Protecting Property Managers – **Condos as Workplaces**

By Joy Mathews

This is the first case of its kind to confirm that condo boards now have the tools to protect property managers from workplace harassment. (Finally! Good news for property managers!). Although the condo brought an application to restrain an owner's disruptive behaviour, more immediate action was required. The owner in *York Condominium Corporation No. 288 v Rabie and Weinroth* was harassing, threatening, and even assaulted the property pending the hearing of the application on its merits.

The condominium took the view that as a responsible employer it had no choice but to seek an interim/interlocutory injunction prohibiting the owner from having any contact with the condo's staff. The condo's evidence included numerous voice messages, emails, and an incident report from the property manager in which the owner struck her on the arm. The owner repeatedly used the worst forms of abusive language, he threatened violence, used gender derogatory terms to refer to female and male employees, respectively, often telling them to "drop dead" and threatened "I don't want to get f*&$#@ around" and "I don't really care whether you think I'm abusive," and repeatedly said that he's "madder than f*&$#@ hell" (quotes are directly from the Endorsement of The Honourable Justice Morgan of the Ontario Superior Court of Justice).

Affirming the condo's obligation to promote and maintain a workplace that is free from harassment, the court stated that the staff of the condo "have a right to be free from this kind of abuse, and the [condo] is right to do whatever the law requires in order to make this a non-abusive workplace for its staff.... the condo's staff has already suffered the trauma of verbal, psychological and physical abuse, and this may have already harmed the entire condominium and its staff beyond repair".

Not only did the court grant the injunctive relief and grant costs to the condo, they sent a strong message to condo boards: you can protect your property managers from workplace harassment!

AirBnB Not Welcome in Condos

The court in *Ottawa-Carleton Standard Condominium Corporation No. 961 v. Menzies (2016)* was asked to consider whether the condo's declaration restricting use of the unit for the "purpose of a single-family dwelling" was inconsistent with short-term leasing.

In this case, the owners of the unit entered into a lease agreement with a

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Photography Guidelines

A picture tells a thousand words. And with more and more hobby photographers, iPhones, Androids and tablets, DSLRs and point and shoots, there should be no shortage of great story-telling images. Here are some guidelines to help you submit the best author's head shot, condo balcony, lobby or interior image to support your article.

Specs

Images should be in colour and in jpeg format
Resolution should be 300 dpi
Image size should be approximately 8X10 in real size (2400X3000 pixels)
If you must use a cellphone, please ensure that there is sufficient light to take the photo. Steady yourself and your camera to minimize camera shake.

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company whose main purpose was to provide short-term leases to tenants. Guests of the unit were advised to be "discreet about mentioning AirBnB to anyone in the building and under no circumstances should [guests] ever leave the keys with the concierge". The board of directors determined this use in the building to be similar to the operation of a hotel and decided that it was in the best interest of the corporation to pass a rule restricting the permitted length of tenancies.

Instead of using the procedures found in the *Condominium Act, 1998* to oppose the passing of a proposed rule, the owners opted to engage in a vicious and litigious attack on the board, by first obtaining an interim injunction restraining the condo from enforcing the rule against them or preventing their short-term rental operation. The condo was successful in setting aside this decision, defended the owner's application, and brought a counter-claim against the owners.

The condo's claim was to enforce both the rule and its declaration provision which restricted the use of units to be occupied "only for the purpose of a single-family dwelling".

The court found the rule was valid and also expanded the definition of "single family" a bit further:

"Single family use" cannot be interpreted to include one's operation of a hotel-like business, with units being offered to complete strangers on the internet, on a repeated basis, for durations as short as a single night. Single family use is incompatible with the concepts of "check in" and "check out" times, "cancellation policies", "security deposits", "cleaning fees", instructions on what to do with dirty towels/sheets and it does not operate on credit card payments.

The court in this case found that short-term leasing was prohibited both by the corporation's rule and the single-family use restriction found in the declaration.

Creating Exclusive-use Common Elements out of Nothing?

Do exclusive-use common elements have to exist before you can discuss them? This is my philosophical summary of the condo case: *Cheung v. York Region Condominium Corporation No. 759 (2016)*.

Currently under appeal, Ms. Cheung argued that a bylaw that leased parking spaces per unit owner was invalid and oppressive. The motivation of passing the bylaw stemmed from her tenant's successful restaurant, which, according the condo, "monopolized" the parking spaces in the commercial condo. The implication of this case is wide considering the number of commercial condo boards struggling to manage fair and equitable access to limited common parking spaces.

Although several arguments were brought forward in the case, the main issue boiled down to whether the parking bylaw was valid based on two sections of the *Condominium Act, 1998* – specifically, whether s.7(2)(f) trumps s.21(1)(a). Section 7(2)(f) of the Act requires that a declaration specify exclusive-use common elements whereas section 21(1) permits the condo to lease common elements, absent any restrictions to do so in the declaration. In this case, the condo's declaration was silent on leasing the common elements and no restrictions were found.

The condo took the position that the bylaw was valid based on section 21(1) of the Act – in other words, it was permitted to lease common elements to owners without amending the declaration. Ms. Cheung took the position the bylaw was not valid, based on being *ultra vires* s.(2)(f) of the *Act*, which would require the condo to amend its declaration since it may have created exclusive-use common elements.

Did the condo *essentially* create exclusive-use common elements merely by passing this parking bylaw? Ah, that is the question….

In any event, Ms. Cheung lost. She appealed. And, now we will wait to see what the highest court in Ontario's has to say about this issue. ■

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