CITATION: Waterloo North Condominium v. Webb, 2011 ONSC 2365
COURT FILE NO.: C-218-11
DATE: 2011-04-14

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Waterloo North Condominium Corporation No. 168, Applicant

AND:

Urbane Lorenzo Webb, Respondent

BEFORE: The Honourable Mr. Justice M. D. Parayeski

COUNSEL: Nelson Amaral, for the Applicant

Respondent, Self-Represented

HEARD: April 13, 2011

ENDORSEMENT

[1] The applicant is a condominium corporation. The respondent is an owner of one of the 246 units contained within the condominium corporation's building. The applicant requests orders, pursuant to the *Condominium Act, 1998*, which, in essence, would oblige the respondent to vacate and sell his unit. The requests are based upon the respondent's behaviour.

[2] The evidence before me is that for years the respondent has engaged in significantly aggressive behaviour toward other unit owners, their guests, and management personnel of the building. He has been convicted of, and has served jail time for, criminal offences relating to the serious vandalism of one such owner's vehicle and to his having become involved in a knife fight in the foyer of the building with yet another owner. He was observed kicking a dog belonging to the guest of an owner, as well as swearing at and throwing beer at the dog's owner. He has been verbally abusive toward staff and others.

[3] In an affidavit sworn on March 22nd, 2011, one Iver Tibbs, a superintendent of the building, says that he heard the respondent yelling at another dog owner and then later saying "if this shit keeps on, someone is going to get hurt and if I have to go back to jail, someone is going to die". Condominium owners and staff are afraid of the respondent, apparently for good reason.

[4] The respondent does not dispute any of this behaviour. Instead, the thrust of his response to this application is to allege that the board of the condominium is misappropriating and/or mis-spending contingency funds, that it is not treating him fairly in comparison with other owners, and that it is acting without proper authority. He says that the board is hiding financial documentation from him, presumably to cover up wrong-doing.

[5] Even if I were to accept all that the respondent says as true and accurate, such would not justify or in any way rationalize his behaviour. If he has a claim for a financial accounting, that can be addressed in another context. The respondent appears to recognize that as, according to what I was told during the application, he has commenced an action against the corporation in Small Claims Court.

[6] Rule 6 of the applicant's set of rules, by which the respondent is bound by operation of section 119 of the *Condominium Act*, reads as follows:

[7] "Owners, their families, guests, visitors and servants shall not create or permit the creation of any noise or nuisance which, in the opinion of the Board or the Manager, may or does disturb the comfort or quiet enjoyment of the property by the owners, their families, guests, visitors, servants and persons having business with them." The respondent has breached that rule for a considerable period of time, and has done so to such an extent that his behaviour, in my view, is coercive and abusive, and thus oppressive.

[8] Section 134 of the *Condominium Act, 1998*, gives this Court jurisdiction to grant orders enforcing compliance with the *Act* and the rules of the corporation. Section 135 of that *Act* gives jurisdiction to grant an order to rectify oppression "if the court determines that the conduct of an owner…is or threatens to be oppressive…to the [condominium corporation] or unfairly disregards the interests of the [condominium corporation]…". I am satisfied that the section should be interpreted widely, including doing so in such a way that the unit owners and their guest and employees are entitled to be protected from oppression.

[9] Given the history of the respondent's behaviour and that even the serving of jail time has not proven effective in curbing his conduct, I do not believe that an order under section 134 would be meaningful.

[10] I appreciate, as does the applicant, that forcing the respondent to vacate and sell his unit is drastic. As such, that relief should not be granted where other remedies appear to be likely to succeed. Unfortunately, I do not see any such other remedies at hand. The other occupants of the building are entitled to basic security and the quiet enjoyment of their properties. The respondent prevents both. He has done so for years, and it is unlikely that he is going to stop voluntarily.

[11] I reject the respondent's contention that the condominium corporation is seeking to "get rid of [him] at any cost…" in order to hinder his pursuit of financial disclosure and accounting. He need not live in the building in order to pursue both in accordance with the law. Instead, I find that the condominium corporation is motivated by its legitimate concerns for the owners, their guests, and staff.

[12] The respondent says, and I accept as true, that he has suffered a brain injury and that he had a difficult childhood. Neither of these facts, however unfortunate and deserving of sympathy as they may be, can justify his conduct.

[13] The applicant is entitled to the relief it seeks at sub-paragraphs a, b, c, d, f, and g of section 1 of its application. As to the amount of costs referred to in sub-paragraph referred to above, I am prepared to fix those at $6, 679.28 all-inclusive, as set out in the costs outline submitted by the applicant.

[14] Order accordingly.

M. D. Parayeski J.

Date: April 14, 2011