

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 14, 2021

CASE: 2021-00185N

Citation: Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 119

Order under Rule 41.1(c) 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

WITHDRAWAL ORDER

- [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 sought 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] This case commenced on August 30, 2021. Over the next several months, the parties disclosed documents, provided witness statements, and conducted cross examinations of witness testimony. On November 26, 2021, the Applicant requested, through the CAT-ODR system, that he be allowed to withdraw his case. Rule 41.1(c) of the Tribunal's Rules of Practice states that the Tribunal will end Stage 3 and close the case if the Applicant has properly informed the Tribunal that they are withdrawing their case **and** the Tribunal member has agreed to allow them to withdraw (emphasis added).
- [3] The Applicant has properly informed me of his wish to withdraw his case, stating that "I feel it is not worth my valuable time and money to pursue further specially with the outcome of the last cases". He noted as well that his property is for sale. Given that the case had progressed to the stage of closing submissions, I allowed

the Respondent to make brief submissions on the withdrawal request, giving the Applicant an opportunity to respond to those submissions before I made my decision whether to allow the withdrawal.

- [4] For the reasons that follow, I will allow the request to withdraw the case and the case shall be closed.

REASONS

- [5] Mr. Hernandez, on behalf of the Respondent, noted that while the Respondent welcomed the conclusion of the case with no negative finding or award against it, it did have a number of concerns. I will address each concern below.

Analogous case

- [6] The first of these concerns is the fact that there is a virtually identical case before the Tribunal commenced by a different unit owner against the Respondent. The Tribunal Chair adjourned that case pending the outcome of this one given that the case before me was further along in the hearing process. Should this case be withdrawn, the Respondent states it would have to go through the entire hearing process again on the same set of facts, a misuse of the Tribunal by “two owners who are working together”.
- [7] While I can appreciate the Respondent’s frustration, I do not conclude that the Respondent’s “entitlement” to a decision in this case on the merits, and effectively in the other, takes precedence over the Applicant’s request to withdraw. There is much ill will between this Applicant and the Respondent as was apparent in the witness testimony and in the Applicant’s various submissions through this case; however, the Applicant appears to have given due consideration to the reasons enunciated in a previous case (released on November 2, 2021, and referred to below as the “November decision”)¹ and determined that withdrawal of this case is appropriate. As a Tribunal, we want to encourage parties, whether they be applicant or respondent, to take heed of our decisions and guide their further interactions with the Tribunal accordingly. Mr. Calderon has done so, and his request is not unreasonable in the circumstances. Indeed, it may well be that the other unit owner, will also read that decision and be similarly guided.

Timing and reason for the withdrawal

- [8] The second concern relates to the timing and reason for the request to withdraw.

¹ Calderon v. York Condominium Corporation No. 274 2021 ONCAT 101(CanLII)

[9] Mr. Hernandez submits that the Applicant could have withdrawn earlier, but instead chose to continue a pattern of disruption of the board governance, noting that this case is the last of eight cases commenced by Mr. Calderon. The Respondent has previously brought motions to have these cases dismissed, including one at the outset of this hearing. I dismissed that motion², but noted that Mr. Calderon had previously been cautioned by the Tribunal against pursuing cases with the intent to cause distress to the corporation, and that all costs are ultimately borne by all owners in the corporation. Further, Mr. Calderon was reminded that underlying disputes about how the board is governed, and by whom, were not matters properly before this Tribunal.

[10] It does, however, as noted above, seem to be the Tribunal's November decision that has caused Mr. Calderon to reconsider pursuit of this case. The fact that the decision was released at about the same time that closing submissions were to be made in this case, is not something that any party had control over or might have foreseen. Up to that point, Mr. Calderon may have felt that there was strong basis on which to continue this case. In the previous case (the November decision), Mr. Calderon alleged that the corporation had failed to enforce its pet and parking rules³. The Tribunal stated at paragraphs 34-36 as follows:

Having considered the evidence and submissions, I find that Mr. Calderon has not provided sufficient evidence to establish that YCC 274 did not enforce its Pet Rules and Parking Rules in a consistent, fair, and reasonable manner.

I note Mr. Calderon's submission that, since YCC 274 became self-managed by the Board, there have been negative changes in the service provided compared to previous services provided by private management companies and that YCC 274 is not capable of adequately managing the condominium. Regarding this submission, I note the CAT's July 27, 2021 motion order relating to the proceeding before me, referred to above, which identified a common theme across his various CAT applications, and stated as follows:

The Applicant does not believe that the Respondent is fairly and consistently applying their rules. While I have decided not to dismiss these cases, I want to reinforce that the CAT is not the venue to deal with the underlying dispute over whether the corporation should be managed by a condominium manager or operate as a self-managed corporation by the directors. The parties are advised to focus their efforts on resolving the issues in dispute before the CAT, and to save larger discussions for how the community will be managed

² Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 88 (CanLII)

³ I note that Mr. Capra, the applicant in the proceeding which was adjourned pending the outcome of this case, was a witness for Mr. Calderon in this case,

to the community itself.

I agree with this previous finding of the Tribunal regarding this matter. The CAT is not the appropriate venue to address Mr. Calderon's concerns about the self management of YCC 274, it is not an issue before me, and it is not within the Tribunal's jurisdiction.

[11] Again, if review of the November decision precipitated the request to withdraw this case, because of the reasons noted above, that is not unreasonable, especially given that issues about the self management of the corporation were raised by Mr. Calderon before me. Mr. Calderon has been cautioned on several occasions now that the issues he has with the board management are not matters within the current jurisdiction of the Tribunal. And he is urged to be mindful of that and not use a records request or an application about the board's enforcement of its governing documents as a vehicle to pursue what he perceives to be his responsibility to bring the alleged negligence or incompetence of the Respondent to light.

[12] I will note here that Mr. Calderon, in his submissions relating to his withdrawal request, alluded to issues that had been decided in other previous decisions between him and the Respondent, to the effect that the Respondent has "gotten away" with certain things related to nondisclosure of records and its lack of enforcement of its rules. Those matters were decided by the Tribunal previously after weighing of the evidence before it at the time and any comments that cast doubt on the merits of those decisions would not be given any consideration by me.

[13] Finally, Mr. Calderon has also indicated that the case has taken a personal toll. Some of his family have already moved out of the unit. He has stated that he has family matters which require his full-time attention. I do agree that such matters ought to take priority and accept that this is another understandable and reasonable basis for the request to withdraw.

Costs

[14] The Respondent submits that "at the very least Mr. Calderon should not be permitted to withdraw with no cost consequences". They argue that it would be patently unfair for it to have to bear the significant costs to fully respond to a CAT case only to have Mr. Calderon arbitrarily withdraw with no cost consequences, and further that it "would wreak havoc on the reputation of the Tribunal" and embolden disgruntled unit owners to pursue cases, opening up rampant abuse. The Respondent has not indicated the amount of costs they believe to be

appropriate in these circumstances.

- [15] The Respondent requested its costs in the most recent case before the Tribunal, but costs were not granted to it. In the November decision, the Tribunal stated that Mr. Calderon had a genuine belief that the Respondent was not enforcing its pet and parking rules, that he had not behaved vexatiously, and he had not delayed or complicated the proceedings. There, as in this case, Mr. Calderon seems to have asked cross examination questions that were not allowed, but the Tribunal noted that this was part of Tribunal process and did not merit a costs award.
- [16] The case resulting in the November decision was commenced around the same time as the case before me. At that time, it is not unreasonable to assume that Mr. Calderon had a genuine belief that the Respondent was not enforcing the parking rules that were in issue in this case. In this proceeding, Mr. Calderon, though vigorous in his arguments and at times focussed on issues extraneous to the issues to be decided by me, generally followed instructions and did not unduly complicate or delay matters. He has not extended this proceeding; he is, by this request to withdraw, bringing it to an earlier close.
- [17] Costs are discretionary. While I do appreciate the Respondent's frustrations with responding to so many cases from one individual, I must consider the circumstances of the proceeding before me, not the other seven, and what is fair and reasonable in this case. I have concluded, for the reasons set out in the preceding paragraph that an award of costs is not warranted.
- [18] Before coming to this conclusion, I considered Mr. Calderon's submissions relating to the withdrawal request. For example, he stated that "if the Respondent continues to fail on their responsibilities ... I will be forced to open any necessary litigation or tribunal process." While I do not find the Respondent's statement that allowing the withdrawal without costs will "wreak havoc", this 'threat' by Mr. Calderon lends some justification to the Respondent's concerns. To be clear, whether or not costs are awarded, Mr. Calderon, or any other applicant, could have a right (as Mr. Calderon puts it) to pursue a case against their condominium corporation to the extent permitted by the *Condominium Act, 1998*; but when a party chooses to litigate, they must understand that - regardless of my decision in this case - it may not be without consequences, costs or otherwise.
- [19] To that end, it is worth repeating what the Tribunal Chair stated at paragraph 24 in his decision⁴ denying the Respondent's motion to dismiss several of Mr.

⁴ Calderon v. York Condominium Corporation No.274 , 2021 ONCAT 70 (CanLII)

Calderon's cases against it on the basis that they were vexatious:

I also caution the Applicant that although I deny the Respondent's motion, it is imperative that they understand the decision is based on the submissions presented to date. It is not permission to file meritless Applications or use the CAT for improper purposes.

This is my caution to Mr. Calderon, as well as to any other potential applicant seeking to bring a case before the Tribunal.

ORDER

[20] For the reasons set out above, I allow the withdrawal of the Applicant's case and I order that the case shall be closed under Rule 41.1 (c), without costs to either party.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: December 14, 2021