

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 19, 2022

CASE: 2022-00110N

Citation: Toronto Standard Condominium Corporation No. 2745 v. Islas, Barahona and Martinez, 2022 ONCAT 36

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Toronto Standard Condominium Corporation No. 2745
Represented by Victor Yee, Agent

The Respondent,

Ricardo Rafael Ocampo Islas

The Intervenors,

Mauricio Barahona and Eduardo Martinez

Hearing: Written Online Hearing – March 8, 2022 to April 12, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Toronto Standard Condominium Corporation No. 2745 (“TSCC 2745”) alleges that the Respondent, Ricardo Rafael Ocampo Islas, a tenant of a parking unit in the condominium corporation, and/or the Intervenors Mauricio Barahona and Eduardo Martinez, the owners of the parking unit, have failed to comply with TSCC 2745’s declaration. The particular provision in issue is Article 4.5(a) which states:

Each Parking Unit shall be used and occupied only for the parking of motor vehicles as may be from time to time defined in the Rules of the Corporation. It shall be the responsibility of the Owners to ensure that their vehicles can be properly operated and/or parked in the parking structure within the Property. **The Owners of Parking Units shall not permit any portion of any motor vehicle parked within a Parking Unit to protrude beyond the boundaries of the Parking Unit and encroach upon any portion of the Common Elements or upon any other Unit.** Each Owner shall maintain his or her Parking Unit in a clean and sightly condition,

notwithstanding that the Corporation may make provision in its annual budget for cleaning of Parking Units (emphasis added).

- [2] TSCC 2745 alleges that the tenant's truck, described by it as "oversized", has been parked in such a way that it protrudes beyond the boundaries of the parking space, the exact dimensions of which are also set out in the declaration. TSCC 2745 seeks an order compelling the tenant and owners to comply with Article 4.5(a) within 21 days of the order and reimbursement of the filing fee of \$150 paid to the Tribunal, also with 21 days.
- [3] The Respondent and Intervenors have not participated in this case, though they were given notice of it by the Applicant and later by Tribunal staff. Further, based on emails that were disclosed by the Applicant during this hearing, I am satisfied that the Respondent and Intervenors, as well as their legal representative who had engaged in discussions with the Applicant's representative about the case on their behalf, were aware that this case was proceeding and have chosen not to participate.

B. RESULT

- [4] For the reasons set out below, I find that the Respondent and Intervenors, prior to March 4, 2022, failed to comply with Article 4.5(a) of the declaration. However, based on the photographs provided by the Applicant and dated March 4, 2022, I find that any noncompliance, as of that date, is negligible. I will order that the Intervenors reimburse the Applicant for the fees paid to the Tribunal in the amount of \$150.

C. ISSUES & ANALYSIS

ISSUE 1: Have the Respondent and/or Intervenors failed to comply with TSCC 2745's declaration?

- [5] In this hearing, I received evidence from Victor Yee, the president of the board of TSCC 2745. I note that Mr. Yee is a lawyer, but he was not participating in the hearing as a legal representative, but rather in his personal capacity as a board member. Mr. Yee provided a detailed chronology and, to the extent relevant to this decision, I will refer to it.
- [6] As indicated above, the Intervenors are the owners of the parking unit. In December 2021, the Intervenors leased the parking unit to Mr. Ocampo Islas and he was registered with condominium management as the occupant of the unit on December 27, 2021. Mr. Yee testified that he complained to the condominium manager in January 2022 about an "oversize" pick up truck in

the parking unit as it blocked/obstructed the drive aisle and turning radius for other vehicles.

- [7] Following this complaint, a letter dated January 18, 2022, was sent by an individual identified as the property manager, by email, to the owners, with a copy to the tenant. In that letter, the property manager noted that the truck must fit within the boundaries of the parking spot and not stick out or affect the drive aisles (common elements). Another inspection would be done on January 24 to ensure the truck “was not affecting the common elements”.
- [8] Based on the photographs taken by Mr. Yee on January 26, and submitted into evidence, it appears that on that date the truck was protruding beyond the concrete pillar at the northwest edge of the parking unit. Attached to this decision as Schedule “A” is a one of the photographs that shows the extent by which the truck was protruding. A description drawing¹ indicates that the length of the parking unit is 5.65 meters. The Applicant has not physically measured the length of the truck to determine whether it can fit within the 5.65 meters. I note that the photographs taken on January 26 show that a motorcycle is also parked in the parking unit, against the wall and behind the truck. The Applicant’s rules permit more than one vehicle to be parked in a parking unit “as long as all parked vehicles fit within the boundaries of the Parking Unit and the parking of multiple vehicles does not obstruct or unreasonably impede another unit owner’s access to their motor vehicle parked inside their Parking Unit”.²
- [9] Mr. Barahona, one of the owners, responded to the January 18 email, indicating that “it will be taken care of”. It appears that it was not. The photographs taken by Mr. Yee on January 26 and then again on February 8 show no change.³ As a result, another letter was sent to the owners and the tenant on February 11 noting that the truck had not been moved and reminding them again of the obligation to comply with Article 4.5(a) of the declaration. The property manager advised that another inspection would take place on February 14 and if the tenant failed to comply, an application may be filed with the Condominium Authority Tribunal. Mr. Barahona responded on February 14 stating that the owners had addressed the issue with the tenant who had been away for the past couple of days.
- [10] Building security personnel took photographs of the truck on February 15 and

¹ Exhibit 9

² Rule 10(n)

³ Exhibits 7 and 8

16. The truck had not moved. The security person noted that a dirt bike behind the truck made the truck stick out.

[11] The Applicant filed this case with the Tribunal on February 22. Mr. Barahona, in an email to property management on that same date, stated that the truck was properly parked in the designated area without interfering with others and that the issue “is being blown out of proportion”. In an email to the owners on February 23 in response, Mr. Yee stated, in part:

The problem is not necessarily (or not only) the “sides” of the Parking Unit, but also the “front” of the Parking Unit as well. Your tenant’s pickup truck sticks out from the Parking Unit (i.e. exceeds the Parking Unit boundaries) and trespasses onto EDS’ common elements (i.e. the drive aisle). This also poses a potential concern for vehicles/pedestrians trying to navigate around your tenant’s pickup truck sticking out.

Article 4.5(a) of the Declaration explicitly stipulates that: “The Owners of Parking Units shall not permit any portion of any motor vehicle parked within a Parking Unit to protrude beyond the boundaries of the Parking Unit and encroach upon any portion of the Common Elements or upon any other Unit.” Pursuant to Section 83(1)(c) of the Condominium Act, you were required to provide a copy of the Declaration to your tenant within 10 days of leasing the unit to him; and pursuant to Section 119(1) of the Condominium Act, your tenant is required to comply with the provisions of the Declaration.

With regards to your email below, EDS has taken steps to enforce against other “oversize” pickup trucks in the underground parking garage as well. Your tenant is not the only resident that EDS has enforced against with regards to violations of Article 4.5(a) of EDS’ Declaration. If you or your tenant have evidence of other “oversize” pickup trucks parked inside EDS’ underground parking garage, please feel free to email that evidence to Management (CC-ed on this email), so that EDS can investigate and enforce if necessary.

In any event, the courts of Ontario have repeatedly held that a condominium corporation is not required to perfectly enforce against all violators before enforcing a particular violator; Article 11.3 of EDS’ Declaration also contains a non-waiver clause to that effect as well.

Please speak to your tenant, and obtain his permanent compliance with Article 4.5(a) of the Declaration....

[12] On February 23, the owners advised Mr. Yee that they had referred the matter to their lawyer, Hercules Faga and on March 4, Mr. Faga, in an email exchange with Mr. Yee, attached various photographs. The first set, the ‘before’ photographs⁴ show the truck parked similar to the photographs taken

⁴ Exhibit 16

by Mr. Yee and building security. The 'after' photographs show that the motorcycle has been moved and the truck protruding slightly from the pillar, but do also show a noticeable change in the extent by which it appears to stick out. Because pictures can often provide a better description than words, I have attached one of the 'after' photographs as Schedule "B" to this decision.

[13] Based on the evidence, I find that prior to March 4, 2022, the truck did protrude beyond the boundaries of the Parking Unit and likely encroached upon the common elements (the drive aisle). There was no evidence of exact measurements nor any evidence of actual issues or concerns raised by other vehicle owners navigating their vehicles through the garage or by persons walking through the garage, possibly because the drive aisle did not appear to be significantly compromised based on the photographic evidence provided. But, on the wording of Article 4.5(a), there was not strict compliance. Compliance with the terms of the TSCC 2745's governing documents is an obligation of owners and their tenants.⁵

[14] However, as of March 4, I cannot conclude that noncompliance continued. The motorcycle or dirt bike which the security person noted made the truck stick out has been moved. The photograph (Schedule "B") depicts the truck virtually in line with the pillar. It may not be 'perfect' compliance (that might require a vehicle shorter by several centimeters), or perhaps it is negligibly noncompliant, but it does show compliance with the intent of Article 4.5(a) as suggested by the Applicant in its evidence - that a vehicle not interfere with the drive aisle or pose a danger to drivers turning their vehicles or to persons walking through the garage.

[15] While it would be unfair to characterize this case as a matter "blown out of proportion", it appears to be a matter that might have been resolved with both a bit of patience and cooperation. A condominium corporation is entitled and obliged to seek compliance with its governing documents, but there is also an expectation of reasonableness in its enforcement actions. And there is also an expectation that the owners and their tenant continue to abide by the parking provisions and that the truck will continue to be parked as depicted in Schedule "B" at a minimum.

⁵ See Article 4.1(b) of the declaration: Each Owner shall comply, and shall require all members of his or her family, occupants, tenants, invitees, servants, agents, contractors and licensees of his or her Unit to comply with the Act, the Declaration, the By-Laws, and all agreements authorized by By-law and the Rules including, without limitation, the Shared Facilities Agreement;

[16] Having found that there was, at the time the evidence was put before me, compliance with the declaration and based on the expectation that the owners and tenant will continue to comply as they are obligated to do as per the *Condominium Act, 1998*, an order that the tenant or owners comply with Article 4.5(a) within 21 days of the order is not warranted.

ISSUE 2: Is the Applicant entitled to reimbursement of the filing fees paid to the Tribunal?

[17] Rule 48.1 of the Tribunal's Rules of Practice states that if a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise. The Applicant is seeking reimbursement of the \$150 paid to the Tribunal. Any award of costs is discretionary.

[18] Here, the application was filed on February 22, 2022. The Applicant gave notice to the owners that it would be commencing this application and for several weeks urged the owners and tenants to move the truck in compliance with the declaration. The owners and tenant chose not to participate in this proceeding, perhaps because, as of March 4, they were of the view that the issue had been resolved. However, at that time, the application had been commenced and fees paid. I will therefore order that the Intervenors pay to the Applicant \$150 within 21 days of this order.

D. ORDER

[19] The Tribunal orders that pursuant to Rule 48.1 of the Rules of Practice, the Intervenors shall pay to TSCC 2745 its costs of \$150 within 21 days of this Order.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: April 19, 2022

SCHEDULE A



SCHEDULE B

