CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 27, 2021
CASE: 2021-00050N
Citation: Sarros v. York Region Standard Condominium Corporation No. 1445, 2021 ONCAT 86

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

Member: Brian Cook, Member

The Applicant,
Haralambos Sarros
Self-Represented

The Respondent,
York Region Standard Condominium Corporation No. 1445
Represented by Bharat Kapoor, Counsel

Hearing: Written Online Hearing – May 21, 2021, to September 3, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] Haralambos Sarros is the owner of a unit in the condominium operated by the Respondent condominium corporation.

[2] This case involves the interpretation of a rule which allows only “seasonal furniture” on unit balconies. The Applicant has a structure on his balcony which the Respondent says is not seasonal furniture. The Applicant concedes that the structure was originally used to store weights and barbells used for weight-lifting training. However, the Applicant stopped using the structure for this purpose and converted it by removing the brackets used to hold weights and installing a piece of wood. The Applicant submits that the structure was then a table and is therefore now a piece of furniture. The Applicant’s evidence is that in the summer he hangs flower baskets from the structure and in the Christmas season, he strings Christmas lights on it. He submits that since he uses the structure in different ways in different seasons, it is now seasonal furniture in compliance with the rule.

[3] The Respondent does not agree that the structure is seasonal furniture. The condominium manager wrote to the Applicant on June 8, 2020 to inform him that the structure was not in compliance with Rule 9 of the condominium rules (the "rule"). The Applicant states that shortly after this, he stopped using the structure for storing weights. The condominium manager wrote again on July 3, 2020 confirming that the structure was no longer being used to store weights but was still in contravention of the rule. In August 2020, the Applicant installed a piece of wood to create a table. As noted, he hung flower baskets from the structure in the summer and used it to string holiday lights for the Christmas season.

[4] When the Applicant did not comply with the requests to remove the structure, the Respondent involved legal counsel (not Mr. Kapoor, the Respondent's counsel in this Application) who wrote a letter, dated January 21, 2021, to the Applicant ordering him to remove the structure. The Applicant was required to pay legal costs associated with the letter and related work by counsel in the amount of $2,476. The Applicant paid this to avoid a lien on his property. In February 2021 the Applicant filed this Application with the Tribunal.

[5] The Applicant seeks an order permitting him to continue using the structure on his balcony and a refund of the legal costs. The Respondent seeks an order directing the Applicant to remove the structure.

B. EVIDENCE

[6] This case was conducted in writing. The Applicant filed a witness statement and a supplementary witness statement. The Respondent did not provide evidence and relied on the written submissions of counsel and the documents filed by the parties. There is little dispute about the facts of the case and its history. The Applicant has provided evidence about how he has used and converted the structure. That evidence is not controverted, and I accept his evidence.

C. THE RULE

[7] The rule that is the source of the dispute in this case is Rule 9, the relevant sections of which read as follows:

> (b) Balconies, terraces, patios and exclusive use areas shall not be used for the storage of any goods or materials.
>
> (c) Only seasonal furniture is allowed on balconies, terraces, patios and exclusive use areas. All such items shall be safely secured in order to prevent such items from being blown of the balcony, terrace or exclusive use areas by high winds.

> (d) No owner, occupant or tenant shall do or permit anything to be done on a balcony, terrace, patio or exclusive use area which does or may unreasonably disturb, annoy or interfere with the comfort and/or quiet enjoyment of the Units and/or Common Elements by other owners, occupants or tenants.

[8] In regard to clause (d) of the rule, although the Respondent's final submissions assert that the structure detracts from the appearance of the property and unreasonably disturbs the neighbours and owners, there is no evidence before me that the condominium board has received any complaint about the structure or that it in way interferes with the comfort or enjoyment of other owners or occupants.

D. THE STRUCTURE

[9] As noted, it is not disputed that the original function of the structure was to store barbells and weights. The structure is metal and consists of four posts with holes, a metal base, and supporting pieces around the top. The structure originally had braces to hold the weights that attached through the holes in the posts. From photos provided by the Applicant, the dimensions appear to be approximately two feet by two and a half feet with a height of about seven feet. A photo of the structure in its summer form is appended to this decision.

E. ANALYSIS

[10] There is no question that the structure in its original configuration was not compliant with clause (c) of the rule. A rack for storing weights and barbells is clearly not "seasonal furniture". However, the structure has been reconfigured. The weights have been removed as have the brackets to hold the weights. A piece of wood has been added to provide a surface that the Applicant uses as a table. The Applicant's un-controverted evidence is that he has not used the structure for weight-lifting or as gym equipment since June 2020, shortly after he received the first letter from the condominium manager. Based on the photos provided by the Applicant, the original purpose of the structure would not be obvious now. In my view, the structure cannot accurately now be described as a piece of gym equipment, or a "squat rack" – the term used in the January 21, 2021 letter to the Applicant from the Respondent's lawyer.

[11] At the same time, the fact that the structure is no longer identifiable as gym equipment does not mean that it is a piece of seasonal furniture.

[12] "Seasonal furniture" is not defined in the Respondent's rules. The Respondent submits that a Google internet search suggests that seasonal furniture would include things like chairs and tables. The Applicant submits that a Google search is not conclusive on the question of what constitutes seasonal furniture. He asks

the tribunal “to consider the dictionary definition of said terms and to accept the Applicant’s position that the Structure qualifies under said terms”. However, he has not provided a dictionary definition, perhaps because this is not a term that could be found in dictionaries.

[13] In the absence of some more precise definition, it seems to me that a Google search for the term “seasonal furniture” is of some assistance in determining an ordinary understanding of the term and whether the structure at issue here could come within the ordinary understanding of “seasonal furniture” in the context of a condominium balcony. Such a search does not produce a structure that looks anything like the structure the Applicant has on his balcony.

[14] I note that the Applicant did not obtain the structure with a view to using it as a table or for hanging flower baskets and lights. He obtained a piece of gym equipment. I think it unlikely that he or anyone else would purchase the structure with a view to using it as a table or to hang flower-baskets or lights. The fact that the Applicant has installed a piece of wood does not substantially change the structure so that it is now easily recognizable as a table. It is instead a metal structure, about seven feet in height, with four posts and a board, albeit at table height.

[15] To the extent that the structure has seasonal functions this is limited to the times when the Applicant has hung flower baskets and strung lights. For the rest of the time, the structure is being stored on the Applicant’s balcony. This is contrary to clause (b) of the rule, which prohibits storing goods on a balcony.

[16] For these reasons, I find that the Applicant is in contravention of rule 9. The Applicant is directed to remove the structure within 21 days of the date of this decision.

F. COSTS ASSOCIATED WITH THE JANUARY 21, 2021, LETTER FROM THE CORPORATION’S LAWYER

[17] Section 17(3) of the *Condominium Act, 1998* (the “Act”) imposes a duty on the corporation to “take all reasonable steps to ensure that the owners, the occupiers of units…comply with this Act, the declaration, the by-laws and the rules.” Section 119(1) requires owners to comply with the Act, and the corporation’s declaration, by-laws and rules and under section 119(3), a corporation has the right to require owners to comply with those provisions. Under section 134, a corporation can apply for a court order enforcing compliance with the Act, declaration, by-laws or rules. If the order is granted, the owner may be required by the court to pay damages including the costs incurred by the corporation in obtaining the order.

The damages and costs can be added to the common expenses for the unit under section 134(5).

[18] Before involving its counsel, the condominium management sent the Applicant three letters between June and December 2020, advising him that he was not compliant with the rules and asking him to remove the structure from his balcony. On December 20, 2020, the Applicant responded to the third letter to advise that he intended to string lights on the structure and to use it hang plants in the summer. It was after this that the matter was referred to counsel.

[19] The January 21, 2021 letter reviewed the history of the dispute and asserted that the Applicant had contravened the corporation rules. It directed the Applicant to immediately remove the structure. It advised that pursuant to the declaration the Applicant was required to indemnify the corporation for costs associated with the efforts to have the Applicant remove the structure and that he would receive an invoice. The letter stated that if he did not pay the invoice, a lien could be registered and his unit sold to recover the amount owing. The letter included references to the legislation, the declaration, by-laws and rules.

[20] The invoice was issued to the corporation on February 25, 2021. It provides billing details. The total bill including HST was $2,476.96. The billing details indicate that the costs associated with the actual letter were about $1,000. The additional costs were in relation to subsequent correspondence and telephone conversations, including correspondence from the Applicant on three occasions and a telephone conversation from the Applicant. These led to further communications with the Respondent and further correspondence from the Respondent's counsel to the Applicant. The Applicant paid the invoice to avoid further potential costs.

[21] Issues can arise in cases where legal costs are invoiced by a condominium corporation and where the owner refuses to pay the invoice (see Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 13). In this case, the Applicant does not dispute that the corporation could seek indemnification if it is determined (as I now have) that the Applicant was in breach of the rules. Since the Applicant paid the invoice, the potential issues about how the money could otherwise be collected do not arise.

[22] The Applicant does argue that some of the costs in the invoice were not directly related to issues relevant to this Application. He identifies only one charge in particular which is a charge for review of correspondence from the condominium manager "re LSO complaint". The Applicant submits that correspondence about a possible complaint to the Law Society is not directly relevant to this Application. It appears that the possible complaint was in relation to the Applicant, who is a

lawyer.

[23] It appears that this matter was not pursued. I was not provided with any evidence from either party about this possible complaint. The lawyer billed 0.10 hours (six minutes) for review of this correspondence, for a fee of $53. I find that a charge of six minutes for a review of this correspondence is reasonable and that the correspondence was in the context of the issue of compliance with the Respondent's rules. I conclude that the fees charged by the lawyer are reasonable.

G. LEGAL COSTS ASSOCIATED WITH THIS APPLICATION

[24] Both parties made submissions on legal costs. Both parties argued that if successful they are entitled to reimbursement of legal costs in connection with this Application.

[25] The Respondent is the successful party in this case. As noted in the Respondent's submissions, the Tribunal's rules provide that legal costs will only be awarded in exceptional circumstances. The Respondent submits that this case falls within the exceptional category because the Applicant willfully ignored the demands that he remove the structure in direct contravention of the Corporation's rules.

[26] I find that an award for legal costs is not appropriate in this case. When the Applicant was advised by the Respondent that the squat rack was not compliant with the Respondent's rules, he stopped using it as a piece of gym equipment and modified the structure so that it was no longer a piece of gym equipment. While I have concluded that the modified structure was not compliant with the rules, I have also found that there is some ambiguity about the interpretation of rule 9 because "seasonal furniture" is not defined. In my view, while not successful, the Applicant made out an arguable case.

H. ORDER

[27] The Tribunal Orders that:

1. The Applicant shall remove the structure that was formerly a piece of gym equipment from his balcony within 21 days of the date of this decision.

2. Neither party is entitled to an award for costs.

Brian Cook

Member, Condominium Authority Tribunal

Released on: September 27, 2021

I. APPENDIX 1