

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** April 7, 2022

**CASE:** 2022-00020N

**Citation:** Waterloo Standard Condominium Corporation No. 435 v. 1719286 Ontario Inc., 2022 ONCAT 30

Order under Rule 19.1 of the Condominium Authority Tribunal's Rules of Practice

**Member:** Patricia McQuaid, Vice-Chair

**The Applicant,**

Waterloo Standard Condominium Corporation No. 435

Represented by Anna Wyszomierska, Agent

**The Respondent,**

1719286 Ontario Inc.

Represented by Victor Yee, Counsel

### **MOTION DECISION AND ORDER**

- [1] The Applicant, Waterloo Standard Condominium Corporation No. 435 ("WSCC 435"), brought an application to the Tribunal for an order that the Respondent 1719286 Ontario Inc. ("171"), a unit owner in WSCC 435, has contravened provisions in the governing documents dealing with the storage of items and parking of vehicles on the common element areas. This matter proceeded to the Stage 3 – Hearing on March 22, 2022. Shortly thereafter, Mr. Yee, who had recently been retained by the Respondent, advised that the Respondent wished to bring a motion for early dismissal under Rule 19.1 of the Tribunal's Rules of Practice. Specifically, the Respondent asserts that the Applicant has no reasonable prospect for success.
- [2] As explained below, the Respondent's motion is granted and the application is dismissed.
- [3] The grounds for dismissal, as set out in the Respondent's motion submissions, are twofold. First, the Respondent submits that the Applicant's board lacks quorum to bring or pursue this CAT application. Second, it submits that the issue of the storage on the common elements was litigated by the parties in 2012 and a decision made by a judge of the Superior Court of Justice that there was, at that time, no effective restriction on the use by any owner of the common elements for outside storage. The Respondent submits that with no by-law or declaration

changes between 2012 and the present, this issue has, in effect, already been determined.

- [4] The Applicant filed submissions in response to 171's motion. The Applicant consents to the motion to dismiss on the basis of the board's lack of quorum.
- [5] The Applicant acknowledges that the board has been without quorum since September 11, 2021. WSCC 435's bylaws provide for a three-member board and a quorum requires two board members. The current board is comprised of two members; however, one of those members had not completed his mandatory Condominium Authority of Ontario director training in the prescribed six-month period and ceased to be a director as of September 11, 2021. When this application was filed in January 2022, there was only one director. The business of the corporation, which includes initiating an application with the Tribunal and authorizing a representative to act in that regard, cannot be undertaken without a decision of a quorum of the board.<sup>1</sup>
- [6] Noting the consent of the Applicant, I am dismissing this application on the basis that the board was not empowered to commence and continue this application. Therefore, at this time, there is no reasonable prospect of success for the Applicant. Having made this decision, I need not determine whether the second ground for dismissal put forward by the Respondent would warrant a dismissal. On that point, I note that the Applicant did respond to that ground as well, suggesting a recent change in circumstances led to their enforcement action.
- [7] Finally, I note that in other cases that have come before the Tribunal where board quorum became an issue (cases cited below), the Tribunal granted an adjournment to allow the board time to rectify the issue. In this instance, the Applicant has not requested an adjournment and has indicated that an owners' meeting is scheduled for May 10, 2022, and anticipates that both the board director and storage issues will be addressed at that time. This is a small commercial condominium with approximately five units and one hopes that the owners can among themselves resolve the equipment storage issue efficiently and amicably, and without recourse to this Tribunal or the courts.

## **ORDER**

- [8] Pursuant to Rule 19 of the Tribunal's Rules of Practice, the Tribunal orders that

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<sup>1</sup> See *Ravells v. Metropolitan Toronto Condominium Corporation No. 564 2020 ONCAT36(CanLII)* and *Kalinitchenko v. York Region Common Elements Condominium Corporation No. 1219 2021 ONCAT10(CanLII)*

this application be dismissed.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

Released on: April 7, 2022