

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 10, 2021

CASE: 2020-00339N

Citation: Roberts v. Halton Standard Condominium Corporation No. 617 and Yamine, 2021 ONCAT 21

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

Member: Patricia McQuaid, Member

The Applicant,

Linda Roberts

Self-Represented

The Respondents,

Halton Standard Condominium Corporation No. 617

Represented by Jen Dias, Agent

Silvia Yamine

Self-Represented

Hearing: Written Online Hearing – December 2, 2020 to February 24, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Linda Roberts brings this dispute to the Tribunal seeking a determination that Silvia Yamine's placement and use of a portable basketball net on what the parties have described as her exclusive use common element driveway is not permitted by Halton Standard Condominium Corporation No.617's ("HSCC 617") governing documents. Ms. Roberts alleges that HSCC 617 is not enforcing the declaration and rules as it is required to do.
- [2] HSCC 617 asserts that there is no violation of the governing documents, that Ms. Yamine asked for permission to place the basketball net on her driveway (between the garage door of her unit and that of the adjacent unit) and that the board had authority to grant such permission and did so. Ms. Yamine concurs with the position of HSCC 617.
- [3] It was clear through the evidence and submissions that Ms. Roberts vehemently objects to the placement of the basketball net which was described as a portable net secured by six sandbags weighing 20 kg each. Several photographs were

submitted in evidence which show the basketball net, one of which I have attached as “Schedule A” to this decision. Ms. Roberts voiced her objection on July 26, 2020 immediately after the basketball net was placed in Ms. Yamine’s driveway. Most unfortunately, the issue has continued to cause acrimony among some of the residents of the 25-unit townhouse community and between Ms. Roberts and the board of HSCC 617. The evidence and submissions were punctuated by personal comments indicative of the heightened emotions that this dispute has generated. This is very unfortunate and while I make note of this here to reflect that I heard these submissions, I also note that such comments are not relevant to the issues that I have to decide.

- [4] As explained below, I determined that the issue for me to decide was whether the placement of the basketball net is contrary to provisions in the declaration or rules that “prohibit, restrict or otherwise govern the parking or storage of items in a unit...that is intended for parking or storage purposes.” I note here that all parties referred to the basketball net as being situated on the “exclusive use common element driveway”. There was a lack of clarity in the evidence before me as to whether that portion of the driveway is in fact part of the unit versus a common element. That distinction may be important when examining the wording of various provisions of the declaration and rules, but it does not affect the final result here, as explained below.

B. RESULT

- [5] For the reasons set out below, I find that that the placement of the basketball net on Ms. Yamine’s driveway is not in violation of the declaration and rules in relation to the Tribunal’s jurisdiction. I dismiss the Applicant’s request for enforcement of the governing documents by removal of the basketball net. Ms. Roberts is awarded her costs of \$200.

C. ANALYSIS

- [6] In addition to Ms. Roberts and Ms. Yamine, I received testimony from Adam Spencer, a HSCC 617 board member, and Alistair Brown, the condominium manager. The evidence was that the basketball net was originally, for about a day, placed on a part of the common elements (in the laneway area) and was soon after moved to its current location. There was discussion between Ms. Roberts and the board, but no resolution; instead, there was an escalation of the dispute. For Ms. Roberts, allowing a basketball net is “the opening of a Pandora’s box” – one basketball hoop will be followed by a second and perhaps a third. The issue was raised at HSCC 617’s annual general meeting in October 2020. The minutes of that meeting were made an exhibit in the hearing and indicate that 15 unit owners

were present and it appears that a majority of those present did not require that the basketball net be moved. I note that if the placement of the basketball net is contrary to the provisions of the declaration or rules, the number of owners polled on this issue may be irrelevant. It is unclear on the evidence whether Ms. Yasmine required explicit permission to place the basketball net on her driveway, or whether she was granted permission, but the board has not asked her to remove it.

- [7] In her evidence and submissions, Ms. Roberts cited the following articles of the HSCC 617's Declaration as being applicable to this dispute.

Article III Common Elements

3.1 Use of Common Elements

Subject to the provisions of the Act, this Declaration, the by-laws and the rules, each owner has full use, occupancy and enjoyment of the whole or any part of the common elements...However, no condition shall be permitted to exist and no activity shall be carried on in the common elements that is likely to damage the property or unreasonably interfere with the use or enjoyment by other unit owners of the common elements or the other units...

3.5 Additions, Alterations and Improvements

...

(b) No alteration, work, repairs, decoration ...or erection of any kind whatsoever (hereinafter called the "work") shall be performed, done, erected...in relation to the common elements...

4.1 Occupation and Use of Units

(j) Each driveway within an owner's unit shall be used and occupied only for motor vehicle parking purposes, in strict accordance with the rules of the Corporation in force from time to time, and without limiting any wider definition of the term motor vehicle as may be imposed by the board from time to time, the term ' motor vehicle' shall be restricted to an automobile, station wagon, motorcycle, mini-van, and truck not exceeding 6 feet in height, and shall exclude any truck larger than a one ton pickup, trailer or recreational vehicle, as well as any van, motor-home, boat and/or snowmobile...

- [8] In addition, she relied on the following of HSCC 617's rules.

9. Common Elements:

All bicycles, tricycles, toys and like objects shall be removed from the

common elements and the front yards of all Units.

14. Furniture, Seasonal:

No articles, other than seasonal furniture, shall be placed on the front portion of each Unit.

18. Obstructions:

The sidewalks, entry, passageways, and driveways used in common by the Owners shall not be obstructed by any other Owners or used by them for any purpose other than for ingress and egress to and from their respective Units.

24. Structures:

No building, structure, shed or tent shall be erected and no trailer or recreational vehicle ...shall be kept or maintained on the common elements or vacant land portion of any Unit.

[9] I explained to the parties at the outset of this hearing, and at various times throughout, both when evidence was submitted and closing submissions made, that the Tribunal does not have jurisdiction over disputes in the governing documents that deal with damage or alteration to property, nuisance, aesthetics, obstructions or noise. I referred the parties to s. 1 (1) (d) of Ontario Regulation 179/17 under the *Condominium Act, 1998* which states that the Tribunal can decide:

...a dispute with respect to any of the following provisions of the declaration, by-

- (i) Provisions that prohibit, restrict or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.
- (ii) Provisions that prohibit, restrict or otherwise govern an automobile, motorcycle, van, truck, trailer, bus...or any other vehicle drawn, propelled or driven by any kind of power, including muscular power, in a unit, the common elements or the assets, if any, of the corporation.
- (iii) Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes.
- (iv) Provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a dispute described in

this clause.

- [10] This is not a dispute relating to provisions in the governing documents relating to a pet, a vehicle or indemnification. It may, based on the evidence and submissions, relate to a provision in the declaration or rules in respect of parking or storage; specifically, whether the placement of the basketball net is contrary to provisions that “prohibit, restrict, or otherwise govern the parking or storage of items in a unit...that is intended for parking or storage purposes.”
- [11] The basketball net is situated on the driveway between the garages of two units, one of which is Ms. Yamine’s. The driveway is only for the use of the two unit holders. The other unit holder is not a party to this proceeding. Whether or not the placement may violate a rule such as rule 9 (which relates to items like bicycles and toys) or rule 18 (which relates to obstructions), for example, is not for me to decide. It is incumbent on the Tribunal to focus on what it has jurisdiction to decide, not what a party believes we should decide. As I consider the rules referenced by Ms. Roberts, for example, none of these are provisions that can reasonably be said to govern parking or storage.
- [12] The provision cited by Ms. Roberts which may be relevant is Article 4.1 (j) of the Declaration which states:

Each driveway within an owner’s unit shall be used and occupied only for motor vehicle parking purposes, in strict accordance with the rules of the Corporation in force from time to time, and without limiting any wider definition of the term motor vehicle as may be imposed by the board from time to time, the term ‘ motor vehicle’ shall be restricted to an automobile, station wagon, motorcycle, mini-van, and truck not exceeding 6 feet in height, and shall exclude any truck larger than a one ton pickup, trailer or recreational vehicle, as well as any van, motor-home, boat and/or snowmobile...

Again, as noted above, there was a lack of clarity as to whether the driveway is in fact an ‘exclusive use common element’ as referred to be the parties or part of the unit. For the purposes of assessing the applicability of this provision of the declaration and, and on a common sense reading of this provision, I have considered the unit to include the driveway.

- [13] The basketball net is on Ms. Yamine’s driveway and therefore the driveway is, arguably, being used for not only motor vehicle parking purposes. The article is very specific in addressing what kind of motor vehicle can or cannot be parked on the driveway. On reading Article 4.1 (j), it is reasonable to infer that the intention here was to clearly state that large vehicles, boats or snowmobiles cannot be

parked on the driveway. The nature of the vehicle seems to be the expressed concern (perhaps for safety reasons or because it could be a rather significant eyesore), not play equipment such as a hockey or basketball net.

- [14] The driveway is being used for play. I note here that Ms. Roberts has expressed concern about children playing in the lane in the course of their basketball 'game' with balls rolling down the roadway. These may be valid safety concerns, but these are not within the purview of the Tribunal.
- [15] Article 4.1 (j) does not refer to 'storage'; however, giving it a broad reading, it does prohibit storage of an owner's motor-home on the driveway, for example. Does a prohibition on storage of this nature, preclude the placement of the basketball net in that it too might be considered to be stored there? "Storage" is generally defined as the action or method of storing something for future use. To the extent that it is being used with some regularity, albeit less in winter, it may not qualify as storage for future use. However, Ms. Roberts' concern, as stated in her evidence, is less about the storing for future use, but its continued use, as if this were a playground.
- [16] Based on the evidence, the driveway is being used for something other than motor vehicle parking, but I am not convinced that a plain reading of Article 4.1 (j) was intended to prohibit the placement of a basketball net there. However, if I were to conclude otherwise, or even if I could reasonably conclude that one of the rules such as rule 9 which states that all bicycles, toys and like objects shall be removed from the common elements and the front yard of all units, may also be contravened, the issue of enforcement of the governing documents is not a foregone conclusion. Courts have clearly stated that while a board has a duty to enforce its own declaration and rules where the violation is causing a problem, not every minor violation of a declaration must be met with an enforcement procedure¹. A condominium board is vested with some discretion in deciding the manner and extent to which it should enforce its declaration and rules and is owed some deference, provided it acts reasonably and not capriciously.
- [17] How and when to take enforcement action often involves a balancing of competing interests, as it has on these facts. Ms. Yamine wants her children to be healthy and active and the activity provided by the basketball net on her driveway allows this. She acknowledged that the ball may sometimes travel past the driveway into the lane. In fairness, for Ms. Roberts, that is, subjectively, not a minor problem; she does not want to see the laneway used as a playground. This is a concern which highlights that the issue may be less about the placement of the basketball

¹ Muskoka Condominium Corporation No.39 v. Drew Kreutzweiser 2010 ONSC 2463 (CanLII)

net, but the impact of the play that results. The board has considered both of their respective interests, as was apparent from the October board minutes and the witness testimony from Mr. Spencer and Mr. Brown. Based on the evidence before me, I cannot conclude that the board unfairly or unreasonably disregarded Ms. Roberts' interests or ignored her complaints when it considered whether the placement of the basketball net was contrary to any provisions of the declaration and rules and /or whether to enforce the governing documents, if applicable, by requiring removal of the basketball net.

[18] My decision relates solely to the application and enforcement of the relevant provisions of the declaration and rules, and not to the validity of any possible associated concerns related to safety. As I noted above, on the facts of this case, concerns about safety fall outside of the jurisdiction of the Tribunal as they are matters covered by s. 117 of the Act.

[19] As is usual in so many cases that come before the Tribunal, no one party bears responsibility for the escalation of tensions. Ms. Roberts stated in her submissions that they are neighbours living in a community. This suggests that no one individual's interests prevail. The evidence and submissions also suggest that some compromise and reparations are required to restore community within this condominium, but that too is beyond the scope of the Tribunal to address.

[20] Ms. Roberts seeks her costs of \$200 to bring this matter to a Stage 3 hearing. In this instance, I award her these costs. This is a novel issue within a new area of jurisdiction for the Tribunal. It was not unreasonable, in the circumstances for Ms. Roberts to pursue this dispute despite the fact that she has been unsuccessful.

D. CONCLUSION

[21] As set out above, I find, based on the Tribunal's jurisdiction, that the placement of the basketball net on Ms. Yamine's driveway is not in violation of the governing documents, specifically the articles of the declaration and the rules set out in paragraphs 7 and 8 of this decision. I dismiss the Applicant's request for enforcement of the governing documents through removal of the basketball net.

E. ORDER

[22] The Tribunal Orders that HSCC617 will pay \$200 for Ms. Roberts' costs in this matter under subparagraph 1.44 (4) of the Act, within 30 days of this Order.

Patricia McQuaid
Member, Condominium Authority Tribunal

Released on: March 10, 2021

F. “SCHEDULE A”

