CITATION: CCC No. 476 v. Wong, 2019 ONSC 4207
COURT FILE NO.: 15-66864
DATE: 2019/07/10

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CARLETON CONDOMINIUM CORPORATION NO. 476, Plaintiff

AND

NEWTON WONG, Defendant

BEFORE: Honourable Justice Marc R. Labrosse

COUNSEL: Cheryll Wood, Counsel for the Plaintiff

Newton Wong, Self-Represented

HEARD: March 7, 2019

ENDORSEMENT

Overview

[1] The Plaintiff commenced an action for vacant possession of the Defendant's condominium unit following the registration of a lien for unpaid condominium fees. The Statement of Claim, issued on December 11, 2015, seeks judgment for the amount of the then current arrears of common expenses, interest, and costs. The Plaintiff further seeks an Order for immediate possession and leave to obtain a Writ of Possession. The Defendant defended the claim and issued a Counterclaim against the Plaintiff as result of alleged damages caused by the Plaintiff's resident building manager. The Defendant seeks aggravated, exemplary, and punitive damages in the sum of $50,000.00 as part of the counterclaim.

[2] The Plaintiff moves for summary judgment seeking an Order for vacant possession, an Order for the payment of arrears (including legal costs and reasonable expenses), leave to issue a Writ of Possession, an Order allowing the Plaintiff to dispose of the contents of the unit, and for those costs to be added to the common expenses. The Plaintiff also seeks an Order dismissing the Defendant's counterclaim.

[3] For the reasons that follow, I am of the view that there is no genuine issue requiring a trial on the issue of the Plaintiff's claim. The main issue raised by the Defendant, being the validity of the service of the Notice of Lien, is properly resolved by way of summary judgment. As for the counterclaim, issues have been raised to determine whether the counterclaim is statute barred and if an agency relationship exists between the Plaintiff and his resident building manager. These issues are easily resolved in favor of the Plaintiff upon the court using its fact-finding powers as set out in r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Rules*").

Background Facts

[4] The Defendant, Newton Wong, is the registered owner of Unit 8, Level 7, Carleton Condominium Plan No. 476 (the "Unit"), municipally known as 708 – 35 Holland Avenue, Ottawa, Ontario. The Defendant is also the named owner of the Unit on the Condominium Corporation's records which are kept pursuant to s. 47 of the *Condominium Act, 1998,* S.O. 1998, c. 19 ("*Condominium Act*"). The Defendant purchased the Unit in December 1989. The Defendant is a lawyer in Toronto who has historically operated the Unit as a rental property.

[5] 35 Holland Avenue is one of two condominium buildings in proximity to each other. The other building is known municipally as 45 Holland Avenue.

[6] The Defendant's evidence is that he would send in his cheques for the common expenses by mail to the Plaintiff's property manager, Axia Property Management Inc. ("Axia"). However, from November 2012 to January 2014, the Defendant never paid the monthly common expenses on the first day of every month. Also, since November 2003, the Unit has been the subject of seven condominium liens.

[7] The Defendant did not make his common expenses payments when due for November 2013, December 2013, and January 2014. There is no evidence that those payments were sent prior to January 21, 2014. On January 21, 2014, the Defendant received a letter from Axia advising of the three months' arrears for common expenses.

[8] While the Defendant states that the November and December 2013 common expenses were paid on January 21, 2014, this is inaccurate. The Defendant's assistant attached a copy of a letter dated January 21, 2014, with a copy of a cheque of same date to her affidavit purporting to be the payments for November and December 2013. The Defendant's letter does not state how the letter was sent, being by mail, registered mail, or courier. The Plaintiff's affiant states that no cheque was received in January 2014. The court is left to assume that the cheque was sent by regular mail and that no additional measures were taken by the Defendant to arrange for immediate payment to be received by the Plaintiff. The Plaintiff also undertook to Axia to send a payment for January 2014 the following week, but there is no evidence that the Defendant made or attempted to make this payment. In addition, there is no evidence that the Defendant made any effort to follow up with the January 21, 2014 payment to ensure that it was received.

[9] On January 21, 2014, Axia sent a letter to the Defendant marked "Via Registered Mail" which included a copy of Form 14 – Notice of Lien to Owner under s. 85(4) of the *Condominium Act.* It is unclear if this was the correspondence received by the Defendant on February 19, 2014.

[10] On January 31, 2014, the Axia registered a lien against the Unit (being Instrument No. OC1556694) for the unpaid monthly condominium fees for three months plus applicable costs.

[11] Since that date, with the exception of a lump sum payment of $4,520 in December 2014, the Defendant has not made any payments toward the monthly condominium fee.

[12] On February 19, 2014, the Defendant claims to have received a letter from Axia advising him that a lien had been registered on January 21, 2014. The Defendant did not provide a copy of that letter to determine if it was the letter of January 21, 2014 with the Notice of Lien or a different letter. The Defendant then claims to have advised Axia that the payment was overlooked due to the severity of the winter, loss of power for a week, and the holidays. This explanation was given despite the Defendant's previous letter stating that the payment for the months of November and December 2013 had been mailed on January 21, 2014, and that no return envelope had been received.

[13] On February 24, 2014, the Defendant's assistant states that a stop payment was made on the cheque for the months of November and December 2013, but there is no evidence that the Defendant ever attempted to replace that payment.

[14] On June 30, 2014, the Plaintiff wrote to the Defendant claiming the amounts owing to that date and stating that the Defendant had two weeks to pay the outstanding amount failing which the Plaintiff would commence Power of Sale proceedings. No response was received.

[15] On August 12, 2014, the Plaintiff delivered a Notice of Sale Under Lien under Part II of the *Mortgages Act*, R.S.O. 1990, c. M.40 to the Defendant.

[16] On November 26, 2014, solicitors for the Plaintiff provided an Arrears Statement (to that date) that set out the amount owing by the Defendant as $8,631.91, broken down as follows:

- Common expenses arrears: $3,918.00;
- Special Assessment: $272.00;
- Interest at 24%: $566.91;
- Administrative fee: $750.00; and
- Legal Fees, Disbursements: $3,125.00.

[17] In December 2014, the Defendant made a partial payment of $4,520.00 that was applied to the outstanding balance and disputed the balance of the charges. No further payment was made by the Defendant for monthly common expenses to the date of this motion for summary judgment.

[18] The Plaintiff served its Statement of Claim on the Defendant on March 18, 2016. The Defendant responded with a Statement of Defence and Counterclaim on May 27, 2016.

[19] During the motion, the Plaintiff relied on a Request to Admit, dated February 12, 2019, and that as of the date of the motion for summary judgment (heard on March 7, 2019), the Defendant had not responded. The content of the Request to Admit became deemed admissions. Following the conclusion of the motion for summary judgment, the parties were asked for further submissions on the required notice period under s. 85(4) of the *Condominium Act*. Along with

his written submissions on this question, the Defendant also sent an Answer to Request to Admit but there was no indication of leave being sought by the Defendant to withdraw a deemed admission under r. 51.03. However, the Answer to Request to Admit is limited to general denials and does not respond with particularity, fully outlining the Defendant's position.

[20] In addition, the Defendant's Statement of Defence and Counterclaim do not plead that the lien was invalid for failure to meet the 10-day notice period.

Defendant's Counterclaim

[21] The Defendant counterclaims against the Plaintiff as a result of the alleged actions of the Plaintiff's resident building manager Ben Laurin and his wife Mary Laurin (collectively, "the Laurins"). The latter was not an employee of the Plaintiff or Axia. The Defendant claims that the Plaintiff is vicariously liable for the actions of the Laurins resulting from a side agreement between the Defendant and the Laurins, who assisted in leasing the Unit and getting repairs done.

[22] The Defendant claims that Ben Laurin allowed a former tenant to vacate and leave their personal effects in the Unit causing the Defendant to incur expenses as a result of Ben Laurin's negligence Neither the Statement of Defence nor Counterclaim plead the year of the damages caused by the Laurins. The Defendant's assistant claims that the Defendant was still dealing with Ben Laurin in or about the fall of 2014.

[23] During examinations for discovery, the Defendant was asked about the date when he came to Ottawa to deal with repairs to the Unit following the damages caused by the Laurins' negligence. That question was taken under advisement and, as of the date of the motion for summary judgment, the court was not advised that any response had been given.

[24] During those same discoveries, the Defendant stated that his last dealings with the Laurins were in 2012. He became aware of the facts surrounding his claim for negligence but did not approach the Laurins because Mary Laurin was very sick. Mary Laurin died in or about June 2012.

[25] The Defendant's evidence for this motion sets out that the Laurins had been leasing the Unit for payment of a fee by the Defendant. Contrary to what he stated during his discovery, the Defendant's assistant states that Ben Laurin had directed a tenant to leave his possessions in the Unit and that, in or about the fall of 2014, the Defendant came to Ottawa and was required to hire a handyman to help clean out the premises and perform repairs. Otherwise, the Defendant provided no evidence for this motion or documentation in the Affidavit of Documents as to the amount paid to the handyman and the work that had to be done to establish the negligence of Ben Laurin.

[26] As part of the evidence for this motion, the parties have relied upon the transcripts from the examination for discovery of the parties. In the Request to Admit, a number of paragraphs relate to the counterclaim involving the Laurins and these paragraphs are deemed to be admitted although the Defendant may likely get leave to withdraw the admissions.

[27] Finally, on the procedural front, there was a Case Conference Endorsement, dated August 13, 2018, by Master Fortier that set out a timetable for this motion for summary judgment. In that order, examinations for discovery were to be completed by September 21, 2018, undertakings answered by November 23, 2018, and any motions with respect to outstanding undertakings were to be served by December 21, 2018. No motions were brought.

Issues on Plaintiff's Motion for Summary Judgment

[28] While the Defendant's factum does not provide a list of issues that require a trial, the motion for summary judgment proceeded on the following three issues:

a. Whether there is an issue requiring a trial with respect to the Defence, and particularly the validity of the Plaintiff's lien for failure to give 10 days' notice of the registration of the lien as required by s. 85(4) of the *Condominium Act*;

b. Whether there is an issue requiring a trial with respect to the counterclaim and if that claim is statute barred; and,

c. Whether there is an issue requiring a trial surrounding the counterclaim and the Defendant's claim that the Plaintiff is liable for the actions of its agents, Axia and the Laurins.

[29] It is the Plaintiff's position that a negative answer to these three questions leaves this court to conclude that there are no genuine issues requiring a trial and that the Plaintiff's claim should be allowed and the counterclaim dismissed, all with costs payable to the Plaintiff.

The Law on Motions for Summary Judgment

[30] Rule 20.04(2)(a) of the *Rules*, provides that summary judgment shall be granted where there is no genuine issue requiring a trial. In determining whether there is a genuine issue requiring a trial, r. 20.04(2.1) grants the court certain fact-finding powers and r. 20.04(2.2) allows for a mini-trial to be held to receive oral evidence from one or more parties.

[31] On a motion for summary judgment, the court must first determine if there is a genuine issue requiring a trial based only on the evidence before it. If there appears to be a genuine issue requiring a trial, the court should then determine if the need for a trial can be avoided by using the fact-finding powers under rr. 20.04(2.1) and 20.04(2.2).

[32] The leading case on the use of summary judgment is *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49, where the Supreme Court of Canada stated:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[33] As set out in *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, affirmed by the Ont. C.A., 2014 ONCA 878, leave to appeal to the S.C.C. refused, [2015] SC.C.A. No.97, at para. 33: "if the court cannot grant judgment on the motion, the court should … decide those issues that can be decided … identify the additional steps that will be required to complete the record… seize itself of the further steps required to bring the matter to a conclusion."

[34] Rule 20.02(1) clearly sets out that in response to a motion for summary judgment, the responding party may not rest on mere allegations or denials contained in a party's pleadings. Rather, it must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

[35] As such, the moving party bears the initial burden of showing that there is no genuine issue requiring a trial. Once a *prima facie* case has been made out, the burden then shifts to the responding party to show that there is a genuine issue by setting out specific facts in an affidavit, or through other evidence: see *1870553 Ontario Inc. v. Kiwi Kraze Franchise Co. Ltd.*, 2015 ONSC 1632 at para. 33.

[36] The Court of Appeal has recently weighed in on the appropriateness of motions for partial summary judgment in *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561, noting that the court must assess the risk of duplicative or inconsistent findings. More recently, in *Mason v. Perras Mongenais*, 2018 ONCA 978, the Court of Appeal again cautioned against the use of motions for partial summary judgment and stated that the use of summary judgment must lead to a fair and just adjudication. Furthermore, the court concludes that "summary judgment remains the exception, not the rule": see *Mason* at para. 44.

Analysis of the Plaintiff's Claim

[37] The first step in the analysis is for the court to determine if the issue can be decided based on the record that is before it. If there remain genuine issues that require a trial, the court must then determine if the need for a trial can be avoided by using the previously mentioned fact-finding powers granted under the *Rules*.

[38] When dealing with the Plaintiff's motion for summary judgment on the relief sought in the Statement of Claim, the sole issue raised by the Defendant at the motion was the validity of the Notice of Lien and if the 10-day notice requirement was met as required in s. 85(4) of the *Condominium Act*.

[39] The Plaintiff relies on a letter dated January 21, 2014, and addressed to the Defendant at his address for service, that is marked "By Registered Mail" and that has a Notice of Lien attached. The Plaintiff's Property Manager has sworn an affidavit that confirms that it sent the Notice of Lien (through its agent, Axia) prior to the registration of the lien. This serves as evidence that the Notice of Lien was sent on that date.

[40] While the validity of the Notice of Lien was raised at the motion for summary judgment, it is not raised in the Statement of Defence and Counterclaim and thus does not form part of the pleadings. This issue was not raised by the Defendant until this motion for summary judgment.

[41] In addition, the Defendant raised, for the first time at the motion for summary judgment, that the Plaintiff had not established that the January 21, 2014 letter and Notice of Lien were ever actually sent to the Defendant. The Defendant's affidavit does specifically state that the Notice of Lien was never received by him as he does not indicate what letter he received on February 19, 2014. The Plaintiff's affiant states that it was sent and this evidence was not contradicted. The Defendant acknowledges that he received a letter on February 19, 2014 advising that a lien was registered on January 21, 2014. As the Lien was not registered until January 31, 2014, it is unclear what letter was received by the Defendant on February 19, 2014. The Defendant does not attach a copy of the letter received on February 19, 2014 and it does not form part of his Affidavit of Documents.

[42] When considering the validity of the Notice of Lien, both parties were asked to make written submissions on the issue. The Defendant relied on r. 16 of the *Rules* to argue that service by mail is only effective on the fifth day after the document is mailed. Alternatively, the Defendant argues that 10 "clear days" were required. The Defendant has submitted two cases that support his position that the computation of time requires 10 "clear days": see *Ashton v. Powers* (1922), 67 D.L.R. 222 (Ont. S.C.) and *Universal Showcase Ltd. v. U.S.W.A.*, [2001] O.T.C. 482 (S.C.).

[43] However, those two cases predate the enactment of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F. ("*Legislation Act*"). As submitted by the Plaintiff, s. 89(3) of the *Legislation Act* provides that a reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens, even if the reference is to "at least" or "not less than" a number of days.

[44] The *Legislation Act* applies to every Act and regulation enacted by the provincial legislature (s. 46) unless: (a) a contrary intention appears; or (b) its application would give a term

or provision a meaning that is inconsistent with the context (s. 47). The Defendant has not suggested that these exceptions apply.

[45] Lastly, s 64 of the *Legislation Act* provides that an Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects: see *Carleton Condominium Corp. No. 396 v. Burdet*, 2016 ONCA 394, 70 R.P.R. (5th) 231, leave to appeal to the S.C.C. refused, 2016 CarswellOnt 20249, at para. 19. The Plaintiff submits that the part of the *Condominium Act* with respect to common expenses was specifically "designed to safeguard the financial viability of a condominium corporation in a manner that fairly balances the rights of the various stakeholders": see *Toronto Standard Condominium Corporation No. 1908 v. Stefco Plumbing & Mechanical Contracting Inc.*, 2014 ONCA 696, 325 O.A.C. 231, at para. 41.

[46] Therefore, applying s. 89(3) of the *Legislation Act* to the facts of this case, the date of mailing being January 21, 2014 (the first event) is excluded, but January 31, 2014 (the second event), is included. This amounts to a total of 10 days. As such, the requirements of s. 85(4) of the *Condominium Act* regarding the notice requirements for a Notice of Lien were met.

[47] While the Defendant stated in his factum that he did not receive the January 21, 2014 letter and Notice of Lien, he provided no evidence on this point other than his February 20, 2014 objection letter. Furthermore, the Respondent's affiant does not specifically say if the January 21, 2014 letter was received or not by the Defendant.

[48] Finally, on this point, in reviewing the transcript of the Defendant's examination for discovery, he initially agrees that he received the January 21, 2014 letter and then seems unsure. Ultimately, the Plaintiff's evidence that the letter was sent to the Defendant is the best available evidence on this issue.

[49] For the reasons set out above, I conclude that there is no issue requiring a trial on the question of whether the Plaintiff sent out the Notice of Lien and if the notice requirements under s. 85(4) of the *Condominium Act* were met. Consequently, the lien is valid. As this is the only issue raised by the Defendant in opposing the motion for summary judgment, and that the Defendant did not otherwise challenge the relief sought in the event that the lien is valid, I

conclude that the Plaintiff is entitled to the relief sought in its Notice of Motion in respect of its claim.

Analysis of Defendants' Counterclaim

[50] The Plaintiff states that there is no genuine issue requiring a trial with respect to the dismissal of the Defendant's counterclaim. The Plaintiff states that the counterclaim should be dismissed for the following reasons:

a. The Defendant has not pleaded the specifics of his claim for damages and the evidence relied upon to substantiate those damages is insufficient;

b. The counterclaim does not establish an agency relationship between the Plaintiff and Ben Laurin; and

c. The counterclaim is statute barred.

[51] During the motion for summary judgment, the focus was on the issue of determining if the counterclaim was statute barred. The most relevant evidence is the following:

a. The Defendant retained the Laurins to rent out the Unit when it was vacant. They charged a fee for doing so. They also arranged for repairs to be done to the Unit from time to time. They received payment for these services.

b. Ben Laurin was the resident building manager for the Plaintiff at 35-45 Holland Avenue, in the City of Ottawa. Ben Laurin was an employee of the Plaintiff but not of Axia. Mary Laurin was not an employee of either the Plaintiff or Axia.

c. The Defendant stated on discovery that he always dealt with the Laurins together for the rental of the Unit. The Defendant further stated that he did not use the Laurins to rent the Unit after 2012, when he learned that Mary Laurin was trying

to sell the Unit and get a commission. He also stated that he had not spoken to the Laurins since prior to 2012.

d. During the hearing of the motion, the Defendant argued that his answers given on examination for discovery were incorrect, but he provided no corrections to his evidence on discovery as required by the *Rules*.

e. Mary Laurin died in or about June 2012.

f. In response to the motion for summary judgment, the Defendant relies on the affidavit of Rebecca Lum, a person who is assisting the Defendant. Ms. Lum's affidavit states that she attended in Ottawa with the Defendant in or about the fall of 2014 for the purpose of viewing damage to the Unit by the previous tenant. During that visit, she saw Ben Laurin who provided keys to the Unit to the Defendant. Ms. Lum provided no specific dates of her trip to Ottawa, no expense receipts, and nothing to corroborate her memory that the trip happened "in or about the fall of 2014".

g. In her affidavit, Ms. Lum provides a summary of the damages caused by the negligence of the Laurins in the amount of $17,190.00. The one-page document is void of details regarding any specific expenses, who performed the work, and she has no receipts for expenses, purchases, or labour. There is nothing to corroborate that those expenses were incurred in 2014 or that they were incurred at all. There are also no such documents produced as part of the Defendant's Affidavit of Documents.

h. There is no evidence that the Plaintiff was aware that the Laurins were finding tenants for the Defendant other than the Defendant proposing that this should be assumed. The Plaintiff's affidavit evidence for this motion specifically denies any such knowledge or that the Plaintiff permitted Ben Laurin to act as a leasing agent. Further, there is no evidence that the Plaintiff consented to the Laurins acting as their agent for the purpose of assisting condominium owners to find

tenants, or that it was within the scope of authority of Ben Laurin to conduct himself as a leasing agent.

i. The Statement of Defence and Counterclaim were issued on May 27, 2016.

[52] The Defendant seems to rely on his letter dated December 4, 2014, portions of which are reproduced in his Statement of Defence. That letter does not form part of the Defendant's Affidavit of Documents, but was referred to during his examination for discovery. The Defendant agreed that the first time he raised any complaints about the Laurins was in his letter dated December 4, 2014. The Defendant also stated on discovery that, apart from a woman who stayed in the unit for about a year at some point, the Unit had been vacant since 2012.

[53] Although the Defendant has attempted to use his letter of December 2014 to raise an issue as to the timing of damages claimed against the Laurins, I am satisfied that this can easily be dealt with through the fact-finding powers available to the court under r. 20.04(2.1), of the *Rules*. That is, to weigh the evidence presented on this motion, to evaluate the credibility of the Defendant and Ms. Lum, and to draw reasonable inferences. In doing so, I come to the following conclusions:

a. The Defendant was consistent during his examination for discovery that he did not deal with the Laurins after Mary Laurin's death.

b. The evidence provided by Ms. Lum about the damages claimed in the counterclaim lacks the required evidentiary basis to constitute proper damages upon which an award could be made at trial. There is nothing to corroborate that those expenses were incurred and when they were incurred.

c. There is no evidence to corroborate the evidence of Ms. Lum that she and the Defendant met with Ben Laurin in or about the end of 2014 to get the keys to the Unit. The Defendant has failed to establish, with credible evidence, that he continued to have dealings with Ben Laurin until the fall of 2014. I conclude that the Defendant's evidence has failed to fit the counterclaim within the two-year limitation period. This evidence flies in the face of all the testimony provided by

the Defendant during the discoveries as to the role of Mary Laurin in trying to sell the Unit when the Laurins stated that the extent of damage warranted selling it. The evidence of Mary Laurin's role in those events is essential to the Defendant's counterclaim, and this could only have transpired prior to her death in or about June 2012.

d. The Defendant's evidence on discovery lacks the necessary credibility to substantiate the allegations in the Statement of Defence and Counterclaim. The Defendant's evidence on discovery is vague and lacks the precision necessary to make it believable. While the facts transpired either four or six years prior, the absence of reliable and corroborated details makes the Defendant's version of the events impossible to accept.

e. The affidavit of Ms. Lum is equally vague and void of detail to allow for a meaningful assessment of the Defendant's version that the events that form part of the counterclaim.

f. The Defendant has not taken the necessary steps to correct the evidence he gave on discovery that his dealings with Mary Laurin were in or before 2012. This is compounded by the Defendant's failure to take any steps to obtain leave of the court to rely on Answer to Request to Admit, another document that is void of any specific details, other than general denials.

g. The Defendant's evidence filed on this motion for summary judgment is deficient. Even in considering his evidence at discovery at its highest, it fails to attain a basic level of credibility. The jurisprudence is clear that the Defendant cannot rely on the allegations pleaded in the Statement of Defence and Counterclaim.

[54] The court's assessment of the evidence provided in respect of the limitation period issue leads to the unmistakable conclusion that the events claimed in the counterclaim could only have transpired prior to the death of Mary Laurin, being in 2012 or before. Specifically, I reject the evidence of Ms. Lum, that the trip to Ottawa, if there was one in 2014, related to the claim for damages to the Unit allegedly caused by the Laurins. There is therefore no issue requiring a trial

that the counterclaim is statute barred as it was filed after the expiry of the two-year limitation period.

[55] In addition to the limitation period issue, the court concludes that there is no issue requiring a trial as to the existence of an agency relationship between Ben Laurin and the Plaintiff or Axia that would have allowed Ben Laurin to act as their leasing agent. The evidentiary record does not raise any issue that could support a finding that it was within Ben Laurin's scope of authority to act as a leasing agent for the Plaintiff.

[56] The Defendant's evidence on discovery was that the Plaintiff was bound by the actions of the Laurins by the simple fact that Ben Laurin was the resident manager and that everybody knew that he was renting out units for the owners. He attempts to rely on portions of the examination for discovery of the Plaintiff, but that evidence does not establish that Ben Laurin was authorized to act as the Plaintiff's leasing agent.

[57] The essential requirements for an agency relationship are: (1) the consent of both the principle and the agent, (2) authority given to the agent to the agent by the principle, allowing the former to affect the latter's legal position, (3) the principal's control the agent's actions: see *Applewood Place Inc. v. Peel Condominium Corp. No. 516*, [2003] O.T.C. 752 (S.C.), at para. 35.

[58] The Defendant's allegation that Ben Laurin was the agent of the Plaintiff is thus rejected for the following reasons:

a. There is no evidence to support a finding that both Ben Laurin and the Plaintiff consented to Ben Laurin acting as the agent of the Plaintiff. The Defendant's allegation that everybody knew that the Laurins were helping owners rent their units is not sufficient to establish consent or even implied consent;

b. There is no evidence that Ben Laurin's duties as resident building manager included any element of acting as a leasing agent for condominium owners. There is also no evidence of implied authority being given by the Plaintiff to Ben Laurin in relation to leasing units other than the Defendant's bald statements to that effect

that are not corroborated in any way. The Plaintiff's affidavit evidence specifically denies any such agency relationship;

c. There is no evidence that the Plaintiff had any control or role to play in Ben Laurin's actions in assisting owners to lease out their units;

d. The evidence relied upon by the Defendant to support an agency relationship does not lead to a finding that any portion of Ben Laurin's duties as resident building manager included leasing out units for owners. To the contrary, the evidence establishes that Ben Laurin's arrangement with the Defendant was independent from his duties as resident building manager.

[59] Finally, the Defendant tries to rely on the failure of the Plaintiff to have produced the contract between Ben Laurin and the Plaintiff as part of the examinations for discovery. I disagree. The Plaintiff's representative stated on discovery that there was no contract between Ben Laurin and the Plaintiff, although he had acted as resident manager for 29 years. However, the question was still taken under advisement to inquire if there was such a contract. If the contract was so important, the Defendant took no steps under the litigation schedule to move for an Order to compel the answer of the question or seek an adjournment of the motion for summary judgment until all undertakings were answered.

[60] The Plaintiff has therefore established that there is no issue requiring a trial on the existence of an agency relationship between the Laurins and the Plaintiff. As the counterclaim relies on the existence of the agency relationship for the Plaintiff's to be liable to the Defendant for the actions of Ben Laurin, this also warrants the dismissal of the counterclaim.

Conclusion

[61] In the end, it is clear that the Defendant has failed to put his best foot forward in responding to the motions for summary judgment. He failed to respect the litigation timetable set by Master Fortier, he filed incomplete evidence to support his position, he relied on the affidavit of an assistant who has incomplete knowledge of the matters at issue, his own Affidavit of Documents does not contain a single document to support the expenses he claims were

incurred due to the negligence of the Laurins and when they were incurred, he failed to supply any expense receipt to confirm that he travelled to Ottawa in or about the fall of 2014, his answers on discovery were vague and incomplete, and he made little effort to provide a proper recounting of the facts at issue. Finally, at the hearing of the motion, he simply tried to distance himself from the bulk of his evidence at discovery with respect to the alleged events involving Mary Laurin and how they had to have happened prior to her death in 2012.

[62] In the end, I conclude that the Defendant has attempted to tailor his evidence to fit the allegations in the Statement of Defence and Counterclaim.

[63] Consequently, the motions for summary judgment are granted and I make the following orders:

1. An Order that the Defendant deliver vacant possession of the Unit to the Plaintiff;

2. An Order that the Defendant pay to the Plaintiff the sum representing the current arrears of common expenses, interest, and all reasonable legal costs and reasonable expenses incurred, to March 7, 2019 (amount includes the cost of this action, amounts which are outstanding against the Unit, and that all such amounts are added to the common expenses of the Unit and recoverable as such, under the lien registered as Instrument No. OC1556694).

3. An Order that leave to issue a Writ of Possession be granted to the Plaintiff.

4. An Order that the Plaintiff is permitted to take such steps are as necessary in the Plaintiff's discretion, to sell or otherwise dispose of the contents of the Unit and thereafter apply the proceeds, if any, from a sale of any such items that are saleable, to the arrears on the account or to pay the proceeds, if any, into court on a motion in this proceeding.

5. An Order that the costs incurred by the Plaintiff in dealing with the aforementioned contents of the Unit may be added to the common expenses for the Unit and recoverable under the lien.

6. An Order that the Plaintiff may bring any further motions if necessary.

7. An Order that nothing herein shall prevent the Plaintiff from recovering future arrears, interests, and costs, as permitted pursuant to the provisions of the *Condominium Act* and the *Mortgages Act*.

8. An Order dismissing the Defendant's counterclaim in its entirety.

9. I will remain seized of the final disposition of the motion to address the accounting of amounts owing.

Costs

[64] In the event that the parties are unable to agree as to costs, they may make written submissions to me. The Plaintiff will have 30 days from the date of this Endorsement and the Defendants will have 30 days thereafter to respond. Each costs submission shall be no longer than five pages in length, excluding the Costs Outline and attachments. The parties shall comply with r. 4.01 pursuant to the *Rules*.

Justice Marc R. Labrosse

Date: 2019/07/10

CITATION: CCC No. 476 v. Wong, 2019 ONSC 4207
COURT FILE NO.: 15-66864
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ONTARIO

SUPERIOR COURT OF JUSTICE

RE: CARLETON CONDOMINIUM CORPORATION NO. 476, Plaintiff

AND

NEWTON WONG, Defendant

BEFORE: Honourable Justice Marc R. Labrosse

COUNSEL: Cheryll Wood, Counsel for the Plaintiff

Newton Wong, Self-Represented

HEARD: March 7, 2019

ENDORSEMENT

Justice Marc R. Labrosse

Released: 2019/07/10