CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 14, 2021
CASE: 2020-00401N
Citation: Mui v. Ottawa-Carleton Standard Condominium Corporation No. 963, 2021 ONCAT 63

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

Member: Brian Cook, Member

The Applicant,
Kenneth Mui
Self-Represented

The Respondent,
Ottawa-Carleton Standard Condominium Corporation No. 963
Represented by Scott Hill, Agent

Hearing: Written Online Hearing – April 13, 2021 to June 10, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] This Application concerns the interpretation of rules established by the respondent condominium corporation concerning parking. The Applicant owns a car and a motorcycle and would like to park both in his assigned parking spot. The Respondent submits that under the rules, a car or a motorcycle can be parked but not both. The respondent submits that to the extent there was any ambiguity about this, that ambiguity was resolved when the rule was amended to make clear that a car or a motorcycle can be parked in a parking spot but not both. The amended rule took effect in March 2021. The Applicant complied with the requirement that he not park his vehicle and motorcycle in one spot but submits that the rule change was improper, not consistent with the Declaration, and is unreasonable.

B. THE PARKING RULE

[2] The relevant parts of the parking rule in effect in October 2020 when the Applicant moved into his unit read as follows:

> 23.1 No motor vehicle, other than a private passenger automobile or motorcycle,

> shall be parked on any part of the property (including any part thereof of which any Owner may have the exclusive use) and no motor vehicle shall be parked or driven on any part of the property other than on a driveway or parking space.
>
> 23.3 Designated Parking Spaces are not to be used for storage or any purpose other than parking of motor vehicles. Tires, containers, signs or furniture shall not be stored in a designated parking space. Items improperly stored in parking spaces will be removed.

[3] The amendment to the rule added the following sentence to rule 23.1:

> For the purpose of clarification, only one vehicle (automobile, motorcycle, etc.) shall be permitted to be parked in the space.

[4] The Respondent submits that the issue of how many vehicles can be parked in one spot before the amendment is governed by the word “or” in the phrase “No motor vehicle, other than a private passenger automobile *or* motorcycle, shall be parked on any part of the property” clearly indicates that either a car or a motorcycle can be parked in a parking spot but not both. The Respondent provided a witness statement from a lawyer, who is an owner, in support of this position. I have disregarded this witness statement as it does not provide any evidence and instead is a legal opinion about the meaning of rule 23.1.

[5] The Applicant submits that the rule 23.1 is not determinative. In his view, the plural word “vehicles” in rule 23.3 shows that rule 23 as a whole contemplates that more than one vehicle can be parked in a parking spot.

[6] In my view, rule 23 as it read before it was amended, did not expressly address the question of whether a car and a motorcycle can be parked together in one parking spot. It specified the type of vehicles that can be parked, presumably to prevent people from parking such things as recreational vehicles or commercial vehicles on the property.

[7] The purpose of rule 23.3 is to ensure that parking spots are used only to park authorized vehicles and not to be used for storage. In my view, the use of the plural “vehicles” is grammatically consistent with the plural reference to “parking spaces” and does not indicate anything about how many vehicles can be parked in one spot.

[8] The amendment to rule 23.1 does make it clear that a car or motorcycle can be parked in a spot, but not both. The Applicant does not dispute this but suggests that the process leading to the amendment was unfair or improper.

C. THE AMENDMENT PROCESS

[9] The Applicant notes that the proposal to amend the parking rule seems to have happened because he filed this Application. The Application was filed on December 9, 2020, and the notice was sent on January 7, 2021, shortly after the Application progressed to stage 2 (mediation) in the Tribunal's process. The Applicant concedes that the Respondent was legally entitled to proceed in this way but feels that it was unfortunate that there was not more discussion to explore other options. I agree with the Applicant that the board could have engaged with the Applicant before proceeding with the rule change. However, while that approach might, as the Applicant suggests, lead to a more harmonious environment, the board was within its legal rights to propose the rule amendment.

[10] The amendment to the parking rule was proposed in the January 7, 2021 notice to the owners. It set out the existing rule 23.1 and the proposed amendment and indicated that it would come into effect on February 7, 2021. The notice stated:

> The purpose of the proposed rule is to clarify the existing rule to prevent an unsafe parking situation where vehicles protrude into the garage as well as protect the aesthetics of the condominium.

[11] The notice referred to section 46 of the *Condominium Act, 1998* ("the Act") and advised that a meeting of the owners could be called to vote on the amendment if "15% of the owners" requisitioned a meeting. Sufficient numbers of signatures were collected to require a meeting and a virtual owner's meeting was scheduled for March 15, 2021. Quorum was not reached and as a result, the amendment came into effect.

[12] Section 58 (6) of the Act sets out the process a corporation must follow in making or amending rules:

> 58(6) Upon making, amending or repealing a rule, the board shall give a notice of it to the owners that includes,
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> (a) a copy of the rule as made, amended or repealed, as the case may be;
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> (b) a statement of the date that the board proposes that the rule will become effective;
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> (c) a statement that the owners have the right to requisition a meeting under section 46 and the rule becomes effective at the time determined by subsections (7) and (8); and
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> (d) a copy of the text of section 46 and this section.

[13] Section 46 sets out the process to be followed when owners wish to requisition a meeting of the owners. The relevant subsections are as follows:

> 46(1) A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47(2) and are entitled to vote.
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> (2) The requisition shall,
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> (a) be in writing and be signed by the requisitionists;
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> (b) state the nature of the business to be presented at the meeting; and
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> (c) be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the corporation.
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> (4) Upon receiving a requisition mentioned in subsection (1), the board shall,
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> (a) if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the meeting to the agenda of items for the next annual general meeting; or
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> (b) otherwise call and hold a meeting of owners within 35 days.

[14] There are some deficiencies in the notice that was sent about the rule amendment. The notice indicated that a meeting could be requisitioned by “15% of the owners”. However, section 46(1) provides that a meeting can be requisitioned by “owners who at the time the board receives the requisition, own at least 15 per cent of the units.” This may be different than 15% of the owners as an owner may own more than one unit.

[15] The notice referred to section 46 but did not include the text of sections 46 and section 58 as required by section 58(6).

[16] In my view, these deficiencies do not make the amendment invalid because the processes set out in sections 46 and 58 appear to have been otherwise followed. The notice set out the rule as made, the proposed change, and the date the rule would become effective. The Applicant clearly understood that it was possible to challenge the amendment and collected sufficient signatures to require a meeting. The meeting was called but a quorum did not appear. The deficiencies in the notice do not appear to have adversely affected anyone’s rights under the Act.

[17] The Applicant argues that the stated purpose of the amended rule was misleading. He notes that he has a small car and that his car and motorcycle do not protrude beyond the designated parking spot when both are parked in his spot. He notes that some owners have large vehicles that do protrude even if only one vehicle is parked. In addition, he asserts that some owners are in violation of rule 23.3 as

things other than vehicles are stored in some spots, including electric bikes. I understand the Applicant's frustration. However, since the amendment was properly made it can be enforced. The wording of the rule as amended makes clear that it is not permitted to park a vehicle and a motorcycle in one spot, even if they fit in the spot. It is the wording of the rule that is the determining factor and not the stated purpose of the amendment in the notice. The fact that there may be violations of other rules does not mean that the board cannot enforce the parking rule.

D. HAS THE RULE BEEN APPLIED INCONSISTENTLY?

[18] The Applicant submits that rule 23.1 as it read before the amendment was not consistently applied. He notes that friends who also own a car and a motorcycle were allowed to park both in one parking spot and did so for about four years until 2019 when they were told that they could no longer do so because of a Fire Code concern. The Applicant proposed to call these friends as witnesses. This evidence was potentially relevant when the Applicant commenced the Application as that happened prior to the rule amendment but I found that this evidence was not necessary because it is not relevant to the rule as amended.

E. IS THE RULE CONSISTENT WITH THE DECLARATION?

[19] The Applicant submits that the parking rule as amended is not consistent with section 4.01(a) of the Declaration which reads in part:

> Each unit designated on the Declarant's architectural plans as being for parking use shall be occupied and used only as a parking space for motor vehicles including both automobiles and motorcycles and for no other purpose, except as may be permitted in the Rules of the Condominium Corporation.

[20] The Applicant submits that the phrase "both automobiles and motorcycles" signifies that the Declaration contemplates that both automobiles and motor vehicles can be parked in one spot together. I do not agree with this interpretation. As with rule 23.1 as it read before it was amended, the purpose of the language in section 4.01(a) is to specify the type of motorized vehicles that can be parked is limited to automobiles and motorcycles and not other types of vehicles. It does not say anything, one way or the other, about whether more than one vehicle can be parked in one spot.

F. IS THE RULE REASONABLE?

[21] Section 58(2) of the Act provides that rules "shall be reasonable". The Ontario Court of Appeal has explained the threshold for finding a rule to be unreasonable is high:

> ...a court should not substitute its own opinion about the propriety of a rule enacted by a condominium board unless the rule is clearly unreasonable or contrary to the legislative scheme. In the absence of such unreasonableness, deference should be paid to rules deemed appropriate by a board charged with responsibility for balancing the private and communal interests of the unit owners.
> (Yo*rk Condominium #382 v. Dvorchik, 1997 1074* CanLII *(ON CA))*.

[22] The Court went on to explain that a rule does not have to be the best or the least arbitrary rule in order to be reasonable.

[23] In this case, it may well be that a better solution could have been found that would meet the needs of the corporation and the owners. It may also be that the amended rule does not address the stated concerns leading to its adoption, or that it is arbitrary. However, these factors do not make the rule unreasonable.

G. CONCLUSION

[24] I conclude that rule 23.1 as amended does not allow the Applicant to park a motorcycle and a car in his parking spot. The rule as amended is not inconsistent with the Declaration and is not unreasonable.

[25] Neither party asked for costs and none are awarded.

Brian Cook
Member, Condominium Authority Tribunal

Released on: July 14, 2021