

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 6, 2021

CASE: 2021-00026N

Citation: Toronto Standard Condominium Corporation No. 2055 v. Robert, 2021 ONCAT 38

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

Member: Laurie Sanford, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2055
Represented by Vida Ardalan-Kamyab, Property Manager

The Respondent,

Pierre Robert
Did not appear

The Intervenor,

Avraham Holdings Inc.
Represented by Ronald Kellner, Agent

Hearing: Written Online Hearing – March 12, 2021 to April 19, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2055 (“TSCC2055”) claims that Mr. Robert is parking his motorcycle in a part of the common elements in the underground garage, in violation of its Rules. TSCC2055 wants Mr. Robert to remove his motorcycle, failing which TSCC2055 proposes to remove it to storage, at his expense.
- [2] Mr. Robert is a tenant in TSCC2055, in a unit owned by Avraham Holdings Inc. (“Avraham”). He has access to a parking space in the underground garage that he uses to park his car. He parks his motorcycle next to his parking spot, in an area identified by TSCC2055 as part of the common elements in the garage.
- [3] Mr. Robert did not appear in these proceedings, despite three notices delivered by

TSCC2055 advising him of the hearing as required by the Tribunal Rules of Procedure. Although Mr. Robert did not appear, both TSCC2055 and Avraham presented statements made by Mr. Robert that apparently set out his position. Mr. Robert has stated that the motorcycle, parked where it is, is not impeding access to any critical infrastructure. Moreover, he has parked his motorcycle there for some years without objection.

- [4] Avraham supports Mr. Robert's position and also submits that it has requested Mr. Robert to move his motorcycle. Avraham's position is that it can do no more.
- [5] For the reasons set out below, I find that Mr. Robert is parking his motorcycle in violation of the Rules of TSCC2055. Neither Mr. Robert nor Avraham produced persuasive evidence that the relevant Rule should not apply to him. Mr. Robert will have 21 days from the date of this Order to permanently remove the motorcycle from its current parking location. If Mr. Robert does not comply with this Order, then TSCC2055 will be entitled to take any lawful action available to it to enforce its Rules against both Mr. Robert and Avraham and will also be entitled to charge those expenses set out in its Rules for this enforcement against either Mr. Robert, Avraham, or both.

B. ISSUES & ANALYSIS

- [6] The three issues in this case are:
1. Is Mr. Robert parking his motorcycle in violation of the Rules of TSCC2055?
 2. Is there anything in the Rules or in their enforcement that would entitle Mr. Robert to continue to park his motorcycle in its current location?
 3. What remedies are available to the parties in the circumstances of this case?

Issue 1 – Is Mr. Robert parking his motorcycle in violation of the Rules of TSCC2055?

- [7] Under Section 58 of the *Condominium Act, 1998* (the "Act") the Board of Directors of TSCC2055 is entitled to enact Rules to promote, among other things, the safety security or welfare of the owners of the condominium and to prevent unreasonable interference with the use and enjoyment of the common elements. Rules cover the range of day-to-day activity in a condominium. They must be reasonable.
- [8] The relevant provision in this case is TSCC2055's Rules, on page D8, paragraph (i), which states,

nothing shall be placed, located, kept, installed or maintained on the common elements. Any goods or chattels placed, left or stored on the common elements in contravention of these rules may be removed and stored by the Corporation or placed in warehouse storage with a company authorized to hold chattels in storage, all at the expense of the Owner or occupant.

- [9] TSCC2055 produced a photograph of Mr. Robert's motorcycle parked in a corner of the underground parking garage. The ground of the corner in which Mr. Robert's parks his motorcycle is hash marked which, the Property Manager of TSCC2055 stated, signifies that the corner is part of the common elements in the parking garage. Common elements are not owned by any individual condominium unit owner but are collectively owned by all owners.
- [10] Avraham does not dispute that Mr. Robert is parking his motorcycle in a part of the common elements and Mr. Robert also did not contest this in any of the statements or emails written by him that were produced during this hearing. I conclude that Mr. Robert is parking his motorcycle in a location that is part of the common elements of TSCC2055. Parking is a form of locating, placing or storing goods and thus Mr. Robert is in violation of the Rules of TSCC2055 in parking his motorcycle in the location he has chosen.

Issue 2 – Is there anything in the Rules or their enforcement which would entitle Mr. Robert to continue to park his motorcycle in its current location?

- [11] The photo of Mr. Robert's motorcycle shows it tucked into a corner in a space that appears too small for car parking. In an email of January 14, 2021, to TSCC2055, Mr. Robert took the position that the location that he is using to park his motorcycle does not:

- Violate a fire safety rule
- Contravene TSCC2055 By-Laws
- Impede access to the adjacent parking space
- Impede access to the storage lockers
- Impede access to a laneway, or
- Impede access to any mechanical system

- [12] Avraham supports Mr. Robert's position. TSCC2055 concedes that parking the motorcycle where it is does not violate the Fire Code or impede access to parking, storage lockers, a laneway or any mechanical system. However, TSCC2055 asserts that it does violate its Rules, as noted above.

- [13] Both Mr. Robert and Avraham also take the position that Mr. Robert has used that parking space for many years without objection by TSCC2055 or complaint by any condominium owner. Therefore, Avraham submits, the sudden enforcement of the Rules is arbitrary.
- [14] It is easy to understand Mr. Robert's, and Avraham's, frustration with the TSCC2055's assertion that he is prohibited from using an isolated location to park his motorcycle. The positions Avraham and Mr. Robert take in this matter may be said to amount to the following arguments: first, that the rule is unreasonable and therefore should not be enforced; and second, that Mr. Robert is entitled to continue to use the space because TSCC2055, having permitted its use for years, cannot now enforce the Rules. The question is whether Avraham or Mr. Robert have demonstrated either of these things. I conclude they have not.
- [15] The Rule is not, on its face, unreasonable. Neither Mr. Robert nor Avraham produced any evidence or arguments beyond those set out above that the Rule is unreasonable, either in general or as it relates to Mr. Robert's use of part of the common elements to park his vehicle. The fact that Mr. Robert's use of the space is not interfering with any critical infrastructure is not persuasive evidence that a prohibition of his use of that space is unreasonable. The Rule is not aimed at that corner of the parking garage or at him personally. The Rule appears to fall within a range of what is reasonable. I conclude that the Rule is not unreasonable.
- [16] Avraham argues that TSCC2055 permitted Mr. Robert, who has lived in the building since 2015, to use the space for many years and did not claim that its Rules had been violated until January, 2021. TSCC2055 contests this and has provided notices and correspondence sent to Mr. Robert on the subject of his parking on September 14, 2020, October 30, 2020, November 17, 2020 and January 14, 2021. The September 14th Notice refers to an earlier, August 31st Notice, to Mr. Robert. I have reviewed the notices sent to Mr. Robert and find that he has been on notice at least since September, 2020 that his parking in that spot would no longer be permitted and that he was required to remove his motorcycle or face its removal at his expense.
- [17] The Property Manager of TSCC2055 submits that she has begun enforcing the Rules more rigorously since her appointment in 2019 and cannot comment on why Mr. Robert was permitted to park in a common element prior to that. Avraham submits that the current Property Manager also permitted Mr. Robert to park in the common element from 2019. The question in law is whether TSCC2055 has failed to enforce its Rules in such a way that it is now estopped from enforcing them in this situation. I conclude that TSCC2055 may now enforce its Rule against Mr.

Robert. There is no evidence before me that TSCC2055 ever acquiesced in Mr. Robert's parking arrangements or led him to believe that he was parking in a permitted space. The lapse in enforcing the Rules might require some additional notice of the change in policy but this was provided by the numerous notices during the fall of 2020.

Issue 3 – What remedies are available to the parties in the circumstances of this case?

[18] TSCC2055 advises that, while it has several rental spaces available for motorcycles, these have now all been taken and therefore the only option for Mr. Robert is to remove his motorcycle from the garage. They wish him to remove it and, if he fails to do that, they wish to have the motorcycle removed to a storage facility at his expense.

[19] It is to be hoped that this situation will not come to that. In order to avoid that outcome and in fairness to Mr. Robert, Mr. Robert will be given a final chance to remove his motorcycle from the common elements in the garage. He will have 21 days from the date of this Order to remove the motorcycle from its current parking location. If Mr. Robert does not comply with this Order, then TSCC2055 will be entitled to take any lawful action available to it to enforce its Rules against both Mr. Robert and Avraham and will also be entitled to charge those expenses set out in its Rules, and cited in paragraph 8 above, against either Mr. Robert, Avraham, or both.

[20] Avraham submits that, having requested Mr. Robert to remove his motorcycle, it can do no more. That position does not permit Avraham to avoid its potential liability in this matter as Mr. Robert's landlord.

[21] TSCC2055 is not claiming its costs in this matter and accordingly, no order as to costs will issue.

C. ORDER

[22] The Tribunal Orders that:

1. Mr. Robert will have 21 days from the date of this Order to permanently remove his motorcycle from its present parking location on part of the common elements of the parking garage.
2. If Mr. Robert fails to remove his motorcycle, then TSCC2055 may take any lawful action available to it to enforce its Rules against both Mr. Robert and

Avraham and will also be entitled to charge those expenses set out in its Rules for this enforcement against either Mr. Robert, Avraham or both.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: May 6, 2021