

CITATION: MTCC No. 1025 v. Hui, 2021 ONSC 5839
COURT FILE NO.: CV-21-666406-000
DATE: 20210831

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: METROPOLOITAN TORONTO CONDOMINIUM CORPORATION NO. 1025, Applicant

AND:

HEIDI YEE HUI and EZRA ESHETU, Respondents

BEFORE: Chalmers J.

COUNSEL: *J. De Vellis and P. Nelson* for the Applicant

S. Hsia for the Respondent Hui

HEARD: August 30, 2021, by videoconference

ENDORSEMENT

Overview

[1] The Applicant seeks an order directing the Respondent Ezra Eshetu to comply with section 117 of the *Condominium Act, 1998*, and the rules of the Condominium. Mr. Eshetu did not attend the Application hearing.

[2] The Applicant also seeks an order directing the owner of the unit, Heidi Yee Hui to take all reasonable steps to ensure that Mr. Eshetu comply with the *Condominium Act* and the rules of the condominium. Ms. Hui has cooperated with the Applicant to have Mr. Eshetu evicted from the premises. She does not oppose the relief sought.

[3] Ms. Hui leased the unit to Mr. Eshetu. He moved in on May 1, 2021. The Applicant produced evidence that since mid-June 2021 Mr. Eshetu has engaged in threatening and disturbing behaviour including:

- (a) Threatened one of the Condominium's security guards with a knife;
- (b) Exposed his genitals and buttocks and performed lewd sexual acts in the common elements of the condominium;
- (c) Enabled an individual to deal drugs on the condominium's premises;
- (d) Tried to force his way into a resident's car and a contractor's van;

- (e) Defaced the unit doors and nearby walls;
- (f) Blocked the entrance of the condominium and did not allow residents to enter;
- (g) Banged on a neighbour's door at 1 am, startling her and her 12 year old daughter.

[4] For the reasons set out below, I am satisfied that Mr. Eshetu is in breach of s. 117 of the *Condominium Act, 1998*, the Rules of the Condominium and the *Occupational Health and Safety Act*. I grant the relief sought by the Applicant.

Background Facts

[5] Ms. Hui is the owner of Unit 1704 in the Condominium. She leased the unit to Mr. Eshetu. He moved into the condominium on May 1, 2021. Soon after moving in, Mr. Eshetu engaged in bizarre and threatening behaviour.

[6] The Applicant relies on the affidavit of Sathya Parthipan, sworn August 15, 2021 Mr. Parthipan is a security guard at the condominium building. Mr. Parthipan states the following:

- (a) On June 12, 2021 a man identified as "Kevin" attended at the building to visit Mr. Eshetu. It appeared to Mr. Parthipan that Kevin was dealing drugs at the premises. When confronted by security Kevin pulled a knife and threatened the guard. The police were called, and Kevin was arrested.
- (b) On multiple occasions Mr. Esheta was observed on the security cameras, exposing himself in the elevator and common areas.
- (c) On July 17, 2021 at 1:35am, Mr. Eshetu was banging on the door of the unit occupied by Kristie Milne.
- (d) On July 24, 2021 Mr. Eshetu was observed in the common areas of the building with no shirt or shoes.
- (e) On July 30, 2021 there were a number of events. Mr. Eshetu tried to grab a contractor's phone. At 5:48 pm he sat in a chair at the entrance of the building and did not allow anyone to enter. Security had to let residents into the building through the loading door. He later tried to force himself into a contractor's van. At 11:45 in the evening he threw a rock at a car. He carved his initials on some of the units on the 17th floor of the building.
- (f) On July 31, 2021 Mr. Eshetu was observed pushing an unidentified a woman in the lobby;
- (g) On August 7, 2021 Mr. Eshetu pulled a knife on a floor security guard.

[7] Ms. Milne swore an affidavit on August 16, 2021 in which she confirms that Mr. Eshetu banged on her door on July 17, 2021, startling her and her daughter. She also states that she observed odd behaviour. Sometime between July 31 and August 1, 2021 someone carved an “E” on her door. She believes that Mr. Esheta carved the initial into her door.

[8] The police were called as a result of the incident in which he pulled a knife on the floor security guard on August 7, 2021. Mr. Eshetu returned to the building briefly on August 8, 2021. He broke the window in his unit and threw some of his belongings out the window. The belongings landed on the balconies below his unit.

[9] Counsel for the Applicant advises that Mr. Eshetu was arrested on August 8, 2021. The police advised the Applicant that Mr. Eshetu was not to be let back into the building

[10] The Applicant also relies on the affidavit of Alexander Patricios sworn August 15, 2021. Mr. Patricio is a security guard in the building. He states that Mr. Eshetu engaged in the following behaviour:

- (a) On June 10, 2021 Mr. Eshetu was observed on the security camera. He made several trips to the parking garage. In the garage he removed three tires from his vehicle and gyrated on them to simulate sex.
- (b) On June 12, 2021, he was observed exposing himself in the elevator.
- (c) On June 14, 2021 and June 29, 2021, he was observed on the security camera exposing his buttocks and genitals.
- (d) On June 30, 2021 he performed lewd behaviour while in the elevator. After getting off the elevator he stood in the hallway and masturbated.

[11] The Applicant also relies on the affidavit of Moses Arulliah sworn August 16, 2021. Mr. Aruliah is the property manager of the condominium. He deposed that over the past three months he has been required to respond to numerous complaints about Mr. Eshetu’s bizarre and dangerous behaviour:

- (a) He states that Mr. Eshetu was arrested twice He was first arrested on July 31, 2021. On that day he grabbed a phone from a contractor. He stole a chair from the floor guard and sat at the main entrance and refused to let anyone pass. He vandalized a number of doors on the 17th, 9th and 16th floor.
- (b) Mr. Eshetu was arrested on August 8, 2021. On August 7, 2021 he pulled a knife on a floor guard. On August 8, 2021 he broke the windows in his unit and threw objects out the window.

[12] On June 23, 2021 the Applicant wrote to Ms. Hui and outlined the incidents that had occurred as of that date. Ms. Hui stated that she would cooperate with the Applicant. On June 24, 2021 Ms. Hui delivered to Mr. Eshetu a N7 Notice to End the Tenancy for Causing Serious

Problems in the Rental. Ms. Hui applied to the Landlord and Tenant Board for an urgent hearing. The Board released its endorsement dated August 25, 2021. The request for an expedited hearing was denied. There is currently no date for the eviction hearing. Ms. Hui agreed to pay the cost of an additional security guard to specifically monitor Mr. Eshetu.

The Issues

[13] The issues on this Application are:

- (a) Is the Applicant entitled to an order for substituted service of the Application record and factum;
- (b) Is Mr. Eshetu's conduct a breach of s. 117 of the *Condominium Act*, the Condominium's Declaration and Rules and the *Occupational Health and Safety Act*?
- (c) Is the Applicant entitled to Costs of the Application?

Analysis

Validating Service

[14] The Application was commenced on July 30, 2021. The same day, the Applicant served Mr. Eshetu by leaving a copy of the Notice of Application with the security guard of the condominium building.

[15] On August 8, 2021 Mr. Eshetu was arrested. The police advised the Applicant that Mr. Eshetu was not to be allowed back into the building. The Applicant does not know where Mr. Eshetu has been living since his arrest.

[16] The Applicant relies on the affidavit of Susy Godinho sworn August 27, 2021. She states that on August 11, 2021 she contacted Mr. Eshetu's mother Meseret Jimale. Ms. Jimale was listed as Mr. Eshetu's emergency contact. Ms. Jimale stated that her son had a criminal lawyer who would get back to her. She did not hear from a lawyer and Ms. Godinho called back on August 13, 2021. She left a voice message advising of the date of the hearing. On August 13, 2021, Ms. Godinho received a call from Hamera Khalid, a legal assistant with Mr. Eshata's criminal lawyer. Ms. Godinho emailed the Notice of Application to Ms. Khalid. Ms. Khalid later advised that they are not accepting service of the documents on behalf of Mr. Eshetu.

[17] On August 15, 2021 Ms. Godinho dropped off an envelope at the condominium with the endorsements of Ramsay J. dated August 3, 2021 and Dow J. dated August 10, 2021. On August 17, 2021, Mr. Eshetu returned to the building. The security staff provided him with the package, including Dow J.'s endorsement dated August 10, 2021, which scheduled the hearing of the Application for August 30, 2021.

[18] Counsel for the Applicant served Mr. Eshetu by emailing a copy of the Application Record to Mr. Esheta's email address; EXRAE88@gmail.com. The factum was served on August 19, 2021 by email. On August 22, 2021 a hard copy of the Application and Factum was left at the condominium for Mr. Eshetu. Later that afternoon Ms. Godinho received a text message from the email address asking that the papers be sent to the email address; Eshetue621@gmail.com. On August 24, 2021 Ms. Jimale requested the Zoom details for the hearing on August 30, 2021. Later that day all materials were sent to Eshetue621@gmail.com and Ms. Jimale's email address; mjimales@gmail.com. The materials were also delivered to Mr. Eshetu's criminal lawyer. On August 25, 2021 Ms. Jimale stated that she could not locate Mr. Eshetu and could not give him the documents. The next day, Ms. Jimale asked that there be no further contact with her.

[19] The Applicant seeks an order validating service of the Application Record pursuant to R. 16.08, which provides:

Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

- (a) The document came to the notice of the person to be served; or
- (b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

[20] The Applicant has taken various steps to serve Mr. Esheta with the Application materials. A copy of the Notice of Application was left at the condominium security desk on July 30, 2021. Mr. Eshta was living at the condominium at the time. After Mr. Eshatu's arrest on August 8, 2021 the Applicant did not know where he was living. The Applicant emailed the material to this email addresses, EXRAE88@gmail.com and Eshetu621@gmail.com. The materials were provided to Mr. Eshetu's criminal lawyer on August 24, 2021. The copy of the materials was provided to his mother Ms. Jimale by sending them to her email address: mjimales@gmail.com on August 24, 2021.

[21] I am satisfied that the Applicant took reasonable steps to ensure that the materials came to the notice of Mr. Eshetu. Between leaving the Notice of Application at the condominium on July 30, 2021, sending the materials to Mr. Eshetu's email address and providing copies to his mother and criminal lawyer, I am satisfied that the documents came to the attention of Mr. Eshetu.

[22] I grant the order validating service of the Application Record and Factum on Mr. Eshetu.

Is Mr. Eshetu's conduct a breach of s. 117 of the Condominium Act, the Condominium's Declaration and Rules and the Occupational Health and Safety Act?

i) Condominium Act

[23] Section 117 of the *Condominium Act*, prohibits dangerous and harmful activities:

No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

[24] Section 134(1) provides

s.134(1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

[25] The evidence filed on this Application establishes that Mr. Eshetu damaged property. He broke the window in his unit. He carved his initials in the doors of other units. He has also threatened other residents and the security guards. The security guards who provided affidavits state that they feel threatened and harassed. Ms. Milne also stated that she felt threatened by Mr. Eshetu. Injury includes any psychological harm: *Metropolitan Toronto Condominium Corporation 747 v. Korolekh*, 2010 ONSC 4448, at para. 71.

[26] I am satisfied that Mr. Eshetu's conduct caused or is likely to cause damage to property or injury to an individual. Mr. Eshetu is in breach of s. 117 of the *Condominium Act*. I am satisfied that the Applicant is entitled to an order pursuant to s. 134 of the *Act* enforcing compliance.

ii) *Condominium Declaration and Rules*

[27] The condominium's Declaration states:

25. All unit owners, tenants and other occupants of the units, their families, guests, invitees or licensees, shall be subject to and comply with the provisions of this declaration, the by-laws, the rules and the Reciprocal Agreement, including, in the case of an tenant who has received a notice under Subsection 49(3) of the Act, those duties relating to common expenses.

[28] The condominium's General Rules and Regulations (the "Rules") state:

General Regulations

1. No owner of any unit shall do or permit anything to be done in his unit, or bring or keep anything therein which will in any way increase the risk of fire or the fire insurance premiums on any building, or on property kept therein, and no owner shall do or permit anything to be done in his unit or obstruct or interfere with the rights of other owners, or in any way injure or annoy them, or conflict with the regulations of the City of Toronto Fire Department, or with any insurance policy

carried by the Corporation or conflict with any of the rules and ordinances of the local board of health, or with any municipal by-law or any provincial or federal statute or regulation.

2. Owners and their families, guests, visitors, servants and agents shall not create or permit the creation or continuance of any noise or nuisance which, in the opinion of the Board or the Manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners or their respective families, guests, visitors, servants and persons having business with them.

Residential Units

2. No immoral, improper, offensive or unlawful use shall be made of any residential unit or of the Condominium property. All municipal and other zoning ordinances, laws, rules and regulations of all government regulatory agencies having jurisdiction shall be strictly observed. [...]

13. Nothing shall be thrown out of windows or doors of the buildings. [...]

18. [...] No one shall obstruct or permit the obstruction of any entry, passageway, hallway or stairwell which is part of the common elements and any such entry, passageway, hallway or stairwell shall be used only as a means of ingress or egress to and from the building and the residential unit or some other part of the common elements.

Tenancies

1. Owners shall ensure that their tenants strictly comply with the provisions governing the use and occupation and leasing of residential units set forth in the declaration. [...]

[29] As a general rule the court will enforce the rules established by the condominium and exceptions will be rare:

This is to foster the result that people only move into the Condominium if they are prepared to live by the rules of the community which they are joining. If they are not, they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes or preferences. The provisions of the Act and the declaration, bylaws and rules are “vital to the integrity of the title acquired by unit owners.” Unit owners are not only bound by the rules and regulations but are “entitled to insist that other unit owners are similarly bound.”: *York Condominium Corporation No. 137 v. Hayes*, 2022 ONSC 4599, at para. 23.

[30] The evidence on this Application establishes that Mr. Eshetu is in breach of the condominium’s declaration and rules. He has disturbed other residents in the building. He has

taken off his clothes in the common areas of the building and has performed lewd acts. He blocked the entrance to the building and did not allow the residents to enter.

[31] I am satisfied that the Applicant is entitled to an order enforcing the condominium's declaration and rules.

iii) Occupational Health and Safety Act (OHSA)

[32] The condominium's staff are workers. The Applicant argues that Mr. Eshetu's misconduct, when levelled at the staff, is workplace harassment and violence.

[33] The *OHSA* defines workplace harassment as:

- (a) 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, or
- (b) workplace sexual harassment.

[34] In choosing to undress, expose his genitals and buttocks, masturbate and simulate sex in the elevators and the parking garage in view of the security cameras that are monitored by the security guards Mr. Eshetu is forcing staff to be unwilling witnesses to his exhibitionism. This conduct constitutes sexual harassment.

[35] The incident in which Eshetu threatened the floor guard with a knife constitutes workplace violence. The *OHSA* defines workplace violence as:

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- (c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

[36] The condominium is under a legal duty to investigate and protect its workers from workplace harassment and violence. I am satisfied that the condominium is entitled to an order that Mr. Eshetu is to cease and desist from uncivil or illegal conduct that violates the *OHSA*.

Is the Applicant entitled to Costs?

[37] The condominium's Declaration states:

22. Each owner shall indemnify and save harmless the Corporation against any loss, cost, damage or injury caused to the common elements or other units because of

the wilful or unlawful act or omission of such owner or any resident or occupant of his unit.

[38] The condominium's Rules provide:

Any losses, costs or damages incurred by the Corporation by reason of a breach of the rules and regulations in force from time to time by any owner, or by his family, guests, servants, agents or occupants of his unit, shall be borne and/or paid for by such owner and may be recovered by the Corporation against such owner.

[39] The Applicant was required to incur the costs of pursuing this Application. The Applicant was successful on the Application and is presumptively entitled to its costs.

[40] Ms. Hui argues that she has fully cooperated with the Applicant. The day after being notified of Mr. Eshetu's conduct she delivered a Notice of Eviction. She applied to the Landlord and Tenant Board for an expedited hearing which was denied. She provided an undertaking to proceed expeditiously with the eviction hearing. She argues that given her cooperation with the Applicant that she should not be personally liable for any costs award.

[41] The condominium rules provide that an owner is responsible for the costs incurred by the corporation as a result of the breach of the rules or regulations by the owner, or occupants of the unit. The corporation was required to incur costs because of the breaches of the rules by Ms. Hui's tenant.

[42] I have some sympathy for Ms. Hui. She fully cooperated with the Applicant and has taken steps to have Mr. Eshetu removed from the unit. However, I also have sympathy for the other owners of the units in the building. It is not fair that the other unit holders are required to be responsible for the costs of the Application which was required to compel Ms. Hui's tenant to comply with the condominium rules: *Chan v. TSCC 1834*, 2011 ONSC 108, at para. 37.

[43] Ms. Hui argues that the Application ought not to have been brought. She states that once Mr. Eshetu was arrested and the police advised that he is not permitted back into the building, there was no need to proceed with Application. There is no evidence before me as to the circumstances of Mr. Eshetu's arrest or the terms of his release. I have no information as to whether Mr. Eshetu may be permitted to return to the building. I am satisfied that the Application was necessary.

[44] I award costs of the Application fixed in the amount of \$10,000 inclusive of counsel fee, disbursements and HST. The respondents are jointly and severally liable for payment of the costs. The costs are payable within 30 days of the date of this endorsement.

[45] The condominium rules provide that interest on unpaid amounts is at the rate of 4.0% above the minimum interest rate available. The Applicant is seeking interest at the rate of 6.45% which is 4% above the prime rate of 2.45%. I am satisfied that the interest rate of 6.45% is reasonable in the circumstances.

Disposition

[46] I make the following order:

- (a) Validating service of the Application Record and Factum on Mr. Eshetu;
- (b) Requiring Mr. Eshetu to comply with section 117 of the *Condominium Act*, and to cease engaging in any threatening, abusive intimidating and harassing behaviour;
- (c) Requiring Mr. Eshetu to comply with the condominium's declaration and rules;
- (d) Requiring Mr. Eshetu to cease and desist from uncivil or illegal conduct that violates the workplace violence and harassment provisions of the *OHSA*;
- (e) A declaration that Mr. Eshetu is in breach of the *Condominium Act*, the Condominium's Declaration and Rules and the *OHSA*;
- (f) Costs of the Application fixed in the amount of \$10,000 inclusive of counsel fee, disbursements and HST. The Respondents are jointly and severally liable for payment of the Applicant's costs. Costs are payable within 30 days of the date of this endorsement;
- (g) This order bears interest at the rate of 6.45% per annum commencing on September 30, 2021.

[47] Order to go in accordance with the draft Order filed and signed by me.



C HALMERS, J.

Date: August 31, 2021