

Pursuant to the [order of the OSCJ on June 2, 2021](#), this decision is set aside and the application is remitted to the CAT for determination of the remaining issues, other than the limitation period.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 4, 2021

CASE: 2020-00340N

Citation: Kong v. Toronto Standard Condominium Corporation No. 1959, 2021 ONCAT 18

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

Member: Laurie Sanford, Member

The Applicant,

Merg Kong
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1959
Represented by Bradley Chaplick, Counsel

The Intervenor,

Toronto Standard Condominium Corporation No. 1862
Represented by Evan Holt, Counsel

Hearing: Written Online Hearing – December 29, 2020 to February 18, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] Ms. Merg Kong is a condominium owner in Toronto Standard Condominium Corporation No. 1959 (“TSCC1959”). TSCC1959 shares a common visitor’s parking area with Toronto Standard Condominium Corporation 1862 (“TSCC1862”). Ms. Kong wants TSCC1959 or TSCC1862 or both (collectively, the “Condo Corporations”) to permit her to use the visitor’s parking area and, equally importantly, to charge her electric vehicle in one of the L1, or 120-volt, wall outlets

that are currently installed in the space. What she would prefer would be to have the Condo Corporations upgrade to a 240-volt Electric Vehicle Charging Station (“EVCS”) in the visitor parking area and permit her to use that. She requests that the Tribunal (the “CAT”) order these arrangements on one or more of several grounds.

- [2] The Condo Corporations have refused Ms. Kong’s request to use the visitor parking area and deny that they are obliged to install an EVCS there. Instead, they have offered Ms. Kong the option of installing an EVCS, at her expense, in her parking space.
- [3] At the outset of this hearing, I raised preliminary questions about the jurisdiction of the CAT to hear Ms. Kong’s application and to give her all or any of the remedies she seeks. The parties agreed that the CAT has the jurisdiction to hear the matter of Ms. Kong using the visitor parking under the Condo Corporations’ Declarations. The parties made submissions about the extent of the CAT’s jurisdiction to deal with other aspects of Ms. Kong’s application. In the course of making these submissions, TSCC1862 brought a motion to dismiss this application because the time during which it could be brought expired before Ms. Kong applied to the CAT on October 16, 2020. TSCC1959 supports this motion.
- [4] For the reasons set out below, I grant the motion to dismiss this application because the time during which the application could be brought against the Condo Corporations under the Act has expired. In view of this dismissal, it is not necessary to decide the questions of the CAT’s jurisdiction.

B. ISSUES & ANALYSIS

- [5] Ms. Kong applies to the CAT to direct the Condo Corporations to permit her to have access to the visitor parking, including the L1 electric wall outlets, or to install an EVCS in the visitor parking and permit her to access it there. She bases her claims on one or more of the following grounds:
 - 1. That the Condo Corporations are, either under their Declarations or under the Act, obliged to permit her to use the Visitor parking and the associated L1 Electric Outlet;
 - 2. That the Condo Corporations are, either under their Declarations or under the Act, obliged to install an EVCS;
 - 3. That she is entitled to an accommodation under the Human Rights Code, R.S.O. 1990 c. H. 19 that would permit her to either access the visitor parking and use the existing L1 wall outlets or oblige the Condo Corporations to install an EVCS in the visitor parking area and grant her access to that;

4. That the Condo Corporations are obliged, under *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, S.O. 2005, c. 11 (“AODA”) to install an EVCS in the visitor parking space.

[6] The issues in the preliminary motions may be summarised as follows:

1. Is Ms. Kong’s application statute-barred against TSCC1959, TSCC1862 or both?
2. Does the CAT have the jurisdiction to determine if TSCC1959, TSCC1862 or both are obliged under their respective Declarations, By-Laws or Rules to install a 240-volt EVCS in the visitor parking area?
3. Does the CAT have the jurisdiction to grant Ms. Kong the remedies she seeks?
 - i. Under Act or the regulations to it?
 - ii. Under the *Human Rights Code*? or
 - iii. Under the *AODA*?

Issue 1: Is Ms. Kong’s application statute-barred against TSCC1959, TSCC1862 or both?

[7] TSCC1862 brought a motion to dismiss Ms. Kong’s application because the time limit to bring the application has expired. TSCC1959 supports this motion.

Subsections 1.36 (6) and (7) of the Act deal with the time limit for bringing applications and state:

(6) Subject to any other provision of this Act, an application must be made within two years after the dispute to which the application relates arose.

(7) If a person does not make an application within the deadline mentioned in subsection (6), the Tribunal may extend the deadline for a time of no more than one additional year if the Tribunal is satisfied that the delay in not applying was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[8] The parties appear to be in agreement about the relevant chronology of events. The Condo Corporations communicated with Ms. Kong through their shared facilities committee. In May 2016, Ms. Kong requested that a specific visitor’s parking space be marked off for her use. Ms. Kong noted, apparently incorrectly, that the Condo Corporations had EVCSs installed as an amenity for residents and visitors and took the position that there should not be any roadblocks to her use of

these. In response, in a letter dated June 7, 2016, the Condo Corporations denied Ms. Kong permission to use the visitor parking. The Condo Corporations denied Ms. Kong's request to upgrade the parking area to include an EVCS but requested further information by letter dated December 22, 2016.

- [9] What TSCC1862 calls a "temporary policy" of the Condo Corporations permitted Ms. Kong to use the visitor parking spaces until February 28, 2017. It is not disputed that an ordinary L1 electrical outlet may be used to charge an electric vehicle. There is some evidence that Ms. Kong was using this type of outlet in the visitor parking to charge her vehicle prior to March 1, 2017. It is the position of the Condo Corporations that Ms. Kong has been denied access to, or use of, the visitor parking since March 1, 2017. Ms. Kong was notified orally on February 28, 2017 that no residents would be permitted to use the visitor parking from March 1, 2017. This position was confirmed in a February 28th email by counsel for TSCC1959, apparently acting for the shared facility committee.
- [10] Ms. Kong points to the *Limitations Act*, S.O. 2002 c.24, Sched B. Section 4 of the *Limitations Act* sets out the basic limitation period as being two years after "the day on which the claim was discovered". Section 5 sets out the date on which a claim is discovered as being the earlier of the day on which a person with a claim first knew, either of the injury, or that an act or omission was "that of the person against whom the claim is made".
- [11] It is the Act, not the *Limitations Act*, which governs this matter. While the *Limitations Act* dates an action from the date on which the claim was discovered, the Act speaks of the date on which the dispute arose. Applying section 1.36 (6) of the Act to the facts in this case, the dispute over Ms. Kong's access to the visitor parking arose on March 1, 2017 when she was denied permission to use the visitor parking area.
- [12] Ms. Kong submits that the dispute between her and the Condo Corporations arose on March 25, 2020 when she saw an electric car being charged from an L1 electrical outlet in the visitor parking, with a parking pass. This was after she had been told on that day that no one had access to the outlet in the visitor parking. In her submission, it was on March 25, 2020 that she learned of a possible breach of the Act, the *Human Rights Code* and the *AODA*. There is no evidence that Ms. Kong made a written request to use the visitor parking after seeing the car charging in that space.
- [13] Ms. Kong also submits that March 25, 2020 was the first day on which she was denied a "disability accommodation to use the L1 outlets in visitor parking during COVID 19." Ms. Kong claims a disability that makes avoiding exposure to COVID-

19 a priority. The doctor's note that she submitted as evidence of a disability speaks of mobility restrictions and an elevated sensitivity to pain due to a degenerative disc disease and other back-related conditions. The Condo Corporations dispute Ms. Kong's claim to a disability that may be COVID-related. They note that in her application to the CAT she refers to a disability entitling her to use both the visitor parking and an EVCS that pre-dates the outbreak of COVID-19 in 2020.

[14] For Ms. Kong's argument that the dispute arose in March, 2020 to succeed, she would have to demonstrate that this was a dispute that was different enough from the one which arose on March 1, 2017 to constitute a fresh matter. Otherwise, simply repeating a request would be sufficient to revive a dispute, which would render section 1.36 (6) meaningless. The question is, has Ms. Kong demonstrated that there was a fresh dispute that arose in March, 2020? I conclude that she has not. It might be unfair that the owner of another electric vehicle had a parking pass and was permitted to charge the car while she was denied that access. However, Ms. Kong has produced no evidence that this was as a result of a change in the Declaration, By-Law or Rules of the Condominium Corporations that would support a conclusion that this was a fresh dispute. Although March 2020 might have been the first time during the COVID-19 pandemic that Ms. Kong was denied access to the visitor parking, that is a change in external circumstances, not the basis of a new dispute. The Condo Corporations merely reiterated their position that residents were denied the use of the visitor parking area. Even assuming the CAT had the jurisdiction to hear a disability-related claim for an accommodation, Ms. Kong has produced no evidence that the pandemic has either changed her disability or raised new concerns about it that would support the conclusion that a different dispute arose in March, 2020.

[15] I find that the dispute between Ms. Kong and the Condo Corporations over her use of the visitor parking and the electric outlets in that parking area arose on March 1, 2017. Even if the provisions of subsection 1.36 (7) of Act were to apply, Ms. Kong's application would be statute barred three years after March 1, 2017, that is on February 28, 2020. I will direct that Ms. Kong's application be dismissed.

[16] I make no ruling as to whether Ms. Kong's claim for an accommodation due to a disability might be statute-barred under other legislation.

[17] The decision to dismiss this matter makes it unnecessary to decide the jurisdictional issues set out above.

C. CONCLUSION

[18] Ms. Kong's application is dismissed on the grounds that it is statute-barred.

[19] There was no request for costs and no costs order will issue.

D. ORDER

[20] Ms. Kong's application to the CAT is dismissed on the grounds that the time during which the application could be brought under the Act has expired.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: March 4, 2021