CITATION: Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp, 2009 ONCA 362
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COURT OF APPEAL FOR ONTARIO

Laskin, Simmons and Juriansz JJ.A.

BETWEEN

Metropolitan Toronto Condominium Corporation No. 932

Applicant (Respondent)

and

Michael Lahrkamp

Respondent (Appellant)

Patricia Conway, for the appellant

Jonathan Fine and Kristen Bailey, for the respondent

Heard: March 10, 2009

On appeal from the judgment of Justice Nancy Backhouse of the Superior Court of Justice dated April 28, 2008.

By the Court:

[1] The appellant, a unit owner in a condominium, appeals from an order obtained by the respondent condominium corporation. The order regulates and restricts the exercise of his rights to examine condominium records and to obtain copies of them.

[2] The Board of Directors of the respondent applied for the order on the basis that the appellant had made and pursued an unrelenting stream of requests for records to the point that his conduct, in effect, amounted to harassment of its management staff. In its application, the respondent sought orders restraining the appellant from: harassing, communicating, or having contact with any member of the Board of Directors, management staff, security personnel, or any other employee of the respondent; requesting further condominium records from the respondent; and, coming within 25 feet of the respondent's management office. The respondent also requested that the appellant be ordered to either dismantle or render inactive his internet website.

[3] The application judge found that "the respondent's conduct to the staff of the management office and to a member of the Board of Directors amounts to harassment." She noted that although the *Condominium Act*, S.O. 1998, c. 19, did indeed give the appellant the right to examine the records of the respondent, he was not entitled to abuse that right "by conducting a campaign by siege against the management office and directors." On the basis of these findings, the application judge made an order restraining the appellant from:

> 1) communicating with any employee of the management office or member of the Board of Directors, other than in writing; and
>
> 2) entering or coming within 25 feet of the respondent's management office.

[4] In addition, she ordered that:

1) the appellant must request in writing any records of the respondent that he wishes to receive; he could not submit more than one request for the same record; and, if he did submit more than a single request, the respondent would not be required to provide a further response;

2) the appellant must pay in advance the photocopying charges for any document he requested; and

3) the appellant was not permitted to review any records in advance of a request for production.

[5] The application judge awarded the respondent costs in the amount of $30,000, and granted the respondent a further $15,000 as "additional actual costs" under s. 134(5) of the *Condominium Act*.

[6] The appellant appeals from the application judge's decision on the merits, as well as from her costs disposition. The appellant advances several arguments.

[7] First, the appellant submits that the Board of Directors of the respondent improperly refused to produce to him records that he had requested. This submission, however, is not pertinent. While the appellant has pointed to some evidence in the record that suggests that the Board of Directors was less than eager to fulfill its duty to produce records to him, the appellant did not bring a cross-application for relief against the respondent. Thus, the only issue before application judge was the nature of the appellant's conduct in pursuing disclosure from the respondent.

[8] Second, the appellant argues that the application judge should not have resolved disputed facts and issues of credibility on a written record; instead, she should have ordered the trial of an issue. In particular, the appellant submits that the application judge relied excessively on the affidavit evidence of two members of the respondent's management staff about what were, according to the appellant, isolated events, without considering the contradictory or qualifying statements they made in cross-examination. He points out that she made no reference to his explanatory and contradictory evidence and submits she had no basis for rejecting it.

[9] We do not accept this argument. The appellant did not ask the application judge to order a trial of issues and there were enough undisputed facts to make an order on the application. That said, we accept the submission of counsel for the respondent that the application judge did not intend to make a finding of actionable harassment. Even taking account of the conflicts in the evidence, the record before the application judge made clear that the relationship between the appellant, on one side, and the respondent's Board of Directors and management staff, on the other, was extremely strained. That strained relationship, and the appellant's contribution to it, provided a basis for an order regulating the manner in which he should exercise his rights under the *Condominium Act*. On the record, such an order was justified and required to ensure the parties' relationship remained workable.

[10] Third, the appellant argued that the application judge could not eliminate entirely his statutory rights of access, which was a result of the injunctive relief. He relies on s. 55 (3) of the *Condominium Act*, which gives him the right to examine records of the corporation "reasonably related" to the purposes of the *Act*. The section does contemplate that there be a written request made on reasonable notice and that the examination takes place at a reasonable time.

[11] The respondent submitted that s. 134(1) of the *Condominium Act* provides a basis for the injunctive relief granted by the application judge. Section 134(1) provides that the court may make "an order enforcing compliance" with any provision of the *Condominium Act*, the declaration, the by-laws, or the rules. We do not need to decide the ambit of s. 134(1) or of a Superior Court judge's inherent jurisdiction in order to dispose of this case. On the particular facts of this case, the motion judge's remedy, while is entitled to deference, is too extreme to be sustained. Given the respondent's acknowledgement that the appellant's behaviour did not amount to actionable harassment, we were not persuaded that the orders made by the application judge prohibiting the appellant from exercising his statutory right to examine the respondent's records, coming within 25 feet of its management office, or communicating with members of the Board of Directors or management staff other than in writing, were supportable. Accordingly, we would set aside these injunctive aspects of the application judge's order.

[12] We would leave in place the application judge's orders that the appellant make his requests to examine documents or for copies thereof in writing, that he not make more than one request with respect to the same record, and that he pay in advance the reasonable photocopying charges of any copies of records that he requests. As noted above, s. 55(3) requires that the appellant's statutory right must be exercised reasonably. In the first instance, it is for the respondent to decide what notice is reasonable and what is a reasonable time and place for the appellant to examine the records.

[13] We would allow the appeal in part and set aside the injunctive components of the application judge's order as discussed above and dismiss the remainder of the appeal.

[14] Counsel agreed that the costs of the successful party on the appeal should be fixed in the amount of $30,000, inclusive of disbursements and GST. Given the appellant's partial success, costs of the appeal are fixed in his favour in the amount of $20,000, inclusive of disbursements and GST.

[15] The result of the appeal changes the relative success of the parties on the application. The costs of the application are varied and fixed in the amount of $20,000, inclusive of disbursements and GST, in favour of the respondent. This amount includes the "additional actual costs" factor under s. 134(5) of the *Condominium Act*.

"John Laskin J.A."
"Janet Simmons J.A."
"R.G. Juriansz J.A.

RELEASED: May 04, 2009