When a Condo Owner Goes Rogue

By Antoni Casalinuovo, Hons BA, LL.B.

We work with a condominium corporation in the City of Ottawa that has spent over two years litigating with a particular unit owner, who, in our view, has simply gone rogue. What started out as a dispute over a $450 back charge to remove a flower box, which was an unauthorized alteration to the common elements, quickly spiralled into a convoluted web of litigation – all perpetuated by the unit owner and what appears to be her personal animus towards her board of directors and the property manager.

The dispute between this unit owner (who goes by a variety of aliases but for our purposes let's call her "M.S.") and Carleton Condominium Corporation No. 116 ("CCC 116") is a long, sordid tale that will likely result in M.S. losing her townhouse unit. M.S. previously practiced law in British Columbia and Alberta, and is apparently seeking to be called to the Bar in Ontario.

In the spring of 2015, M.S., without permission from CCC 116, installed a large flower box on the common elements in front of the unit. The flower box did not comply with any of the acceptable options in place by CCC 116 via its longstanding rules, and there was no acquiescence by the corporation in enforcing its rules.

After several attempts to have the unit owner remove the flower box on her own, CCC 116 had no choice but to remove the flower box and back charge the unit owner. When CCC 116 contractors attended the site, M.S. became hostile and the Ottawa police were contacted. After a several-hour standoff with Ottawa police, the unit owner eventually capitulated and let the contractors remove the flower box. An invoice reflecting the unnecessary increase in time was rendered to CCC 116, who then charged it back to the owner. M.S. did not pay the chargeback, and a lien was registered against her unit to secure the chargeback and other unpaid common expenses.

Within the span of a few months, M.S. 1) filed an application with the Ontario Superior Court of Justice, 2) commenced an action with the Small Claims Court seeking similar relief, and 3) filed several complaints with the Law Society of Upper Canada, the Privacy Commission of Canada, the Ottawa Police and essentially anyone who had a mailbox. All of these complaints have now been closed by the authorities, despite M.S.' best (and repeated) efforts to re-open them. M.S.' Small Claims Court action cited damage related to the flower box, a parking space that she was not happy with, and the pruning of a tree.

M.S.' various allegations between August 2015 to February 2016 included:

i) unfounded allegations of endangerment to her child;

ii) baseless allegations of CCC 116 destroying back-dated contracts to disprove an aspect of her case;

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iii) the Board and management engaging in receiving kickbacks, nepotism, favoritism etc.;

iv) filing affidavits with the Court where she insults or uses defamatory names for board members, other residents, property management and anyone who disagreed with her; and

v) pulling up Internet searches that she conducted of the Judge with his children, in the open courtroom, to further her arguments about breach of privacy.

Eventually, a Judge of the Ontario Superior Court of Justice found the totality of M.S. behaviour so bizarre, that the Court ordered her to undergo a psychological assessment with respect to her mental capacity. This type of court order is only made in very rare and extreme circumstances.

Over the same period of time, M.S. decided to install two (even larger) flower boxes on the common elements in front of her unit, in apparent retaliation against CCC 116's decision to remove her first flower box.

After a Judge ordered M.S. to undergo a mental capacity assessment, her "bizarre" conduct worsened. M.S. would repeatedly file irrelevant pleadings and launch multiple appeals, making collateral attacks not only against the Corporation, its directors, and management, but also towards several Judges of the Ottawa courthouse and later the Ontario Court of Appeal. M.S. also commenced additional legal proceedings including against CCC 116's legal counsel, all of which were a continuation of her previous claims.

M.S. refused to attend a capacity assessment, despite the court order and CCC 116 taking steps to set up an appointment for her on multiple occasions. M.S. ignored numerous warning from multiple Judges, and repeatedly kept making excuses as to why she did not need to undergo a capacity assessment – including the fact she allegedly belonged to Mensa, an international association of individuals with "high IQ."

Not surprisingly, M.S.' excuses for refusing to comply with what would eventually be multiple Court Orders, did not garner her any sympathy from the Court. In fact, M.S. openly admitted to the Court that she refused to attend the capacity assessment. The only thing that stopped several Judges from finding M.S. in contempt of court, was that the Court was, not surprisingly, uncertain that she had the requisite mental capacity to understand the consequences of her actions; and therefore, M.S. technically could not be found in contempt. This repeated cycle of M.S.' non-compliance also caused all of M.S.' litigation against CCC 116 to be halted until she attended the capacity assessment.

M.S.' conduct eventually forced CCC 116 to bring a court Application to have her declared a vexatious litigant, which would prohibit her from further commencing additional litigation. CCC 116 also brought a motion to dismiss all of M.S.' active litigation (other matters had already been dismissed by the Court for being vexatious and an abuse of process). Ultimately, the Court decided that M.S.' multiple breaches of multiple Court orders should not be tolerated. The Court found that M.S.' actions called into question the administration of justice, and that her case was "crying out for a dismissal". Subject now to a further appeal which should be heard later this year, the Court exercised its powers to dismiss all of M.S.' active litigation and granted CCC 116's legal costs, the amount of which will be determined at a full-day hearing in August.

Due to the fact that all of M.S.' Superior Court proceedings were related to her challenging the validity of the condominium lien, CCC 116 is seeking the full recovery of its litigation costs under that lien. M.S.' actions are so concerning, that her mortgagee has sought to intervene and make their own submissions at the costs hearing because of the costs at stake.

This entire series of events should not have occurred. While unfortunate, M.S. was the author of her own misfortune. The corporation did what it was required to do – it passed a reasonable rule, did not acquiesce to the breach of that rule, took reasonable steps in enforcing the rule, and attempted to settle the matter with M.S. amicably. However, none of this seemed to matter for M.S. Her vendetta was paramount.

This case stands as a reminder of two things: 1) court orders must be complied with, and 2) parties in litigation, particularly when that litigation involves your neighbours in a condominium setting, need to put personal animosities aside. Stories involving vendettas don't typically end well. ■

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