

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 7, 2023

CASE: 2022-00493N

Citation: Rahman v. Peel Condominium Corporation No. 779, 2023 ONCAT 36

Order under Rule 19 of the Condominium Authority Tribunal's Rules of Practice.

Member: Marisa Victor, Member

The Applicant,

Aqib Rahman
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 779
Represented by Victor Yee, Counsel

Submission Dates: January 31, 2023 to February 10, 2023

MOTION ORDER

A. INTRODUCTION

- [1] This is a motion brought by the Respondent, Peel Standard Condominium Corporation No. 779 ("PSCC 779"), requesting that the Tribunal dismiss the application brought by the Applicant, Aqib Rahman ("Mr. Rahman"). PSCC 779's grounds for the motion are lack of jurisdiction and *res judicata*. In the alternative, PSCC 779 asks that this application be stayed pending the outcome of the related appeal of CAT case 2021 ONCAT 13 to Divisional Court.
- [2] Mr. Rahman is a unit owner of PSCC 779. He filed his application with the Condominium Authority Tribunal (the "Tribunal" or "CAT") in relation to a dispute regarding alleged misleading parking signage in the parking lot which is part of PSCC 779's common elements.
- [3] PSCC 779 submits that the CAT does not have jurisdiction over Mr. Rahman's complaints about confusing parking signs. In the alternative, PSCC 779 states that Mr. Rahman is making the same complaints he made in 2021 ONCAT 13 (the "Previous Case").¹ PSCC 779 submits that *res judicata* applies, meaning that the CAT cannot re-hear these complaints. Finally, PSCC 779 says that the Previous

¹ Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 13 (CanLII)

Case has been appealed to Divisional Court and that, if the CAT has jurisdiction to hear this case, the CAT should wait until the Divisional Court rules before hearing it.

- [4] For the reasons that follow, I find that the Respondent has shown that the CAT does not have jurisdiction to hear this case. I do not need to consider the alternative arguments about *res judicata* or the need for a stay. Based on lack of jurisdiction, I grant the motion and dismiss this application.

B. SUBMISSIONS & ANALYSIS

Background and Allegations of Bias

- [5] Prior to the present motion being heard, Mr. Rahman brought a motion to disqualify the Respondent's counsel ("Motion to Disqualify").² I denied that motion.
- [6] Mr. Rahman was unhappy with that decision. Mr. Rahman then used the CAT-ODR messaging system to express his complaints about that decision.³ The messages he posted also questioned my impartiality. Mr. Rahman also indicated that he intended to sue the CAT.
- [7] I instructed Mr. Rahman that his submissions needed to be uploaded as documents to the CAT-ODR.⁴ I advised both parties that posting messages to the message board were not submissions. I invited Mr. Rahman to address allegations of bias together with his submissions on the motion. On the issue of a reasonable apprehension of bias, I also advised Mr. Rahman of the legal test.
- [8] The only document Mr. Rahman uploaded as submissions was his Ontario Superior Court of Justice Statement of Claim against the Condominium Authority of Ontario and the CAT (Statement of Claim).⁵
- [9] Despite clear instructions and several opportunities, Mr. Rahman ultimately made no submissions relevant to the issue of bias. He did not actually ask for any particular relief, such as for me to recuse myself. After the close of submissions, Mr. Rahman continued to post messages to the message board questioning my impartiality. Again, those messages were similarly broad general complaints and

² Rahman v. Peel Standard Condominium Corporation No. 779, 2023 ONCAT 10 (CanLII)

³ At the CAT, parties are able to communicate with the Member by posting messages on a message board that is part of the CAT on-line dispute resolution system ("CAT-ODR").

⁴ Mr. Rahman has demonstrated that he was able to upload a notice of motion, factum, book of authorities and book of documents to the CAT-ODR as part of the Motion to Disqualify.

⁵ CV-23-00000416-00SP, filed February 3, 2023

also did not ask for a specific relief. I have not considered these posts as submissions.

[10] I have considered the lack of submissions together with the legal test for a reasonable apprehension of bias. I find that the Applicant has not raised a reasonable apprehension of bias before me. I also find that there is no reason for me to raise a reasonable apprehension of bias on my own. I find that there is nothing for me to consider on this issue.

[11] Therefore, the only issue for me to consider is whether the Tribunal has jurisdiction to hear the Applicant's case.

Jurisdiction

[12] PSCC 779 submits that the CAT lacks jurisdiction to hear this application.

[13] PSCC 779 relies on Rule 19.1(c) of the CAT Rules of Practice. That rule states that the CAT can dismiss an application "where a Case is about issues that the CAT has no legal power to hear."

[14] PSCC 779 relies on the Applicant's statement about the nature of his application, called the Problem Description. In that Problem Description, Mr. Rahman says that the issue to be determined is "misleading signage is being used fraudulently by the board and management to deceive authorities." Mr. Rahman cites PSCC 779's General Operating By-Law No. 1 (By-Law 1), in particular, Articles 4.1(a) and (e) "which refers to the duty of the corporation to manage and maintain including repair of all sections of the common elements in good standing." Mr. Rahman asks the CAT to order PSCC 779 to correct the parking signage.

[15] PSCC 779 submits that the dispute in this application, as defined by Mr. Rahman, is an issue of maintenance and repair. Further, the articles of By-Law 1 relied on by Mr. Rahman refer to the controlling, managing, repairing and restoring of common elements, which is not under the jurisdiction of the CAT. Finally, PSCC 779 submits that the CAT has no authority over maintenance and repair and that the parking signs are an issue of maintenance and repair.

[16] PSCC 779 also submits that the CAT's jurisdiction in relation to parking is limited to disputes about provisions that prohibit, restrict or govern parking.⁶ PSCC 779

⁶ Section 1(1)(d)(iii) of O. Reg. 179/17 (the Regulation) pursuant to the *Condominium Act*, 1998, S.O. 1998, c. 19

submits that Article 4.2(a) and Article 4.2(b) of the Declaration mention “clearly visible signs” in relation to visitor and handicap parking. However, PSCC 779 submits that this is not enough to bring the dispute within the CAT’s jurisdiction.⁷ PSCC 799 submits that section 1(1)(d)(iii) of the Regulation, which grants the CAT jurisdiction over parking, does not extend jurisdiction to the physical placement of the parking signs.

[17] Mr. Rahman’s submissions are that the CAT has jurisdiction over parking and that parking signage is a governance issue. In support of his position, Mr. Rahman has submitted a Statement of Claim that seeks declaratory judgment over the powers of the CAT, its relation to the Charter of Rights and Freedoms and its authority in relation to consumer protection rights, as well as damages. The Statement of Claim does not mention parking or parking signs.

Analysis

[18] After reviewing the application, associated documents and the submissions of the parties, I have determined that the CAT has no legal power to decide this dispute.

[19] The CAT’s jurisdiction is limited. The CAT’s jurisdiction regarding parking is set out in the Regulation at section 1(1)(d)(iii). It says that the CAT has jurisdiction over disputes relating to provisions in the condominium corporation’s governing documents (the Declaration, By-Laws or Rules) that prohibit, restrict or otherwise govern parking. The CAT does not have jurisdiction over any dispute that merely mentions or is related to parking.

[20] This is a dispute about the communication of rules. Mr. Rahman’s complaint is that he wants the parking signs to be less confusing. The parking signs communicate the rules regarding parking, perhaps, in this case, poorly. But a complaint that the parking signs are confusing is not a dispute relating to provisions within the governing documents that govern parking. Changing, altering, even removing the parking signs will not alter the rules governing parking.

[21] Although the Respondent relied on several cases, I ultimately did not rely on any of the cases as the issues were not similar enough to this case.

[22] I also did not rely on Mr. Rahman’s reliance on the Problem Description to the

⁷ PSCC 779 relies on the following CAT cases: *Sidhu v. Peel Condominium Corporation*, 2022 ONCAT 112 (CanLII), *Naderi v. Toronto Standard Condominium Corporation No. 2763*, 2021 ONCAT 51, *Smith v. Toronto Standard Condominium Corporation No. 1*, 2021 ONCAT 64, *JRS Productions Inc. et al. v. Metropolitan Toronto Condominium Corporation No. 98*, 2022 ONCAT 93, *Friedlander v. York Condominium Corporation No. 427*, 2022 ONCAT 110

extent that he characterized it as an issue of maintenance and repair. The choice of an applicant to refer to or rely on the maintenance and repair provisions of the governing documents of a condominium corporation is not necessarily determinative of jurisdiction.

[23] Mr. Rahman has not shown that his concern regarding the parking signs is a dispute arising from the condominium corporation's governing documents that prohibit, restrict or otherwise govern parking. It is a dispute about the communication of parking rules. The Applicant has failed to demonstrate that this dispute relates to provisions that prohibit, restrict, or otherwise govern parking. As such, the CAT does not have the jurisdiction to hear this application.

C. CONCLUSION

[24] The Respondent's motion is granted. The Application is dismissed.

Marisa Victor
Member, Condominium Authority Tribunal

Released on: March 7, 2023