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Courtland Mews Co-Operative Homes Inc. v. Wood

Courtland Mews Co-Operative Homes Inc., Applicant and Suzette Michelle Wood, Respondent

Ontario Superior Court of Justice

Frank J.

Heard: June 4, 2010

Judgment: June 4, 2010

Docket: Toronto CV-09-00378407-0000

Proceedings: Affirmed, [2011 CarswellOnt 15055](#), [2011 ONSC 7495](#) (Ont. Div. Ct.)

Counsel: C.E. Sinclair, for Applicant

H.M. Evans, for Respondent

Subject: Corporate and Commercial; Property

Business associations.

Cases considered by *Frank J.*:

***McBride v. Comfort Living Housing Co-operative Inc.* ([1992](#)), [22 R.P.R. \(2d\) 126](#), [7 O.R. \(3d\) 394](#), [89 D.L.R. \(4th\) 76](#), [54 O.A.C. 286](#), [1992 CarswellOnt 558](#) (Ont. C.A.) — referred to**

Statutes considered:

***Co-operative Corporations Act*, R.S.O. 1990, c. C. 35**

s. 171. 13 [en. 1992, c. 19, s. 23] — pursuant to

s. 171. 21(1)(a) [en. 1992, c. 19, s. 23] — referred to

***Frank J.*:**

1 Courtland Mews, a non-profit housing co-operative, applies for an order pursuant to s. 171. 13 of the *Co-operative Corp. Act*, RSO 1980 c. C-35 declaring the membership and occupancy rights of the respondent, Ms. Suzette Wood, to be terminated and for a writ of possession.

2 The Background Facts to this application are as follows:

3 In March, 2008 Ms. Wood signed an Occupancy Agreement with Courtland Mews Co-operative pursuant to which she and her two children moved into a three bedroom townhouse at the subsidized monthly rent of \$322. In signing this agreement, Ms. Wood acknowledged that her relationship with the Co-operative was governed by the cooperative's By-Laws, in particular the Occupancy By-Laws as they existed at the time of the signing and as subsequently changed.

4 Ms. Wood's membership rights in the co-operative were terminated effective April 24, 2009. This is following a meeting, called in accordance with the co-operative's By-Laws, at which Ms. Wood's proposed termination was considered. Ms. Woods attended the meeting.

5 The meeting was triggered by events that occurred in the early morning of April 1, 2009. As part of a major police project targeting gangs in the area of the co-operative, the police raided Ms. Wood's unit. This resulted in Ms. Wood and her husband, her children's father, Otis Wood, who was with her at the time of the raid, being arrested.

6 The Board's decision to terminate was based on its conclusion that Ms. Wood was in breach of various provisions of the Occupancy By-Law.

7 Ms. Wood opposed the Board's application on the basis of its decision to evict her being patently unreasonable, or in the alternative, submits that I should exercise my discretion not to grant the order on the basis of its being unfair.

8 Subsidized housing co-operatives are a unique form of housing. Landlord and tenant legislation has no application to them. The relationship between the co-operative's members and the co-operative is based on a concept of co-ownership. The structure of the co-operative is democratic, with each member having one vote, and the members establishing the By-Laws and rules by which the co-operative is to be governed. The members elect a volunteer board of directors to manage the cooperative. In some cases, eviction of a member being one of them, the members may overturn a Board decision at the request of a member.

9 In recognition of their democratic and self governing nature, judges have generally deferred to the eviction decisions made by the Boards of non-profit housing co-operatives. Only in the event that a Board's decision was not made in accordance with the co-operative's own rules, was not procedurally fair or was patently unreasonable should the courts interfere. (See *McBride v. Comfort Living Housing Co-operative Inc.*, [1992] O.J. No. 260 (Ont. C.A.), para 19 and 20.)

10 As set out in the Board's Eviction Decision, it concluded that Ms. Wood was in breach of the following provisions of the Occupancy By-Law:

Residence - 5. 1. The unit can only be used as private residences for members;

Nuisance - 5. 2. Members must not make or allow any act that unreasonably disturbs or interferes with any other members of the community;

Illegal acts - 5. 3. Within their unit or on co-op property members must not commit any illegal act or break any agreement with any government authority. This includes breaking any municipal, provincial or federal law or any By-Law or regulation of any other authority;

Acts of others - 5. 1. Members are responsible for any act of their household or guests. This includes any person they or their household guests invite or allow onto the coop property. Members can be evicted for any such act or failure to act and are responsible for any damages;

Changes in household size - 6. 2 Members must give prompt written notice of a change in the household composition; and finally, Addition to household - 7. 2. Members who wish to add to the household must apply for membership or for Board approval as a long term guest.

11 After listing the provisions it found Ms. Wood to have breached, the Board set out the following under the heading, "Details":

On April 1, 2009 Suzette Michelle Wood's unit was targeted by the anti-gang task force as part of a large gang clean up initiative. She was arrested and charged as a result of this along with Otis Wood who is her husband and was also in the unit. As a result of this situation the other breaches have come to light such as the change in household composition and the unit being used other than as a private residence for the member. There have been concerns from several members in the community in regards to the safety of their family and the community.

12 The question to be determined is not whether a different decision could have been reached but rather whether the Board's decision was patently unreasonable. In my view it was not.

13 Ms. Wood accepts that the events of April 1, 2009 at her unit were a disturbance to her neighbours and were frightening for them. As such, what happened was in breach of the Occupancy By-Law dealing with nuisance. Ms. Wood denies, however, that she was in breach of any other By-Law.

14 These denials must be considered in the context of Ms. Wood having made no denial of the allegations against her at the Board meeting convened to consider her eviction. Ms. Wood attended the meeting with her nephew and her sister, Joan Hinds. Ms. Hinds spoke on her behalf. It is the recollection of Angela Pringle, the co-operative's manager, that Ms. Hinds implied that Ms. Wood acknowledged the accuracy of the information on which the Board believed Ms. Wood to have breached the co-op's By-Laws. Ms. Pringle based this on Ms. Hinds having implored the Board to forgive her sister as everyone makes mistakes and having told the Board that Ms. Wood promised that it would not happen again. Heather Cooper, a member of the Board who was also present at the meeting confirmed that Ms. Hinds did not address the allegations in making her submissions to the Board.

15 Ms. Wood effectively acknowledged that her sister, in speaking on her behalf did not re-

spond to the allegations but disputes that her sister said that Ms. Wood had mistakes in the past. I accept Ms. Pringle's evidence over Ms. Wood's on this point. Ms. Wood demonstrated that her recollection of relevant events was not clear as she conceded several times in response to questions. As well, based on her application for membership to the co-operative, there is reason to believe that Ms. Wood's evidence is influenced by self-interest. In response to the requirement that she provide a letter of reference with her application, she submitted a letter from her sister. This is in spite of it being clearly and boldly set out in the portion of the application dealing with the reference requirement that a family member could not be a reference. Of course, it would not be obvious to the Board in considering her application, that Ms. Hinds was Ms. Wood's family member given their different surnames.

16 Ms. Wood's current denials are not convincing. She claims to have no knowledge of Lisa Parmanand, one of the people arrested in the police operation of which the raid on Ms. Wood's unit was a part. Ms. Parmanand's picture appeared in the press following her arrest. One of the co-operative members, Suzanne Lafayette, recognized the picture immediately as being the woman who she had often seen coming and going from Ms. Wood's unit and who drove by Ms. Lafayette almost every evening for 6 or 7 months, heading towards Ms. Wood's unit. Ms. Lafayette assumed that this woman lived in Ms. Wood's unit. As well, the security records show that one of the cars registered to Ms. Wood's unit during the month of November, 2008 and February and March, 2009 was registered to Tulsiedai Parmanand. Although there is no evidence that this is the same person who was arrested, together with Ms. Lafayette's evidence, this evidence casts serious doubt on Ms. Wood's assertion that Ms. Parmanand was not known to her.

17 I will deal first with the reasonableness of the Board's conclusion that Otis Wood lived in Ms. Wood's unit. The Board relied on the following in reaching its conclusion that Otis Wood was living with Ms. Wood:

1. The information provided to the Board by the police. At trial PC Kerr testified that based on their investigation, the police had concluded that the unit in which Ms. Wood lived was Otis Wood's principal residence.
2. Mail was received at the cooperative addressed to Otis Wood at Ms. Wood's address.
3. A "Credit and Tenancy Report" from the Rent Check Credit Bureau conducted by the Board revealed Otis Wood to have reported his address as being Ms. Wood's.
4. Members of the co-operative reported that they saw Mr. Wood at the co-operative regularly, that they believed him to be living there, and that he identified himself as Ms. Wood's husband and said that he was living with her.

18 The Board's conclusion was reasonable given these facts. As I have said, Ms. Wood did not dispute that Otis Wood was living with her at the eviction meeting.

19 I cannot accept Ms. Wood's evidence at this trial that Otis Wood was not living with her. While there is no doubt that there were times that he did not spend the night at Ms. Wood's unit

, the evidence is overwhelming, in my view, that his connection with Ms. Wood's unit was sufficient to amount to his reasonably being considered as living there.

20 I accept that it was entirely reasonable for the Board to conclude that Ms. Wood was in breach of the Occupancy By-Law by failing to give written notice of Otis Wood living with her and having failed to apply for membership in the co-operative for him.

21 Next is the breach resulting from the illegal activity of others.

22 Ms. Wood denies knowledge of the comings and goings in her unit or of any illegal activity occurring in it. She claims that she was out of her unit all day and so would not know who was there or what they were doing. Assuming this to be so it does not absolve her for the purposes of the By-Law. Ms. Wood agreed, on cross examination, that she knew that the By-Law made her responsible for the acts of her guests and that she could be evicted for their actions. The fact that at another point in her cross-examination she denied that she was responsible for what others did in her unit does not cast doubt on her earlier admission, in my view.

23 That leaves the question of whether there was a basis for concluding that illegal activity was taking place in Ms. Wood's unit. The fact that arrests of people connected to the unit were made is not a sufficient basis for concluding that there had been illegal activity. However, the information from the police that they had seized contraband items from the unit warranted that conclusion.

24 Ms. Wood denied at trial that anything was seized from her unit other than her car. The contraband seizures, unlike the other allegations against her, were not put to Ms. Wood at the eviction meeting. Nonetheless, in my view, it was not unreasonable for the Board to rely on what it had been told by the police regarding the seizures. Ms. Wood's current denial is relevant only to the issue of fairness with which I will deal later in these reasons.

25 Next is the By-Law with respect to the use of the unit.

26 The paragraph of the Occupancy By-Law making Ms. Wood responsible for the acts of her household or guests is relevant to the Board's conclusion that Ms. Wood was in breach of the By-Law that required her unit to be used only as a private residence for her and her children. Whether or not Ms. Wood was aware of it, the evidence is overwhelming that the use of her unit was not limited to being her and her children's residence. In addition to the evidence with respect to Lisa. Parmanand's use of the unit, there is the evidence of the co-operative maintenance worker that there were always people in the unit whenever he was there to carry out repairs, the evidence that a total of eight different licence plates were registered with the co-operative's parking service as belonging to Ms. Wood's unit, and the evidence of other individuals having lived at the address or using it as their mailing address.

27 I find that the Board's conclusion that Ms. Wood was in breach of the Occupancy By-Law as a result of the use of her unit not being limited to what was required by the By-Law to have been reasonable.

28 While the Board's decision to evict Ms. Wood might not have been justified on the basis

of any one of these breaches individually, the decision to evict is clearly not patently unreasonable considering all of the breaches together.

29 Counsel for Ms. Wood submits that, in spite of the Board's decision not being patently unreasonable, it would be unfair for the eviction order to be granted. He relies on Ms. Wood's evidence that she had no knowledge of any criminal activity taking place in her unit, that she was not responsible for the raid on her unit and the resulting nuisance, and that her failure to give notice of Otis Wood's living with her is not sufficient to warrant eviction.

30 In assessing whether there is unfairness sufficient to warrant my refusing to grant this application, fairness to the co-operative is a relevant consideration. In my view, any unfairness to Ms. Wood is outweighed by the unfairness to the co-operative resulting from her being permitted to remain a member and resident.

31 In reaching this conclusion, I am mindful of the fact that Ms. Wood chose not to appeal the Board's decision to the co-operative membership though she knew she was entitled to do so. She should have taken the step of appealing the decision if it was her intention to object to the eviction. I infer from her failure to take the step of appealing that Ms. Wood believed that the membership would support the Board's decision to evict her. Ms. Wood herself acknowledged that living in a cooperative was different from private housing in that the members of the co-operative work together to make the co-operative what it is and "have a lot of input in making decisions for the cooperative." I am quoting from Ms. Wood's application for membership in the co-operative.

32 It is inconsistent with the fundamental nature of a co-operative, as recognized by Ms. Wood, for its members to have forced on them the continued membership of someone reasonably found to be in breach of the rules established by the co-operative and binding on all of its members.

33 Members of the co-operative reported to the Board that as a result of the police raid and the arrests at Ms. Wood's unit they no longer felt safe in the co-operative. Some reported that they were stressed and concerned and some reported that they were extremely fearful of Ms. Wood and her husband. The incident has resulted in some members having moved out of the co-operative and other considering to do so. The Board is concerned that such incidents might result in the co-operative having difficulty attracting new members. None of this evidence was challenged.

34 The evidence of the impact of the raid on the members and the concerns of the members brought to the attention of the Board together with the Board's concerns regarding the ability of the co-operative to attract new members should Ms. Wood's membership continue, convince me of the enormous unfairness to the co-operative of requiring them to continue the membership of someone they wish to and are entitled to exclude.

35 In my view, this is not an appropriate case in which to exercise my discretion under s. 171. 21(1)(a) of the *Co-operative Corporations Act*.

36 Accordingly this application is granted.

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