

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 1, 2021

CASE: 2021-00048N

Citation: Tahir v. York Regional Standard Condominium Corporation No. 991, 2021 ONCAT 89

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

Member: Laurie Sanford, Member

The Applicant,

Zuree Tahir

Self-Represented

The Respondent,

York Regional Standard Condominium Corporation No. 991

Represented by Edmond Prifti, Agent

Hearing: Written Online Hearing – June 16, 2021 to September 1, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] Ms. Zuree Tahir is a unit owner in York Regional Standard Condominium Corporation No. 991 (“YRSCC991”). She believes that she is entitled to two dedicated parking spaces, and submits that YRSCC991 is wrongfully denying her one of these spaces. She bases this belief on her reading of the documents provided to her by YRSCC991, including the YRSCC991 Declaration (the “Declaration”), various plans and her examination of certain municipal records.

[2] YRSCC991 submits that Ms. Tahir’s townhouse comes with one parking space and a smaller storage locker. A witness for YRSCC991 testified that Ms. Tahir is misreading the diagrams filed with the Land Registrar in reaching the conclusion that she is entitled to two full parking spaces. This witness referred to the description of the condominium, prepared in accordance with Ontario Regulation 49/01 to the *Condominium Act, 1998* (the “Act”), which the witness called the “site plan” in describing the parking space allotments. The testimony is that Ms. Tahir is entitled to one parking space, which is an exclusive use portion of the common elements allocated to her use under the Declaration. There is also testimony that Ms. Tahir is entitled to one smaller storage locker.

- [3] For the reasons set out below, I accept the testimony of the witness for YRSCC991 and conclude that Ms. Tahir is entitled to one parking space, which is designated as an exclusive use portion of the common elements. She is also entitled to a storage locker in an adjoining space as part of her unit. She has both of these things.
- [4] As a secondary issue, Ms. Tahir asserts that that YRSCC991 has improperly encroached on her storage locker space with a water drainage pipe which penetrates her storage locker, restricting her use of the space. YRSCC991 relies on its Declaration to submit that any restriction is permitted. Ms. Tahir also submits that the drainage pipe persistently leaks both inside the storage space and on the exterior of her townhouse.
- [5] Neither party questioned the Tribunal's jurisdiction to hear the drainage pipe issues. For the reasons set out below I conclude that there is no need to decide whether the Tribunal has the jurisdiction to determine if the Declaration permits the restriction of Ms. Tahir's use of her storage locker. The question is determined by a statutory easement established for the drainage pipe. Thus, the drainage pipe is not improperly encroaching on Ms. Tahir's storage space. The question of whether the drainage pipe is leaking is outside the Tribunal's jurisdiction. Ms. Tahir's application is dismissed.

B. ISSUES & ANALYSIS

- [6] The issues in this case may be summarized as follows:
1. How many parking spaces should Ms. Tahir have?
 2. Does the Tribunal have the jurisdiction to deal with the issues concerning the drainage pipe?
 3. What remedies and costs, if any, are appropriate?

Issue 1. How many parking spaces should Ms. Tahir have?

- [7] Ms. Tahir bought her townhouse in 2015. About five years later, she noticed employees of YRSCC991 changing the Visitor Parking configuration in a way that she felt encroached on her exclusive use rear yard space. She was also concerned about the accessibility issues the change might create. Her concern was such that she began to research the inventory of all the parking spaces on the property. She requested that YRSCC991 provide her with the number, size and locations of all the parking spaces. She became further concerned about what she saw as inconsistencies in the documents provided to her, including what she saw

as inconsistencies in the various legends on and schedules to the diagrams. Her search expanded to municipal records. Her consideration encompassed all the documentation she had acquired, including the Declaration and diagrams such as the "Diagram Showing Vertical Relationship of Floors (Not to Scale) Typical" and similar diagrams. By performing calculations and extrapolations based on these documents and diagrams, Ms. Tahir is convinced that she is entitled to two parking spaces. She also asserts that every other owner is also entitled to two parking spaces. While she led no evidence of her qualifications to read and interpret plans and diagrams, it was obvious from her extensive and detailed testimony and submissions, that Ms. Tahir has given this matter a great deal of thought.

- [8] YRSCC991 called one witness, a Mr. Juliusz Zulauf, the President of the Board of Directors of YRSCC991 and an owner of a townhouse in the complex. The witness identified himself as an aviation engineer with experience, on a daily basis, in reading, interpreting and approving various types of technical drawings and specifications. Mr. Zulauf testified that the document governing the number and arrangement of parking spaces in the commonly accessible garage, where Ms. Tahir's parking is located, is the description of the condominium prepared in accordance with Ontario Regulation 49/01, which he identified as the "site plan" and which is referred to in the Declaration as the "Description". It will be referred to in this decision as the "Description" to be consistent with the Declaration. The Description, in Mr. Zulauf's testimony, is registered with the Land Registrar. Mr. Zulauf testified that he has inspected the townhouse complex and found that the "number and arrangement of the parking spaces located in the commonly accessible garage at the basement level are consistent with the [Description]." Mr. Zulauf went on to say:

Examination of the [Description] leads to the obvious conclusion that the intention of the Declarant was to create townhouse complex comprising of residential units of various sizes and shapes. Some of the units are bigger, some are smaller, some have private garages while some other do not. YRSCC townhouse complex comprises of 24 residential units. Each unit has assigned one front yard designated as "F-#", one rear yard designated as "R-#" and one exclusive use common elements parking designated as "P-#" located in commonly accessible basement garage. Additionally, units #2 to #11 and #14 to #23 also include each one private garage which is an inherent part of the unit. Those private garages are located in the basement level and are accessible from assigned "P-" parking space of the unit. Units #1, #12, #13 and #24 do not have private basement garages. Those units have basement storage lockers instead. Additionally, the common elements basement garage includes a central alley and 4 (four) visitor parking spaces.

Mr. Zulauf notes that Ms. Tahir's unit is one of those identified as having a parking space and smaller storage locker.

- [9] I accept Mr. Zulauf's testimony about the interpretation of the Description to show that Ms. Tahir's unit is entitled to a single parking space as an exclusive use common area and the adjoining storage locker. This testimony is consistent with my review of the Declaration and the Description. I note that the provisions of the Declaration allocating the exclusive use parking spaces are designated by a "P" followed by a number and that there is only one such parking space allocated to Ms. Tahir's unit. Further, I observe that there are no parts of the common elements designated as exclusive use storage lockers. The Description shows that Ms. Tahir's unit includes a storage area located on the basement level of the condominium. Thus, Ms. Tahir is entitled to two differently designated spaces for parking and storage. She is entitled to a parking space as an exclusive use portion of the common elements. She is also entitled to a smaller storage locker as a part of her unit.
- [10] While Mr. Zulauf's testimony is consistent with my review of the Declaration and the Description, Ms. Tahir's testimony is not. For example, her extrapolation from the diagram showing the vertical relationship of floors to calculate the parking spaces is using the diagram for a purpose for which it was not intended. I accept Mr. Zulauf's testimony that the Description is the appropriate plan to use in understanding the allocation of the parking space. It is the plan referred to in the Declaration as forming part of the description of the property. It is the plan which shows the parking space allotment most clearly and directly. I conclude that Ms. Tahir is mistaken in her conclusion that all owners, including her, are entitled to two parking spaces. She is entitled to one parking space and a storage locker, which is what she has been allotted.
- [11] Mr. Zulauf expressed the opinion that Ms. Tahir was attempting to mislead the Tribunal. He takes particular issue with her selective use of parts of the Description and her use of diagrams showing a vertical relationship of the stories in the complex as the basis to extrapolate into the parking area.
- [12] I am not persuaded that Ms. Tahir is attempting to mislead anyone. Rather, she appears to be making a good faith attempt to understand the parking layout and organization. The various diagrams are not as clearly labelled as one might wish. Mr. Zulauf concedes that there are mistakes in the documents, although he characterizes these as clerical errors.

Issue 2. Does the Tribunal have the jurisdiction to deal with the issues concerning the drainage pipe?

- [13] Ms. Tahir raised two issues regarding the drainage pipe that runs through her storage unit. First, she submits that it encroaches on her storage locker without an easement or encroachment agreement. Second, she submits that the pipe persistently leaks both inside the locker and on the exterior of her unit. Neither party questioned the Tribunal's jurisdiction to deal with these issues.
- [14] The Tribunal's jurisdiction in this case arises from the wording of Regulation 179/17 to the *Condominium Act, 1998* (the "Act"). Subsection 1(1)(d) that regulation extends the Tribunal's jurisdiction to disputes with respect to provisions of the declaration that "prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset or the common elements, that is intended for parking or storage purposes."
- [15] Ms. Tahir is alleging that the drainage pipe restricts her use of the storage locker. YRSCC991 submits that the restriction is permitted by the terms of its Declaration. It is therefore at least arguable that the Tribunal has the jurisdiction to deal with the question of whether there are provisions in the Declaration that restrict Ms. Tahir's use of her storage locker. However, it is not necessary to decide the question of the Tribunal's jurisdiction over this matter. Upon reviewing the parties' evidence and submissions related to the issue of the drainage pipe and whether it restricts the use of the storage locker, I conclude that what is determinative of the issue are the provisions of section 12 of the Act. This section states that certain easements are appurtenant, or attached to, individual units or exclusive use portions of the common elements. Among these is an easement for the provision of service through "the common elements or any other unit". Applying that provision to this situation, the storage locker, which forms part of Ms. Tahir's unit, has a statutory easement attached to it for the provision of a service, such as a drainage pipe serving more than one unit. As the drainage pipe is included in an easement, it cannot be said to be improperly restricting Ms. Tahir's use of her storage locker.
- [16] Concerning the issue of whether the pipe is leaking into Ms. Tahir's storage locker or the exterior of her townhouse, there is nothing in the Act or in Regulation 79/17 that presently gives the Tribunal the jurisdiction to determine this issue. It should also be noted that Ms. Tahir did not raise the issue of alleged water leakage until she posted her written testimony. This was too late in the process for the issue to be heard without the consent of YRSCC991, which contested the hearing of the issue. For both these reasons, the question of water leakage, if any, from the drainage pipe cannot be dealt with in this proceeding.

Issue 3. What remedy, if any, is appropriate?

- [17] Ms. Tahir requested a number of remedies. As she has been unsuccessful in her

application, none of these remedies are available to her. YRSCC991 requested the dismissal of Ms. Tahir's application. YRSCC991 did not request costs. No order as to costs will issue.

[18] It should be noted that the representatives of YRSCC991 in this proceeding displayed an aggressive attitude towards Ms. Tahir. In his testimony, Mr. Zulauf was occasionally condescending and dismissive of Ms. Tahir's concerns. YRSCC991 referred, in its closing submissions, to Ms. Tahir making a "fraudulent" claim for water damages from the drainage pipe and to seeking "unlawful enrichment" in claiming compensation for the alleged encroachment of the drainage pipe. This attitude and the language associated with it was uncalled for, inappropriate and inconsistent with the sort of respectful relations one expects to see demonstrated by the board of directors and management of the condominium corporation towards owners of condominium units.

C. ORDER

[19] The Tribunal orders that Ms. Tahir's application be dismissed.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: October 1, 2021