

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 28, 2022

**CASE:** 2022-00545N

**Citation:** Peel Standard Condominium Corporation No. 843 v. Thackorie, 2022 ONCAT 150

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

**Member:** Monica Goyal, Member

**The Applicant,**

Peel Standard Condominium Corporation No. 843  
Represented by Justin McLarty, Counsel

**The Respondent,**

Danny Thackorie

**Hearing:** Written Online Hearing – November 28, 2022 to December 20, 2022

### REASONS FOR DECISION

**A. INTRODUCTION**

- [1] The Applicant, Peel Standard Condominium Corporation No. 843 (“PSCC 843” or the “Corporation”) filed an application with the Condominium Authority Tribunal (“Tribunal”) against the Respondent, Danny Thackorie, for breach of the Corporation’s declaration, by-laws and rules (“Governing Documents”) on parking.
- [2] Mr. Thackorie did not join the case, so the case went to Stage 3 – Tribunal Decision as a default proceeding on November 28, 2022. When he failed to join the case at the onset of Stage 3, I asked the Tribunal staff to contact Mr. Thackorie by email and telephone. The Tribunal staff spoke with Mr. Thackorie, who indicated that he would be joining the case right away. He was advised that if he had any difficulty that he should contact the Tribunal for assistance. Two weeks later, he had still not joined the case. Mr. McLarty confirms that notices of the proceeding were delivered to Mr. Thackorie in accordance with the *Condominium Act, 1998* (the “Act”), and I am satisfied that he was properly served. Therefore, the hearing in this matter proceeded without Mr. Thackorie’s participation and my decision is based solely on the evidence and submissions of PSCC 843.

[3] For the reasons set out below, I find that Mr. Thackorie has violated the provision of PSCC 843's Governing Documents pertaining to parking. I order that Mr. Thackorie comply immediately with PSCC 843's Governing Documents and cease parking more than one motorcycle in any of his parking spots. I also order Mr. Thackorie to pay costs of \$2,150 to PSCC 843 within 30 days of the date of this decision.

## **B. BACKGROUND**

[4] On August 4, 2021, the condominium management of PSCC 843 sent their first letter noting that three motorcycles were triple parked in Mr. Thackorie's parking spot. The letter reminded Mr. Thackorie to ensure only one motorcycle was parked in his spot and the other two motorcycles were to be removed.

[5] On September 24, 2021, a second letter was sent by condominium management that again asked Mr. Thackorie to comply with the Corporation's declaration pertaining to parking.

[6] As Mr. Thackorie did not comply with the requests from property management, the issue was escalated to the Corporation's legal counsel.

[7] On November 2, 2021, February 10, 2022, and June 27, 2022, Corporation's legal counsel, wrote to Mr. Thackorie demanding he cease parking multiple motor vehicles in his parking spot.

[8] In her witness statement, Amanda Netta, an employee of the condominium management provider for PSCC 843, stated that Mr. Thackorie continues to park three motorcycles in his parking spot in contravention of the Corporation's parking provisions up to the time of the Applicant's submission.

## **C. ISSUES & ANALYSIS**

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

1. Is Danny Thackorie in violation of the provision of PSCC 843's Governing Documents which forbids parking multiple motorcycles in the same parking spot? If yes, then what order should the Tribunal make in this case?
2. What legal costs, if any, should be awarded to PSCC 843?

[10] In deciding these issues, I have reviewed all the submissions and evidence provided to me by the Applicant, but only refer to those that are relevant and necessary to making my decision

**Issue 1: Is Danny Thackorie in violation of the provision of PSCC 843's Governing Documents which forbids parking multiple motorcycles in the same parking spot? If yes, then what order should the Tribunal make in this case?**

- [11] The Tribunal has jurisdiction pursuant to Ontario Regulation 179/17 ("Reg") to hear disputes, such as this case, related to parking.
- [12] PSCC 843 has a duty pursuant to section 17(3) of the Act to ensure compliance with its declaration, by-laws and rules.
- [13] PSCC 843 submits that Mr. Thackorie parks multiple motor vehicles in his parking spot in contravention of section 20(a) of its declaration:
- "Each Parking Unit shall be used and occupied only for the parking of one (1) Motor Vehicle."
- "Motor Vehicle" is defined in Section 1(m) of the Corporation's declaration as:
- "Motor Vehicles shall include, without restricting any wider definition of Motor Vehicles as may be imposed by the Board, from time to time, any private passenger automobile, station wagon, pick-up truck, van, or motorcycle"
- [14] Pursuant to section 119(1) of the Act, Mr. Thackorie has a duty to comply with the Act and the Governing Documents of PSCC 843, and by extension he must comply with section 20(a) of the Corporation's declaration.
- [15] On a balance of probabilities, the evidence of Ms. Netta, and the letters to Mr. Thackorie from the PSCC 843 and the Corporation asking Mr. Thackorie to comply with the parking provision, establishes that Mr. Thackorie has contravened section 20(a) of the PSCC 843's Declaration.
- [16] Based on this finding, I now consider what is the appropriate order in this case. The counsel for PSCC 843 requests that the order restraining Mr. Thackorie from parking multiple motor vehicles in the same parking spot be extended to Mr. Thackorie's two other parking spots.
- [17] There is no evidence before me that Mr. Thackorie has parked multiple motor vehicles in his other two parking spots. The concern of the Corporation is that Mr. Thackorie will evade the order of the Tribunal by using one of his other parking spots to park his motorcycles, thereby necessitating the Corporation to return to the Tribunal for another order. This is a valid concern. Mr. Thackorie's failure to cooperate with the multiple requests from the Corporation, and his lack of participation in this case, even after speaking with Tribunal staff and indicating he

would join the case, demonstrate that Mr. Thackorie, if he moves his motor vehicles to his other parking spot, will likely not cooperate with the Corporation requests to comply with parking provisions. I find that Mr. Thackorie will probably continue his behaviour of non-cooperation, necessitating the Corporation to once again return to the Tribunal. Furthermore, the Corporation's Governing Documents say that only one motor vehicle not three motor vehicles should be parked in a parking spot. Extending the order to apply to Mr. Thackorie's three parking spots confirms the parking provisions in the Governing Documents of the Corporation of which Mr. Thackorie by law is required to abide by. Thus, my order requesting Mr. Thackorie to cease from parking multiple motor vehicles in his parking spot, will extend to all three of his parking spots.

## **Issue 2: What legal costs, if any, should be awarded to PSCC 843?**

[18] PSCC 843 is requesting costs and compensation totalling \$3,243.39. The costs comprise of \$150 in Tribunal filing fees and the balance are legal fees. The Corporation says that they should be awarded the full amount of costs incurred because Mr. Thackorie has wilfully refused to cooperate with the Corporation and participate in this Tribunal hearing. The Applicant did not provide particulars to support the costs requested.

[19] 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 TRIBUNAL Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's TRIBUNAL fees unless the TRIBUNAL member decides otherwise.

48.2 The TRIBUNAL 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 TRIBUNAL 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.

[20] PSCC 843 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order a cost award of \$150 in respect of the Tribunal fees it paid.

[21] With respect to the legal fees incurred by PSCC 843 relating to this proceeding, I

am guided by the Tribunal's "Practice Direction: Approach to Ordering Costs" which includes, among other factors to be considered, whether the parties had a clear understanding of the potential consequences for contravening them.

[22] In *Muskoka Condominium Corporation No. 39 v. Kreuzweiser*, 2010 ONSC 2463 (CanLII), a case in which the Court found the respondent to be in breach of the corporation's pet rules, the Court wrote:

"The Corporation repeatedly warned the respondent of the cost consequences of enforcement proceedings. The respondent failed to respond to any communication from the corporation or to comply with its directions. Therefore, the costs are to a large extent the consequences of the respondent's own actions.

No part of these costs should be borne by the respondent's neighbours who are blameless in this matter."

[23] The Applicant cited the case *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 (CanLII), where the Tribunal awarded 100% of the applicant corporation's requested legal costs. The Tribunal noted that the corporation was required to request an order from the Tribunal "only because Mr. Psofimis deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters ...."

[24] In the case before me, Mr. Thackorie received multiple notices starting in August 2021. These notices were followed by three letters from the PSCC 843's legal counsel. The legal letters advised him of the consequences of failing to comply would lead to further legal action. It is clear that Mr. Thackorie had knowledge of this case, as the Tribunal staff spoke with him, and he indicated an intention to join the case, even though he has not. According to the evidence of Ms. Netta, Mr. Thackorie continues to park three motor vehicles in his parking spot up to the date of her statement. Mr. Thackorie's actions demonstrate that he has little regard for his obligations as a condominium owner. On the other hand, because Mr. Thackorie did not participate in the case, this case moved straight to the hearing and as such the Applicant spent less time than they would have spent if the Respondent had participated in the case.

[25] Legal fees not awarded as costs are ultimately paid by all owners of a corporation. It would be neither reasonable nor fair if the owners were to be liable for all of the corporation's cost of obtaining Mr. Thackorie's compliance. Upon reviewing the submission for legal costs by PSCC 843, I find that Mr. Thackorie should pay legal fees on a partial indemnity basis, especially as the proceeding was shortened by the non-participation by the Respondent. Given the specific facts of the case, I am

ordering Mr. Thackorie to pay costs of \$2,000.00 of the legal fees the corporation incurred with respect to this proceeding.

**D. CONCLUSION**

[26] I have concluded that Mr. Thackorie acted in contravention to the parking provisions in the Corporation's declaration. The Corporation provided Mr. Thackorie with many opportunities to bring his behavior into compliance prior to taking legal action. I am ordering Mr. Thackorie to cease parking more than one motor vehicle in any of his parking spots. I am also ordering Mr. Thackorie to pay Tribunal Fees of \$150, and legal costs of \$2,000.

**E. ORDER**

[27] The Tribunal Orders that:

1. Under section 1.44(1)2 of the Act, Mr. Thackorie to immediately cease parking more than one motor vehicle in any of his parking spots at the premises of PSCC 843.
2. Under section 1.44(1)4 of the Act, within 30 days of this Order, Mr. Thackorie shall pay costs of \$2,150 to PSCC 843.

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Monica Goyal  
Member, Condominium Authority Tribunal

Released on: December 28, 2022