CITATION: 580 Christie v. Halik, 2024 ONSC 1213
COURT FILE NO.: CV 23 00700949
DATE: 20240227

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
580 Christie Street Co-Ownership Inc	)	Jake Fine, for the Applicant
	)	
Applicant	)	
– and –	)	
	)	
Miha Halik	)	In person
Respondent	)	
	)	
	)	
	)	
	)	
	)	
	)	**HEARD:** February 23, 2024

PAPAGEORGIOU J.

The Issue

[1] The main issue for consideration is whether any further steps should be taken to determine whether the Respondent requires a litigation guardian. This issue was raised by the Respondent at his second appearance before me where he provided me with a letter from his physician regarding his mental health and the difficulty he had representing himself in this matter as a result. With both the Applicant's and the Respondent's consent, I ordered a capacity assessment. The Respondent has subsequently withdrawn his consent.

Decision

[2] For the reasons that follow, I am vacating the order that the Respondent attend for a capacity assessment. I see no basis for me to require this assessment without his consent, and no basis for me to conclude that he is a party under a disability within the meaning of r. 7 and the caselaw decided pursuant to it.

Discussion

[3] The Applicant is a corporation which manages a residential building located at 580 Christie on behalf of a group of owners who each own a separate and undivided percentage interest as tenants in common in the Property (the "Corporation").

[4] The Respondent is a self-represented litigant.

[5] There is a significant history which involves another Application as well as several motions brought by the Corporation, damage awards and costs orders made against the Respondent.

[6] The prior issues have related to the Respondent's failure to allow the Corporation to fix a leak, conduct fire safety investigations, permit it to address infestation in the Respondent's unit and his alleged hoarding.

[7] There have been approximately 13 attendances before various judges in respect of these issues.

[8] The Respondent currently owes over $85,000 in respect of damage awards and costs orders.

[9] In this Application, the Corporation seeks an Order permitting it to sell the Respondent's Co-ownership interest and requiring him to vacate his unit.

[10] This Application was issued on June 12, 2023.

[11] It had been scheduled to proceed on an urgent basis at a Civil Practice Court hearing on July 4, 2023. It was originally returnable before me on July 26, 2023.

[12] I adjourned the initial hearing date because the Respondent advised that he had not attended Civil Practice Court when the Application was scheduled because he had trouble connecting via the zoom link. By the time he did, the hearing had been scheduled. He advised that he had not had sufficient time to prepare responding materials.

[13] I provided direction in my endorsement to accommodate the Respondent including permitting him to file responding affidavit material and provide oral evidence, if necessary.

[14] Thereafter the Respondent attended before me on August 11, 2023, and provided a letter from his physician Dr. Ju Eun Lee, which stated that he was a patient of physicians who practice in the Department of Geriatric Psychiatry. It indicated that he suffered from serious psychiatric conditions including adjustment disorder with mixed anxiety and depressed mood, and Generalized Anxiety Disorder, with panic attacks. He also has unspecified Trauma and stressor related symptoms. It further indicated that he struggles with the current court issue and has demonstrated inability to care for and advocate for himself as a result of the mental illness. This affects his ability to function, understand and appreciate various circumstances.

[15] At that time, the Respondent advised that he was unable to represent himself because of his mental circumstances. He also advised that he did not have anyone who could act as a litigation

guardian. He was willing to undergo a capacity assessment. If it was determined that he was a party under disability, I could appoint the Public Guardian and Trustee as his litigation guardian. The Respondent was agreeable to proceeding with a capacity assessment for this purpose.

[16] Thus, I directed that a certified capacity assessor conduct an assessment.

[17] This was unsuccessful as the Respondent could not pay for one. The PGT became involved and advised that this is a hole in the legislation which does not fund assessments for the purposes of establishing whether a party is under a disability under r. 7.

[18] Then as per the PGT's recommendation, I considered whether I could consider the matter myself based on medical records, my observations and transcripts of prior attendances. However, at the return date, the Respondent's medical records were not forthcoming. He said that he had attempted to obtain them, but his physician did not give them to him.

[19] Then, the Respondent indicated that his physician could provide an assessment. However, his physician then indicated that the Respondent had withdrawn his consent for such assessment.

[20] Then, the Applicant agreed to pay for the assessment, and I established a process for each side to make recommendations as to an assessor, after which I would select one. The Respondent raised offensive objections to the Applicant's suggested assessor.

[21] Then, on February 23, 2024, the Respondent attended in court and advised that he withdrew his consent to a capacity assessment altogether. He said:

> "I understand this proceeding from the beginning. I know what's going on."
>
> "I have no issues with, how can I put it, understanding or not understanding…what's going on. They want to confiscate my—my home."

[22] As set out in *623681 Ontario Limited et al. v. Kagan*, 2013 ONSC 4114 at para 21:

> …someone will be considered a person under a disability if he or she is not able to understand information that is relevant to making a decision in the management of his or her property *in respect of an issue in the proceeding*, or if the person is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision *in respect of an issue in the proceeding*.

[23] There is a difference between being unable to understand relevant information or consequences and failing to understand them: *623681* at para 24.

[24] As also set out in *623681* at para 22, courts should exercise caution when concluding that a party cannot make decisions about his own litigation. Medical evidence is typically required, but the Court can also take into account its own impressions. As also set out in *623681*, an Order to obtain an assessment is "the rare exception and not the rule":

> Moreover, such an order is discretionary and should not be granted lightly or without good reason. Due consideration should be given to the autonomy of the individual, having regard to the intrusive nature of a mental examination: para 40.

[25] Given that the Respondent no longer takes the position that he lacks capacity, I see no basis for me to compel him to undergo an assessment. The Applicant also brings no independent motion on its own.

[26] I add that, at each appearance since the Respondent first raised this issue, he has attended and spoken in a competent and logical manner about the issues in this proceeding and any next steps. He has always been well aware of the issues before me at each attendance and the consequences of any decisions he makes in relation to them.

[27] When I made the original order that a capacity assessment be conducted at his express request, he immediately knew to attend at the PGT and seek their assistance with obtaining an assessment. Then, he made his own efforts to find an assessor.

[28] When his physician did not provide his medical records and advised that the Respondent had withdrawn his consent, the Respondent knew enough to obtain a subpoena which he had issued to require his physician to attend in court although he had been unable to locate his physician. The important thing is that he figured out, on his own, that he needed his medical records and/or opinion from his physician and figured out how to subpoena him.

[29] When we embarked on the process of selecting an assessor, he participated in the discussion on how this should be approached. After some limited information from me, he easily understood how to find a list of possible assessors and then was able to contact them on his own.

[30] At the final return date of February 23, 2024, I spoke to him at length. He understood the issues in the lawsuit. He understood the nature of this proceeding which was to obtain an order to permit the Applicant to sell his unit. He understood what had happened in the past. He understood the potential consequences of continuing to oppose this matter, which include the Applicant being successful, an order that the Applicant sell his unit, as well as cost consequences if the Applicant is successful.

[31] Although he has sought to re-argue the motions which resulted in the costs orders against him, when I explained to him that this was not an appeal court and that I could not look behind these orders, he understood quite well.

[32] It is not that the Respondent cannot distinguish between relevant and irrelevant issues; it is that he does want to. That is, without having successfully appealed the prior decisions, he still wants to refer to them. He even grudgingly acknowledged that I could not look behind any previous orders.

[33] He does not appear to have any mistaken belief about the law or court procedures.

[34] Despite the letter from his physician which started this process of considering whether there was a basis to appoint a litigation guardian, what I have seen is an intelligent and competent man, who understands court procedures, speaks coherently, and who understands that he must provide evidence. He has represented himself well before me.

[35] While he expresses disappointed in the law he does understand it. His main complaint is that he is a self-represented litigant and his feeling that the system is unfair because of that. He points out that while the Applicant obtains large costs orders against him, because he is self-represented, the only costs he would be entitled to, if successful, are much lower. This argument also demonstrates that he is able to advocate for himself.

[36] He has even commenced his own lawsuit against the Applicant related to damages they caused him when they addressed the infestation at his unit. He said that this caused him both physical and psychological injuries and also asserted that the property manager assaulted him. He argued before me that his lawsuit should be joined to the Application which I rejected. This also demonstrates a level of sophistication with the litigation process, not an inability to understand it.

[37] Because of the Respondent having given me a letter from his physician at the outset, which raised his capacity, I felt compelled to take the matter seriously. It is important that individuals who lack the required capacity with respect to an issue in the litigation have a litigation guardian.

[38] However, what this process has shown me, is that the Respondent is an astute man who understands litigation procedure and the matter before me as well as the consequences of any choices or decisions he makes in relation to it.

[39] The order that the Respondent attend for a capacity assessment is vacated. I see no basis for any finding that the Respondent is a party under a disability who requires a litigation guardian.

[40] Since his main complaint is that the schedule was too short for him to prepare fulsome responding materials, I am giving him leave to file one additional ten-page affidavit within twenty days, after which the Applicant may also do so within ten days thereafter.

[41] The Application is scheduled for April 29, 2024, for two hours before me.

Papageorgiou J.

Released: February 27, 2024

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Applicant

– and –

Miha Halik

Respondent

REASONS FOR JUDGMENT

Papageorgiou J.

Released: February 27, 2024