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Michael Bazilinsky and his wife Margarita Bazilinsky at their Toronto condo

Michelle Siu for The Globe and Mail

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The condo board, the lawsuit and the \$40,000 parrot

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The parrot, it seems, had something to say and wanted to be heard – even into the condominium corridor. Other residents complained. That's when Ontario's Condominium Act came into play, and that's when the parrot's keepers were left speechless.

Last week, a couple that violated the “no pets” policy of their midtown condo building had a punitive legal fee largely thrown out, but not before going through a 11/2 year process during which they were threatened with having to pay more than \$40,000 to cover the condo corporation's legal costs.

In the end, they are left with legal bills of their own, a comparatively modest \$1,500 owed to the condo board, and a keen appreciation for how condo boards enjoy unique powers to recover full legal costs any time a unit owner disputes bylaw enforcement.

Michael Bazilinsky has lived at 30 Holly St., near Yonge and Eglinton, since 1989. He says in late 2010 he briefly took care of a friend's parrot, but only had it for about two weeks. He claims to not even remember the parrot's name, or what it talked about. The condo board declined comment for this article, but court documents show the board believed the parrot was in the unit well into 2011. The board took Mr. Bazilinsky and his wife to court last August.

Mr. Bazilinsky says he thought the "no pets" policy was for dogs and cats. He first tried to make a joke out of the dispute, writing a sarcastic letter asking if it would be all right if he had a goldfish. The answer was no.

"I didn't ask about pet rocks," says Mr. Bazilinsky.

He then had a personal trainer, a real-estate agent and an electrician sign affidavits affirming the feather-free status of his unit. Mr. Bazilinsky says the condo board inspected his unit last January and found nothing, but then accused the Bazilinskys of sneaking the parrot out of the apartment in a blanketed box the day of the inspection. Mr. Bazilinsky maintains the box, which was caught on surveillance cameras, was not being muffled for noise.

"My wife is a sommelier," says Mr. Bazilinsky. "She puts on wine tastings. We need to keep wine the right temperature."

Last August, Mr. Bazilinsky consented to a court order to get rid of the bird (the one he claimed had flown the coop months earlier) and to pay \$3,000 in court costs to his condo board.

After consenting, Mr. Bazilinsky learned the condo board was putting a lien on his unit to recover "actual additional costs" the condo board said it incurred while trying to evict the parrot. The total expenses the condo board ultimately sought from the Bazilinskys were \$41,599.

A judge rejected that amount last week, telling the Bazilinskys they had to pay only \$6,500 of the condo board's legal fees, less \$5,000 in court costs awarded to the Bazilinskys for winning the recent motion.

"We argued the fees were excessive, and the court agreed with us," says the Bazilinskys' lawyer, John De Vellis of Shibley Righton LLP.

But as lawyers familiar with Ontario's Condominium Act point out, had the fees not been deemed excessive, the Bazilinskys could have ended up paying not only all of their own legal fees, but those of the condo board also.

Jonathan Fine is condominium lawyer and senior partner of Fine and Deo in Vaughan. He explains that when individuals or corporations enter into litigation, the losing party usually has to pay between one-half and two-thirds of the winner's legal bills. These are called court costs and are also awarded in cases where condominium corporations win a decision.

Where condominium law goes further, however, is that the statute allows successful condo boards to unilaterally claim additional costs, including remaining legal fees, management fees, surveillance costs, etc., and apply those costs to a unit's common expense account, backing it up with a lien on the offending owner's

unit.

“This power is an exceptional and extraordinary right, and one that is not enjoyed by business corporations or individuals,” says Mr. Fine.

Though Mr. Fine is supportive of the statute, he points out that consequences can be severe for condo owners who decide to fight compliance applications.

“The costs of losing are a gigantic red flag to unit owners. You’d better make sure you are going to win, because there is a substantial risk,” says Mr. Fine.

Mr. Bazilinsky now fully understands that risk. “People are very vulnerable,” he says. “They went after me with a vengeance. I just wanted them to go away.”

Lorne Shapiro, a commercial real-estate lawyer with Toronto firm Basman Smith LLP, contends that the “additional cost” statute, which gained legal weight in 2005, gives condominium corporations a defence against frivolous lawsuits from unit owners.

“Previously, the law was toothless, and there were abuses. So I think it works. If one owner is going to put the rest of the condo community to an economic disadvantage through legal costs, why shouldn’t the board be able to recoup those costs? Before this, it was tough to run a condo corporation properly.”

Of course, Mr. Shapiro points out, the new act also lays out a process of mediation to resolve disputes before legal fees start to tick upward.

In her decision, Justice Nancy Backhouse notes that both parties claim the other party waived opportunities for mediation.

A lesson, perhaps, in what happens when most of the talking is done by a bird.

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