

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 17, 2023

CASE: 2022-00578N

Citation: Durham Standard Condominium Corporation No. 259 v. McGee et al., 2023 ONCAT 92

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

Member: Michael Clifton, Vice-Chair

The Applicant,

Durham Standard Condominium Corporation No. 259

Represented by David Thiel, Counsel

The Respondents,

Aaron McGee

Not Represented

Jake Karns

Self-Represented

Hearing: Written Online Hearing – December 8, 2022 to July 3, 2023

REASONS FOR DECISION

[1] The Applicant condominium corporation brought this case against the owners of Unit 308 in the condominium, due to ongoing complaints about noise, smoke, and related nuisances, annoyances, and disruptive behaviour of the residents and guests of the unit. Some complaints also relate to what appear to be potentially criminal behaviour. These latter issues are, of course, outside the range of this Tribunal's authority to consider, but the balance of the conduct at issue falls well within the scope of what the Tribunal can address. The Applicant seeks both an order that the conduct cease and an order for reimbursement of its costs and expenses incurred to date in relation to it.

[2] The Respondents did not participate much in these proceedings. The Respondent, Aaron McGee, who resides in the unit, did not participate at all. The Respondent, Jake Karns, who co-owns the unit with Mr. McGee, participated only enough to state that he has nothing more to offer this Tribunal than the following information:

1. Mr. Karns states that he is a long-time friend (more than 30 years) of the other Respondent, Mr. McGee.
2. Mr. McGee suffers from a variety of serious mental health conditions for which he is prescribed medication.
3. Mr. Karns is the executor of Mr. McGee's father's estate and Mr. McGee's father entrusted to him the task of helping Mr. McGee manage his finances and ensure he has a home to live in.
4. For these purposes, Mr. Karns provides Mr. McGee with a monthly allowance to cover his living expenses and retains a 1% ownership interest in the unit in order to ensure Mr. McGee cannot sell his home without Mr. Karns ensuring it is a sensible and appropriate sale and that Mr. McGee is not thereby deprived of a place to live.
5. Regarding the allegations surrounding the conduct of the occupants of the unit, Mr. Karns says that Mr. McGee has told him that the residents of other units make false accusations and are "out to get him". In part, Mr. Karns blames the condominium for a lack of security, that the front door is often left unlocked, and that there are no security cameras on the property. He also notes that the common expenses for the condominium have diminished significantly over the years, which he thinks is odd given "the inflationary environment we are in right now," and suggests the condominium could benefit from increasing its budget to deal more effectively with security issues.

[3] True to his word that he had nothing more to say, after providing these comments at the commencement of the case, Mr. Karns declined all other opportunities to participate or to provide any evidence during these proceedings.

[4] The Applicant uploaded several documents as evidence in this case. They include the following:

1. A letter addressed to the Respondents dated February 2, 2022, from the condominium manager, Robert Tilson, noting there have been a number of complaints about noise coming from the unit "at all times of the day and night," and what have appeared to other residents to be "potential domestic disturbances". The letter states that "noise is not allowed" asks that the occupants of the unit "abide by the Rules and Regulations of the Condominium Corporation."

2. A letter addressed to the Respondents dated May 31, 2022, from the condominium's legal counsel, noting more specifically complaints regarding, "loud music, stomping, yelling and other loud noises, especially at unreasonable hours," the "improper disposal of refuse in unauthorized common element areas," and various potential criminal behaviour including attempted break-ins at other units.
3. A letter addressed to the Respondents dated July 26, 2022, from the condominium's legal counsel, setting out additional complaints regarding, intoxicated guests of the unit loitering in the common areas, a police incident relating to the unit, the physical assault of a female in the driveway of the property by one of the residents or guests of the unit, continuous barking by a dog, and allegations of neighbouring units deliveries being stolen by residents or guests of Unit 308.
4. A further letter addressed to the Respondents from the condominium's legal counsel, dated November 17, 2022, after commencement of this case, which addresses significant safety issues that counsel states are not addressed in these proceedings as they are "not within the CAT's jurisdiction." These include drug use, smoking, loitering, and damage to common elements.
5. Nearly 30 additional samples of other unit owners' and residents' complaints, which, along with the witness statement submitted by the Applicant's condominium manager, Mr. Tilson, collectively mention the following kinds of behaviour allegedly done by occupants or guests of the Respondents' unit:
 - a. Extremely loud music at all times of day or night;
 - b. loud arguing;
 - c. yelling in hallways;
 - d. stomping on the floor;
 - e. continuous barking by a dog, described as a pitbull;
 - f. smoking in common areas;
 - g. urinating in common areas (including once on another unit owner's garage door);
 - h. use of illicit drugs (some specifying witnessing use of a "crack pipe") in common areas;

- i. small bags being flushed down a toilet causing flooding in another unit;
- j. piling excessive garbage in their unit garage;
- k. discarding items in the common elements;
- l. placing their own garbage in other owners' garbage containers after collection times;
- m. parking in the driveways of other units; and
- n. leaving open the emergency exit to the building, permitting access to the building by various people who do not live there.

[5] One complainant describes "strange men, high and staggering around at all hours of the night... trying different doors to see if they are open," and states, "I have footage of the man who lives there, punching his girlfriend in the hallway. ... The neighbours I have talked to are equally concerned and even considering moving now as well because of what unit 308 subjects us to." The police have occasionally been called to address noise complaints and other issues.

[6] Also included in the Applicant's exhibits were a few items of correspondence from Mr. Karns which agree with the few statements he offered in these proceedings, and provide the following additional information:

1. That Mr. McGee has permitted other persons to reside in the unit as tenants;
2. That such persons changed the unit locks and refused to pay rent to Mr. McGee;
3. That Mr. McGee himself has not been involved in any of the issues described in the letters sent to them by the condominium and its legal counsel.

[7] The circumstances described by the Applicant range from the atrocious to the disturbing, and are reasonably the cause of significant worry, distress, and discomfort for other residents. However, as counsel for the Applicant indicated in his letter to the Respondents on November 17, 2022, not all of the issues complained about fall within this Tribunal's jurisdiction. Nevertheless, the following matters clearly do:

1. Excessive noise due to loud music, loud arguments and yelling, and continuous barking by the dog that has been kept at the unit, all fall under both subsection 117 (2) of the Act and clause 1 (1) (d) (iii.1) of Ont. Reg.

179/17, since they contravene the Applicant's Rules A2, B20, and G4, and section 3.2 of its declaration;

2. Keeping a pitbull on the property falls under clause 1 (1) (d) (i) of Ont. Reg. 179/17, as it contravenes the express prohibition against pitbulls in section 3.2 of the Applicant's declaration;
3. Smoke, odour, and vapour are all cited by the Applicant in their materials relating to complaints about Unit 308 residents smoking and using drugs in the common areas. No specific rule or declaration provision relating to smoking was specified, but these behaviours also fall under subsection 117 (2) of the Act.
4. While the Applicant's Rules B12 and C1 do not expressly use the words "nuisance," "annoyance," or "disruption," their provisions relating to discarding items on the common elements and governing the manners in which garbage must be kept and placed for pick up, are reasonably intended to prevent nuisances, annoyances, or disruptions, as such words are commonly and properly understood, and therefore are appropriately viewed as being within the scope of clause 1 (1) (d) (iii.2) of Ont. Reg. 179/17. The Applicant also cited odour as a nuisance relating to the Respondents' garbage disposal habits, which falls under subsection 117 (2) of the Act.
5. Likewise, urinating in the common elements and similar kinds of conduct are neither set out under sub-section 117 (2) of the Act nor specifically addressed in the condominium's declaration or rules. I daresay that it would be the unusual set of condominium documents that would refer to such behaviours specifically. Nevertheless, they reasonably invite description as nuisances or annoyances, at least, and I conclude that it is also reasonable to view them as being prohibited as such by the following provisions of the Applicant's rules:

A2 Owners and their families, guests, visitors, servants and agents shall not create or permit the creation or continuance of any ... nuisance which, in the opinion of the Board or the Building Manager, may or does disturb the comfort or quiet enjoyment of the unit or common elements by other owners or their respective families, guests, visitors, servants and persons having business with them;

B2 No immoral, improper, [or] offensive ... use shall be made of any dwelling unit or of the Condominium property;

and this more general clause in its declaration:

3.1(a) ... no condition shall be permitted to exist and no activity shall be carried on in any unit or on the common elements that is likely ... that will unreasonably interfere with the use or enjoyment, by other unit owners, of the common elements and the other units;

and therefore, I find they are also subject to the Tribunal's jurisdiction under clause 1 (1) (d) (iii.2) of Ont. Reg. 179/17.

- [8] The parking issues mentioned in some of the complaint letters submitted in evidence would also fall within the Tribunal's jurisdiction, but the Applicant has not particularly addressed these in its submissions or requests for an order.
- [9] The Applicant's evidence of all these matters is consistent, credible, and compelling. For its part, the Respondents do not deny such things occur, but only deny responsibility for them.
- [10] Despite Mr. Karns' statements, neither the Respondents nor the Applicant have provided evidence as to whether it is Mr. McGee, or the other permitted occupants, including tenants, or guests of the unit, who are the actual cause(s) of the circumstances complained of in this case. Ultimately, this fact is not relevant. Whether or not the owners or occupants or guests of a condominium unit misbehave, it is the unit owners – in this case, both Respondents together – who bear responsibility for their conduct.
- [11] Based on the foregoing, I order that the Respondents must immediately cease or cause the cessation of all of the complained of conduct. If the conduct is done or caused by occupants of the unit other than either of its owners, then the Respondents are reminded that it is their responsibility under the Act to take all reasonable steps to ensure their tenants and other unit occupants and guests comply with the declaration, by-laws, and rules of the condominium, and the Act. If the conduct in question is that of Mr. McGee, then he must govern himself and his guests appropriately. In either case, the conduct complained of – all of it – cannot be allowed to continue. (Obviously, in relation to those few issues that fall outside the Tribunal's scope of authority, this order is not enforceable.)
- [12] The Applicant has requested indemnification, or compensation, and costs.
- [13] Section 2.2 of the Applicant's declaration provides,

Any losses, costs or damages incurred by the Residential Corporation by reason of a breach of any rules and regulations of the Residential Corporation in force from time to time, by any unit owner, or by members of his or her family and/or their respective tenants, invitees or licencees, shall be borne and paid for by such

owner, and may be recovered by the Residential Corporation against such owner in a same manner as common expenses subject to and in accordance with the Act.

[14] Furthermore, clause 1.44 (1) 3 of the Act provides that the Tribunal may make an order “directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed,” and clause 1.44 (1) 4 grants authority to order costs.

[15] In support of its claims, the Applicant submitted the following documents:

1. A bill of costs itemizing legal expenses incurred for Stages 1, 2, and 3 of Tribunal proceedings. The total of such expenses is \$12,373.50 including HST, for legal fees, plus \$227.89 in disbursements including CAT filing fees of \$200;
2. a redacted invoice for legal services relating to Unit 308, dated May 26, 2022, totalling \$884.96 including disbursements and taxes;
3. a redacted invoice for legal services relating to Unit 308, dated July 27, 2022, totalling \$596.00 including disbursements and taxes;
4. a redacted invoice for legal services relating to Unit 308, dated November 25, 2022, totalling \$847.39 including disbursements and taxes;
5. invoices for services provided by Securitas Canada Limited, for security patrol around the premises, for the following amounts (inclusive of HST):
 - a. \$316.97 (invoice dated, March 2, 2023)
 - b. \$382.05 (invoice dated, April 6, 2023)
 - c. \$422.62 (invoice dated, May 4, 2023)

[16] With respect to the costs of these proceedings, I find the Applicant’s costs to be reasonable.

[17] There would have been no Stage 1 or Stage 2 in these proceedings, since one of the Respondents never joined the case. In that circumstance, CAT cases proceed directly to Stage 3 as default proceedings. The total of \$1,350 in legal fees that the Applicant’s bill of costs shows for work needed to prepare for and commence the case does not appear unreasonable in this case.

[18] Regarding the nearly 30 hours’ work spent in relation to Stage 3, I would consider this potentially excessive given the lack of participation by the Respondents, but I note that the materials submitted on behalf of the Applicant were detailed,

comprehensive, clear, and orderly. It is clear that counsel's time was well spent organizing exhibits and statements of fact and relevant law to cover a wide array of issues in a comprehensible presentation. Counsel did not appear to add to their work, or the Tribunal's, by taking unnecessary steps or supplying irrelevant information. The bill of costs also indicates that the majority of time spent on the case was performed by students-at-law and a law clerk. I have no reason to conclude that the costs it outlines are not reasonable.

- [19] However, it is not typical that a costs award at the Tribunal will cover more than just the filing fees, unless there are circumstances that specially warrant a greater award. Factors to be considered in awarding such additional costs to an applicant will include whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense, the potential impact an order for costs would have on the parties, whether the parties attempted to resolve the issues in dispute before the CAT case was filed, whether a party has failed to follow or comply with a previous order or direction of the CAT, and relevant provisions in the condominium corporation's governing documents.
- [20] Although failing to join a case can be problematic, the absence of Mr. McGee and the minimal participation of Mr. Karns in this case did not have the effect of either impeding or complicating the proceedings. Mr. Karns' participation, to the extent there was any, was polite and reasonable.
- [21] The factor that seems most relevant to my consideration for a costs award is that it appears that from early 2022 and possibly until late in these proceedings, Mr. Karns and Mr. McGee made little or no effort to change what was happening at the property. If the conduct in question was caused by tenants, they do not appear to have taken any of the steps a reasonable landlord should take to curtail it. If the conduct in question was caused by Mr. McGee or his guests, they likewise did not take steps to stop it.
- [22] I do note that the reports provided along with the Securitas Canada Limited invoices disclose no issues occurring during their patrols which appear to have started in early February 2023. In relation to this, Mr. Tilson also notes in his witness statement that, "there have been no very recent complaints provided by Condominium residents." I do not know if this is coincidental or should be viewed as evidence that Mr. McGee and Mr. Karns have finally gotten control of the situation; but, in any event, those reports cover periods arising only during Stage 3 proceedings and, if they do indicate that the Respondents have resolved the issues, they also show, then, that this has only occurred late in the process and do not mitigate the impression that, prior to and during the early part of the CAT

proceedings the Respondents did not make the efforts toward resolution that ought to have been made.

- [23] In the circumstances, I order that the Respondents must pay costs to the Applicant clause 1.44 (1) 4 of the Act in the amount of \$9,921.11, which is 80% of the legal fees and disbursements claimed in the Applicant's bill of costs for this case, other than the amount specified for Tribunal filing fees.
- [24] Being entirely successful in this case, the Applicant is also entitled to its Tribunal filing fees, which are \$150 not \$200 as set out in the bill of costs.
- [25] Regarding the Applicant's request for compensation or indemnity, I find that paragraph 2.2 of the Applicant's declaration does appear to provide that if expenses arise on account of non-compliance with a rule, the owner responsible for the non-compliance should reimburse those expenses.
- [26] Although the Respondent's witness, Mr. Tilson, suggested that hiring Securitas Canada Limited was necessary "as a result of unit 308's non-compliance," this is not strictly evident. It appears that Securitas was only hired long after the majority of complaints about Unit 308 were received and well after this CAT case was filed. As noted, their reports disclose no events of any note regarding Unit 308 or otherwise. Further, I note Mr. Karns expressed concern that the condominium may have failed to expend funds appropriately to address security issues for quite a long time; it is possible that, if they had done so earlier, some of the issues that were complained of might not have occurred, or perhaps not as frequently. On the facts before me I cannot conclude that the Securitas invoices are an expense that should be attributed solely to the Respondents as a result of their or their tenants' or guests' breach of the condominium rules.
- [27] Regarding the legal bills submitted for compensation, although all three invoices were referred to by the Applicant's counsel as constituting "pre-CAT costs," I note that one of the invoices post-dates the commencement of CAT proceedings. Since it is heavily redacted, I am unable to determine whether some part of the work covered by it might have related to the CAT proceedings, and not solely to the November 17, 2022, letter to the Respondents addressing issues considered to be outside the Tribunal's jurisdiction. As a result, I will reduce the amount of that invoice by 50% and award compensation to the Applicant in that amount plus the full amounts of the prior two invoices, for a total of \$1,904.66.

ORDER

- [28] For the foregoing reasons, the Tribunal orders that:

1. The Respondents, Aaron McGee and Jake Karns – effective immediately and throughout the entire time they continue to be owners and/or occupants of a unit in Durham Standard Condominium Plan No. 259 – are to take all reasonable steps to ensure that they and each other resident, tenant, or guest of their unit comply fully with the rules of the condominium, and ensure that neither they nor any occupant or guest of their unit perform or permit any activity that creates a prohibited nuisance, annoyance, or disruption disturbing the use and quiet enjoyment of the property by others – including, without limitation, that they shall: put a stop to all excessive noise in the unit and the common elements; stop all loitering, urinating, smoking and related activities in the common elements; and ensure that the provisions of the declaration and rules relating to parking, pets, and garbage disposal are complied with; and
2. the Respondents, Aaron McGee and Jake Karns, are and shall be jointly liable to pay to the Applicant:
 - a. \$10,071.11 as costs under clause 1.44 (1) 4 of the Act; and
 - b. \$1,904.66 as compensation under clause 1.44 (1) 3 of the Act.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: July 17, 2023