

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 16, 2021

CASE: 2020-00371N

Citation: Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 13

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

Member: Laurie Sanford, Member

The Applicant,

Aqib Rahman

Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 779

Represented by Victor Yee, Counsel

Hearing: Written Online Hearing – December 17, 2020 to January 29, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] This hearing began before Vice-Chair Michael Clifton. On January 19, 2021, Vice-Chair Clifton recused himself and I was assigned to adjudicate the hearing. The parties did not request that the hearing be started again. The hearing was in writing and no witnesses were called. Submissions had not yet been made and I had an opportunity to ask the parties questions. In light of all these factors, I decided to continue the hearing rather than re-start it.
- [2] Mr. Aqib Rahman is an owner of a condominium unit and two designated parking spaces in Peel Condominium Corporation No. 779 (“PSCC779”). Mr. Rahman submits that he does not use the parking spaces he owns because a disability impedes his ability to access his condominium unit from them. Instead, he uses an outdoor parking space in what he believes is an area reserved for accessible parking. Mr. Rahman is not claiming an accommodation for his disability. Rather, Mr. Rahman submits that the Declaration of PSCC779 entitles him to use the accessible parking because of that disability. Mr. Rahman provided a copy of an

Accessible Parking Permit parking sticker issued by the Province of Ontario. He also provided a letter from his doctor which discusses Mr. Rahman's injuries.

- [3] PSCC779 contests the jurisdiction of the CAT to hear this matter. The issue of the CAT's jurisdiction in this case was decided earlier in these proceedings and it is not appropriate to decide the matter again. The motion decision was that the CAT does have the jurisdiction to hear this case.
- [4] Alternatively, PSCC779 takes the position that Mr. Rahman is in violation of the PSCC779 Declaration because he is parking in the parking area designated for visitors only. In the further alternative, PSCC779 submits that Mr. Rahman is in violation of the PSCC779 Declaration in parking in what the Declaration refers to as "handicap parking" because he has not provided sufficient evidence of a disability to support his use of an outdoor parking space.
- [5] For the reasons set out below, I find that Mr. Rahman is parking in the "handicap" or accessible, parking spaces and that he meets the requirements that PSCC779 has set in its Declaration and in its parking signage to allow him to park there. Given that there has been no violation of PSCC779's Declaration by Mr. Rahman in this case, it follows that no claim for compensation of PSCC779's costs, including legal costs, for an attempt to enforce the Declaration may be pursued against Mr. Rahman. I will direct PSCC779 to stop any enforcement actions against Mr. Rahman for costs that relate to this matter.
- [6] There were mutual claims of harassment. The harassment claimed by PSCC779 arises in the context of their jurisdictional motion and has been dealt with there. Mr. Rahman submits that PSCC779 has been harassing him about his use of the accessible parking space. Both parties cited numerous examples of PSCC779's actions. For the reasons set out below, I find that PSCC779's aggressive actions in the circumstances of this matter do constitute harassment. PSCC779's actions are also not in compliance with either PSCC779's Declaration or the Act. I will award Mr. Rahman \$200 for his costs of this action and a further \$1,500 under section 1.44(1) 3 of the *Condominium Act, 1998* (the "Act").

B. ISSUES & ANALYSIS

- [7] The issues in this case may be summarised as follows:
1. What is the jurisdiction of the CAT in this matter?
 2. Where is Mr. Rahman parking?

3. Is Mr. Rahman entitled to use the accessible parking spaces reserved by PSCC779?
4. Is PSCC779 entitled to claim indemnification for the costs of enforcing compliance of its Declaration against Mr. Rahman?
5. Is Mr. Rahman entitled to costs or damages in this matter and, if so, in what amount?

Issue 1 – What is the jurisdiction of the CAT in this matter?

- [8] PSCC779 challenges the jurisdiction of the CAT to hear this matter. However, earlier in these proceedings, PSCC779 brought a motion to dismiss Mr. Rahman’s application on the grounds that the CAT lacked the jurisdiction to hear it. That motion was denied in the decision, *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 1 (CanLII), <<https://canlii.ca/t/jclpt>>. PSCC779 advanced the same or substantially similar grounds in its current submissions. PSCC779 has provided no persuasive reason to re-litigate this issue.
- [9] The CAT’s jurisdiction arises under Ontario Regulation 179/17 (the “Regulation”) to the Act and under subsection 1.44 of the Act. Subparagraph 1(1)(d)(iii) of the Regulation gives the CAT jurisdiction over disputes with respect to provisions of the declaration, by-laws or rules of a condominium that “prohibit, restrict or otherwise govern the parking”, including parking on common elements, such as the outdoor parking space at PSCC779. Subparagraph 1(1)(d)(iv) of the Regulation gives the CAT jurisdiction to hear disputes about the provisions of the Declaration of PSCC779 “that govern the indemnification or compensation of the corporation regarding a dispute described in this clause.”
- [10] Subsection 1.44 of the Act sets out the orders which the CAT may make and includes, in subparagraph 1.44(1)2, “An order prohibiting a party to the proceeding from taking a particular action or requiring a party to a proceeding to take a particular action.” Subparagraph 1.44(1)3 permits damages “as a result of an act of non-compliance”. Subparagraph 1.44(1)4 permits the award of costs.
- [11] I conclude that the CAT has the jurisdiction both to hear this matter and to issue the Order set out below.

Issue 2 – Where is Mr. Rahman parking?

- [12] There is confusion between the parties and within PSCC779 itself as to where Mr. Rahman is parking. Specifically, is Mr. Rahman parking in the “Visitors Parking” section of the outdoor parking or in what PSCC779 refers to as the “Handicap

Parking” area of the outdoor parking? I will use the more current expression “accessible parking” in this decision except when referring to the wording in PSCC779’s Declaration and correspondence. The distinction is important because the Declaration of PSCC779 deals with the two types of parking differently.

[13] Article 4.2 of the PSCC779 Declaration is headed “Visitors and Handicap Parking”. It provides as follows:

- a) Those parts of the Common Elements designated as visitors parking by the Declarant shall be for use only by visitors to the Condominium. These parking spaces may not be leased or sold to any Owner or otherwise assigned. The parking spaces shall be maintained by the Corporation, and shall be used by visitors for the parking of their motor vehicles and shall not be used by Owners or for any other purpose whatsoever. The designated parking space shall be identified as visitors parking by means of clearly visible signs. . . .
- b) Those parts of the Common Elements designated as handicap parking by the Declarant shall be for use only by Owners or visitors to the Condominium requiring handicap parking. These parking spaces may be leased or otherwise assigned but not sold by any Owner. The parking spaces shall be maintained by the Corporation, and shall be used by Owners or visitors for the parking of their motor vehicles and shall not be used for any other purpose whatsoever. The designated parking space shall be identified as handicap parking by means of clearly visible signs.

[14] Mr. Rahman submits that the signage is confusing and it is not clear which are the parking spaces for visitors and which are for those with disabilities. He submitted several photographs, one of which I attach as Schedule “A” to this decision. The photograph shows three designated accessible parking spaces. These are labelled in two ways. First, the universal symbol of accessible parking, a stick figure in a wheelchair, is on the pavement of the parking space. At the head of each parking space, there is a sign. At the top of the sign, there is a no parking symbol. Below it is the universal accessible parking symbol. Below that is written “By Permit Only”. Behind the parking, there is a sidewalk and behind that again there is a sign with arrows pointing in both directions. Most of the sign is illegible in the photograph but that part which can be read is, “Visitor Parking Only.” It is in this area that Mr. Rahman parks and I conclude that Mr. Rahman intends to park in the accessible parking area, which he believes he is justified in doing because he claims a disability and has an Accessible Parking Permit.

[15] Curiously, PSCC779 is also confused about whether the accessible parking spaces are part of the visitor parking or not and, if not, where the boundary is between them. PSCC779, wrote, on page 2 of its submissions, “It is our

understanding that the Handicap Parking spaces are located with the Visitors Parking in the Parking Lot, pursuant to the Visitors Parking signage erected by the Declarant.” Subsequently, on page 3, PSCC779 wrote, “In the alternative, if the Handicap Parking spaces are not located within the Visitors Parking in the Parking Lot but rather part of the aboveground [sic] Parking Lot, then the Applicant has failed to comply with Article 4.2(b) of the Respondent’s Declaration.”

[16] The Declaration sets out two distinct provisions for visitors and handicap parking. Visitors parking is for visitors only whereas handicap parking is for owners or visitors who require handicap parking. If handicap parking were the same as visitor parking, the effect would be to deny owners of the condominium the ability to use outdoor accessible parking. PSCC779 has not submitted that any part of its indoor parking qualifies as accessible parking under any statutory definition. Therefore, the only accessible parking available to owners is the outdoor parking. To conflate the accessible parking with the visitors parking would deny owners of the condominium any accessible parking.

[17] PSCC779 is located within the City of Mississauga. Mr. Rahman put in evidence “The Corporation of the City of Mississauga Accessibility Parking By-Law 10-16” (the “Mississauga Parking By-Law”) passed by the City on January 20, 2016 under the authority of section 102 of the *Municipal Act, 2001*, S.O. 2001, c. 25. Subsection 5(1) of the Mississauga Parking By-Law states that, “Every owner or operator of a Public Parking Area shall provide Accessible Parking Spaces in conformity with the provisions of this By-Law for the use of vehicles with permits.” Permits are defined as Accessible Parking Permits issued by the Province. A “Public Parking Area” is defined as any open area, and other specified places, “intended for the temporary parking of vehicles and on which there are Accessible Parking Spaces . . . “

[18] The Mississauga Parking By-Law sets out the specifications for Accessible Parking Spaces and the spaces in the photograph in Schedule “A” appear to meet these criteria. PSCC779 argues that the Mississauga Parking By-Law is not dispositive of this matter because the City authorities, while declining to take action against Mr. Rahman, have not ruled out PSCC779 taking action on its own. In fact, an email of July 24, 2020 from the City of Mississauga to PSCC779 says, in part:

The spirit of accessibility legislation related to parking including the *Accessibility for Ontarians with Disabilities Act* is to provide persons with disabilities access to designated parking spaces. Without explicit legislative authority that authorizes a property owner to place conditions on the use of accessible spaces (such as visitor’s parking only), the City cannot enforce subsection 41(2) of the Traffic By-Law in this regard.

Despite the City's position on this matter, this does not prevent property owners from resolving this type of manner, privately with the resident

Far from authorizing PSCC779 to enforce conditions on the use of this space, such as visitor's parking only, the City's position is that it cannot enforce such provisions and it would be up to the parties to reach a private resolution.

- [19] There is nothing in the Declaration of PSCC779 that says the accessible parking must be restricted to visitors. In fact, the plain wording of Article 4.2(b) is that handicap parking is available to both visitors and owners. To give effect to the Declaration and considering PSCC779's confusion, I find that the specific wording of the three designated accessible parking signs should take precedence over the more general, and more distant, "Visitor Parking Only" sign. For the purposes of this decision, I conclude that Mr. Rahman is parking in a handicap parking space as opposed to a visitor's parking space.

Issue 3 - Is Mr. Rahman entitled to use the accessible parking spaces reserved by PSCC779?

- [20] PSCC779 made extensive submissions about the law relating to those claiming an accommodation due to a disability under the *Human Rights Code*. The problem with these submissions is that Mr. Rahman is not claiming an accommodation; he is asserting an entitlement. There is a difference. Mr. Rahman is not asking PSCC779 to set aside an accessible parking space for his exclusive use. He is not asking PSCC779 to guarantee him an accessible parking space. He submits that the accessible parking spaces are available on a "first come, first served" basis. I conclude from this that Mr. Rahman understands that if all three spaces are occupied by other qualified users, then Mr. Rahman will have to make alternative arrangements. As it is, Mr. Rahman says that he is usually the only user of these spaces.

- [21] The question is whether Mr. Rahman is entitled to use the handicap parking under the provisions of PSCC779's Declaration. The Declaration refers to use of handicap parking by owners who require handicap parking. It does not define what would constitute a requirement for this parking but it does refer to that parking as being identified by clearly visible signs. The clearly visible sign at the head of each designated accessible parking space states, "Permit Required". The specification of a permit under the universal symbol for accessible parking would be understood by a reasonable person as meaning an Accessible Parking Permit is required by those using any of these spaces. This interpretation is consistent with the Mississauga Parking By-Law which also provides that accessible parking is available to those with an Accessible Parking Permit. Mr. Rahman has an

Accessible Parking Permit issued by the Province of Ontario and valid for a five-year term, from August 22, 2017 to June 19, 2022. Mr. Rahman submits that he displays that permit in his vehicle.

- [22] Accessible Parking Permits are governed by the *Highway Traffic Act*, RRO 1990, Regulation 581 (“HTA Regulation”). To qualify for a permit, the HTA Regulation requires the certification of a prescribed disability by a regulated health practitioner. Under subsection 5(1)(a) a five-year term of the permit, as Mr. Rahman’s is, signifies that the disability is permanent.
- [23] PSCC779 submits that the HTA does not apply in these circumstances because the HTA deals with public not private roads. The HTA Regulation noted above sets out the qualifying criteria to obtain an Accessible Parking Permit but the use of such a permit is governed separately. The Mississauga Parking By-Law specifies that an Accessible Parking Permit is required to use accessible parking places. This is consistent with the *Municipal Act, 2001*, S.O. 2001 c.25. Subsection 102(1) of the *Municipal Act, 2001* states, “If a municipality passes a by-law for establishing a system of accessible parking, the sole manner of identifying vehicles shall be an accessible parking permit issued and displayed in accordance with the *Highway Traffic Act* and the regulations made under it.” Finally, PSCC779 has itself adopted the Accessible Parking Permit as the qualification for use of its accessible parking places by the signage it has chosen.
- [24] PSCC779 argued that the onus was on Mr. Rahman to demonstrate that he had a disability that would qualify him to use the designated accessible parking places. I find that Mr. Rahman has met the qualifying criteria to use the handicap parking at PSCC779 because he has and is displaying the Accessible Parking Permit as required by the signage and as set out in the Mississauga Parking By-Law.
- [25] PSCC779 also submitted that Mr. Rahman’s Accessible Parking Permit was not sufficient to permit him to use the visitor’s parking. This argument appears to depend on the assumption that Mr. Rahman is seeking an accommodation and that he wishes to have access to the visitor’s parking. As discussed above, I find neither of those assumptions to be the case.
- [26] PSCC779 also argues that its interpretation of Article 4.2(b) of the Declaration is “that a unit owner is required to, in accordance with human rights law . . . , demonstrate a disability-related need to use the Handicap Parking spaces in the aboveground [sic] Parking Lot”. It is PSCC779’s position that so long as the interpretation is not unreasonable, the Tribunal should not interfere. In this case, the question is not the reasonableness of PSCC779’s interpretation of its Declaration but the reasonableness of its application of Article 4.2(b) in these

circumstances. The Accessible Parking Permit that Mr. Rahman has is the demonstration of a disability-related need to use the Handicap Parking spaces that PSCC779 is seeking.

[27] PSCC779 disputed Mr. Rahman's disability and submitted several pictures of him in the lobby and in the elevator. From the angle of these photographs, they were taken from at or near the ceiling and may be assumed to be security camera footage. The photographs show Mr. Rahman carrying groceries, a box and, in one photograph, a barbell either in the lobby or in the elevator. As a probative matter, the photographs provide no context and no medical opinion about what they signify was introduced. Mr. Rahman's doctor provided a letter that referred to fractures to Mr. Rahman's back, wrist and ankle due to a fall from a roof some years ago. Mr. Rahman's doctor notes that Mr. Rahman has a "disability parking permit" and has "chronic pain and reduced function". PSCC779 has produced no persuasive evidence to over-ride the doctor's letter or to demonstrate that the Accessible Parking Permit is invalid.

[28] PSCC779 submits that it would be willing to permit Mr. Rahman to stop in the accessible parking spaces to unload but they object to him using the parking spaces overnight. This is obviously inconsistent with the position of PSCC779 that Mr. Rahman does not qualify to use the accessible parking at all. There is nothing in the Declaration that specifies that there is no overnight parking in the accessible parking spaces and there appears to be no rule in force that restricts such parking to daylight hours. I find that Mr. Rahman is in compliance with Article 4.2 of PSCC779's Declaration in his use of the handicap, or accessible, parking spaces.

Issue 4 – Is PSCC779 entitled to claim the costs of enforcing compliance with its Declaration against Mr. Rahman?

[29] PSCC779 cites three indemnification clauses in their Declaration as authority for charging Mr. Rahman for its costs of enforcing compliance with the parking provision of its Declaration. The most relevant of these indemnification clauses is contained in Article 6.1 of PSCC779's Declaration. It reads:

All costs, charges and expenses including solicitors' costs, *on* the basis of costs between a solicitor and the solicitor's own client, incurred by the Corporation in enforcing its rights against an owner, arising from the Act, the Declaration, the By-Laws, the Rules or otherwise, including the costs of bringing an application under Section 134 of the Act, shall be payable by the Owner to the Corporation. All monies, interests and costs payable by an Owner to the Corporation may be collected as additional Common Expense payments and shall be recoverable as such.

In this case, there is no basis for these charges. PSCC779 may not claim costs for enforcing its rights against Mr. Rahman when there are no rights which Mr. Rahman is encroaching upon in his use of the accessible parking spaces.

[30] PSCC779 did not quantify the indemnification costs, charges or expenses in this hearing and made no claim for them in its submissions. Rather, PSCC779 appeared to take the position that it did not need to claim these costs. As I understand PSCC779's position, the mere assertion of the costs of compliance, including legal costs, is sufficient to shift the onus to Mr. Rahman to demonstrate that the costs are not recoverable. It is fortunate that this is not the law of Ontario. Condominium corporations cannot simply assert a claim against an owner to succeed. Mr. Rahman objects to the indemnification charges on the grounds that PSCC779's case is without merit. I find that Mr. Rahman has complied with Article 4.2 of the Declaration. It follows that there can be no claim for indemnification for the costs of enforcing compliance with this Article of the Declaration that are recoverable against Mr. Rahman.

[31] Acting on the authority of subparagraph 1.44(1)2 of the Act, I will direct that PSCC779 cease its attempts to enforce its costs of compliance with Article 4.2 of its Declaration against Mr. Rahman. As will be discussed below, this includes PSCC779's attempts to enforce these claims against Mr. Rahman by registering a lien on his condominium unit and issuing a Notice of Sale.

Issue 5 – Is Mr. Rahman entitled to costs or damages and, if so, in what amount?

[32] Mr. Rahman, as the successful party, is entitled to be reimbursed for his costs of bringing this application to the CAT in the amount of his filing costs. These are \$200.

[33] There were mutual claims of harassment by the parties. The harassment claims made by PSCC779 were made in the context of the jurisdictional motion referred to above. Those claims were addressed in that motion. PSCC779 is not claiming any recompense for its claims of harassment.

[34] Mr. Rahman also claims that he has been harassed in the matter of his use of the Accessible Parking spaces. Both parties detailed the actions taken by PSCC779 in this matter. Mr. Rahman purchased his unit in PSCC779 on April 14, 2020 and began using the accessible parking spaces. PSCC779 issued its first enforcement letter on June 2, 2020. In that letter, PSCC779 asked for medical documentation to support his claim for "permanent parking" in the accessible parking space. The letter also deals with allegations of harassment against Mr. Rahman and allegations that Mr. Rahman is refusing to pay his common expenses. The letter

ends with the claim of \$694.16 for the legal costs of producing the letter. It should be noted that while Mr. Rahman may or may not have initially requested permanent parking, and PSCC779 has produced no persuasive evidence of that, Mr. Rahman in this hearing acknowledges that the parking is available on a first-come, first-served basis.

- [35] PSCC779 issued its second enforcement letter on June 19, 2020. This letter raises new grounds of harassment against Mr. Rahman, including writing two emails 2 minutes apart to PSCC779 board members in violation of the “Communication Policy” of PSCC779. The condominium corporation repeats its position that Mr. Rahman has not provided sufficient medical evidence to support a human rights accommodation to a handicap parking space. PSCC779 claims a chargeback of \$1,833.99 for “Legal Costs of Enforcement” to that date. The claim is made in a one-line statement with no details provided.
- [36] On June 23, 2020, PSCC779 issued a third enforcement letter. This letter responded to emails from Mr. Rahman. In this letter, PSCC779 took the position that the accessible parking spaces were for visitors only. The letter concludes by advising Mr. Rahman that, “because of your further harassment of the Corporation’s Building Manager, you are responsible for indemnifying the Corporation for its increased legal costs in this enforcement matter against you” The letter attaches an updated legal bill, with a one-line charge of \$2,522.16 for undetailed legal costs.
- [37] On October 2, 2020, PSCC779 sent a “follow-up” to its third enforcement letter. The letter refers to alleged violations of PSCC779’s Communication Policy and alleged harassment by Mr. Rahman as well as to his continued use of the accessible parking spaces. This letter offered Mr. Rahman the opportunity to lease a space in the handicap parking for, by way of example, \$100 per month if Mr. Rahman would provide “sufficient medical documentation”. The letter concluded by stating that the “payout statement” included in the June 23rd letter was no longer valid and that if Mr. Rahman wished to pay off the chargeback, he should contact PSCC779’s legal counsel for an updated account. The letter refers to the outstanding chargeback as being added to “your Unit’s arrears”. It is not clear from this reference if PSCC779 was adding its claims for legal costs of enforcing compliance to Mr. Rahman’s common expenses but that is the implication.
- [38] On October 8, 2020, Mr. Rahman’s doctor provided a letter, as discussed above. The letter ends,

Mr. Rahman Has a disability parking permit and has spoken to me on a number of occasions regarding harassment by his condo management which he has told me is

causing stress and anxiety in his life. Any action to reduce this stress would obviously benefit Mr. Rahman's overall Health. IF you require any further information please do not hesitate to contact our office.

PSCC779 submitted that they did not find the letter sufficient support for Mr. Rahman's request and wrote to the doctor for more specific information. They did not receive a reply, which they assume was on Mr. Rahman's instructions.

- [39] During the month of October, there were a number of email exchanges between the parties, during some of which Mr. Rahman threatened to report PSCC779's counsel to the Law Society of Ontario, a threat for which Mr. Rahman subsequently apologised.
- [40] On October 14, 2020, PSCC779 served Mr. Rahman with a Notice of Lien in the amount of \$6,982.70. On October 26, 2020, PSCC779 emailed Mr. Rahman and advised Mr. Rahman that it was on that date registering a Certificate of Lien on Mr. Rahman's condominium unit. The email continues, "Please be advised that PSCC779's costs of our continued involvement in this enforcement matter against you is [sic] being charged back to your Unit's common expenses – including the legal costs of having to defend and/or counterclaim against the Action in the Brampton Superior Court which you apparently electronically-issued [sic] this morning." PSCC779 submitted that, pursuant to its Declaration, it was charging Mr. Rahman interest at 18% per annum, compounded monthly, on its cost claims.
- [41] There are a series of letters in November and December advising Mr. Rahman that the amount secured by the lien was increasing. On December 31, 2020, a Notice of Sale was registered by PSCC779 against Mr. Rahman's condominium for an amount of \$13,839.68, which was expected to increase by February 1, 2021 to \$15,162.51. PSCC779 advised that if payment in full was not received by February 19, 2021, PSCC779 would proceed to sell Mr. Rahman's condominium.
- [42] Mr. Rahman had earlier protested that PSCC779 could not add its legal costs in this matter to his common expenses without a court order. Mr. Rahman cited subsection 134(5) of the Act, which reads:
- If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit.
- [43] In response, PSCC779 cited the case of *Amlani v. York Condominium Corporation No. 473*, 2020 ONSC 194, a decision of the Superior Court of Ontario. PSCC779

takes the position that this case authorises them, with properly constructed indemnification clauses in its Declaration, to add its costs of enforcing compliance with its Declaration to Mr. Rahman's common expenses without seeking a court order. The importance of this interpretation is that common expenses may be the subject of a lien and that lien may be enforced through the sale of, in this case, Mr. Rahman's condominium unit.

- [44] The *Amlani* case deals with the interpretation of an indemnification clause and the operation of section 134 of the Act. However, the case does not stand for the proposition that, through deft wording of an indemnification clause, a condominium corporation can deprive an owner of his or her day in court as provided for in subsection 134(5) of the Act. In fact, the Court says, at paragraph 34,

It is one thing to allow the corporation to enforce, by way of lien, common expenses that are applicable to all unit holders and that a majority of unitholders have approved. It is entirely another to allow a condominium corporation the unfettered, unilateral right to impose whatever costs it wants on a unitholder, refer to them as common expenses and thereby acquire the right to sell the unitholder's apartment.

- [45] Another way of considering the matter is to determine if PSCC779's interpretation of its indemnification clauses is reasonable. Here again, reference may be had to the *Amlani* case, where the Court wrote, at paragraph 46:

Finally, the interpretation the Corporation advances contravenes [section 134 \(5\)](#) of the [Act](#) because the costs it claims related to compliance and enforcement costs without being embodied in a court order. An interpretation that contravenes a statutory provision is, by definition, unreasonable

- [46] From the outset PSCC779 took an aggressive posture in enforcing compliance despite the fact that it would have been clear to a reasonable person that Mr. Rahman had, at the minimum, a prima facie case for his use of the accessible parking space. PSCC779's position became increasingly aggressive. It added its legal costs in enforcing the Declaration, together with associated interest charges, to Mr. Rahman's common expenses. Despite Mr. Rahman, correctly, advising PSCC779 that it could not add these costs to his common expenses without a court order as required under subsection 134(5) of the Act, PSCC779 persisted. It not only added those costs to Mr. Rahman's common expenses but attempted to collect its legal costs and interest by way of lien and notice of sale. It proceeded despite hearing from Mr. Rahman's doctor that its treatment of him was causing him stress and anxiety.

- [47] PSCC779 has not quantified the costs it is claiming related to its enforcement of compliance of Article 4.2 of its Declaration against Mr. Rahman. It is impossible to

determine what part of the lien registered against Mr. Rahman's property or the Notice of Sale relates to claims of indemnity of enforcement costs concerning Mr. Rahman's use of the accessible parking. Despite being specifically invited to set out its costs in this hearing, PSCC779 declined to do so. As discussed above, it apparently takes the position that it is sufficient to assert a claim in order to force Mr. Rahman to defend against it. PSCC779 is doing exactly what the Court in the *Amlani* case warned against, that is, PSCC779 claims, "the unfettered, unilateral right to impose whatever costs it wants on a unitholder, refer to them as common expenses and thereby acquire the right to sell the unitholder's apartment."

- [48] At some point in pursuing this matter, PSCC779 tipped over from aggressively pursuing its claims to harassing one of its condominium unit owners. PSCC779 persistently ignored Mr. Rahman's claims, brushed off his references to the Act and the Mississauga Parking By-Law. Most egregiously, despite the letter from Mr. Rahman's doctor testifying to the stress it was causing, PSCC779 registered a lien on Mr. Rahman's condominium units and is now moving to enforce the lien by selling Mr. Rahman's home. It is important to underscore that both the lien and the Notice of Sale are being pursued in contravention of subsection 134(5) of the Act, which requires a court order before enforcement costs can be added to Mr. Rahman's common expenses.
- [49] What is to be done about this? The first step is to have PSCC779 provide Mr. Rahman with a complete accounting of what costs it has claimed for enforcement of Article 4.2 of its Declaration against Mr. Rahman. It is important that Mr. Rahman understand what part of the lien against his property and the Notice of Sale relates to this matter and what part he will have to seek a remedy for in another forum.
- [50] Second, PSCC779 must stop any enforcement actions it is currently taking that relate to costs it claims in enforcing Article 4.2 of its Declaration against Mr. Rahman. Included in these actions are the registration of a lien against Mr. Rahman's condominium units and the Notice of Sale served by PSCC779 against him.
- [51] I will direct PSCC779 to pay Mr. Rahman's costs in this matter in the amount of \$200 under subparagraph 1.44(1) 4 of the Act.
- [52] Subparagraph 1.44(1) 3 of the Act gives the CAT the discretion to award compensation for damages that result from "an act of non-compliance". The question of what constitutes an act of non-compliance will depend on the context of the case. This case is a dispute over the interpretation of PSCC779's Declaration and over its efforts to collect indemnification for the costs of enforcing

its Declaration under the Act. Therefore, I conclude that, before I may award damages under this provision, I must determine if there has been an act of non-compliance with the Act or with PSCC779's Declaration. I find that there has been non-compliance with both. PSCC779 is acting in violation of Article 4.2 of its Declaration in attempting to deny Mr. Rahman access to the accessible parking spaces it provides under Article 4.2(b). PSCC779 is also acting in contravention of Subsection 134(5) of the Act in adding its claim for indemnification, including a claim for legal costs, to Mr. Rahman's common expenses without a court order.

[53] It is appropriate that PSCC779 recompense Mr. Rahman for some of the time, trouble and expense it has caused him due to its acts of non-compliance. Mr. Rahman submits that PSCC779, acting under some colour of right, has issued several parking tickets to him and that he has had the time and trouble of going to the City of Mississauga to have these tickets cancelled. More importantly, Mr. Rahman submits that he has had to seek bi-weekly counselling for the stress that this matter has caused him. Mr. Rahman says that his doctor prescribed this counselling and this is consistent with the stress and anxiety reported by his doctor in the letter referred to above. I find that the amount of \$1,500 is fair recompense in the circumstances of this case and I will direct PSCC779 to pay Mr. Rahman this amount.

C. CONCLUSION

[54] Mr. Rahman is entitled to use the accessible, or handicap, outdoor parking at PSCC779 under Article 4.2(b) of the condominium corporation's Declaration. PSCC779 has been attempting to enforce compliance of Article 4.2 of its Declaration when Mr. Rahman has been in compliance with this Article from the beginning. In its increasingly aggressive pursuit of Mr. Rahman, PSCC779 has engaged in harassment and has caused Mr. Rahman understandable stress and anxiety. Now, PSCC779 is moving to sell Mr. Rahman's home despite not having a court order adding its legal costs to Mr. Rahman's common expenses. PSCC779 must stop any enforcement actions that relate to costs it claims in enforcing Article 4.2 of its Declaration against Mr. Rahman. It must also pay Mr. Rahman some recompense for the damages it has caused him.

D. ORDER

[55] The Tribunal finds that:

1. Mr. Rahman is entitled to use the accessible, or handicap, outdoor parking at PSCC779 under Article 4.2(b) of PSCC779's Declaration, and

2. PSCC779's claims for the costs of enforcing compliance with Article 4.2 of its Declaration against Mr. Rahman are invalid.

[56] The Tribunal orders that:

1. Within 14 days of the date of this Order, PSCC779 will provide Mr. Rahman with a complete accounting of the costs it is claiming as indemnity for its costs of enforcing Article 4.2 against Mr. Rahman (the "Indemnification Costs"). Included in these costs are legal costs and any interest claimed.
2. PSCC779 will immediately stop any actions it is taking to enforce collection of the Indemnification Costs. Included in these actions are the continued registration of a lien against Mr. Rahman's condominium unit and the continued Notice of Sale against the property to the extent that they relate to the Indemnification Costs.
3. PSCC779 will pay the following to Mr. Rahman within 30 days of the date of this Order:
 - a. The amount of \$200 for Mr. Rahman's costs in this matter under subparagraph 1.44(4) of the Act;
 - b. The amount of \$1,500 under subparagraph 1.44(1)3 of the Act; and
 - c. To ensure that Mr. Rahman does not pay any portion of the amount awarded in this paragraph, Mr. Rahman shall be given a credit towards the common expenses attributable to his unit equivalent to the proportionate share of the amounts awarded.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: February 16, 2021

E. SCHEDULE "A"

