CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 14, 2022
CASE: 2021-00324N
Citation: Wellington Standard Condominium Corporation No. 244 v. Pauli, 2022 ONCAT 64

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Wellington Standard Condominium Corporation No. 244
Represented by Christopher Mendes, Counsel

The Respondent,
Nicole Pauli
Self-Represented

The Intervenor,
Justin Price-Matthews

Hearing: Written Online Hearing – February 11, 2022 to May 30, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Wellington Standard Condominium Corporation No. 244 ('WSCC 244") brought an application to the Tribunal, alleging that Nicole Pauli, the owner of a unit in WSCC244, and Justin Price-Matthews[1], the tenant in the unit, have failed to comply with a provision in its declaration which prohibits certain dogs in the condominium, specifically, Doberman or mixed breed Dobermans. WSCC244 alleges that Mr. Price-Matthews has a mixed breed Doberman, "Mikita," that resides with him in the unit, and that Ms. Pauli and Mr. Price-Matthews knew, or ought to have known, that this was in breach of the declaration.

[2] WSCC244 seeks an order directing compliance with its declaration by removal of

[1] Mr. Price-Matthews was incorrectly named as Mr. Prince-Matthews on the CAT-ODR system when this application was filed.

the dog and indemnification of its costs incurred in seeking compliance.

[3] Ms. Pauli does not dispute that her tenant has a dog, which may be a Doberman mix, but challenges the manner in which WSCC244 has pursued compliance. Mr. Price-Matthews did not participate in this hearing though I am satisfied, based on information received from Tribunal staff, and from WSCC244 and Ms. Pauli, that he was aware of this case, of his right to participate and of the possible consequences – that if WSCC 244 was successful, an order could be made requiring removal of Mikita from the condominium. Ms. Pauli did indicate early in this hearing that she anticipated that Mr. Price-Matthews would provide a witness statement, but he did not.

[4] I note that Ms. Pauli was self-represented in this proceeding. In early March 2022, she stated that she wanted to seek legal advice and she was granted a two-week adjournment for that purpose. However, she advised on March 24 that she would continue to represent herself. Adjournments were requested by both parties for various reasons, and neither opposed these requests; I do want to commend both parties for their courtesy to one another throughout this hearing.

[5] The issues for me to decide in this hearing are as follows:

1. Have the Respondent and/or her tenant, the Intervenor, failed to comply with the Applicant's declaration; specifically, Article 10.11 which reads:

   > Despite any of the foregoing, because the presence of certain breeds of dogs, aggressive dogs, or dogs which give the impression of being aggressive, may give concern to other Unit Occupants, there shall be no dog allowed on this Condominium Plan (Common Elements or Units) which are one (1) or more of the following breeds, cross breeds, or types: Pit Bull, Rottweiler, Doberman, Akita, any sort of guard dogs, dogs originally bred for fighting, or such other breed as the Board may determine, in its absolute discretion, from time-to-time is prohibited.

2. If there is noncompliance with Article 10.11, should an order be granted requiring the dog, "Mikita," to be removed from the unit owned by the Respondent?

3. Is the Applicant entitled to an order for indemnification for costs incurred in seeking compliance by the Respondent and/or the Intervenor, being the costs of this proceeding?

B. RESULT

[6] For the reasons set out below, I find that the Respondent and the Intervenor have

failed to comply with the pet provisions in the declaration and order removal of Mikita within 21 days of this Order. However, removal will not be required if the Intervenor provides a letter to the board from a licensed veterinarian stating that Mikita is not a prohibited breed, within 21 days of this Order. Further, the Respondent shall pay to the Applicant $1,700 (comprised of the Tribunal fee of $200 and legal costs of $1,500) within 30 days of this order.

C. ISSUES & ANALYSIS

[7] The essential facts are not in dispute. Ms. Pauli purchased her unit in WSCC 244 in July 2019, as an investment property. While she may not have reviewed the declaration, by-laws and rules of the condominium corporation prior to closing the real estate transaction, the evidence is that she did receive these documents. Her first tenant lived in the unit between July 2019 and November 2020. Her second tenant was Mr. Price-Matthews, with an initial lease term of 12 months commencing December 1, 2020. The lease clearly states that the unit is in a condominium and that the tenant agrees to comply with the condominium declaration, by-laws and rules. At that time, Ms. Pauli knew Mr. Price-Matthews had Mikita and had seen the dog a few times.

Issue 1: Have the Respondent and/or Intervenor failed to comply with Article 10.11 of the declaration?

[8] Ms. Pauli stated that in late November 2020 she advised the corporation, through Heather Fitzgerald, the condominium manager, that she had a new tenant. On December 14, 2020, she received a notice, sent to all residents, informing them of the need to register pets and to provide a picture. It appears that the dog was not registered at that time nor did WSCC 244 follow up until July 2021. I heard evidence about a flurry of communications between Ms. Pauli and Ms. Fitzgerald's office related to a broken lock that needed repair, outstanding paperwork – a tenants information package – that needed to be completed, and the possibility of the cancellation of a parking fob and garage access pass if the forms were not submitted. These email exchanges, though not directly relevant to the dispute before me, did, in all likelihood, set the stage of escalating tensions between WSCC 244 and Ms. Pauli.

[9] In late July 2021, WSCC 244 became aware that Mr. Price-Matthews had two dogs, one of which it believed to be a Doberman or Doberman mix. On July 28, Ms. Pauli provided WSCC 244 with a photograph of the two dogs and the pet registration forms which identify both dogs as a "mix". This information, likely coupled with a complaint received from another unit owner or occupant about the

dogs, led to a letter from WSCC 244 on September 2, 2021, requesting, among other things, a document from a licensed veterinarian confirming the breed of dog, by September 9, 2021. No such document was provided. I do note that there have been no reported incidents of aggression or noise related to the two dogs, as confirmed by WSCC 244 in its evidence.

[10] Ms. Pauli asserts that she had no authority to take Mikita to the vet, which is correct, but there is no evidence that she asked her tenant to obtain the document from his vet, which might have been the most straightforward response and may have resolved this dispute. Given the photos of the dogs provided and the provisions in the declaration, it was not unreasonable for WSCC 244 to request this documentation.

[11] In addition to Article 10.11, I note that Article 10.13 of the declaration states that the board has the absolute jurisdiction and authority to determine if any dog is a member of a prohibited breed or cross breed, and to require the permanent removal of such dog. Counsel for WSCC 244 submits that Mikita is "clearly a doberman". While I do not find that the evidence supports that such a definitive conclusion, Article 10.13 does give the board broad authority and given the photographs and the social media posts by Mr. Price-Matthews in evidence before me which suggest that Mr. Price-Matthews identifies Mikita as a Doberman mix, on a balance of probabilities, it is a reasonable conclusion that Mikita is a Doberman mix, which is in contravention of Article 10.11 of the declaration.

ISSUE 2: Should an order be granted requiring the dog, "Mikita", to be removed from the unit owned by the Respondent?

[12] Removing a dog is a serious matter. As noted above, there have been no reported incidents of aggression or noise. But there is, based on the evidence before me, noncompliance with the very clear provisions of the declaration which support an order for removal. Ms. Pauli has suggested in her evidence that Mr. Price-Matthews told her that Mikita is an emotional support animal and that he mentioned this to Ms. Fitzgerald. However, no request for accommodation has been made to the board. A simple assertion of a need for a particular animal as emotional support does not suffice. A condominium corporation does have an obligation to accommodate a disability pursuant to the *Human Rights Code* R.S.O 1990 (the "Code"). But a person seeking accommodation needs to actually make a request and to provide such information as may reasonably be required by a board in order for it to make a decision about its obligations under the Code. In this instance, Mr. Price-Matthews could be required to provide information to establish that Mikita is a required accommodation to warrant an exemption from the

declaration provisions.

[13] Based on the evidence before me, given the finding of noncompliance, I will order removal of Mikita within 21 days of this order. I recognize that WSCC 244 sought removal within two weeks of this order; however, in fairness, it can take some time to re-home a dog. I will also order, pursuant to s. 1.44 (1) 7 of the *Condominium Act, 1998* (the "Act") that if Mr. Prince-Matthews provides to WSCC 244 a letter, satisfactory to the board, from a licensed veterinarian confirming that Mikita is **not** one of the prohibited breeds or mixes, and the basis for the breed designation given for Mikita, within 21 days of this order, removal will not be required as noncompliance with Article 10.11 of the declaration would no longer be an issue. I note here that the expectation is that the board will be reasonable in its assessment and review of any such letter.

ISSUE 3: Is the Applicant entitled to an order for indemnification for costs incurred in seeking compliance by the Respondent and/or the Intervenor as well as the costs of this proceeding?

[14] The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act. Section 1.44 (1) 4 states that the Tribunal may make 'an order directing another party to the proceeding to pay the costs of another party to the proceeding ", Section 1.44 (2) states that an order for costs "shall be determined …in accordance with the rules of the Tribunal". The Applicant is seeking full indemnity for its costs of this proceeding, an amount of $10,879.63 pursuant to the indemnification provisions of its declaration, s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice. Of that amount, $200 is the fee paid to the Tribunal. Pursuant to Rule 48.1, an unsuccessful party will be required to pay the successful party's Tribunal fees unless the member decides otherwise. In this case, the Applicant was successful and it is appropriate that the Respondent reimburse the Tribunal fee to the Applicant.

[15] The balance of the costs claimed are legal fees and disbursements of $10,679.63. Regarding the legal costs, Rule 48.2 states that the Tribunal generally will not order one party to reimburse another party for legal fees or disbursements unless their behavior was unreasonable, undertaken for an improper purpose or caused delay or additional expense. As noted above, the parties' conduct in this case was courteous and civil. The Respondent's behavior was at no time unreasonable.

[16] Counsel for WSCC244 submitted at paragraph 61 of his closing submissions that the condominium attempted to resolve the issues with the unit owner prior to this application but the unit owner "invited" the condominium to commence this application, leaving it with little choice but to do so. In reviewing the Applicant's

documents, in particular some of the email exchanges between WSCC 244 and Ms. Pauli, I do note that Ms. Pauli agreed that the Tribunal was an appropriate avenue to pursue the concerns "regarding the pedigree" of her tenant's dogs, but that does not imply an invitation to do so. It is also apparent from reviewing the various email exchanges that the Respondent was of the view that the validity of the lease was central to this dispute and had concerns about her rights under the *Residential Tenancies Act, 2006,* and had a mistaken impression that she was required to take her tenant's dog to the vet even though she had no authority to do so, all somewhat indicative of misunderstanding on her part. Further, I note that the Applicant's documents reveal that little effort was made to engage directly with Mr. Price-Matthews about Mikita even though, as was noted by WSCC 244, he was equally bound by the provisions of the declaration. It is for this reason that I will be making no order for costs against him.

[17] The Tribunal has published a Practice Direction on costs[2]. Among other relevant factors that the Tribunal may consider when determining whether to order costs and the amount of any costs order are the potential impact of an order of costs would have on a party and the provisions of a condominium corporation's governing documents.

[18] Regarding the potential impact of an order for costs, counsel for WSCC 244 asserted in closing submissions that the impact on the unit owner would be minor, because she owns the units as an investment property and she is, as described by him a "sophisticated real estate professional". To suggest a robust financial situation due to those factors without any evidence is unreasonable. A costs order of approximately $10,000 is not insignificant for most persons and should be considered likely to have an adverse impact in most cases.

[19] Regarding the condominium's declaration, it does contain clear indemnification provisions[3]. The courts and this Tribunal have articulated the principle that it can be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner. It is also well established law that an award of costs is discretionary and that condominium corporations must act reasonably and judiciously when incurring legal and compliance costs. And it is rare that full indemnity for legal costs is awarded.

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[2] CAT Practice Direction: Approach to Ordering Costs

[3] Articles 11.1 and 11.2 of the declaration state that the unit owner shall indemnify the corporation for any legal costs and disbursements (including fees on a solicitor client basis) in effecting compliance with the declaration and for those costs incurred by the corporation in bringing a tribunal application involving a unit owner or occupant on account of the provisions of the declaration

[20] WSCC 244's counsel has cited various cases in support of its claim for its legal costs. In *Toronto Standard Condominium Corporation No. 2370 v. Chong,* [4] ("Chong"), where there were also indemnification provisions in the governing documents, the Tribunal awarded legal costs of $8,486.02 against the respondent occupant of the unit (of an approximately $17,000 bill of costs). In Chong, the Tribunal found that the respondent occupant persistently and blatantly breached the rules with 48 noise complaints documented over a period of six months. In the case of *Peel Condominium Corporation No. 96 v. Psofimis*[5], cited by the WSCC No.244, though not on the costs issue, the Tribunal did award the full amount of costs (an amount of $3,926.75). In doing so, the Tribunal considered the fact that for a period of three years the respondent had deliberately and consciously defied the corporation's rules. He had blatantly breached an agreement with the corporation and showed a lack of good faith throughout. The circumstances of these two cases bear little resemblance to this one.

[21] Here, the issue arose in the latter part of July 2021 and while WSCC 244 communicated with the Respondent on several occasions about the dog and tenant information forms over the next six weeks, by late September, the dispute was destined for the Tribunal. This was not a dispute that could be described as exceptional such as to warrant a substantial award of costs. But there was noncompliance and there was an obligation on the Respondent as owner to familiarize herself with the provisions in the declaration and, when faced with potential noncompliance, to explore measures with her tenant that may have resolved the issue. It appears she did not. In *Middlesex Vacant Land Condominium Corporation No. 605 v. Cui,*[6] ("Cui"), also cited by Applicant's counsel, the Tribunal considered the legal costs of the hearing in accordance with the Tribunal's Rules of Practice though there were also indemnification provisions in the governing documents. In Cui, the Tribunal found that the respondent's actions caused some delay which led to additional costs to the condominium corporation. The Tribunal concluded that it was fair in the circumstances to order the respondent to pay one quarter of the corporation's legal fees of approximately $18,000 for the hearing to minimize the burden borne by other unit owners. While there was is no evidence of additional costs to WSCC 244 due to delays caused by the Respondent during the course of this hearing, I do find that the declaration provisions (including indemnification provisions) have some relevance and it is appropriate in this context to minimize the burden borne by other owners to secure compliance with the declaration and therefore it is not unreasonable that the

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[4] 2021 ONCAT 108 (CanLII)
[5] 2021 ONCAT 48 (CanLII)
[6] 2021 ONCAT 91 (CanLII)

Respondent bear some of the burden of the legal costs to secure compliance through this hearing. I award costs of $1,500.

D. CONCLUSION

[22] In summary, I have concluded that the Respondent and intervenor have not complied with Article 10.11 of the declaration. The dog Mikita must be removed from the condominium unit unless a satisfactory letter from a licensed veterinarian is provided to WSCC 244 which states that Mikita is not a Doberman or mixed breed Doberman. This decision does not address whether the dog Mikita is or is not an emotional support animal as no request has been made to the board of WSCC 244. I also order that the Respondent shall reimburse WSCC 244 for its $200 paid for Tribunal fees and legal fees of $1,500.

E. ORDER

[23] The Tribunal Orders that:

1. Pursuant to s. 1.44 (1) 1 and s. 1.44 (1) 7 of the Act, within 21 days of the date of this Order, the Intervenor Justin Price-Matthews shall permanently remove his dog Mikita from the unit of WSCC 244 which he occupies unless, within that 21-day period he provides a satisfactory letter from a licensed veterinarian confirming that Mikita is not a Doberman or mixed breed Doberman.

2. Pursuant to s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, the Respondent shall pay $1,700 to the Applicant, within 30 days of this Order, for its costs in this matter.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: June 14, 2022