

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 17, 2023

CASE: 2022-00634N

Citation: York Region Condominium Corporation No. 627 v. 1722620 Ontario Ltd. o/a Edgeley Printing, 2023 ONCAT 26

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

York Region Condominium Corporation No. 627
Represented by David Thiel, Counsel

The Respondent,

172260 Ontario Ltd. o/a Edgeley Printing

The Intervenor,

5050056 Ontario Inc.

Hearing: Written Online Hearing – November 24, 2022, to February 8, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] York Region Condominium Corporation No. 627 (“YRCC 627”), a commercial condominium, alleges that the Respondent, a tenant in the unit owned by the Intervenor, is parking or storing its vehicles on the common elements in violation of provisions in the condominium’s declaration and rules.¹ YRCC 627 also alleges that by continuing to park its vehicles as it does, the Respondent is creating a nuisance and unreasonably interfering with the use and enjoyment by other unit owners of the common elements – the parking area. YRCC 627 is requesting an order that the Respondent permanently remove the vehicles and cease parking the vehicles in violation of the declaration and rules, as well as its costs incurred to secure compliance and the costs of this hearing on a full indemnity basis.
- [2] The Respondent and Intervenor have not participated in the case. I am satisfied based on the evidence before me that they both have had notice of the case. I also

¹ The specific provisions will be reviewed in greater detail later in the decision; generally, the provisions prohibit the storage of vehicles and equipment on the common elements, including unlicensed or unroadworthy vehicles.

note that the Respondent is owned and operated by Dan Sotto and Jacob Sotto. The Sottos are also officers and directors of the Intervenor corporation. The two companies are, in effect, one and the same. The hearing proceeded without their participation. When a respondent does not join a case, the Tribunal must decide the case based on the evidence provided by the applicant, weighed on the balance of probabilities. I will only refer to the evidence and submissions relevant to my analysis and the issues to be decided by me.

- [3] For the reasons set out below, I find that the Respondent and Intervenor are not in contravention of s. 12(a) of the declaration and rules 14, 18 and 21. The Intervenor shall reimburse the Applicant, as compensation, \$903.05 as well as costs pursuant to Rule 48 of the Tribunal's Rules of Practice in the amount of \$150.

B. ISSUES AND ANALYSIS

ISSUE 1: Have the Respondent and/or Intervenor failed to comply with the declaration, by-laws and rules relating to the parking and /or storage of vehicles?

- [4] YRCC 627 states that between January 2022 and September 2022, the Respondent and/or Intervenor continuously parked four trucks with snowplowing equipment attached to the front of each, as well as a fifth vehicle which was without a licence plate, on the condominium property. One of the vehicles was parked in such a way that it blocked access to the catch basin in the parking area which YRCC 627 asserts presents a possible flood risk issue. As of early September 2022, after four compliance letters were sent by condominium management and one by YRCC 627's legal counsel, only two of the vehicles remain on site. The vehicle that was blocking the catch basin was one of the vehicles moved in September. This case was filed in late October 2022.
- [5] Documents were filed with the affidavit of the Applicant's witness, John Battistella, the condominium manager. These documents indicate that YRCC 627 received complaints from other unit owners about the continuing presence of the Respondent's five parked vehicles. YRCC 627 responded initially by sending a notice to all unit owners on June 22, 2022, stating that owners who were parking or storing vehicles in the back area of the building were causing an inconvenience to others and a safety hazard. YRCC 627 requested that the owners comply and move their vehicles by June 30. The Respondent's vehicles were not moved despite three more letters sent to it between June and August 3, 2022. What appeared somewhat incongruous is that in correspondence through the summer of 2022, a representative for the Respondent stated that the vehicles were used strictly in the operation of the business on a 24 hours a day, seven days a week basis, and that vehicles were "coming and going". Yet, as YRCC 627 noted in response to the Respondent's emails, the Respondent is a printing company (apparently not in the business of snow removal). Further, board directors and condominium management had verified the vehicles had not been moved and that during the summer months snow plowing equipment would not be used in any event.

- [6] Legal counsel for the Applicant sent their letter to the Respondent and Intervenor on August 27, 2022, and it seems that it may have been that letter which lead to action by the Respondent – three of the five vehicles were no longer on site in early September.
- [7] While the frustration with the apparent continuous presence on site of five parked vehicles for eight months and the disregard for the condominium rules is understandable, the fact is that there are now only two vehicles remaining. The evidence before me is that while these vehicles may not be moved for long stretches of time, they have been driven on occasion.
- [8] YRCC 627 relies on several provisions that relate to parking. I will review each of these in turn. The first of these is Rule 14:

“No motor vehicle other than a private passenger automobile, station wagon or commercial vehicle shall be parked on any part of the common elements (including any part thereof, of which any owner may have the exclusive use) nor shall any repairs be made to such motor vehicle on the common elements nor shall any such motor vehicle be left or stored on the common elements awaiting repair...”

With respect to this rule, and based on the current facts, two commercial vehicles owned by the Respondent are parked on site. The fact that they have snow plow equipment attached to them is curious given that the Respondent described itself in documentation filed with YRCC 627 as a printing business to which snow plows seems unrelated. However, that is not an issue for the Tribunal to decide. The vehicles are moved on occasion. I cannot find, on the facts before me, that the vehicles are anything other than commercial vehicles used by the Respondent and parked on site, or that they are being stored awaiting repair as per the wording of the rule.

- [9] Rule 18 states that no part of common elements shall be used for the purpose of keeping, storing or leaving waste matter, semi-manufactured items, finished products, equipment, parts or other materials. Again, there is no evidence before me that equipment is currently being “stored” on the common elements. Rule 21 which has also been cited by YRCC 627 speaks to the prohibition against the parking of unlicensed or unroadworthy vehicles is also no longer relevant as of September. I note that Mr. Battistella has stated that the unlicensed vehicle was no longer a concern.
- [10] YRCC 627, in submissions also referred to By-Law 6 which states that no owner or occupant shall permit the unit and any portion of the common elements, to be used as a garage for the parking of trucks or the service or repair of automobiles, trucks. This provision speaks to the use of a unit or the common elements as a garage. A garage denotes a building or structure in which a vehicle is kept. I find that the by-law is not applicable to the facts before me, even prior to September 2022.
- [11] Finally, YRCC 627 refers to s.12(a) of the declaration which states:

“Each owner may make reasonable use of, and has the right to enjoy the whole or any part of the common elements, subject to any conditions or restrictions set out in the Act, the declaration, the Corporation's by-laws ... and the rules. However, no condition shall be permitted to exist and no activity shall be carried on in the common elements that ...or that will unreasonably interfere with the use or enjoyment by other unit owners of the common elements and the other units,...

- [12] The facts prior to September 2022 may have supported a finding that the Respondent and/or Intervenor were unreasonably interfering with the use or enjoyment by other unit owners. With five vehicles parked in the same spot for months on end, and several apparently stored – such as the unlicensed vehicle – other owners’ access to parking spots was limited. One of the vehicles was parked over the catch basin which may have created a flood risk, though I note that this was characterized by Mr. Battistella as a possibility only. It was also parked in such a way that YRCC 627 was unable to have it easily towed. However, that vehicle was moved off site in September. But the evidence at this time, of two vehicles, even if not moved on a daily basis, does not support a finding of unreasonable interference. I also note that while YRCC 627 submits that because the two remaining vehicles have snow plow equipment attached, they must be unrelated to the operation of the business and therefore are instead just being stored on the property, it is not unreasonable that the Respondent has two vehicles as part of its business operation. The existence of the snow plow attachments on the vehicles, unusual as it may be, does not violate the rules.
- [13] Based on the evidence before me, I do not find that the Respondent and/or Intervenor are currently in noncompliance with the various provisions cited above. Nor were they, as of early September 2022. Had this case been brought forward in August 2022, the facts may have justified a finding of noncompliance with rules 14 and 21 as well as s. 12(a) of the declaration.

ISSUE 2: Is YRCC 627 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] YRCC 627 seeks indemnification for the costs incurred to secure compliance; specifically the costs incurred as a result of counsel’s letter to the Respondent and Intervenor on August 27, 2022 in the amount of \$903.05. In that letter, counsel referred to s. 9 of the declaration which states that any costs incurred by the corporation by reason of a breach of any rules and regulations by any unit owner, and/or the owner’s tenants shall be borne and paid for by such owner and may be recovered by the corporation against the owner in the same manner as common expenses. In that letter, counsel also referred to the fact that four letters had previously been sent to the Respondent and Intervenor requesting compliance.
- [15] The circumstances here warrant an order that the owner, in this instance, the Intervenor indemnify YRCC 627 costs incurred to secure compliance with its rules prior to this CAT case. It is noteworthy that it was only after that letter that three of

the vehicles were moved.

- [16] Regarding costs claimed in this proceeding, s. 1.44 (1) 4 states that the Tribunal may make “an order directing a 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 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.

- [17] I have ordered that YRCC 627 be indemnified for its ‘pre-CAT” costs incurred to enforce compliance. To that limited extent, they have had some success before the Tribunal. Therefore, in accordance with Rule 48.1 of the Rules of Practice, I order the Intervenor to pay \$150 in costs to YRCC 627, which are the Tribunal fees it paid.

- [18] YRCC 627 seeks its legal costs in the amount of \$7250. As noted above, this case was filed in late October 2022, approximately six weeks after the three vehicles were moved. I have found that the presence of the remaining two vehicles are not in violation of the rules, by-laws or the declaration. Compliance with the declaration and rules was achieved in early September through an effective compliance demand, before the case was filed with the Tribunal, though YRCC 627 sought the permanent removal of the two remaining vehicles. YRCC 627 has been unsuccessful in that regard. In the facts before me, this is not an appropriate case for an award of legal costs under Rule 48.2.

C. CONCLUSION

- [19] In summary, I have found that the Respondent and Intervenor are in compliance with the provisions related to parking and are not unreasonably interfering with the use and enjoyment of the common elements by other unit owners or their tenants. Had this case been brought forward prior to September 2022, the result may have been different at least regarding compliance with rule 21 and perhaps rule 14. The Respondent and Intervenor did, by their earlier noncompliance cause costs to be incurred by YRCC 627 and they will be ordered to reimburse YRCC 627 for a portion of those costs. I remind the Respondent and Intervenor that compliance is an obligation under s. 119 of the *Condominium Act, 1998* (the Act).

D. ORDER

[20] The Tribunal Orders that:

1. Pursuant to s. 1.44 (1) 3 of the Act, within 30 days of this Order, the Intervenor shall pay YRCC 627 compensation in the amount of \$903.05 in respect of legal fees and expenses it incurred.
2. Within 30 days of this Order, in accordance with s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, the Intervenor shall pay \$150 to YRCC 627 for its costs in this matter.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: February 17, 2023