CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 12, 2021
CASE: 2020-00371N
Citation: Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 1

Order under section 1.44 of the *Condominium Act, 1998.*

Member: Michael H. Clifton, Vice-Chair

The Applicant,
Aqib Rahman
Self-Represented

The Respondent,
Peel Standard Condominium Corporation No. 779
Represented by Victor Yee, Counsel

MOTION DECISION

[1] The Applicant in this case seeks an order relating to his eligibility to use an accessible parking space within the Respondent's common elements, which the Respondent has denied based upon provisions in its declaration or rules. This motion is brought by the Respondent to dismiss the Applicant's case on certain grounds. After considering the submissions made by both parties, I have determined that the grounds cited by the Respondent are not sufficient to favour dismissal and that the hearing of this case will proceed. The following are my reasons.

Motion for Dismissal

[2] The Respondent's motion is based on clauses (b) and (c) of Rule 17.1 of the Tribunal's Rules of Practice, which provide as follows:

> *17.1 The CAT can dismiss a Case at any time in certain situations, including:*
>
> *…*
>
> *(b) Where a Case is about issues that the CAT has no legal power to hear or decide;*

(c) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications);

…

[3] The Respondent submits under Rule 17.1(b) that the Tribunal has no legal power to hear or decide the case since it relates to section 117 of the Condominium Act, 1998 (the "Act"). Although clause (i) of section 1(1)(d) of Ontario Regulation 179/17 grants the Tribunal jurisdiction to address (among other things) *"a dispute with respect to… [p]rovisions [of the declaration, by-laws or rules of a corporation] that prohibit, restrict or otherwise govern the parking,"* which is the central issue in this case, section 1(3) of the same regulation restricts that jurisdiction where the dispute *"is also with respect to section 117 of the Act."*

[4] Under Rule 17.1(c), the Respondent submits that this case is vexatious or an abuse of process by the Applicant, based on the Applicant's alleged prior conduct and as the Applicant has additionally commenced, or threatened to commence, a variety of other legal proceedings arising out of the same circumstances.

Re: Rule 17.1(b) – Does the Tribunal have legal power to hear and decide this case despite the restriction set out in section 1(3) of Ontario Regulation 179/17?

[5] As noted above, section 1(3) of Ontario Regulation 179/17 restricts the Tribunal's jurisdiction under section 1(1)(d) of that Regulation, where the dispute in question *"is also with respect to section 117 of the Act."* Section 117 of the Act provides,

> *No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.*

[6] The Respondent submits that there are two ways in which the dispute in this case *"is also with respect to section 117 of the Act."* First, the Respondent submits that the Applicant's conduct in relation to this case constitutes harassment of the Respondent's board and management, and notes the Applicant has also accused the Respondent of harassing him. Second, the Respondent identifies that the Applicant himself has characterized the case as being about risk to his personal safety.

[7] Regarding the application of section 1(3) of Ontario Regulation 179/17, the Respondent suggests that the phrase, *"is also with respect to section 117 of the Act,"* must be interpreted very broadly, citing two leading decisions of the Supreme Court of Canada, Nowegijick v. The Queen, 1983 CanLII 18 (SCC), [1983] 1 SCR 29 ("Nowegijick") and in *CanadianOxy Chemicals Ltd. v. Canada (Attorney*

General), 1999 CanLII 680 (SCC), [1999] 1 SCR 743 (“CanadianOxy”), in which the court provides direction regarding the interpretation of certain statutory phrases.

[8] In Nowegijick, Dickson J., on behalf of the court, states,

> *The words "in respect or'* [sic] *are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.*

In CanadianOxy, the court adopts the same reasoning to interpret the phrase *“with respect to”*.

[9] I agree with the Respondent that, based on the analysis and direction of the court in those decisions, it is appropriate to give section 1(3) of Ontario Regulation 179/17 a broad interpretation. However, even the *“widest possible scope”* is not unlimited, and I do not agree with the Respondent’s position that this case falls within that scope in order to be excluded from the Tribunal’s jurisdiction.

[10] Based on the application of the reasoning in CanadianOxy, particularly in paragraph 15 of that case, it appears that the phrase *“with respect to,”* should be taken most particularly to mean something along the lines of *“relevant or rationally connected to.”* The term *“relevance”* implies a close connection. Adopting the principles of its most common use in Canadian law – regarding evidence – something is relevant if, based on logic and experience, it is apparent that it could affect or influence the determination of a matter. *“Rational connection”* is also a phrase commonly used in Canadian law that is understood to mean a connection that is logically or practically necessary, not arbitrary or nonsensical, and, in some decisions, it is also required to be appropriate or fair.

[11] Applying this reasoning to section 1(3) of Ontario Regulation 179/17, I conclude that it should not be considered sufficient merely to assert that risks of or concerns about damage or injury are circumstantially or incidentally connected with a case. Rather, a dispute in a case before this Tribunal should be viewed as *“also with respect to section 117 of the Act,”* where the considerations under that section cannot reasonably or easily be divorced from analysis of the dispute in question or, more particularly, where a correct determination of the central issues in dispute cannot be made without also addressing such considerations. In this case, the Respondent has not shown that there is any such connection or relevance.

[12] Regarding the Respondent's submissions relating to the parties' respective allegations of harassment against the other, I do not disagree that such allegations in and of themselves could fall within the ambit of section 117 of the Act. However, based on the reasoning above, this would not be sufficient to qualify as grounds for dismissal of a case before this Tribunal under section 1(1)(d) of Ontario Regulation 179/17. As noted earlier, the central issue or dispute in this case is the claim for, and the Respondent's denial of, the Applicant's eligibility for use of an accessible common elements parking space under the Respondent's declaration and rules. While the allegations of harassment do relate to conduct that has arisen out of that dispute, the connection is not a relevant or rational one in regard to the determination of that dispute; indeed, it is apparent that the dispute can be decided without any consideration of such allegations or conduct, and the parties are encouraged to ensure their further submissions in this case are not complicated by reference to them.

[13] In applying the principles set out above, I am also conscious of the fact that, in a number of cases that have come before the Tribunal, one or more of the parties has felt or alleged feeling significant agitation or harassment on account of the actions or arguments of another party. The feeling is often a mutual one, as in this case. If I were to agree with the Respondent that existence of such circumstances alone, without any relevant or rational connection to the central issues of the case, qualify the case for dismissal, this would not only mean applying a broader interpretation than appears to be required by the Supreme Court cases cited above, it could also encourage or permit responding parties to advance such allegations solely for the purpose of avoiding applications that are otherwise legitimately within the Tribunal's jurisdiction. This could easily become a significant impediment to the access to and efficient application of justice that this Tribunal is intended to deliver.

[14] The Respondent's second claim under this heading is that the Applicant himself has connected the case to section 117 by indicating in his submissions concern for his safety if he is not entitled to make use of an accessible parking space in the Respondent's common elements. I note that the Applicant's statements in this regard constitute a minimal, and, in one instance, merely incidental, part of his submissions. I further note that the Applicant is not represented by legal counsel in this case. I expect that, if he was, he might not have expressed his concern for personal safety in a way that has allowed the Respondent to suggest this connection. In any event, I find that, applying the reasoning set out above and considering the whole of the Applicant's submissions, such statements do not require me to conclude that this case *"is also with respect to section 117 of the*

Act." While I believe the Applicant's concern for his safety is genuine, neither the Applicant nor the Respondent has argued that a determination of the issue of eligibility for accessible parking is dependent upon or requires an assessment of that alleged risk.

[15] I find, as a general principle, that the mere mention of concern about safety (or damage or any other circumstance that might fall within the ambit of section 117 of the Act) does not necessarily represent a relevant or rational connection that takes the case outside of the Tribunal's jurisdiction. I also find that there is no such connection in this case. I believe it would be inappropriate and unfair to rely on such incidental statements to deny the Applicant the right to have the Tribunal hear and consider the actual and substantive bases on which he believes his claim for eligibility rests.

Re: Rule 17.1(c) – Has the application been brought for an improper purpose?

[16] The Respondent submits that this case is both vexatious and an abuse of process and should be dismissed as having been brought for an improper purpose. The Respondent's primary evidence in this regard is that the Applicant has commenced or threatened to commence multiple proceedings against the Respondent, including a case in the Ontario Superior Court of Justice (the "OSCJ Proceedings"), a complaint to the Human Rights Tribunal of Ontario (the "HRTO Claim"), and a complaint against the Respondent's legal counsel to the Law Society of Ontario (LSO). The Applicant has also threatened to bring criminal charges against the Respondent's legal counsel and/or its management or board.

[17] A multiplicity of proceedings on the same matter can constitute an abuse of process, which is usually characterized as an unjustified or unreasonable use of legal proceedings or processes to further a cause of action. It is without question that the Applicant appears very upset about the Respondent's denial of his entitlement to use a common elements accessible parking space and conduct surrounding that issue, and that the Applicant appears inclined to grasp at what must appear to him to be every possible option for expressing and resolving his concerns. In that regard, the Respondent states in its submissions,

> *The courts of Ontario have held* [that] *the fragmentation of litigation should be avoided, and a multiplicity of proceedings is an inefficient use of public resources.*

However, while these statements are accurate expressions of general principles or concerns, they do not necessitate a finding that this case constitutes an abuse of process or has been brought for an improper purpose.

[18] I have been provided with only a copy of the Respondent's Statement of Defence and Counterclaim in the OSCJ Proceedings. Based on them, it is evident that, while the issue of the Applicant's eligibility for accessible parking is included in that case, the range of issues to be considered there is significantly wider in scope. Those issues include the parties' respective claims of harassment and matters relating to lien enforcement. It is fundamental to the Respondent's position in this motion that such matters are appropriately dealt with in the OSCJ Proceedings, and not at the Tribunal, and I agree. On the other hand, this Tribunal is especially suited to render an effective determination regarding the question of eligibility for accessible parking that I have identified as the central issue in dispute in this case and for which section 1.42(1) of the Act provides that the Tribunal has an exclusive jurisdiction. It appears, therefore, entirely appropriate that this dispute be heard in this forum. Furthermore, it is probable that, given the usual backlog of the courts and its exacerbation due to the COVID-19 pandemic, proceeding with this hearing will allow for a more efficient handling of that issue, which will not harm the progress of the OSCJ Proceedings and may even serve to simplify and expedite them.

[19] The Respondent's legal counsel also suggested that regardless of whether this Tribunal has jurisdiction to deal with this case, the Applicant should prefer to have the dispute addressed as part of the OSCJ Proceedings, since the Tribunal does not have authority to enforce its own orders. The Respondent wrote,

> *Moreover, even if the CAT makes an order here regarding the parking spaces, Mr. Rahman must still go to the Superior Court to enforce same if the Respondent for some reason decides not to comply with said CAT Order. The Superior Court has greater powers to enforce its own court orders, whereas the CAT does not and must rely on the Superior Court for enforcement instead.*

This argument suggests that, on principle, potential applicants to the Tribunal should, where possible, choose instead to rely on the more costly processes of the Superior Court, on the assumption that the respondent – in most cases to date, a condominium corporation – may refuse to comply with the Tribunal's orders. Let alone the cynicism this argument seems to express regarding the good faith of respondent parties, it also seems to ignore the fact that the Tribunal was created primarily for the purposes of promoting and encouraging fair, timely and efficient resolution of condominium-related disputes. If I were to give any credence to the Respondent's position in this regard, I believe it would undermine such purposes and represent an unfortunate step backward for the resolution of condominium-related disputes.

[20] Regarding the Applicant's HRTO Claim, since the decision of the Supreme Court of Canada in Tranchemontagne v. Ontario (Director, Disability Support Program), [2006] 1 S.C.R. 513, 2006 SCC 14, it is understood that the HRTO does not have exclusive jurisdiction over the interpretation and application of the Ontario Human Rights Code (the "Code"). A tribunal has authority to apply the Code where issues of human rights properly arise within the context of a case before it. Therefore, it is the HRTO, not this Tribunal, that might have reason for dismissing the complaint before it, if it is found that the Applicant's issues under the Code are fully addressed here. Further, it is possible that the range of remedies that can be ordered by this Tribunal under the Code are more limited than what is available through the HRTO, and the Applicant may be fully justified in pursuing a claim there while the extent to which his claims under the Code will be addressed in these proceedings remains uncertain.

[21] As for the possible complaint to the LSO and threatened criminal proceedings, the submissions of the parties make it evident that these are wholly separate matters from this case, even if based on the conduct of individuals in relation to the dispute that is central to it. They do not support a finding that this case is an abuse of process.

[22] The Respondent also submits that the conduct of the Applicant during Stage 2 of the Tribunal's proceedings indicates an abuse of process. Since the material evidence needed to substantiate these allegations is confidential and unable to be disclosed, I cannot consider or address them. I am confident that if either party's conduct during Stage 3 reaches the threshold of constituting an abuse of process, this can be dealt with during these proceedings.

[23] I am also not persuaded that the Applicant's case is justifiably described as vexatious. A vexatious application would include one that is brought (1) without sufficient or appropriate grounds or likelihood of success and (2) primarily for the purpose of aggravating the responding party. In its submissions for this motion, despite stating that the Applicant's claim regarding eligibility for accessible parking is "unmeritorious," the Respondent has not demonstrated that the Applicant has no hope of success or that he lacks adequate and appropriate grounds for this case. Further, while I understand that the Respondent feels aggravated by the existence of this case as well as the other proceedings the Applicant has brought, for the reasons noted above I find no support for the suggestion that this application is therefore brought for an improper purpose.

Conclusion

[24] For the reasons stated above, the Respondent's motion is dismissed. The hearing shall proceed as hereafter scheduled. I do not award any costs to either party in relation to this motion.

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Michael H. Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: January 12, 2021