

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 18, 2023

CASE: 2023-00263N

Citation: Halton Standard Condominium Corporation No. 427 v. Foley et al., 2023 ONCAT 94

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

Member: Dawn Wickett, Member

The Applicant,

Halton Standard Condominium Corporation No. 427
Represented by Michelle Kelly, Counsel

The Respondents,

Wilbert Foley
Unrepresented/Not Appearing

Norma Foley
Unrepresented/Not Appearing

Hearing: Written Online Hearing – June 29, 2023 to July 14, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is Halton Standard Condominium Corporation No. 427 (“HSCC 427”). The Respondents are Wilbert Foley and Norma Foley (the “Foleys”). The Foleys live in a unit of Abbey Oaks condominiums located within HSCC 427. The Foleys have a pet dog living with them in their unit.
- [2] The Foleys were sent notice of this hearing on May 19, 2023. The notice advised the Foleys that if they did not join the case that a decision would be made in their absence and without their input or participation. The Foleys never joined the case, so this case went to Stage 3—Tribunal Decision as a default proceeding on June 29, 2023. Therefore, the only evidence before me to consider when making my decision is that of HSCC 427.
- [3] HSCC 427 brings this application requesting the Tribunal order the Foleys to permanently remove their dog from their condominium unit. HSCC 427’s position is that the Foleys are in contravention of its pet nuisance and noise rules, and its declaration. HSCC 427 submits that the contravention of its governing documents arises from the Foleys allowing their dog to roam the common elements without a

leash or on a long leash, without supervision, and relieve itself on the common elements. HSCC 427 further alleges that the Foleys dog disturbs the quiet enjoyment of others because of excessive barking.

- [4] In addition to an order requiring the Foleys to remove their dog from their condominium unit, HSCC 427 is seeking an order for costs they incurred seeking compliance with its governing documents, as well as the fee paid to file this application.
- [5] For the reasons that follow, I find the Foleys have not complied with HSCC 427's rules and declaration, and I order the Foleys to remove their dog from their unit within HSCC 427's premises within 15 days of the date of this decision. I also order the Foleys to pay pre-CAT-hearing legal costs (\$952.49), the Tribunal filing fee (\$150.00) and the legal costs of these proceedings (\$2,805) to HSCC 427 within 30 days of the date of this decision.

B. ISSUES & ANALYSIS

Issue 1: Should the Foleys' dog be removed from their unit?

- [6] HSCC 427's Counsel submits that the Foleys are in violation of its rules 12, 36 and 37 which read as follows:

12. Owners shall not make or permit the creation or continuance of any noise or nuisance which, in the opinion of the Board, may or does disturb the comfort or quiet *[sic]* enjoyment of the units or common elements by other Owners, their families, guests, visitors, servants and persons having business with them pursuant to the Town By-laws.

36. No pets shall be allowed to use exclusive use balcony/patio common hallways or common walkways for bathroom facilities.

37. Dogs shall be walked off Abbey Oaks complex to protect common area landscape. Owners are responsible for all clean up after their pet. All dogs shall be leashed at all times when on common areas, and muzzled, if required by law.

- [7] Further, HSCC 427's Counsel submitted that because of the above noted conduct, the Foleys have also failed to comply with section 12(g) of its declaration which sets out owners' expectations for pets and permits HSCC 427 to deem a pet a nuisance requiring removal from the corporation's premises. Section 12(g) of the HSCC 427's declaration reads:

No animals other than *[sic]* a pet (as hereinafter defined) are permitted within the units or upon common elements, and the number of pets shall be limited as hereinafter set out. The board of directors of the condominium shall have the authority to deem a pet to be a nuisance and to demand the removal of the pet from the Condominium, on such terms as it may decide. Unit owners, their residents or permitted occupants, owning or responsible for a pet, are required

to immediately clean any part of the interior or exterior common elements where their pet has soiled such common elements. All pets must either be on leash or physically constrained when on the common elements.

- [8] Since the summer of 2022, HSCC 427 has received numerous complaints about the Foleys allowing their dog to roam the common elements without a leash or a long leash without supervision. The complaints also indicated that the dog was relieving itself on the common elements and it was disturbing others in the condominium complex because of excessive barking.
- [9] In support of its position, HSCC 427 submitted several photographs capturing Foleys' dog roaming the common elements unleashed or on a long leash which appears to be fastened to the exclusive use patio. There are six photographs which are dated between December 18, 2022, and May 5, 2023. The photograph dated December 18, 2022, depicts Foleys' dog not leashed and relieving itself on the common elements.
- [10] Gail Cote, ("Cote") the condominium manager testified that on September 22, 2022, and October 11, 2022, she sent letters to the Foleys reminding them that their dog was not permitted to be off leash or relieve itself on the common elements. The letters also reminded the Foleys not to allow their dog's barking to disturb others in the condominium complex. Cote testified that the Foleys never responded to the letters.
- [11] On November 29, 2022, Cote sent a final letter to the Foleys reminding them of the rules. This letter also warned them that their dog could be deemed a nuisance by the board which could require the dog's removal from HSCC 427's premises. Again, the Foleys never responded to the letter.
- [12] As the Foleys never responded to HSCC 427's letters, and they continued not to comply with the rules and declaration, HSCC 427 had their Counsel send a registered letter. This letter is dated December 21, 2022. In the letter, Counsel for HSCC 427 set out the nature of the concerns, the content of the previous letters, the requirements for compliance with HSCC 427's rules and declaration, as well as compliance with the *Condominium Act, 1998* (the "Act"). Attached to the letter were two photographs demonstrating HSCC 427's concerns about the dog roaming and relieving itself on the common elements. Counsel for HSCC 427 advised the Foleys that if they did not comply with the governing documents and the Act, the condominium board would deem their dog a nuisance and require its removal from the premises.
- [13] The Foleys never responded to HSCC 427's Counsel's letter. They also did not comply with the requirements set out in HSCC 427's governing documents and the Act. Complaints continued to be reported to HSCC 427.
- [14] Given the Foleys' ongoing non-compliance, the condominium board deemed the Foleys' dog to be a nuisance. The condominium board also decided that the Foleys' dog must be removed from its premises.

[15] On April 11, 2023, HSCC 427's Counsel sent a letter to the Foleys advising that the condominium board deemed their dog to be a nuisance and that they had 14 days to remove the dog from the premises. The letter also advised the Foleys that if they did not remove their dog from the premises, HSCC 427 would make an application to the Tribunal. HSCC 427 further advised the Foleys that it would be sending another letter detailing the amount they owed to indemnify the corporation for costs incurred because of their failure to comply with the governing documents. Again, the Foleys did not respond to the letter, and they did not remove the dog from the premises. As of the date of this hearing, the Foleys continues to have the dog live in their unit.

[16] Tom Petrov ("Petrov") is a director for HSCC 427. He provided testimony which confirmed that of Cote. Petrov also testified that he witnessed Foleys' dog unleashed and on a long leash roaming the common elements.

[17] Having considered the uncontested evidence before me, I find HSCC 427's decision to deem the Foleys' dog a nuisance is reasonable. In making my finding, I considered the numerous complaints made about the Foleys' dog roaming the common elements unleashed or on a long leash, relieving itself on the common elements and barking excessively which interferes with the quiet enjoyment of others in the condominium complex. The complaints were verified by six photographs. Further, despite HSCC 427 having sent the Foleys three reminder letters, and two legal letters, the Foleys continued to disregard their obligations as a unit owner to comply with HSCC 427's rules and declaration. More specifically, the Foleys have not complied with HSCC 427's rules 12, 36 and 37, and section 12(g) of its declaration. The Foleys have offered no defence or explanation for their non-compliance. For these reasons, I will order the Foleys to remove the dog from their unit.

Issue 2: Is HSCC 427 entitled to an award for costs?

[18] HSCC 427's Counsel submitted that the pre-CAT costs total \$952.49 for having prepared two legal letters. The hearing costs are \$4,250.61 which is inclusive of taxes and disbursement, including the Tribunal filing fee (\$150). HSCC 427's Counsel submits that an order for these costs is in keeping with HSCC 427's rule 30 and section 9 of the declaration which reads as follows:

30. Any loss, cost or damage incurred by the Corporation by reason of a breach of any Rules and Regulation in force from time to time by any Owner, his family, guests, servants, agents or occupants of his unit shall be borne and/or paid by such owner in the same manner as common expenses.

Section 9:

Each owner, including the Declarant, shall pay to the Corporation his or her proportionate share of the common expenses, and the assessment and collection of the contribution towards the common expenses may be regulated by the board pursuant to the by-laws of the corporation. In addition to the

foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of this declaration, the by-laws of the Corporation or any rules and regulations of the 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 licensees, shall be borne and paid by such owner, and may be recovered by the Corporation against such owner in the same manner as common expenses.

- [19] Pursuant to the Tribunal's Rule 48.1, if a matter is not resolved by way of a settlement agreement or consent order, the unsuccessful party will be required to pay the successful party's filing fee. As HSCC 427 has been successful, I will order for the Foleys to pay HSCC 427 \$150 for the fee it paid to file this application.
- [20] Regarding HSCC 427's claim for pre-CAT costs incurred in seeking the Foleys' compliance with its governing documents, pursuant to section 1.44 (1) 3 of the Act, the Tribunal can make an order directing a party to pay compensation for damages incurred by another party because of an act of non-compliance. Having regard for this section of the Act, as well as the provisions of HSCC 427's rule 30 and section 9 of its declaration, I find an order for the Foleys to pay HSCC 427's its pre-CAT costs (\$952.49) is appropriate. In making this finding I considered the fact HSCC 427 unnecessarily incurred these expenses because of the Foleys' complete disregard for the previous three warning letters, as well as the Foleys' refusal to comply with HSCC 427's governing documents.
- [21] With respect to HSCC 427's request for an order that the Foleys indemnify the legal costs it incurred in relation to these proceedings, I find it appropriate to make this order. In making my finding, I considered the fact the Foleys were made aware of the possibility of such an order in the two legal letters sent to them by HSCC 427's Counsel. Further, HSCC 427's right to indemnification of costs is clearly set out in its rule 30 and section 9 of its declaration.
- [22] In determining the amount of costs the Foleys will pay to HSCC 427, I find the amount requested by HSCC 427 is disproportionate to the nature of the issues in dispute, particularly since this was a default proceeding which was straightforward and uncomplicated. Therefore, weighing the facts in this case, I award \$2,805 to HSCC 427 for their legal costs. This amount is approximately 65% of the costs incurred for the Tribunal hearing.

C. ORDER

[23] The Tribunal Orders that:

1. Under section 1.44 (1) 2 of the Act, within fifteen (15) days of the date of this Order, the Respondents, Wilbert Foley and Norma Foley shall permanently remove their dog from their unit within Halton Standard Condominium Corporation No. 427.

2. Under section 1.44 (1) 3 of the Act, within thirty (30) days of this Order, the Respondents, Wilbert Foley and Norma Foley shall indemnify pre-CAT costs in the amount of \$952.49 to Halton Standard Condominium Corporation No. 427.
3. Under section 1.44 (1) 4 of the Act, within thirty (30) days of this Order the Respondents, Wilbert Foley and Norma Foley shall pay Tribunal fees of \$150 and legal costs of \$2,805 to Halton Standard Condominium Corporation No. 427.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: July 18, 2023