

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 9, 2021

**CASE:** 2021-00102N

**Citation:** Teeter v. Simcoe Condominium Corporation No. 8, 2021 ONCAT 105

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Mary Ann Spencer, Member

**The Applicant,**  
Jim Teeter  
Self-Represented

**The Respondent,**  
Simcoe Condominium Corporation No. 8  
Represented by Sonja Hodis, Counsel

### DISMISSAL ORDER

#### **A. OVERVIEW**

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT) and the case proceeded to Stage 3 – Tribunal Decision on September 29, 2021. In his application, the Applicant indicated his issue was a request for an accessible parking space in the Respondent’s parking lot which, although not designated for owners’ exclusive use pursuant to the Respondent’s governing documents, had been assigned to owners for their exclusive use.
- [2] The Respondent brings this motion to dismiss this matter before hearing evidence on the basis that the issues raised in the Applicant’s application have been resolved and that it would be unfair to continue with the proceeding. The Applicant disputes that the issues have been resolved. The Respondent also requests the Tribunal order the Applicant to pay its costs of \$21,328.75.
- [3] Rule 17.1 of the CAT’s Rules of Practice states that the CAT can dismiss a case at any time in certain situations. These include if the CAT determines that a case is about issues that are so minor that it would be unfair to make the Respondent go through the CAT process to respond to the Applicant’s concerns, and where a case is about issues that the CAT has no legal power to hear or decide. Under Rule 41.1 of the Rules of Practice, the CAT will end Stage 3 and close the case if the CAT Member dismisses the case.

[4] I have considered the submissions made by both parties and find that the issues in dispute have been resolved. Accordingly, I order that this case be dismissed. I also order the Applicant to pay the Respondent \$1,000 in costs.

**B. BACKGROUND**

[5] The Respondent is a 32-unit residential condominium corporation. In accordance with the provisions of Article VIII 2 of its declaration, each unit has the exclusive use of one parking spot. Rule 4.02 of the Respondent's Rules states "Owners and tenants shall park in the parking spot assigned to their unit."

[6] The Applicant took possession of his unit in September 2019. On December 14, 2020, on behalf of his spouse, he formally requested an accessible parking space. The president of the Respondent's board of directors indicated that the specific space requested by the Applicant was assigned to another owner but the board was prepared to provide a visitor's space which would be more accessible than the Applicant's assigned spot. The Applicant was sent a copy of a survey of the Respondent's site with the response.

[7] The site survey did indicate that the specific parking space the Applicant had requested was in fact assigned to another owner. However, it also showed that the spots the Respondent was using and had physically marked as visitors' parking were in fact owners' spots and that owners had been assigned spaces in what the survey indicated was visitors' parking. The Applicant did not accept the space he had been offered and filed his application with the Tribunal.

[8] The Applicant's application was accepted by the Tribunal on April 21, 2021. In June, 2021, while this matter was before the Tribunal, his spouse passed away.

[9] The Stage 2 mediation did not resolve this matter and the Stage 2 Summary and Order sets out the issues to be addressed at the Stage 3 hearing as follows:

1. Do the provisions of the declaration, by-laws, or rules of SCC No.8 that "prohibit, restrict, or otherwise govern the parking", allow for the reassignment of unsurveyed parking spots to parking spots 31, 30, 29, 28 and 27?
2. Are the provisions of the declaration, by-laws, or rules of SCC No.8 that "prohibit, restrict, or otherwise govern the parking", in contravention of the Human Rights Code for failing to provide accessible parking spots?

[10] At the outset of the Stage 3 hearing, I asked both parties to confirm the issues to be addressed. Counsel for the Respondent submitted that the issues in the Applicant's application have been resolved and that the Tribunal does not have

jurisdiction to deal with them as they are moot. She indicated that she wished to submit this motion to dismiss this matter and I requested submissions from both parties.

### **C. ANALYSIS**

[11] Rule 17.1 of the Tribunal's Rules of Practice states that the Tribunal "can dismiss a case at any time in certain situations", including, among others:

(a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns;

(b) Where a Case is about issues that the CAT has no legal power to hear or decide;

(c) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications);

[12] The Applicant's application in this case states:

I have respectfully requested a handicap spot adjacent to the east side of spot 32 surveyed exclusive use spot. Surveyed spots to the east of 32 which are not identified to any unit as exclusive use that the directors have reassigned from owners surveyed parking spots 31 30 29 28 and 27 and are using the surveyed undesignated spots as exclusive use for themselves. Sadly and additional to pre-existing mobility issues, my wife has fallen and has underwent hip replacement surgery in Venice Florida 3/16/21. I have been flexible with these issues and am asking for an immediate resolution.

[13] Counsel for the Respondent submits that that it would be unfair to make the Respondent go through the hearing process because the issues raised in the Applicant's application have been resolved. In this regard, she referred me to the Tribunal's decision in *Yeung v. MTCC 1136 2020 ONCAT 45*, a records-related case in which the Tribunal found that the case should be dismissed under Rule 17.1(a) because the Applicant had received the records requested and there was no issue to decide.

[14] Counsel further argues that the Tribunal's jurisdiction does not extend to the Applicant's issue because the designation of parking spots is set out in the Respondent's description rather than its declaration, by-laws or rules. The Tribunal's jurisdiction is set out in O. Reg. 179/17:

1. (1) The prescribed disputes for purposes of subsection 1.36(1) and (1) of the Act are,

(d) subject to subsection (3) a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:

(iii) Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any or the common elements, that is intended for parking or storage purposes.

[15] I reject this jurisdictional argument with respect to the issue set out by the Applicant because Article VIII 2 of the Respondent's declaration in fact both references and relies on the description:

Each unit owner shall also have the exclusive use, subject to the provisions of this declaration, the by-laws of the corporation, and the rules and regulations passed pursuant thereto, of a parking space designated in the description by being numbered the same as the number of his unit with the letter P preceding such number.

[16] However, the evidence is that the Applicant is no longer requesting an accessible parking spot as accommodation for his spouse and, as set out in the affidavit and accompanying exhibits of board president Brian Allen, the Respondent has reassigned the visitors' and owners' designated parking spots in accordance with the survey. I note this reassignment took place after the Stage 2 mediation in this matter ended.

[17] The Applicant disputes that the reassignment issue has been resolved because there has been some lack of compliance with an owner continuing to park in what were formally owners' spots but are now designated as visitors' spots. However, I also note that the Applicant's evidence is that the Respondent is attempting to enforce compliance: he indicated that the corporation has requested owners to use their designated spot and that "the lawyer has now forwarded to all requesting removal of all homeowner vehicles from the visitor parking".

[18] Based on Mr. Allen's evidence, which includes photographs of the reassigned parking spots, I find that the issue the Applicant detailed in his application to the Tribunal, which is also set out in the Stage 2 Summary and Order as the first issue to be addressed in the hearing, has in fact been resolved and therefore there is no basis on which to hear it.

[19] The Respondent disputes the accuracy of the second issue set out in the Stage 2 Summary and Order, that is whether the Respondent's parking provisions

contravene the *Human Rights Code* by failing to provide for accessible parking. Counsel for the Respondent submits that the issue was not correctly framed in the Stage 2 Summary and Order and that the issue in fact is whether there was a “disability related need that needs to be accommodated and whether the condominium failed in their duty to accommodate as required by the *Human Rights Code*.”

- [20] I determine the second issue set out in the Stage 2 Summary to be whether the Respondent, in relying on provisions in its governing documents, contravened the Code’s requirement to accommodate the needs of a person with a disability. The decision in *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14 (CanLII), 2006 SCC14, [2006] 1 SCR 513 established that Tribunals have the jurisdiction to consider the provisions of the Code in the context of matters properly before them. However, in this case, the question of the Tribunal’s jurisdiction is moot. The Applicant’s request for an accessible parking space on behalf of his spouse is no longer extant and therefore there is no decision for the Tribunal to make on the second issue.
- [21] In response to my request that he confirm his understanding of the issues, the Applicant indicated “I was advised that once the parking lot was repainted a handicap spot should have been created. I had requested the spot as per the Disability Laws of Ontario.” In his response to the Respondent’s motion submission, he stated that he is now asking the Tribunal to issue, among others, an order requiring the Respondent to create an accessible parking spot for future use.
- [22] Counsel for the Respondent submits that the Tribunal’s jurisdiction arises only when there is a dispute with respect to *existing* provisions of the declaration, by-laws or rules of a corporation. Counsel argues that the word “existing” is implied in the wording of s. 1. (1)(d) of O. Reg. 179/17 which states “The prescribed disputes...are...a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation”. She argues that the provision “has to exist for there to be a dispute about it” and because there are no provisions in the Respondent’s governing documents which address accessible parking spaces, there can be no dispute. She submits that the Applicant’s request for an accessible parking spot was “solely based on a request for accommodation under the *Human Rights Code* that did not involve a dispute over the provisions of the Respondent’s declaration, bylaws or rules.”
- [23] I agree with Counsel for the Respondent that the jurisdiction of the Tribunal does not generally extend to a dispute about what provisions a condominium's

governing documents *ought* to contain other than in limited circumstances, such as where the condominium has sought to enforce restrictions or regulations that were not properly enacted. This case does not fall within that limited range of exceptions. I also agree that the second issue set out in the Tribunal's Stage 2 Summary and Order, that is whether the parking-related provisions of the declaration, by-laws, or rules of the Respondent contravene the *Human Rights Code* for failing to provide accessible parking spots, can only relate to the Applicant's request for accessible parking as accommodation for his spouse. The *Code* does not address accessible parking spots. Rather, it sets out the right of individuals to equal treatment with respect to services, goods and facilities without discrimination and includes a duty to accommodate to meet the needs of a person with a disability. It is the *Accessibility for Ontarians with Disabilities Act* ("AODA") which sets out the specific requirements for the provision of accessible parking.

[24] The Applicant is now requesting that the Tribunal order the Respondent to create an accessible parking space for future requirements. He provided no evidence or submissions to support that this request is a dispute relating to the provisions of the Respondent's declaration, by-laws or rules. Therefore, I find that the Tribunal has no jurisdiction with respect to this request. The *Condominium Act, 1998* does not address accessible parking. Whether a corporation must have accessible parking spaces would be established in the requirements of the AODA or municipal by-laws.

[25] That the only issues over which the Tribunal has jurisdiction have been resolved is sufficient reason for the Respondent's motion to succeed. However, I will address Counsel for the Respondent's submission that this case should be dismissed under Rule 17.1(c) on the basis that the Applicant is using the CAT for an improper purpose. Counsel asserts that the Applicant is using the Tribunal as a forum to raise his concerns about the management of the Respondent and issues not relevant to parking in spite of being advised that only parking issues would be considered.

[26] As part of his response to the motion, the Applicant submitted numerous documents not relevant to the parking issue including, among others, documents related to common expense arrears, repair of his balcony, patio and front entrance, hedge removal, and mooring fees. I note that in uploading these to the CAT-ODR system, he labelled them as "Abuse". His written submission included allegations of bullying and director mismanagement as well as a statement that the directors were involved in "illegal activities". He requested that the Tribunal charge any costs it awarded directly to the directors and that he be awarded an unspecified amount of "general compensatory damages."

- [27] I agree with Counsel that the Applicant used the opportunity to reply to the motion submission improperly to raise ancillary issues and to make inappropriate and unsubstantiated allegations about the directors notwithstanding that he was advised in both the Stage 2 Summary and Order and by myself that the parking issues are the only ones this Tribunal would consider. However, based on the fact that his position at the outset of this Stage 3 proceeding was that the parking issues were not resolved, I conclude that while the Applicant is improperly using the Tribunal, he is not using it for an entirely improper purpose.
- [28] The Respondent has requested it be awarded \$21,328.75 in costs including \$20,650.75 in legal fees, of which \$9,028.70 were incurred before this matter moved to Stage 3 and \$11,622.05 were incurred with respect to the Stage 3 proceeding.
- [29] Rule 45.1 (c) of the Tribunal's Rules of Practice states that the Tribunal may order a User to pay to another User or the CAT costs that were directly related to a User's behaviour during the Case that was unreasonable, for an improper purpose, or that caused an unreasonable delay." Rule 46.1 of the Tribunal's Rules of Practice states that the Tribunal "will not order a User to pay another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so."
- [30] I will award no costs with respect to the legal fees the Respondent incurred before this Stage 3 proceeding. While the Applicant's request for an accessible parking spot was withdrawn due to the unfortunate passing of his spouse during the Stage 2 mediation, the misallocation of parking spots was an issue over which the Tribunal had jurisdiction and on which no settlement was reached during the Stage 2 mediation. I also note that a portion of the pre-Stage 3 legal costs claimed are those incurred to respond to the Applicant's motion for an extension of time to request adjudication. The Applicant's motion was successful and the decision in *Teeter v. Simcoe Condominium Corporation No. 8*, 2021 ONCAT 84 indicates that the merits of the Applicant's case were duly considered.
- [31] Counsel for the Respondent submits that the Applicant's persistence in raising issues in his submissions in this Stage 3 hearing which he was aware were outside of the scope of this case caused the Respondent to incur unnecessary legal expenses. As noted above, the Applicant submitted 14 supporting documents to his response to the Respondent's motion submission, of which I found only two were related to the issues to be decided in this matter. I note the posted documents inappropriately included the settlement offer he had made during the Stage 2 proceeding which the Stage 2 Summary and Order stated could not be introduced

as evidence. The Applicant acknowledged in his submission that the issues he raised had been found to be outside of the scope of this hearing and wrote:

The CAO mediator has requested that all listed disputes cannot be included. I have disagreed as all listed disputes are not only related to the parking issue but further support my reasoning for the distrust of the directors failure for appropriate governance and that may require investigations involving other Ontario Provincial Authority's to which I did not wish to pursue.

Notwithstanding the Applicant's submission, I find that the other issues he raised were not related to the parking issue other than to support his allegations that he has been mistreated and bullied by the Respondent.

[32] The Applicant had the right to dispute that the parking issues, particularly the issue of re-allocation of the Respondent's parking spaces, had been resolved, and to make submissions in this regard. However, his inclusion of many other issues and irrelevant documents after he had been advised of the limitations of this case made those submissions both difficult and time-consuming to follow. I find that the Applicant's behaviour in continuing to raise matters not before the Tribunal was unreasonable and that this comprises an exceptional reason to award legal costs. In this regard, however, I note that the Respondent's detailed cost submission indicates that only approximately 13%, that is \$1,512.79 of the \$11,622.05 legal fees claimed in respect of the Stage 3 proceeding were incurred to review and respond to the Applicant's submission; and, a portion of that submission was in fact relevant to the motion. Therefore, I find that an award of \$1,000 in costs is appropriate.

[33] In summary, I have found that the issues in the Applicant's application have been resolved. Therefore, the Respondent's motion succeeds, and I dismiss this case without a hearing. I also award the Respondent \$1,000 in costs.

#### **D. ORDER**

[34] The Tribunal orders that:

1. This case is closed in Stage 3 - Tribunal Decision pursuant to Rules 17.1 and 41.1 of the CAT's Rules of Practice.
  2. Within 30 days of the date of this decision, the Applicant shall pay \$1,000 in costs to the Respondent.
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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: November 9, 2021