20] I turn to the evidence.

[21] I have already described some of the evidence of Mr. Colucci. He has witnessed the barking of the dog inside the respondent's unit. He has personally observed the stains on respondent's balcony and has taken a photograph of them. Those stains are consistent with an animal urinating on the balcony. He has received complaints from the occupants of unit 109 and he has received reports from the security personnel employed by YCC concerning their investigations of the matter. Those reports are entirely confirmatory of Mr. Colucci's personal observations. His evidence is that YCC 26 retained a cleaning contractor to clean the urine on unit 109 and the adjacent common elements and incurred costs of $1,384.25. The evidence indicates that the contractor attended on at least 16 occasions between November 2010 and March 2011. These occasions were after the respondent had been asked to remove her dog and after this proceeding was commenced.

[22] Alan Snape is one of the occupants of suite 109, located directly below the respondent's suite. He has sworn an affidavit dated October 19, 2011. In summary, it is his evidence that the barking of the respondent's dog, and the presence of urine on the balcony, began around August of 2010 and continued on a regular basis between August 2010 and April or May of 2011. He has observed the respondent's dog on her balcony on a number of occasions and he has witnessed the presence of urine on the side of the balcony of suite 209, and on the railing of the balcony of his unit, on numerous occasions. This is confirmed by photographs attached to his affidavit.

[23] The most recent occasion of urine on Mr. Snape's gate and terrace was October 10, 2011, only a month before the hearing of this application.

[24] Mr. Snape swears that he and his co-residents of suite 109 work nights and are at home during the day. The barking of the dog has been a constant nuisance and irritation and the regular presence of urine on the balcony has interfered with their use and enjoyment of their premises.

[25] The evidence of Mr. Snape is confirmed by the evidence of the other two occupants of unit 109. The fact that the substance is urine has been confirmed by smell and by the use of an ultraviolet detector, sold by pet stores for exactly that purpose.

[26] The evidence of Mr. Snape and his two unit-mates has not been challenged by cross-examination.

[27] Photographs taken of the respondent's balcony show stains from trickles of liquid flowing off her balcony and down the front concrete wall of the balcony towards the ground. The appearance of these trickles is consistent with a dog urinating on the balcony close to the edge and the urine flowing over the side. Photographs of the railing on the gate of the terrace of unit 109 show the presence of liquid and stains on the top of the railing that are entirely consistent with the flow of urine from the balcony immediately above.

[28] Ms. Ramadani has filed several affidavits in response to the application. Much of her evidence fails to directly address the issues and consists of either argument or irrelevancies.

[29] In her first affidavit, sworn July 8, 2011, she essentially asserts that this proceeding is the result of a personal vendetta by Mr. Colucci. In light of the evidence of the occupants of suite 109, which is unchallenged and which I accept, this allegation is ridiculous.

[30] The respondent denies that her dog makes excessive noise or that he has ever urinated on the balcony. She admits that he was permitted on the balcony from time to time. She admits having received a notice from YCC 26 concerning the complaints about her dog and says that she spoke to someone at the management office to say that there had been no complaints about the dog barking and denied the allegations about urine on the balcony. She gives no satisfactory reasons for her failure to respond to other communications from YCC 26 or its lawyers or for her failure to participate in mediation.

[31] An affidavit sworn by Ms. Ramadani's fiancé is essentially corroborative of her evidence. He denies that the dog has ever urinated on the balcony while he was there.

[32] In a supplementary affidavit, sworn September 9, 2011, Ms. Ramadani responds to the evidence of Mr. Colucci. She goes into detail about why her dog barked when Mr. Colucci was standing outside the door of her unit. She suggests that YCC 26 is continuing these proceedings because it has already wasted a good deal of money in pursuing the matter. She complains about the "new evidence" filed by YCC 26, presumably the affidavits of the occupants of unit 109. Most of her affidavit consists of argument rather than evidence. It suggests that the stains on her balcony were not dog urine at all or that they came from units above hers.

[33] Ms. Ramadani has filed affidavits sworn by three other residents of YCC 26, living on the second floor, who swear that the respondent's dog has not been a nuisance, that they have not

been bothered by the dog barking and that they have not observed the dog urinating on the balcony.

[34] The most recent evidence is an affidavit of Ms. Ramadani sworn November 5, 2011, apparently in response to the affidavits sworn by the occupants of unit 109. She denies that her dog urinated on the balcony on October 10, 2011. She says that the balcony door is not left open during the day, when her child is at school and when she and her fiancé are at work, so it is impossible that the dog could have urinated on the balcony during daytime hours, as alleged by the occupants of unit 109.

[35] Ms. Ramadani goes on to complain that YCC 26 has never inspected her unit to determine whether her dog is urinating on the balcony. She recounts a recent episode where the corporation made such a request, on November 3, 2011, but the inspection was cancelled at the last minute because it appears that the stains observed on unit 109 in that case were not dog urine but some other substance. The respondent apparently insisted that the inspection go ahead in any event. It appears that, by coincidence, the respondent had taken her dog to stay with her mother – this is confirmed by affidavits of her mother and her son. This evidence leaves me with the strong suspicion that the entire incident was staged by the respondent, whose insistence and enthusiasm for allowing YCC to do an inspection is out of character with her previous failure to respond to communications from the corporation.

[36] I do not accept the respondent's evidence. It is contradicted by the evidence of the occupants of unit 109 and by the physical evidence, namely the presence of urine on the terrace of unit 109 and the presence of stains, consistent with urine, on the respondent's balcony.

Jurisdiction and Authorities

[37] The *Condominium Act* contains a statutory scheme that governs all condominium corporations in the province. The management of the affairs of the corporation falls to the board of directors, who are required to exercise their duties in good faith and to exercise the care, diligence and skill that a reasonable person would exercise in the circumstances: s. 37(1).

[38] The corporation is entitled to make rules respecting the use of the common elements and the units, among other things for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation s. 58(1).

[39] YCC 26 has made such rules. The Rules of YCC 26 provide as follows:

> 40. No one shall do or permit anything to be done in his / her unit or bring or keep anything therein that will in any way obstruct or interfere with the rights of other owners or in any way injure or annoy them.
>
> 41. No noise caused by any instrument or other device, howsoever caused, including noise caused by any pet, which, in the opinion of

> the board or manager, disturbs the comfort or quiet enjoyment of the property by another owner, shall be permitted.
>
> …
>
> 69. No animal or bird, other than a pet which is small when fully matured shall be kept by an owner and then only in his / her unit, and no such animal or bird shall be allowed on the common elements, and when traversing such common elements, such animal or bird shall be carried at all times. No such pet that is deemed by the board or the manager in the board's or manager's absolute discretion, to be a nuisance, shall be kept by any owner in any unit. Any owner who keeps such a pet in any unit shall within two (2) weeks of receipt of written notice from the board or manager requesting the removal of such pet, permanently remove such pet from the unit and the property.

[40] The owner of a condominium unit, and an occupier of a unit, has an obligation to comply with the declaration and with the rules of the condominium corporation. This duty is set out in s. 119(1) of the *Condominium Act*, which provides:

> A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

[41] As well, a condominium corporation is under a statutory duty to enforce its rules. Section 17(3) provides:

> The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[42] It is quite obvious that unless the corporation takes reasonable steps to enforce its rules, in a reasonable manner, chaos will result. Owners and occupiers are entitled to expect that others will observe the rules and that if they fail to do so, the corporation will take measures to enforce the rules. This is confirmed by s. 119(3) of the statute:

> A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have

> the right to require the owners and the occupiers of units to comply with this Act, the declaration, the by-laws and the rules.

[43] In *Re. Carleton Condominium Corp. No. 279 and Rochon et al.* [1987] O.J. No. 417, (1987), 59 O.R. (2d) 545, Finlayson J.A. observed at O.J. para. 26, O.R. p. 552:

> The declaration, description and by-laws, including the rules, are therefore vital to the integrity of the title acquired by the unit owner. He is not only bound by their terms and provisions, but he is entitled to insist that the other unit owners are similarly bound.

[44] The interplay between s. 119 and s. 17 of the *Condominium Act* was succinctly described by Wood J. in *Muskoka Condominium Corporation No. 39 v. Kreutzweiser*, [2010] O.J. No. 1720, 2010 ONSC 2463 (S.C.J.) at para. 8:

> Section 19(1) of the *Condominium Act* provides that all owners and occupiers of units must comply with the condominium corporation's declarations and rules. Section 17(3) of the Act requires a condominium corporation to enforce the declaration and rules. These provisions are crucial to the orderly operation of condominiums and for the protection of condominium unit owners and occupiers. The owner of a condominium unit does not have a classic freehold. He or she is not at liberty to deal with property in the same manner as the owner of a single family residential dwelling might be. The nature of a condominium is that in return for the advantages gained through common ownership of certain elements some degree of control over what can be done with those common elements is given up. The details of what is given up are set out in the condominium declaration and its bylaws and rules. It is both the right and obligation of a unit owner or occupier to see that these are obeyed. *Re Carleton Condominium Corporation N 279 v. Rochon et al* [1987] O.J. No. 417, Ont C.A. Finlayson J.A. at para. 26.

[45] Where the corporation enforces its rules, the Court is entitled to ask "whether that discretion was exercised properly, rather than capriciously": *York Condominium Corp. No. 216 v. Nalekva* (Co. Ct., Judl. District of York, File M73379 (1982)). It is interesting to note that in that case, also involving a pet, Haley Co. Ct. J., as she then was, also stated:

> It is not my function to consider whether I would have found the dog should be deemed a nuisance on the evidence, but rather whether the Board properly did so and I so find that it did.

[46] The approach has been stated more recently by Allen J. in *Chan v. Toronto Standard Condominium Corp. No. 1834*, [2011] O.J. No. 90, 2011 ONSC 108 at para. 5:

> Courts have addressed the standard of review on a condominium application. The role of the court hearing an application is not to substitute its own opinion for that of the Board of Directors, but to ensure the Board has acted in good faith and in compliance with the *Act*, declaration, bylaws and rules. In deference to the rules, the court should not pronounce on the propriety of a rule except where the rule is clearly unreasonable or contrary to the legislative scheme. The court should accept the board's decision unless it has acted capriciously or unreasonably. [*Muskoka*, [*Muskoka Condominium Corp. No. 39 v. Kreutzweiser*] *supra*, at para. 9; *York Condominium Corporation No. 382 v. Dvorchik*, [1997] O.J. No. 378 (Ont. C.A.) and *Metropolitan Toronto Condominium Corporation No. 781 v. Reyhanian*, unreported decision of Mesbur, J, released December 30 1999, (Ont. S.C.J.)].

[47] This Court has jurisdiction to make an order enforcing compliance with the provisions of the declaration, the by-laws and the rules of the condominium corporation. If owners or occupiers of condominium units refuse to comply with their obligations under the statute, and refuse to comply with reasonable and lawful requests by the condominium corporation, the corporation, and other unit owners, are entitled to expect that the Court will enforce their rights. This jurisdiction is conferred by s. 134(1) of the statute:

> Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

[48] Sub-section 134(2) provides that a person may not apply for an order under s. 134 until the person has failed to obtain compliance through the mediation and arbitration process provided by s. 132. In this case, the respondent refused to participate in mediation and arbitration. Mediation has since taken place, but has failed.

[49] Subsection 134(3) gives the Court considerable scope of an application to tailor a remedy that is appropriate in the circumstances and to enable the condominium corporation to recover damages and legal expenses incurred as a result of the breach of the declaration, by-laws or rules. It provides:

> On an application, the court may, subject to subsection (4),
>
> (a) grant the order applied for;

> (b) require the persons named in the order to pay,
>
> (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
>
> (ii) the costs incurred by the applicant in obtaining the order; or
>
> (c) grant such other relief as is fair and equitable in the circumstances.

[50] Subsection (4) deals with the termination of a lease of a unit for residential purposes, and is not applicable.

[51] This case is not unique. There have been a number of similar cases in which the Court has been asked to enforce a "no pets" or "no nuisance" clause. One of the cases to which reference is frequently made is *Metropolitan Toronto Condominium Corp. 776 v. Giffort*, [1989] O.J. No. 1691 in which Herold D.C.J., enforced a "no dogs" rule in what were acknowledged to be very sympathetic circumstances from the perspective of the dog owner, who was a war veteran, disabled by a stroke, using a wheelchair and reliant on his fifteen pound poodle for companionship and therapeutic and emotional support. There was no evidence that the dog was a nuisance or that there were any complaints about it, but the rules prohibited unit owners from having dogs. The Court ordered that the unit owner remove the dog from the unit and from the common elements.

[52] Herold D.C.J. noted that the Court has a jurisdiction whether to enforce the rules and the declaration, but that discretion must be exercised judiciously.

[53] In deciding to grant the corporation's application, in a case in which there was undoubtedly much sympathy for the respondent, Herold D.C.J. made the following observation concerning the importance of enforcing a condominium's declaration and rules:

> While I do not disagree that each case must be decided on its own merits, at least by the Court if not by the Board who appears to have no discretion, the general message surely must be that enforcement will be expected and exceptions will be rare and will require a Court Application in any event. A longer term result of this position will surely be that people will only move into the building if they are prepared to live by the rules of the community which they are joining - if they are not they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes or preferences.

[54] I accept the general proposition, set out earlier, that on an application of this kind a court can and should consider whether the board has acted capriciously and unreasonably. Where that

discretion has been properly exercised, however, the Court should not substitute its discretion for the discretion of those charged with the management of the corporation: *Muskoka Condominium Corp. No. 39 v. Kreutzweiser*, above, at para. 9:

> Where the court is asked to enforce a declaration by a corporation great deference should be shown to that declaration. It is not for the court to substitute its view of what is reasonable for that of the board. If the board has acted reasonably and not capriciously it is important that the court support the board's decision. *York Condominium Corporation No. 382 v. Dvorchik* [1997] O.J. No. 378 (C.A.) at paragraph 5.

Findings and Analysis

[55] I have summarized my conclusions at paragraphs 4 and 5 above. The evidence of Mr. Colucci, and of Mr. Snape and the other occupants of unit 109, leads to the unassailable conclusion that dog urine fell on unit 109 from above and that the respondent's dog was the source. No other plausible explanation has been given. There is credible evidence that the door to the respondent's balcony has been left open and that the dog is left unattended on it.

[56] The fundamental submission on behalf of the respondent is that the applicant has acted unreasonably and capriciously in deeming the respondent's dog to be a nuisance and in aggressively pursuing this proceeding. Counsel for the respondent makes the following principal arguments – he submits that YCC 26:

(a) failed to properly investigate whether the dog's barking amounted to a nuisance – it should have spoken to other neighbours to confirm the validity of the complaints of the occupants of unit 109;

(b) failed to provide specifics of the allegations to the respondent so that she could have investigated;

(c) failed to properly investigate whether the substance on the balcony of unit 109 was urine and whether it originated from the respondent's unit or from some other source;

(d) failed to inspect the respondent's unit to see whether there was, indeed, dog urine on the balcony.

[57] In answer to point (a), the property manager had received complaints from the occupants of unit 109. In investigating those complaints, Mr. Colucci himself heard the barking and saw the urine on September 26, 2010, before writing his first letter to the respondent. There was no reason to think that the complaints of the occupants of unit 109 were not *bona fide* and it has not been suggested that they were contrived or motivated by ill-will. The complaints were serious,

particularly the complaint about urine. It was, in the circumstances, irrelevant that no one else had complained about the barking.

[58] In response to point (b), the communications provided by Mr. Colucci to the respondent made the nature of the complaints very clear. Her dog was barking excessively and was urinating on the suite below. It was not the responsibility of YCC 26 to advise the respondent every time there was a complaint about her dog.

[59] As regards (c), several people, including Mr. Snape, Mr. Colucci and the security personnel of YCC 26 examined and smelled the substance on the railing of suite 109 and concluded that it was urine. The smell of urine is pronounced, within the experience of a lay person and does not require the opinion of a forensic scientist. The presence of urine on unit 109 was confirmed by an ultraviolet light, sold in pet stores for that very purpose. Mr. Levitt suggested that the urine might have come from some other animal in the bushes around the patio of unit 109. I regard the concept of an animal repeatedly mounting the railing and urinating on it as far-fetched. So is the notion that the urine came from some other flying animal or from some other location. In light of the first-hand observations of Mr. Colucci and of Mr. Snape, of marks on the respondent's balcony, as confirmed by the photographs, this suggestion is fanciful.

[60] Finally, with regard to (d), Mr. Colucci did inspect the respondent's balcony from the balcony of the unit immediately above and saw stains on the balcony that are consistent with urine. There are marks running off the side of the balcony that appear to be urine. These observations are confirmed by photographs. The respondent's dog was observed on the balcony by the occupants of suite 109. Dog urine was found on the terrace of suite 109 immediately below the respondent's balcony. The evidence is overwhelming. There was no need, in the circumstances, to inspect the respondent's balcony.

[61] The rules of YCC 26 prohibiting a nuisance were reasonable. In the face of the evidence I have detailed, there can be no question that YCC 26 was entitled, indeed that it was required, to enforce its rules. It was required to bring the issue the attention of the respondent and to demand that the nuisance cease. Having received no satisfactory response, it was entitled to require that she remove the dog. The demand that she do so was made in the reasonable exercise of the condominium manager's discretion.

It is often the case that the dog is not the problem – it is the dog owner who is the problem. The respondent was the problem in this case. She showed complete indifference to the concerns of the other occupants of YCC 26. She made no adequate response to reasonable communications from the condominium corporation and its lawyers. She refused to participate in the mediation process that is designed to resolve disputes between unit owners, and between unit owners and the corporation, in an orderly and neighbourly way. She simply ignored the request. She failed to participate in arbitration. When legal proceedings were initiated, she first made allegations that Mr. Colucci was out to get her. Then she made arguments about why her dog could not have done what was claimed. Then she made arguments that the condominium corporation had not sufficiently investigated the matter. I have found against her on all these arguments.

Conclusions

[62] No useful purpose would be served by directing the parties to arbitration. The respondent has already refused to participate in the dispute resolution process under the *Condominium Act*. Mediation has been attempted and failed. The parties have gone to considerable expense to put together a factual record and have prepared extensive factums and briefs of authorities. There has been a full airing of the evidence and the law. Very significant costs have been incurred. Arbitration will only add a further level of costs and further delay.

[63] I am satisfied that the corporation had reasonable grounds to act on complaints made by the occupants of unit 109. I am satisfied that the manager, Mr. Colucci, acted reasonably and fairly in the exercise of his discretion. The respondent failed to make a proper response to Mr. Colucci's perfectly reasonable written request dated September 27, 2010, other than to make a blanket denial and state that she had contacted her lawyer. No response was forthcoming. She failed to respond to the other communications. The evidence establishes that the offensive conduct continued. The corporation reasonably concluded that this application was required.

[64] There is no doubt that the reasonable expectations of residents of the condominium is that they would not be troubled by conduct such as occurred in this case. The fact that other residents have not been bothered by such conduct, or have not observed it, is irrelevant. The conduct was annoying, persistent, dangerous and egregious.

[65] I have given careful consideration to this matter because I realize that removing a dog from a family is a serious matter. People become understandably attached to their pets. However, people living in a condominium are required to conduct themselves in a manner that is considerate of the interests of their fellow owners and neighbours. That is part of the bargain one makes on becoming a unit owner. The respondent has indicated that she is not prepared to honour that bargain. The result, unfortunately, is that she will have to find another home for her dog.

[66] I have considered whether an order short of requiring the respondent to remove her dog would satisfy the interests of justice and would be a fair resolution. I had considered, for example, an order requiring that the respondent not permit her dog on the balcony of her unit. I have decided that an order of this kind would require ongoing enforcement by YCC 26 and ongoing supervision by the Court and would be unacceptable. The respondent's conduct has continued notwithstanding the letters from the property manager, the invocation of the dispute resolution process and the commencement of this proceeding. She has failed to respond to reasonable requests in the past. I have no confidence at all that granting a further indulgence will do anything more than create further problems and expense for everyone involved.

[67] For these reasons, an order will issue:

(a) directing the respondent to forthwith remove her dog from her unit and from the YCC 26 property; and

(b) permitting YCC 26 to post to the common expenses attributable to the respondent's unit the cleaning costs it has incurred in the amount of $1,384.25 and its legal costs in relation to the mediation and arbitration process in the amount of $806.65.

[68] I will reserve my disposition as to costs pending written submissions. Both parties have filed costs outlines. Counsel for YCC 26 may make written submissions (no more than 5 pages in length), to be delivered within 10 days of the date of this Endorsement. The respondent shall have 10 days within which to reply. The submissions shall be addressed to me, care of Judges' Administration, Room 170, 361 University Avenue, Toronto.

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G.R. Strathy J.

DATE: November 15, 2011