

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** July 13, 2023

**CASE:** 2022-00543N

**Citation:** Pavlovic v. Peel Condominium Corporation No. 216, 2023 ONCAT 88

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

**Member:** Laurie Sanford, Member

**The Applicant,**

Diane Pavlovic

Self-Represented

**The Respondent,**

Peel Condominium Corporation No. 216

Represented by Greg Marley, Counsel

**Hearing:** Written Online Hearing – April 27, 2023 to June 26, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Diane Pavlovic has been a long-time unit owner in Peel Condominium Corporation No. 216 (“PCC 216”). For many years, she complained that the provisions in PCC 216’s governing documents related to visitor parking were not being enforced. It was only after she retained a lawyer to make a formal complaint that PCC 216 decided that, rather than enforce its existing visitor parking provisions, it would amend its declaration and repeal its existing visitor parking rules. Ms. Pavlovic brings this Application because she does not believe that PCC 216 correctly amended its declaration. Specifically, she submits that PCC 216 has breached subsection 107(3) of the *Condominium Act, 1998* (the “Act”) which requires the board to call a meeting of owners for the purpose of considering the proposed amendment. During the hearing, Ms. Pavlovic raised other issues, including questions and concerns about the how and when PCC 216 obtained the consents of owners to the proposed amendment and allegations that it has acted in violation of other sections of the Act in its management of the visitor parking issue. There appears to be no issue with the amendment of the rules.

[2] PCC 216 acknowledges that for many years it had not enforced the visitor parking provisions of its declaration and rules. However, it takes the position that it has amended its declaration in accordance with the section 107 of the Act and is now in compliance with its governing documents.

[3] For the reasons set out below, I find that PCC 216 has been deficient not only in its enforcement of its visitor parking restrictions but also in its initial attempts to avoid having to amend its declaration. However, it finally embarked on a correct process by deciding to amend its declaration and, in doing so, it has complied with subsection 107(3). Concerning Ms. Pavlovic's other issues, these are not part of this proceeding. However, for the sake of completeness and in an effort to address Ms. Pavlovic's concerns, I have made comments on the most material of them below. Both parties sought costs but I conclude that no cost order should be made in the circumstances of this case.

## **B. ISSUES & ANALYSIS**

[4] The principal issue in this case was originally stated very broadly as being whether PCC 216 was in compliance with its declaration with respect to visitor parking. During the course of the hearing, the issue was narrowed to be whether the visitor parking amendment was improperly enacted. Ms. Pavlovic alleges that PCC 216 is in violation of subsection 107(3) of the Act. The issues may now be summarised as follows:

1. Has PCC 216 amended the visitor parking provisions in its declaration in accordance with subsection 107(3) of the Act?
  - a. If not, what remedies should be ordered?
2. What responses are appropriate to address Ms. Pavlovic's other concerns?
3. Should costs be awarded?

### **Issue 1 - Has PCC 216 amended its declaration in accordance with section 107(3) of the Act?**

[5] Originally, PCC 216's declaration obliged it to maintain 32 parking spaces in its common elements, of which 28 were to be designated for the exclusive use of visitors. For many years, Ms. Pavlovic would complain from time to time about the fact that owners were using the visitor parking spaces and that PCC 216 was not enforcing its rules against that. Her proposal was that owners who wished to use the visitor parking should be charged for doing so. PCC 216 did not act in any meaningful way either on her complaints or on her proposal. Finally, Ms. Pavlovic retained a lawyer who, in July 2020, made a formal complaint to PCC 216. In response to this complaint, PCC 216 advised that it was reviewing its governing documents and had decided to amend its declaration and remove the visitor parking rules.

[6] The proposed, and eventual, wording of the visitor parking provisions in the declaration obliged PCC 216 to maintain 32 parking spaces in its common elements "which shall be clearly marked for the non-exclusive use of visitors

to the Condominium Building”. The provisions of its rules dealing with visitor parking were repealed.

[7] Under the guidance of its lawyers, PCC 216 began the process of amending its declaration. Section 107 of the Act sets out the procedure for amending a declaration. For the purposes of this decision, the provisions of this section that are relevant may be summarised as follows:

1. The board, by resolution, approves the proposed amendment (s.107(2)(a));
2. The board calls a meeting of the owners to consider the amendment and includes in the notice of the meeting a copy of the proposed amendment (s. 107(4));
3. The board holds a meeting of the owners “for the purpose of considering the proposed amendment” (s. 107(3));
4. In an amendment like the one in this case, the owners of at least 80% of the units at the time the board approved the proposed amendment must consent to it in writing (s.107(2)(e));
5. The board registers a copy of the amendment on title (s. 107(5));
  - a. The registered amendment includes a certificate in the prescribed form certifying that the amendment complies with section 107 of the Act.

[8] Ms. Pavlovic submitted that PCC 216 did not comply with subsection 107(3) of the Act in two respects. First, it did not allow enough opportunity for discussion of the amendment. She points to the minutes of the 2021 annual general meeting, which had the amendment on the agenda. She says that the discussion of the amendment was limited to the chair of the meeting noting that the requisite number of consents had not been obtained. Second, she submits that the amendment does not comply with the local municipal parking by-law, a fact which she says should have been told to the other owners.

[9] In response, PCC 216 says it is not obliged to permit “discussion” so much as “consideration” of the amendment, which it submits it did. Concerning the question of whether the amendment violates the municipal parking by-law, PCC 216 says that it has obtained a legal opinion that, as long as visitor parking signs remain in place, it is in compliance with the municipal parking by-law. PCC 216 also submits that the Tribunal lacks the jurisdiction to deal with the issue and, because of this, even if the amendment violated the by-law, the Tribunal lacks the jurisdiction to consider whether the owners should have been notified of that. PCC 216 also notes that if the amendment is subsequently found to be in violation of the by-law, then the amendment

could be further amended. The process by which this amendment was enacted should not be affected by the question of its compliance with the municipal parking by-law in PCC 216's submission.

- [10] There is no dispute between the parties that the board of directors of PCC 216 approved the amendment sometime in early 2021. Ms. Pavlovic does not dispute that a notice to the owners went out in advance of the 2021 Annual General Meeting, which was held virtually in June 2021. The proposed amendment was attached to the notice of the meeting. Her concern is that the owners were not advised in the notice to the meeting that the proposed amendment would put PCC 216 in violation of the municipal parking by-law. PCC 216's lawyer gave as his opinion in submissions to the Tribunal that PCC 216 was not in violation of that by-law as long as visitor parking signs remained in place. Ms. Pavlovic has offered no evidence beyond her assertion that the amendment violates the municipal by-law.
- [11] I agree that the Tribunal does not have the jurisdiction to consider breaches or enforcement of the municipal parking by-law itself. However, the question of whether a municipal by-law has been breached may be relevant to the Tribunal's consideration of the validity or enforceability of a condominium corporation's governing documents. In this case, Ms. Pavlovic's concern goes beyond the question of whether PCC 216 is in violation of the municipal parking by-law. She also takes the position that PCC 216 acted improperly in putting the amendment before the annual general meeting without advising them of the fact that, in her submission, PCC 216 would be in violation of the municipal by-law if the amendment were enacted. That is a related issue but it is not the same. I am not persuaded that, if a situation arose where a condominium corporation actively misled owners about whether declaration amendment violated a municipal by-law, that these owners would be without recourse before the Tribunal. However, there is no evidence before me that PCC 216 is attempting to mislead its owners on this point. I conclude that, based on the evidence presented, PCC 216 had no obligation to notify the owners of any concerns about compliance with the municipal by-law.
- [12] The June 2021 Annual General Meeting was held. Ms. Pavlovic is concerned that not enough time was given to a discussion of the proposed amendment. PCC 216 argues first that there was some discussion and Ms. Pavlovic was able to raise her concerns. Second, PCC 216 notes that the wording of subsection 107(3) calls for a meeting to "consider" the amendment rather than to "discuss" it. I agree that the distinction is material in this case. Consideration involves careful thought. A discussion, on the other hand, involves a dialogue. Despite the distinction, a meeting that prohibited any opportunity for discussion might be found not to constitute a consideration of the amendment, but that is not the case here. The notice of the meeting included the wording of the amendment and advised owners that the amendment would be on the agenda. Owners were given an opportunity to ask questions generally and Ms. Pavlovic did not ask any.

[13] Regarding Ms. Pavlovic's concern that there was an inadequate introduction to the topic of the amendment, the minutes of the annual general meeting read as follows:

The Chair advised that the current declaration states that visitor parking is exclusively for use of visitors and the proposed amendment changes verbiage to allow owners to make use of visitor parking. He advised that the Corporation is required to enforce the Declaration. Section 107 of the Condominium Act allows a corporation to amend a declaration providing 80% of owners give consent in writing. A consent form was included with the AGM package; however, an insufficient number have been returned. The Corporation is asking that all owners return the form to determine if the amendment will pass.

I believe that this minute adequately introduced the amendment. All owners received the notice of the meeting with the text of the proposed amendment. The owners who attended the meeting were advised about the contents of the proposed amendment and the consent requirements. They were given a general opportunity to ask questions. I conclude that PCC 216 acted in accordance with subsection 107(3).

[14] It should be noted that PCC 216 did not obtain the required consent during the following year and so again notified the owners of the amendment at its 2022 annual general meeting and again raised the topic during the meeting. This time, Ms. Pavlovic did raise her concerns about the lack of discussion and was told that the discussion had occurred in the previous meeting.

## **Issue 2 - What responses are appropriate to address Ms. Pavlovic's other concerns?**

[15] As noted above, Ms. Pavlovic raised a number of other issues during the course of the hearing. Ms. Pavlovic was self-represented and I assume she was unaware that these issues could not form part of the hearing without her either bringing a motion to add them or obtaining the consent of PCC 216. In order to deal with some of the concerns of Ms. Pavlovic, I offer the following comments on the most material of the issues she has raised.

[16] Ms. Pavlovic submits that PCC 216 has been operating in breach of subsection 17(3) of the Act in failing to enforce its visitor parking provisions. Subsection 17(3) obliges a condominium corporation to take all reasonable steps to enforce compliance with its governing documents. PCC 216 acknowledges that it failed to enforce the visitor parking provisions of its original declaration. However, the condominium manager testified that only Ms. Pavlovic complained about the non-enforcement and she did not suffer as a result of it. Ms. Pavlovic testified to the extensive correspondence she had with PCC 216 before retaining a lawyer to formally complain. In her closing submissions, Ms. Pavlovic disputed the condominium manager's testimony that she had not suffered as a result of the non-enforcement of the

visitor parking provisions, arguing that she has spent significant time and money on the issue. In her Reply Closing Submissions, Ms. Pavlovic submitted that she had spent, in addition to the Tribunal filing fees, the sum of \$2,881.38 in legal fees to formally complain of the non-compliance.

[17] Ms. Pavlovic complained without success for years. In 2020, PCC 216 chose to conduct a survey of owners. PCC 216 reported that an “overwhelming majority of owners” supported the current practice, and it advised Ms. Pavlovic that this concluded the matter. In fact, only 42% of owners replied and the wording of the question was so ambiguous that the result was meaningless. Moreover, there is no provision in the Act that permits a condominium corporation to avoid its responsibilities under subsection 17(3) by conducting a survey. It was after this that Ms. Pavlovic retained a lawyer. Only after correspondence between PCC 216 and her lawyer did PCC 216 finally decide to bring itself into compliance with its governing documents by amending the visitor parking provisions.

[18] PCC 216 has been acting in breach of subsection 17(3) and Ms. Pavlovic has been put to trouble and expense as a result. Both parties gave testimony on this subject and made submissions on the point. In Reply Submissions, PCC 216 argued that the question of the breach of subsection 17(3) of the Act did not form part of the subject matter of this hearing. It is true that, as noted above, Ms. Pavlovic did not raise this issue either in the closing of the mediation stage that preceded this hearing or during the confirmation of the issues at the outset of the hearing. Subsequently, she would have required either a successful motion or the consent of PCC 216 to include it as an issue to be decided. With regret, I must agree that the question of whether subsection 17(3) was breached and whether Ms. Pavlovic suffered damages as a result is not properly before me in this hearing.

[19] Ms. Pavlovic also raised a number of questions about when and how PCC 216 obtained the necessary consents of the owners to the declaration amendment. Specifically, she was concerned that the collection of the consents may have started before the annual general meeting at which the amendment was considered. She is also concerned about the length of time that PCC 216 took to gain the required consent of 80% of the people who were owners both at the time of the original board resolution and at the time of the registration of the amendment on title. It was not until February 2023 that the threshold was achieved. The amendment was registered on title and the board certified that it had been passed in accordance with section 107 of the Act.

[20] Ms. Pavlovic submits that while the Act does not specify a time limit on reaching the 80% consent threshold, to take as long as PCC 216 did is a violation of the intention and spirit of the Act. However, in each of Ms. Pavlovic’s concerns, it is not a question of the intention or spirit of the Act. The wording is clear and unambiguous. PCC 216 was not required to wait

until after the owner's meeting to begin collecting consents. The requirement for consent is not tied to the requirement for consideration of the amendment at an owners' meeting. Nor is there a time limit placed on when consents may be obtained. If the legislature had wanted to directly address either of these concerns, it could easily have done so.

- [21] Ms. Pavlovic is also interested in understanding how PCC 216 went about determining that the consents were obtained from qualified owners; that is owners who were there when the amendment was approved by the board in 2021 and who were still owners in 2023. As PCC 216 submits, the board certified that the amendment had been passed in compliance with section 107 of the Act. In the absence of persuasive evidence that the certification is not true, the certification is an answer to Ms. Pavlovic's questions.
- [22] Ms. Pavlovic also alleges that PCC 216 is in breach of its duty under subsection 37(1) duty to act honestly and in good faith. The Tribunal may consider this issue in determining if PCC 216 was acting honestly or in good faith in amending its declaration. However, not only is this issue not properly before me, but there is also no evidence that subsection 37(1) was breached in the procedure used to amend PCC 216's declaration.

### **Issue 3 - Should costs be awarded?**

- [23] PCC 216 submits that it should receive a portion of its over \$10,000 legal costs of this hearing from Ms. Pavlovic, namely \$2,500. It argues that Ms. Pavlovic insisted on pushing the matter on to a hearing because she wanted an independent determination of whether or not PCC 216 had complied with subsection 107(3). PCC 216 submits that Ms. Pavlovic could have consulted her own lawyer on this point and that the other owners of PCC 216 should not have to pay for this hearing.
- [24] It is not only Ms. Pavlovic who is responsible for this hearing. Had PCC 216 taken her complaints seriously, the hearing might not have been necessary. As noted above, PCC 216 attempted to circumvent its own declaration by conducting a meaningless owner survey and advising Ms. Pavlovic that this concluded the matter. Even after PCC 216 finally decided to amend its declaration, it made a point of advising the other owners that only one owner had complained and that all other owners would be bearing the cost of compliance as a result. This blame-shifting was petty and apparently designed to cause friction between Ms. Pavlovic and other owners. Having reviewed this and other correspondence between the parties over the years, I conclude that it is understandable that Ms. Pavlovic would doubt the assurances of PCC 216 that it had finally and correctly amended its declaration. She was within her rights to request a hearing and she was under no obligation to incur further legal costs in the matter. In the circumstances of this case, no order as to costs will issue.

**C. ORDER**

[25] The Tribunal orders that this Application is dismissed.

---

Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: July 13, 2023