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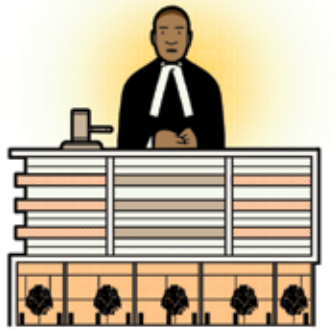
Case Law Update

Decisions From the Courts



- Violence and Abusive Language May Result in a Restraining Order
- Risky Strategies May Have Negative Results for Condominiums
- CAT Clarifies Criteria to Determine a Vexatious Applicant

Peel Standard Condominium Corporation No. 1028 v. Jakacki, 2020 ONSC 3697

Summary: Violence and abusive language, including "middle finger emoji" in emails, may result in orders restraining behaviour.

Quite unfortunately, disruptive and violent behavior in a condominium comes with the territory of condo living from time to time. The court in Peel Standard Condominium Corporation No. 1028 v. Jakacki, 2020 ONSC 3697 considered the question of whether an owner's disruptive behaviour over several years satisfied the test for an interim/interlocutory injunction restraining behaviour (sometimes referred to in the vernacular as a "restraining order").

The earlier incidents included the owner being allegedly intoxicated while driving a vehicle (at high speeds) on the common elements, forcefully kicking elevator buttons causing the sockets to come loose, kicking over a chair in the manager's office, alleged drug dealing on the property, physical assaults with other residents, and acting aggressively to the staff of the condominium corporation.

The more recent incidents include the owner repeatedly using the worst forms of abusive language to the property manager in written emails which were cited directly in the case at paragraphs 21 and 22 as follows:

> "You dumb @&* you wanna try and evict me.
> LOL GOOD LUCK ©IM THE OWNER SO YOU CANT DO S*#* B*#(# HAHAHA.
> Just cause of this I PROMISE I will make your life rund security's life HELL.
> You thought I was trouble oh just wait. You wanna play this game. Lets play [sic]"

Counsel for the condominium corporation was not spared the owner's vitriol based on his perceived indignation and the court referenced twice the aforementioned "middle finger emoji" as ending an email to counsel which read "see you court".

Although this case was not a final determination on all the issues, the court considered the test of whether a temporary injunction preventing the owner from using the common elements except for ingress and egress should be granted. In granting the injunction restraining behaviour, the court determined that the issue was serious, the condominium corporation could suffer irreparable harm if the order is not granted, and the right of residents to be free from inconsiderate, rude and dangerous conduct outweighed the rights of the owner in these circumstances.

Also not determined in the cited case, but may have in a later proceeding, was the issue of whether the condominium corporation could lose its rights to secure its costs and legal fees against the unit in accordance with Section 134(5) of the Act if the owner sold his unit prior to the final determination of all the issues. This is an important litigation strategy consideration for condominium corporations struggling with obtaining compliance from difficult owners.

Temedio v. Niagara North Condominium Corporation No. 6, 2019 ONCA 762

Summary: An owner can have court costs added to common expenses assessed where condominium adopts an inappropriate compliance strategy.

The applicant in this court case, Jean Temedio ("Temedio") bought a unit in North Niagara Condominium Corporation No. 6 ("NNCC 6") so that her grandson, who

ILLUSTRATION BY JASON SCHNEIDER

was 29 years old, has autism, and is unable to live independently, would have a place to live with his mother and sole caregiver, Kimberly Watson. Disputes arose between Kimberly Watson and another tenant. Those disputes resulted in compliance letters from NNCC 6's lawyers, and chargebacks for legal costs that eventually resulted in the registration of a lien on title to Temedio's unit. NNCC 6 then brought an application to court with the primary objective of requiring Temedio to sell the unit and to evict Kimberly Watson and her autistic son. The court hearing the application admonished NNCC 6 for taking such a heavy-handed approach, but nevertheless ordered Temedio and Watson to comply with the Condominium Act and NNCC 6's rules, and the court ordered Temedio to pay $2,500.00 in costs. Temedio tried to appeal this decision, but she was out of time to do so, and the court ordered her to pay a further $5,000.00 in costs.

NNCC 6 relied on subsection 134(5) of the Condominium Act (which section permits a corporation to add all of its additional, actual costs onto the common expenses payable in respect of a unit as long as the court ordered the unit owner to pay some costs) to require Temedio to pay close to $89,000.00 in costs.

Temedio brought an application to have those costs assessed. Where a person is liable to pay the bill of a lawyer that person can, in certain circumstances, have the bill "assessed." An "assessment" is a review by a court assessment officer of the lawyer's bill with the object of determining whether all of the charges are appropriate. The Ontario Superior Court of Justice allowed Temedio to assess only the legal bills related to the appeal. But the Ontario Court of Appeal overturned the Superior Court decision and allowed Temedio to have assessed all of the bills associated with all of the costs that NNCC 6 was claiming.

In doing so, the Ontario Court of Appeal stated that it was not fair that NNCC 6 adopted a strategy to have Temedio sell the unit and have Kimberly Watson and her autistic son evicted, which strategy failed, and for which NNCC 6 was admonished by the court, and then have Temedio pay the bills associated with that failed strategy.

This case confirms that ability of a condominium to collect all of its costs from an owner is not guaranteed and that risky strategies can have negative results.

Yeung v. Metropolitan Toronto Condominium Corporation No. 1136 v, 2020 ONCAT 45

Summary: CAT clarifies criteria to determine a vexatious applicant.

In a recent decision from the Condominium Authority Tribunal (the "CAT"), Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, the tribunal determined the factors which identify vexatious conduct. This decision is particularly important considering that the CAT is expanding its scope and hearing applications pertaining to pets, vehicles, and storage disputes.

The decision was the summation of eight applications within two years by Mr. Yeung. The fact that Mr. Yeung had filed eight applications did not make him a vexatious applicant, rather, it was the

overarching theme of why he kept applying to the CAT.

In late October 2020, Mr. Yeung submitted two separate applications to the CAT pertaining to a request for records. The first request involved board meeting minutes for a meeting that was scheduled in the future. The second involved the accuracy of Periodic Information Certificates issued by the corporation. In response, the condominium corporation brought a motion for the early dismissal of both applications. The condominium corporation also included a request for an order pursuant to Rule 4.5 which would allow the CAT to deem Mr. Yeung a vexatious litigant and require Mr. Yeung to obtain the CAT's permission prior to submitting any future applications.

The CAT, relying on the decision in Manorama Sennek, v. Carleton Condominium Corporation No. 116, 2018 ONCAT 4 listed the criteria for identifying vexatious conduct as follows:

- Bringing of one or more actions to determine an issue which has already been determined;
- Where is it obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;
- Bringing a proceeding for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- Rolling forward grounds and issues into subsequent actions; and,
- Persistently taking unsuccessful appeals from judicial decisions.

Considering both the history and the contents of the applications, all of which challenged the governance and decision making of the board, paired with the fact Mr. Yeung on multiple occasions emailed the board utilizing his remedy to apply to the CAT as a threat, the CAT deemed Mr. Yeung a vexatious litigant.

The relief under Rule 4.5 was granted in these circumstances and may be another consideration for condominium boards as the CAT expands its scope.

Editor's Message

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corporations are legally required to pay assessment fees annually to the CAO, which were set at $1 per voting unit per month in 2017), such owners have a right to know what they are getting in return for their contribution and an expectation that the shortcomings identified within the AG Report are addressed in a proactive and response manner.

It is my sincere hope that the Ontario government and the CAO will implement changes necessary to address some of the flaws within an industry that continues to expand and evolve.

Brian Horlick
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