

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 26, 2022

CASE: 2022-00057N

Citation: Toronto Standard Condominium Corporation No. 2208 v. Kaissi et al., 2022 ONCAT 92

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

Member: Mary Ann Spencer, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2208
Represented by Bharat Kapoor, Counsel

The Respondents,

Amer Taameri Kaissi and Aya Marwan Kamel El Barek
Represented by David Costa, Counsel

Hearing: Written Online Hearing – April 21, 2022 to August 2, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2208 (“TSCC 2208”) requests the Tribunal order Respondents Amer Taameri Kaissi and Aya Marwan Kamel El Barek to permanently remove their dog from the condominium premises.
- [2] On December 2, 2021, while in an area of TSCC 2208’s common elements, the Respondents’ dog bit and injured a dog owned by another resident. On December 23, 2021, TSCC 2208 sent the Respondents a letter requiring the permanent removal of their dog from the condominium premises by January 13, 2022. The Respondents did not relocate the dog.
- [3] TSCC 2208’s position is that the Respondents’ dog is a nuisance; its aggressive behaviour is contrary to the provisions of the corporation’s declaration and rules which state that no condition shall be permitted to exist that would unreasonably interfere with the use and enjoyment of the common elements and units by other owners.

[4] The Respondents' position is that TSCC 2208's decision to require their dog's removal from the premises is unreasonable; TSCC 2208 did not independently investigate the December 2, 2021 incident and its failure to enforce its pet rules created a situation which contributed to the incident.

[5] Both TSCC 2208 and the Respondents request their costs in this matter.

[6] For the reasons set out below, I dismiss the Applicant's request that the Tribunal order the removal of the Respondents' dog from its premises. I award the Respondents \$5,000 in costs.

B. BACKGROUND

[7] The Respondents' dog Stan is a 9-year-old Akita. Their daughter, Huda Kaissi, testified that her family splits its time between Toronto and Lebanon. In November, 2021, they made the decision to bring Stan from Beirut to Toronto. Approximately two weeks after his arrival, Stan bit and injured Charlotte, a 15-year-old Bichon Frise owned by TSCC 2208 resident Cathy Bisset-Parkes.

[8] The December 2, 2021 incident took place in an area of TSCC 2208's main floor which the witnesses in this matter variously described as a nook or alcove located between its main entrance and the elevator bank to its suites. To reach the elevators, residents must make a sharp turn from a narrow hallway. The alcove is not visible until this turn is made. On the evening of December 2, 2021, Ms. Kaissi, who was returning from a walk with Stan, made this turn and encountered residents Ms. Bisset-Parkes, Zaina Dibie and Ms. Dibie's 11-year-old daughter who were chatting in the alcove area. Both Ms. Bisset-Parkes and Ms. Dibie had two small dogs with them. One of Ms. Dibie's two dogs was unleashed, the other was on an extended leash. Four witnesses testified about the incident.

[9] Ms. Bisset-Parkes' account is that she saw a "white flash" as, unprovoked, Stan attacked Charlotte. She testified that Ms. Kaissi could not control him. She believes that two men helped Ms. Kaissi pull Stan off Charlotte. She tried to kick Stan to get him to release Charlotte but could not reach him because she was holding back her other dog.

[10] Ms. Dibie testified that she was taking her two dogs out for a walk when she met Ms. Bisset-Parkes and her two dogs. She stated their dogs were jumping and "excited to see each other." When Ms. Kaissi and Stan approached from what Ms.

Dibie described as an “elbow corner,” Ms. Dibie’s dogs went towards Stan although she pulled them back. She stated that Stan was “spooked” by the dogs and grabbed Charlotte. Ms. Bisset- Parkes screamed, Ms. Kaissi yelled “stop, stop” and Stan then released Charlotte. She further testified that her daughter told her that Ms. Bisset-Parkes then kicked Stan but Stan did not react to this.

- [11] Resident Hamid Afshar testified that he and his brother-in-law witnessed the incident which he described as lasting only seconds. He stated that neither of them touched the dogs. He further testified that Ms. Bisset-Parkes hit Stan.
- [12] Ms. Kaissi testified that when she made the sharp right turn to reach the elevators, Ms. Dibie’s dogs were barking and “charging towards” Stan. Stan grabbed Charlotte, the dog closest to him. Ms. Kaissi yelled at him to stop and Stan dropped Charlotte. She estimated the incident lasted only a second. Ms. Bisset-Parkes then approached Stan and hit him twice on his face and kicked him.
- [13] The evidence of the injuries sustained by Ms. Bisset-Parkes’ dog Charlotte on December 2, 2021 is not disputed in this case. Charlotte required veterinary care for numerous puncture wounds, a broken rib and bruising and, after initially being released from the Veterinary Emergency Clinic, experienced seizures which require ongoing medication. The Respondents reimbursed Ms. Bisset-Parkes for the cost of the emergency veterinary care and on January 12, 2022, Ms. Bisset-Parkes signed a release in consideration of that payment.
- [14] Both Ms. Bisset-Parkes and the veterinarian who treated Charlotte reported the incident to the City of Toronto Animal Services. Officer Patrick Palubjak investigated and a Dangerous Dog Order dated December 8, 2021 was served on the Respondents’ son Tarek Kaissi on December 9, 2021. The order requires Stan be muzzled at all times when he is not on his owners’ premises and restricts his access to dog parks. It also requires that the owners display a dangerous dog notice on their door, that they obtain a dangerous dog tag and that Stan receive socialization/obedience training within 90 days of the date of the order.
- [15] On December 23, 2021, Counsel for TSCC 2208 sent the Respondents a letter which stated that pursuant to a December 17, 2021 resolution of TSCC 2208’s board of directors, Stan must be permanently removed from the condominium premises by January 13, 2022. The Respondents did not remove the dog and on January 24, 2022, TSCC 2208 filed its application with the Tribunal.

C. ISSUES & ANALYSIS

[16] The issues to be addressed in this matter are:

1. Should the Respondents be required to permanently remove their dog from TSCC 2208's premises?
2. Should an award of costs be assessed?

Seven witnesses testified in this hearing and both parties filed documentary and video evidence. In this decision, only the evidence most relevant to the issues to be decided is addressed.

Issue 1: Should the Respondents be required to permanently remove their dog from TSCC 2208's premises?

[17] The December 23, 2021 letter which Counsel for the Applicant sent to the Respondents states that on December 17, 2021, TSCC 2208's board of directors, pursuant to Rule 9.7 of the corporation's rules, deemed the Respondent's dog to be a nuisance because of its aggressive nature and resolved that it must be removed permanently from the condominium premises. Rule 9.7 states:

The Board or the Property Manager has the absolute discretion to determine that any pet is a nuisance and, if this decision is made, the Corporation may order that such pet be permanently removed from the condominium property within two (2) weeks.

[18] In his closing submissions, Counsel for the Applicant wrote "It is the responsibility of the condominium corporation to ensure that no condition exists, or no activity takes place on the common elements, or the assets of the corporation if the condition or the activity, as the case may be, is **likely to damage the property or the assets or to cause an injury or an illness to an individual.**" The wording emphasized by Counsel is a direct quote from section 117 (1) of the *Condominium Act, 1998* (the "Act") which Counsel also referred to in his submission. Ontario Regulation 179/17 establishes the jurisdiction of the Tribunal. That jurisdiction does not extend to section 117 (1) of the Act. Notwithstanding that the parties introduced evidence in this case about the Dangerous Dog Order issued by the City of Toronto, the sole focus of this case is whether the Applicant is justified in declaring the Respondents' dog a nuisance and ordering its removal pursuant to its Rule 9.7.

[19] Counsel for TSCC 2208 submits that the Respondents, in keeping an aggressive

dog, are in violation of the provisions of TSCC 2208's declaration that forbid a condition to exist that could unreasonably interfere with owners' use or enjoyment of their units or the common elements. Specifically, Counsel cites sections 12(a) and 16(1) of the declaration, which respectively read, in part:

... no condition shall be permitted to exist and no activity shall be carried on in the Common Elements that is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Owners of the Common Elements and the other Units...

No Unit shall be occupied or used by any one in such a manner as is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Owners of the Common Elements.

Counsel further submits that the conduct of the Respondents' dog is contrary to TSCC 2208's rules which were made to "promote the safety, security, or welfare of the owners and of the property and to prevent unreasonable interference with the use and enjoyment of the units and of the common elements of the corporation."

[20] Counsel for the Respondents submits that in making its decision to order Stan's removal, the board did not act reasonably; it did not conduct an independent investigation of the December 2, 2021 incident but relied only on the account of Ms. Bisset-Parkes. Counsel further submits that the board's negligence in failing to enforce its pet rules contributed to the incident. Specifically, Counsel refers to Rules 9.2 and 9.4 which respectively state:

No pet is permitted to be on or about the common elements, excluding exclusive use common elements, except for ingress and egress to an owner's unit in company with and under the control of an owner or designate.

Unless within the confines of a unit, all pets shall be carried or be on a lead, leash or chain of not more than six (6) feet in length and this provision shall be applicable to the whole of the common elements whether interior or exterior. Pets shall not be taken into an elevator already in use without first obtaining permission from those persons on the elevator. Pets must be under the control of the owner at all times when on common elements.

[21] It is established law that deference should be shown to the decisions of a condominium corporation's board. In this regard, Counsel for the Applicant referred me to the decision in *York Condominium Corporation No. 382 v Dvorchik* [1997] O.J. No. 378 (C.A.) which states at paragraph 5:

Where the court is asked to enforce a declaration by a corporation great deference should be shown to that declaration. It is not for the court to substitute its view of what is reasonable for that of the board. If the board has acted reasonably and not capriciously it is important that the court support the board's decision.

I must determine whether TSCC 2208's board acted reasonably when it determined that the Respondents' dog was a nuisance and ordered its permanent removal from the condominium premises.

- [22] No representative of either TSCC 2208's board or its condominium management provider testified at this hearing. The only evidence before me relating to the basis for the board's December 17, 2021 decision is the December 23, 2021 letter ordering Stan's removal. The letter characterizes Stan as "aggressive" and cites two factors: the December 2, 2021 incident and extracts from the American Kennel Club's description of the Akita breed.
- [23] There is no evidence before me to indicate what information TSCC 2208's board had about the December 2, 2021 incident when it made its decision to order Stan's removal. I note that there is no security camera footage of the incident. Ms. Kaissi, Ms. Bisset-Parkes, Ms. Dibie, and Mr. Afshar, all of whom were present, each testified that no one contacted them about the incident. As summarized in the "Background" section above, the accounts of these four witnesses are not completely consistent, perhaps understandably given that it was undoubtedly traumatic and their testimony was that the incident took place very quickly.
- [24] A decision to remove an owner's pet is a serious and sensitive matter and should be based on consideration of all available information. There is evidence that both Ms. Bisset-Parkes and Ms. Kaissi informed the corporation of the incident. In a December 3, 2021 e-mail Ms. Bisset-Parkes sent to Animal Services officer Patrick Palubjak, she advised that the board of TSCC 2208 was in consultation with its lawyer with respect to what action should be taken, indicating she had reported the incident. And Ms. Kaissi, almost immediately after the incident, to obtain Ms. Bisset-Parkes' contact information, sent an e-mail to the condominium manager in which she advised her dog had been "aggressive with another dog" earlier that evening. It is unknown whether the board considered any other information; for example, whether Ms. Bisset-Parkes and Ms. Dibie contributed to the incident by stopping with their dogs to chat in the alcove in violation of the corporation's pet Rule 9.2 which states dogs may only be on the common elements for ingress and egress. Or, whether the corporation itself contributed to the incident; in this regard, I note that Richard Ng, TSCC 2208's executive

concierge and its head of security, testified that the corporation has not enforced its pet rules.

- [25] The extent, if any, to which the board relied on the American Kennel Club's description of the Akita breed is also unknown. However, this case is about a specific dog and while breed descriptions may be helpful in selecting a dog, a generalized description obtained from the Internet does not provide a reasonable basis for a decision to declare that specific dog a nuisance and order its removal. I note that an Akita is not listed as a banned breed in the *Dog Owners Liability Act* and that the only restriction in TSCC 2208's rules is that residents keep no more than two dogs which must be registered with the corporation. The evidence is that the Respondents' dog was duly registered.
- [26] In his closing submissions, Counsel for the Applicant states that the board based its decision on the December 2, 2021 incident, Charlotte's injuries, and the City of Toronto's Dangerous Dog Order. However, it is notable that the December 23, 2021 letter contains no reference to the Order. On December 8, 2021, the Respondents' son sent an e-mail to TSCC 2208's condominium manager in which he advised the City of Toronto had declared Stan to be a dangerous dog and inquired whether a notice could be affixed to the family unit's door to comply with the Order. Whether TSCC 2208's property manager advised the board of the Order and/or whether it was aware of the Order's full content, including that Stan must be muzzled at all times when outside of his home, when it made its December 17, 2021 decision is also unknown.
- [27] There is no evidence before me to indicate that a thorough investigation was conducted before the board made its December 17, 2021 decision to order the removal of the Respondents' dog and therefore, I cannot conclude that decision was "reasoned and reasonable" as Counsel for the Applicant submits. The question then becomes should the Tribunal now order the removal of the Respondents' dog?
- [28] The evidence is that the December 2, 2021 incident has been the only incident involving the Respondents' dog. Ms. Kaissi testified that the incident was out of character for Stan. She stated that she spoke to Stan's veterinarian and to trainers who suggested that the incident occurred because Stan was still adjusting to new living conditions. She noted that Stan had been caged during a lengthy transport from Beirut, and had to adjust to an unfamiliar environment, new people and even different weather. She testified that the family was disturbed by the incident and voluntarily decided to muzzle Stan after the incident occurred.

- [29] As set out above in paragraph 14. the December 2, 2021 incident resulted in the issuance of a Dangerous Dog Order under chapter 349-15 B (2) of the Toronto Municipal Code. The issuing officer, Patrick Palubjak, did not testify at this hearing. The Municipal Code provides the right to appeal the Order. Ms. Kaissi testified that the Respondents did not appeal because Mr. Palubjak discouraged them from doing so, advising them it would be difficult, and the Respondents decided that the conditions in the order were manageable given they had already voluntarily muzzled Stan.
- [30] The Dangerous Dog Order is a consequence of the December 2, 2021 incident. While its issuance speaks to the investigating officer's assessment of that specific incident and suggests that Stan could be a nuisance, the evidence is that the owners have fully complied with the Order and there have been no other incidents. Ms. Kaissi testified that Stan is muzzled at all times when on TSCC 2208's common elements. Ms. Bisset-Parkes and Ms. Dible both testified that Stan has been muzzled when they have seen him since the incident. Mr. Ng and security guard Moorsalin Hossain also both testified that Stan is muzzled and on a short leash. Ms. Kaissi further testified that on her own initiative, she arranged a protocol with TSCC 2208's property manager to use a side door when taking Stan out for walks. Mr. Ng testified that the Respondents are "completely compliant" with the protocol.
- [31] The Dangerous Dog Order also required that Stan receive socialization/obedience training within 90 days of its date and that the Respondents provide proof of compliance within 14 days of the date of completion of that training. Stan received the training from K9 Academy in February, 2022.
- [32] Anesh Srikrishnakumar is the owner of K9 Academy and has been a dog trainer for 13 years. He personally conducted Stan's training. Mr. Srikrishnakumar estimated he has trained over 100 Akitas and stated Stan was the most docile. He explained the purpose of the training was first to correct Stan if he fixated on other dogs and then to train him to be with other dogs. Videos of the training were submitted into evidence and show Stan walking with his owner and other dogs. Mr. Srikrishnakumar testified that Stan's owners were given rules "to minimize the dog's territorial instincts" and noted that Amer Taameri Kaissi, Huda Kaissi and Tarek Kaissi all participated in the training. He described Stan as very calm and "good with people." Asked how Stan was with other animals, he testified that Stan was "a little on guard but under control" and always obeyed his owner. He further testified that he would have no concern with Stan interacting with other dogs when he was wearing a muzzle. Asked on cross-

examination what would happen if Stan, who weighs approximately 90 pounds, pounced on a small dog while wearing a muzzle, Mr. Srikrishnakumar stated that nothing would happen; dogs use their teeth and back off when they cannot. Asked if Stan could injure a child if he pounced, he stated that a child might be bruised or scratched by the muzzle.

[33] Ms. Kaissi, Ms. Dibie, Mr. Ng and Mr. Hossain all testified that Stan is a calm dog. Ms. Dibie's testimony was that she had met Stan before the December 2, 2021 incident, that her daughter had played with him, and that he was "very friendly, calm and docile." She further testified that she is comfortable with her daughter playing with Stan now and that he is a well-behaved dog. Mr. Hossain testified that Stan was docile, did not approach people before the incident and is the same docile dog now. He noted that Stan is calmer than other dogs living at the condominium which "get a little hyper" and can jump on people.

[34] Counsel for the Respondents submits that the evidence is that the Respondents are responsible dog owners. I agree. There is no evidence before me to indicate that Stan has caused any interference with TSCC 2208's residents' use and enjoyment of their units and the common elements in the seven months since the December 2, 2021 incident. The evidence is that there is minimal likelihood that Stan will cause any such interference; the witnesses' testimony is that Stan is a calm dog and that he is muzzled and leashed on the premises. Stan has successfully completed training to enable him to deal with other dogs without reacting, and Ms. Kaissi arranged and is following a protocol to use a side entrance to take Stan for walks. I note that the issue addressed in Stan's training was not his reaction to people but to other dogs. TSCC 2208 provided no evidence that it has received any complaints about Stan other than a March 1, 2022 e-mail from Ms. Bisset-Parkes in which she inquired why Stan had not been removed from the building. While I do not wish to diminish the seriousness of the injuries sustained by Ms. Bisset-Parkes' dog, the evidence of one incident does not support a finding that Stan is a nuisance. Therefore, I dismiss TSCC 2208's request that I order the Respondents to permanently remove their dog from the premises.

Issue 2: Should an award of costs be assessed?

[35] Both TSCC 2208 and the Respondents requested their costs in this matter. The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (2) of the Act states that an order for costs "shall be determined...in accordance with the rules of the Tribunal." The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 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.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

The Applicant was not successful in this matter and therefore I need only consider the Respondents' request for costs of \$14,893.40, representing their legal fees.

[36] The Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or causes a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; and, whether the parties attempted to resolve the issue in dispute before the CAT case was filed.

[37] The evidence in this case is that TSCC 2208 made no effort to attempt to resolve this issue before filing its application with the Tribunal. This case might have been avoided had the board of TSCC 2208 sought out and considered all of the facts before determining the Respondents' dog to be a nuisance and ordering its removal based solely on the December 2, 2022 incident and a summary of the characteristics of the Akita breed. Notwithstanding that there were five adult witnesses to that incident, the four witnesses who testified at this hearing each stated that the corporation did not contact them to provide their accounts. Ms. Kaissi also testified that the Respondents were surprised by the December 23, 2021 letter demanding Stan's removal because, after hearing rumours that the board was considering this, she contacted the condominium manager and received assurance that this would not happen. The case might also have been shortened had both parties actively participated in the Stage 2—Mediation. I note that a portion of the legal costs incurred by the Respondents was for preparation for that mediation but the Stage 2 Summary and Order prepared by the Mediator

in this matter states “During Stage 2, the Applicant stated its position in the case through counsel but did not indicate any willingness to engage in mediation.”

[38] While Rule 48.2 is clear that the Tribunal will generally not order legal costs, I find that the Applicant’s conduct warrants an order of costs. In considering the amount to be awarded, I do note that the Respondents’ request for costs includes legal fees incurred with respect to their unsuccessful motion to add Ms. Bisset-Parkes as a respondent to this matter which, given the order to remove the dog was issued by TSCC 2208, their counsel reasonably should have known could not succeed.

[39] In the circumstances outlined above, I find a partial award of the Respondents’ legal costs in the amount of \$5,000 to be appropriate.

D. ORDER

[40] The Tribunal orders:

1. The application of Toronto Standard Condominium Corporation No. 2208 is dismissed.
2. Within 30 days of the date of this decision, Toronto Standard Condominium Corporation No. 2208 shall pay \$5,000 in costs to the Respondents Amer Taameri Kaissi and Aya Marwan Kamel El Barek.
3. To ensure the Respondents do not pay any portion of the costs award, the Respondents shall be given a credit towards the common expenses attributable to their unit in the amount equivalent to the unit’s proportionate share of the above costs.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released On: August 26, 2022