CITATION: York Condominium Corp No 163 v Robinson, 2017 ONSC 2419
COURT FILE NO.: CV-16-565154
DATE: 20170419

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: York Condominium Corporation No 163, Applicant

– and –

Dianne Robinson, Respondent

BEFORE: EM Morgan J.

COUNSEL: *Patrick Greco and Kate Genest*, for the Applicant

Richard Hoffman, for the Respondent

HEARD: April 13, 2017

ENDORSEMENT

[1] The Applicant is a condominium corporation located at 914-920 Yonge Street in Toronto. The Respondent is a resident and owner of a unit in the condominium building.

[2] As counsel for the Applicant put it, the Respondent is deeply concerned about the governance of the condominium corporation, the maintenance of the building, the staff of the management office, etc. She is so concerned that she emails the management office virtually every day asking for various records kept by the building management, critiquing the effectiveness of management, and complaining about building maintenance. Indeed, so concerned is she that in order to ensure she gets staff's attention, she calls them degrading names – "obscenely obese", "massive hulk", "tubbo", are some of the ways she addresses the people that work in her building.

[3] I can only imagine how oppressive it is for the employees of the Applicant. They have tried to be patient, and have developed a protocol with the Respondent that she limit her communications to email correspondence. They have asked her to refrain from coming into the office and verbally abusing them the way she did in previous years. This has worked to a certain extent, but it cannot be easy to be in the position of the Applicant's employees. They come to their place of employment day after day and find correspondence in their inbox that engages in insult, body shaming, name calling, and other types of coarse language and rudeness.

[4] Counsel for the Respondent submits that his client is a habitual email writer. He agrees that she is also a complainer. He points out, however, that as a resident of the building she has a right to complain. Not only that, but some of her complaints are valid. She has complained about the hot water in the building being turned off for extended periods of time, about doorways that are broken and will not close, and other matters that the Applicant concedes need to be attended to.

[5] Because of this situation, management of the building does not want to ignore the Respondent's emails. She often brings important maintenance issues to their attention. Thus, although it is possible to ignore a person's emails by simply deleting them without opening and reading them, management is not anxious to do that. They do want to know what the Respondent has to say.

[6] The problem is that the Respondent has somehow formed the view that she should express herself by calling the office manager and other employees in the building degrading epithets and labels. She also frequently copies the president of the Applicant – effectively, the staff's boss – on her insulting and offensive emails, which often contain personal criticisms and name calling directed at the office manager and other employees in the building.

[7] The Respondent is also in the habit of communicating her concerns about the building by complaining about one staff member to another. In one recent incident, she approached a building superintendent about a problem with the elevator, and took the opportunity to opine that the office manager "should do more than sit down at her desk eating all day as the fat woman she is."

[8] I feel obliged to add that the Respondent has sought no remedies in respect of the records she has requested be disclosed or in respect of any alleged mismanagement of the building. As counsel for the Applicant puts it, her correspondence is simply "directed, ongoing harassment."

[9] It is the Applicant's position that that this is not a situation that its office staff should have to endure at their workplace. In that, the Applicant is correct. Although no allegation of violence or physical abuse is leveled at the Respondent, her daily verbal barrage has made work life intolerable for the Applicant's staff – in particular for the Applicant's office manager at whom much of the Respondent's venom appears to be aimed.

[10] Section 117 of the *Condominium Act*, *1998*, SO 1998, c 19, provides that, "No person shall…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." The phrase "injury to an individual" has previously been interpreted to include psychological harm, *Metropolitan Toronto Condominium Corporation 747 v Korolekh*, 2010 ONSC 4448, at para 71, and has been applied to verbal and written forms of abuse: *Carleton Condominium Corporation No 291 v Weeks*, 2003 CarswellOnt 1013, at paras 25-34.

[11] Moreover, Article K of Applicant's own rules governing all residents states that, no "immoral, improper, offensive, or unlawful use shall be made of any unit or of the Condominium property." Having established these rules for all condominium owners, the Applicant should be

able to expect all residents and unit owners, including the Respondent, to abide by them. Indeed, the Applicant is obliged to all of the other owners and residents to enforce the rules against an offending resident or owner: *Metropolitan Toronto Condominium Corporation No 850 v Oikle*, 1994 CarswellOnt 763, at para 8.

[12] It is also worth noting that the staff of the Applicant who are the targets of the Respondent's verbal abuse are workers, and the Respondent's conduct falls within the ambit of workplace harassment. This term is defined in section 1 (1) of the *Occupational Health and Safety Act*, *1990*, RSO 1990, c O.1, as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome." A condominium unit owner's harassing language has been held to constitute workplace harassment when leveled at the staff of a condominium building: *Toronto Standard Condominium Corporation No 2395 v Wong*, 2016 ONSC 8000, at paras 36, 39-41.

[13] It is readily apparent from the affidavits filed in support of the Applicant's position that the Respondent's vituperative correspondence is indeed unwelcome. Subsections 32.0.7 (1) (a)-(d) of the *Occupational Health and Safety Act* provide that the Applicant is under a legal duty to investigate and protect its workers from workplace harassment, and to remedy the situation by implementing and enforcing appropriate anti-harassment policies.

[14] Likewise, the Applicant has a duty under section 17(3) of the *Condominium Act* 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." The present Application is just such a step, reasonably designed by the Applicant to enforce the condominium rules and to protect its workers from harassment.

[15] Again, counsel for the Applicant points out that the Applicant is not seeking to silence the Respondent or to create a situation in which she is unable to articulate her criticisms and complaints about the building. They are merely trying to get her to communicate in a civil, non-harassing manner.

[16] Under these circumstances of antisocial, degrading and harassing communications aimed at the Applicant's employees, a legal remedy is appropriate. The Respondent's conduct demands an order directing her as unit owner and resident of the condominium to control her behavior and her manner of communicating with the employees and representatives of the Applicant: *York Condominium Corporation No 136 v Roth*, 2006 CarswellOnt 5129, at paras 2-3, 21.

[17] Accordingly, the Respondent shall cease and desist from uncivil or illegal conduct that violates the *Condominium Act* or Rules of the Applicant. The Respondent shall also refrain from verbally or in writing abusing, harassing, threatening, or intimidating any employee or representative of the Applicant, and shall comply with section 117 of the *Condominium Act* by ceasing to conduct herself in a way that is likely to cause injury to an employee or representative of the Applicant.

[18] The Applicant deserves its costs of this Application. Both sets of counsel have submitted their Costs Outlines. Counsel for the Applicant seeks just over $20,000 on a partial indemnity

basis, while counsel for the Respondent would seek just over $13,500. Both figures are reasonable given the nature of the Application.

[19] Under section 131 of the *Courts of Justice Act*, costs are discretionary. That discretion is generally exercised in accordance with the factors specified in Rule 57.01 of the *Rules of Civil Procedure*.

[20] Of particular relevance is the direction that costs conform with "the amount of costs than an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed": Rule 57.01(1)(0.b). I will exercise my discretion to reduce the amount going to the Applicant to bring it a bit closer to what the Respondent herself was requesting. In that way, it will be more certain that she would reasonably expect to pay the amount that the Applicant has been awarded.

[21] The Respondent shall pay the Applicant costs in the amount of $15,000, all inclusive.

Morgan J.

Date: April 19, 2017