

Corrected Decision

This decision was amended to update typographical errors in paragraphs 17 and 20.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 10, 2023

CASE: 2022-00490SA

Citation: Carleton Condominium Corporation No. 88 v. McKay, 2023 ONCAT 22

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Stephen Roth, Member

The Applicant,

Carleton Condominium Corporation No. 88

Represented by Emily Deng, Counsel

The Respondent,

Ryan McKay

Self-Represented

Hearing: Written Online Hearing – September 21, 2022 to January 23, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Carleton Condominium Corporation No. 88 (“CCC88”) alleges that the Respondent, Ryan McKay, failed to observe the terms of a Settlement Agreement (the “agreement”) between the parties dated June 20, 2022.

[2] The relevant details of the Agreement are as follows:

3.

Ryan McKay will ensure that his emotional support dog wears an emotional support animal vest at all times while on the common elements.

4.

Ryan McKay will provide to the Corporation with documentation confirming his emotional support dog’s registration with the City of Ottawa.

Compliance

If any of the parties fails to comply with this Settlement Agreement, then another party can file a case with the CAT requesting an order requiring compliance with this Settlement Agreement. That case must be filed within six months of the failure to comply with this agreement.

B. BACKGROUND

- [3] The Respondent is the owner of his dog, Sheba, which lives with him in his condominium unit.
- [4] CCC88's rules provide for a weight restriction of 25 pounds for animals and prohibit the German Shepherd breed of dogs.
- [5] The parties resolved a previous CAT case, 2022-00023N, relating to Sheba's weight and breed by way of a settlement agreement that contained the above referenced provisions. The sole issue before the CAT is whether either or both of the terms have been breached, and if so, the remedy to follow.

C. ANALYSIS

- [6] Stephen MacKechnie, the Applicant's condominium manager, testified that on June 24, 2022 he witnessed the Respondent crossing CCC88's common elements with Sheba. Sheba was not wearing any "Emotional Support Animal" identification. He further testified that CCC88's building superintendent witnessed the Respondent with his dog on a regular basis on the common elements without any "Emotional Support" identification. Mr. McKechnie's evidence was brief and contained limited details as to the frequency of the alleged infractions.
- [7] In opening submissions, Mr. McKay wrote that, "Yes she will wear a service vest while in the building...her other one ripped so I'm waiting for another one." Mr. McKay later testified that Sheba had been a service dog since she was a puppy. He testified that Sheba outgrew her emotional support vest and admitted that Sheba did not always wear a vest while on the common elements, but that his dog "now" had a collar that "states she is a service animal." The Respondent further stated in his November 14, 2022 testimony that he obtained the collar "a month ago." This CAT case was accepted on August 2, 2022, at least a couple of months before Mr. McKay obtained a collar. Based on the Respondent's testimony, I conclude that the Respondent did not use a vest on his dog. There is no evidence as to when this stopped. I also find that it was likely that there was a period of time

that Sheba wore neither a vest nor a collar identifying her as either an emotional support or service animal.

- [8] The term of the agreement is very specific—that Sheba must wear a vest. I have considered whether the collar is an adequate substitute. In other words, is there a breach of the settlement agreement if Sheba is wearing a collar identifying her as a support or service animal.
- [9] Mr. McKay uploaded a photograph of Sheba’s red collar with “Service Dog” branded on it.
- [10] The Applicant argues that a collar is not an adequate substitute because it is not sufficiently visible for CCC88 residents to identify Sheba as an emotional support or service dog. The Applicant submits that it is difficult for residents to read the writing on the collar from a distance. Because an exemption for Sheba has been made based on weight and breed, it is argued that it is important that residents understand why an exemption has been made.
- [11] I accept that this was CCC88’s reason for requiring a vest, and the parties agreed on that. I cannot conclude that the collar is an adequate substitute because it does not provide the visibility that a vest provides. Although not argued by Mr. McKay, I have considered that the term of the agreement contains no language as to the particulars of the “emotional support” vest, however, the intention is that any observer must easily recognize Sheba’s status.
- [12] I find that Mr. McKay is in breach of provision no. 3 of the agreement. Therefore, I direct that when Sheba is on the common elements, Mr. McKay shall ensure that Sheba is wearing a vest clearly identifying her as an emotional support or service animal.
- [13] The agreement also required Mr. McKay to provide the Applicant with proof of Sheba’s emotional support dog registration with the City of Ottawa. It is not entirely evident from the provision whether Sheba was already registered at the time the agreement was signed, or that Mr. McKay was required to register her and then provide documentation. No evidence or submissions on this particular issue were given. Because the provision does not contain a timeframe for the registration, it is a reasonable inference that proof of registration was to be provided immediately or soon after the parties entered into the agreement. In his November 14, 2022 testimony, the Respondent states that Sheba was registered with the City of Ottawa “probably a month or two ago.” Although he states that he previously sent this information to the Applicant, no evidence was offered to confirm this, nor were any particulars provided. I conclude that the Respondent likely did not provide

documentation until November 2022, during this hearing, when the Respondent provided a City of Ottawa Pet Registration dated September 29, 2022. The Applicant takes the position that the Respondent was in breach of this term when the CAT application began, and only became compliant during the hearing. I agree with submission. Because the Respondent is now in compliance, I do not need to make an order.

D. COSTS

[14] The Applicant seeks costs.

[15] The Tribunal's authority to make orders is set out in section 1.44 of the *Condominium Act, 1998* (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 Tribunal's cost-related 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.

[16] 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 caused 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; whether the parties attempted to resolve the issue in dispute before the CAT case was filed; and whether a party has failed to follow or comply with a previous order or direction of the CAT. The Tribunal may also consider the provisions of the corporation's governing documents and whether the parties would have had a clear understanding of the potential consequences of a contravention of the declaration and rules.

[17] The Applicant seeks full indemnity of its legal costs incurred and has submitted a bill of costs in the amount of \$4,253.39. The Applicant argues that the Respondent breached the terms of the agreement and caused the Applicant to unnecessarily incur costs. The Applicant argues that it wrote to the Respondent on July 5, 2022

to advise of the breach and provide the Respondent with an opportunity to correct the breach. Further, it is argued that the Respondent failed to correct the breaches or respond to the Applicant's concerns. The Applicant submits that it was required to bring this CAT application to enforce the settlement agreement. The July 5, 2022 letter was uploaded but not referred to in testimony. I have no reason to believe the letter was not sent. The Applicant's witness provided no testimony as to what efforts were made prior to the issuance of the CAT Application to bring the Respondent into compliance. With respect to providing the pet registration, the Applicant argues that the Respondent's breach of this term was not corrected until November 25, 2022, more than two months after the commencement of the Stage 3 hearing.

- [18] As directed in the CAT Rules, the Tribunal does not generally order a party to pay another party's costs. However, the CAT's Practice Direction provides factors for the Tribunal to consider when awarding costs as described above. The Respondent is self-represented. He appeared somewhat overwhelmed and felt harassed by the process. Although it was difficult for him to manage providing submissions and evidence, he participated as well as he could. The Respondent required a fair amount of direction and redirection that prolonged the hearing, although I did not conclude he had a disregard for the process.
- [19] The Respondent entered into an agreement with the Applicant. CCC88 had a legitimate expectation that the Respondent would fulfill the terms. He did not. Given that he had already participated in a CAT case over Sheba, he reasonably should have known that a failure to follow the terms of the agreement could result in another CAT case, which would in turn result in CCC88 incurring legal costs. He understood that Sheba's exemption from the condominium rule on weight and breed was based on an agreement that he entered into. It should have been clear to him that violating that agreement would likely result in a further CAT case. For this reason, I find a cost award is in order.
- [20] The Applicant submits that it made efforts to resolve Mr. McKay's non-compliance before it filed a CAT case. Other than the single letter, which has not been referred to in testimony, there is nothing else before me to suggest what efforts were actually made. Nevertheless, the terms of the Agreement were straightforward and clearly critical to resolving the original dispute. The Applicant should not have been put to significant efforts part to obtain Mr. McKay's compliance. Given Mr. McKay's position in the hearing, it is likely further efforts would not have prevented a return to the Tribunal.
- [21] While the Applicant has submitted that costs should be awarded pursuant to its

declaration and rules which provide for indemnification, the costs related to this proceeding are assessed in accordance with Rule 48. The bill of costs before me relate solely to the CAT dispute. In assessing costs, I have considered the principle of proportionality and the fact that this matter was straightforward and in no way complex. Therefore, I award costs in the amount of \$750 plus \$125 for reimbursement of the CAT filing fee pursuant to Rule 48.1.

E. ORDER

[22] The Tribunal Orders that:

1. Pursuant to s. 1.44(1) of the *Condominium Act, 1998*, the Respondent shall comply with the terms of the settlement agreement and, in particular, shall ensure Sheba wears an emotional support animal vest at all times while on the common elements.
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 costs of \$750 to the Applicant and \$125 for filing fees, for a total of \$875 within 30 days of the date of this decision.

Stephen Roth
Member, Condominium Authority Tribunal

Released on: February 10, 2023