

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 28, 2021

CASE: 2021-00185N

Citation: Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 88

Order under Rule 17 of the Condominium Authority Tribunal's Rules of Practice

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Ney Calderon

Self-Represented

The Respondent,

York Condominium Corporation No. 274

Represented by Luis Hernandez, Counsel

MOTION DECISION

- [1] The Applicant, Ney Calderon, is a unit owner in York Condominium Corporation No. 274 ("YCC 274" or the "Respondent"). In this case, the Applicant is seeking an order requiring YCC 274 to enforce compliance with its governing documents against the owners of the vehicle in parking spot #60. The owners of this vehicle are the president of YCC 274's board of directors and their spouse. Specifically, the Applicant alleges that the vehicle owners are permitting their vehicle to leak oil contrary to the corporation's rules and that YCC 274 has not taken the enforcement action against the vehicle owners as required by the rules.
- [2] The Respondent has brought a motion to dismiss this application under Rules 17.1¹ and 41(f) of the Tribunal's Rules of Practice. For the reasons set out below, the motion is dismissed.
- [3] The Respondent asserts that the issue in dispute – whether the Respondent has taken reasonable steps to enforce compliance with its governing documents against the vehicle owner - is a minor issue and that it has enforced the rules in its reasonable discretion. In support of this assertion, the Respondent submits that this particular parking spot is one of many with oil stains, that the entire parking garage has been power washed and that the owners of the vehicle have provided

¹ Specifically, the Respondent cites Rules 17.1(a) and 17.1(c)

evidence that the vehicle has been fixed, is no longer leaking, and that the vehicle is no longer on the property.

- [4] The Applicant, in response, asserts that whether or not the vehicle has been moved, the fact is that it was leaking and the damage remains, with no enforcement action taken against the owners, as required by the rules, for the resulting damage which he alleges has occurred.
- [5] I agree with the Respondent's submission that 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 deference in that regard, provided that it acts reasonably. It is the reasonableness of the Respondent's actions which would be central to a hearing in this matter. The Respondent's submissions are clear that the vehicle was leaking and the entire garage has been cleaned, but I cannot infer from this that a decision was reasonably made to enforce, or not enforce, the relevant provisions in the rules against the owners, or that, as submitted by the Respondent, "no further enforcement action is necessary". That is the crux of the issue to be decided by me.
- [6] The Respondent has not demonstrated that the issue in dispute is so minor that it would be unfair to require it to go through the CAT process to address it. The motion to dismiss the case on the basis of Rule 17.1(a) fails.
- [7] The Respondent also submits that the Applicant is bringing this case for an improper purpose, under Rule 17.1(c). The Respondent has referred me to a recent decision by the Tribunal in which the Tribunal dismissed this Applicant's case against YCC 274.² That case was a dispute regarding access to records. The Respondent had provided the records to the Applicant during the mediation stage, but the Applicant wanted to proceed to Stage 3 - Adjudication to pursue reimbursement of the Tribunal fee of \$75 paid by the Applicant. A decision to dismiss in that case was more clear-cut - the records were previously provided to the Applicant and hence it was reasonable to query why the case should proceed. Where the enforcement of rules is the issue to be decided, a conclusion that the case has been filed for an improper purpose is not as readily determined at this preliminary stage of the proceeding.
- [8] That being said, I note that this is one of eight cases that have been filed by this Applicant. The Respondent has previously sought an order from the Tribunal seeking to have all eight cases deemed to be vexatious and to have this case (2021-00185N), with several others, dismissed on the basis that the CAT is being

² 2021 ONCAT 80 (CanLII)

used for an improper purpose.³ The Tribunal did not grant the relief sought, noting that "... the Applicant questions the fairness and consistency of the corporation's enforcement of rules... It is not obvious that the cases will not succeed." Similarly, at this stage of this proceeding, the Respondent has not demonstrated that the Applicant has used the Tribunal process for an improper purpose. Therefore, the motion to dismiss on the basis of Rule 17.1(c) also fails. However, I also note that the Tribunal, in the prior motion decision, did caution the Applicant against pursuing cases with the intent to cause distress to the corporation, noting that all costs are ultimately borne by all the owners in the corporation.

[9] So, while I have determined that dismissal of this case is not warranted, I will set guidelines upon which this case may move forward. I do this not only because of the caution previously articulated by the Tribunal, but also in response to the Applicant's submissions on this motion. Though he has cited several of the condominium rules which may be relevant to the issue before me such as Rules 7,8,11,15 and 16, he has also directed me to sections of the declaration that address the maintenance and repair to units, provisions relating to damage to units, insurance and other broad 'general matters and administration' provisions. These are not relevant to the issue in the context of the Tribunal's jurisdiction:

- 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, or
- provisions that govern the indemnification or compensation of the corporation regarding a dispute with respect to parking

The Tribunal will not permit this case to expand into tangents beyond the scope of its jurisdiction.

[10] The Applicant has requested, in his responding submissions, that issues such as the disqualifications of directors and that discrepancies in the governing documents uploaded by the Respondent be addressed as well as an order directing the Respondent to fix any damage from oil leaks and that fines be imposed. These are examples of the ways in which the Applicant may be seeking to have the CAT deal with underlying disputes about how the board is governed and by whom. Evidence on these issues will not be permitted and submissions regarding these will be disregarded.

³ 2021 ONCAT 70 (CanLII)

[11] Therefore, in order to ensure that evidence and submissions remain focussed on the issue to be decided, the parties will be required to provide me with a list of witnesses that they wish to call to give evidence, and why. In addition, the parties are to provide a list of their proposed documents. These will be reviewed by me to assess their relevance to, and focus on, the issue to be decided, after which permission may be granted to the parties to upload witness evidence and documents. Specific instructions will be posted to the CAT-ODR system. The parties are cautioned to ensure they follow instructions given and to avoid unnecessarily complicating the Tribunal process.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: September 28, 2021