

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 31, 2023

CASE: 2023-00128N

Citation: Crough v. Wentworth Common Elements Condominium Corporation No. 571, 2023 ONCAT 104

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

Member: Mary Ann Spencer, Member

The Applicant,
Jacob Crough
Self-Represented

The Respondent,
Wentworth Common Elements Condominium Corporation No. 571
Represented by Fernanda Silveira, Agent

Hearing: Written Online Hearing – May 8, 2023 to July 24, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Jacob Crough, resides in a townhouse community. He is the owner of a common interest in the Respondent, Wentworth Common Elements Condominium Corporation No. 571 (“WCECC571” or the “corporation”). His townhome and the land it sits on do not form part of the corporation; the land on which the townhome sits is a parcel of tied land (“POTL”) to which a portion of the common interest in the common elements of the corporation is legally attached. The common elements of WCECC571 include the roadways, sidewalks and visitors’ parking areas of the community.
- [2] Mr. Crough alleges that WCECC517 has improperly enforced the provision in its declaration which prohibits owners’ use of visitors’ parking spaces because it failed to identify which of the spaces in the common elements are the 35 that the declaration states are designated for visitors. He requests the Tribunal order the corporation to cease its parking enforcement and to reimburse him for three tickets he has received. He also alleges that the corporation has improperly made rules which apply to the townhomes and requests the Tribunal order that any future rules the corporation makes must comply with the governing documents and “not

attempt governance over the freehold homes.” He requests his costs in this matter.

- [3] The corporation submits that the declaration’s provision which states there are 35 parking spaces designated for visitors is an error which it intends to correct by amending the declaration. It also submits that it is not responsible for any tickets owners received because it gave them due notice of its intent to enforce the parking restrictions. The corporation also advises that it is in process of revising its rules. Its position is that Mr. Crough’s application should be dismissed. It requests no costs in this matter.
- [4] I find that the corporation has improperly enforced owners’ use of the parking spaces in the common elements. I order it to cease this enforcement until such time that the signage identifying visitors’ spaces in the common elements identifies the same number of spaces designated for visitors’ parking in its governing documents. I also order the corporation to pay \$200 in costs to Mr. Crough. I make no order with respect to the corporation’s rules; my jurisdiction is limited to the disputes about the provisions of the governing documents set out in Ontario Regulation 179/17 (“O. Reg 179/17”) and no such dispute with respect to the rules is before me.

B. ISSUES & ANALYSIS

- [5] The issues to be decided in this matter, as set out in the Stage 2 Summary and Order, are:
1. Has the WCECC571 implemented parking enforcement that is contradictory to the provisions set out in the declaration and rules?
 2. Has the Respondent amended the parking provisions in the declaration in accordance with section 107 and/or 109 of the Act?
 3. Were the rules made in accordance with the provisions of WCECC571’s governing documents and the Act?
 4. Is the Applicant entitled to be reimbursed for three parking tickets he incurred while parking on the common elements’ parking spaces?
 5. Should an award of costs be made?
- [6] Mr. Crough submitted that there were other issues to be addressed in this matter including whether the corporation’s directors have exercised their powers with the standard of care set out in s. 37 of the Act. I advised him that the Tribunal’s jurisdiction does not extend to this issue but is limited to the specific disputes set

out in O. Reg. 179/17. These include disputes with respect to records and to provisions of the governing documents that prohibit, restrict or otherwise govern pets, vehicles, parking and storage, and disputes about nuisance, annoyance or disruption to an individual. Nevertheless, evidence and arguments were submitted about this issue as well as other matters including the manner in which the corporation communicates with its owners, the fact that the corporation has yet to hold an AGM, and the validity of the reasons for the delay. I do not address these matters in this decision. However, where appropriate, I have included some observations about matters which relate to the issues to be decided.

Issue 1: Has WCECC571 implemented parking enforcement that is contradictory to the provisions set out in the declaration and rules?

- [7] WCECC571's declaration was registered on December 11, 2018. Clause IV (6) of the declaration states there are 35 visitors' parking spaces and prohibits their use by owners or occupants of the POTLs:

There are 35 spaces designated as "Visitors' Parking" in the Common Elements. Visitor Parking spaces shall not be used by the Owner or occupant of any of the POTLs.

The corporation's rules, effective September 29, 2022, include a definition of vehicles and include, among others, rules which prohibit parking in fire routes or laneways, prohibit servicing or storing vehicles in the common elements, and set a driving speed limit. The evidence presented in this case all related to the corporation's enforcement of owners' parking in visitors' spaces which I note the rules do not prohibit. In fact, none of the rules under the title of "Visitors' Parking" mention visitors' parking; rather they refer generally to the "common elements" or to specific components such as roadways.

- [8] Mr. Crough testified that he received three tickets for parking his vehicle in a common elements parking space. His position is that the corporation's enforcement action was invalid because it failed to properly identify the 35 visitors' spaces designated in the declaration.
- [9] Enforcement of parking restrictions on private property is performed by the municipality at the request of the private property's owner. The owner must report non-compliant parking to the municipality which will then send an enforcement officer to the property. Sara Lake, a member of WCECC571's board of directors, testified that in February, 2023, as required by the municipality's by-law, the corporation ordered and placed signage to identify the visitors' parking spaces. The undisputed evidence is that the corporation's signage identifies 62 common

elements' parking spaces as reserved for visitors and that it requested the municipality to enforce the prohibition of owners' parking in those spaces.

- [10] Section 119 (1) of the Act requires compliance with the governing documents of a condominium:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

Section 119 (3) provides the corporation with the right to enforce the provisions of the governing documents:

A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require that a person who is required to comply with this Act, the declaration, the by-laws and the rules shall do so.

While s. 119 (3) of the Act provides the corporation with the authority to enforce compliance, as set out in s. 119 (1), that enforcement must be in accordance with the governing documents. The corporation's enforcement of owners' use of 62 visitors' parking spaces is clearly inconsistent with Clause IV (6) of its declaration which designates only 35 spaces.

- [11] At the outset of this hearing, Fernanda Silveira, WCECC571's condominium manager and its representative in this matter, requested that this proceeding be adjourned for 12 weeks to permit the corporation to complete what she advised was a process underway to amend the declaration to correct an error in the designated number of visitors' parking spaces. She advised that the corporation had ceased all parking enforcement. I did not grant the adjournment because, while amendment of the declaration has the potential to resolve some of the issues in this matter, it would not address all of the issues to be decided.
- [12] Notwithstanding the corporation's advice that it has ceased enforcement, for certainty, I am ordering that it cease enforcing the prohibition of owners' use of visitors' parking spaces until such time that the signage which identifies the visitors' spaces in the common elements identifies the same number of spaces which are designated as visitors' parking in the corporation's governing documents. This can be achieved either by removing signage so that only 35 visitors' spaces are identified or by amending the corporation's governing documents to increase the number of designated visitors' spaces to 62.

[13] While not directly relevant to the issue of whether the corporation's enforcement was in accordance with its governing documents, the parties submitted evidence about the manner in which the corporation did enforce the parking prohibition. When enforcement began, a board member identified the owners' vehicles which were in visitors' spaces and advised the municipal enforcement officer accordingly. It later hired a security firm to patrol the parking area and accompany the officer; Ms. Lake testified this was because she had been harassed and felt threatened when she was patrolling the parking area. Mr. Crough testified that the enforcement efforts were targeted against specific owners, particularly those parking pick-up trucks, and provided a number of photographs which he submitted supported his allegation that the targeting was based on a director's personal agenda. Hani Selbak, the owner of the security firm the corporation retained, testified that he was provided with a site plan and a list of owners' licence plates by the corporation and used this to determine which vehicles were to be ticketed. Ms. Lake testified that the corporation had compiled the list after observing owners parking their vehicles and then entering their homes.

[14] I have no doubt that the corporation's enforcement process was imperfect and, as the submitted documents indicate, resulted both in some owners parking without being ticketed and some legitimate visitors receiving tickets. I also have no doubt that this imperfect process has contributed to what the parties' witness statements and responses to cross-examination questions clearly indicate is significant friction between some owners and the corporation's board of directors. The corporation would be well-advised to devise a more reliable method of identifying owners' vehicles before it re-commences enforcement.

Issue 2: Has WCECC571 amended the parking provisions in the declaration in accordance with section 107 and/or 109 of the Act?

[15] There is no dispute that Clause IV (6) of the declaration has yet to be amended. The submissions in this matter indicate what is at issue between the parties is the way in which the corporation proposes to amend it. As I advised the parties, O. Reg 179/17 does not provide the Tribunal with jurisdiction to decide this issue.

Issue 3: Were the rules made in accordance with the provisions of WCECC571's governing documents and the Act?

[16] It is Mr. Crough's position that the corporation's board of directors over-reached their authority in making the corporation's rules which he characterized as being "arbitrarily implemented." In his application to the Tribunal, he included a list of the rules which he believes the corporation had no authority to put in place. However, he presented no evidence with respect to any dispute related to these rules during

this hearing. Rather, he expressed his concern that the corporation did not have authority to make rules governing “units.” He requests that the Tribunal order “any and all future rules comply with the Act and related documentation and not attempt governance over the freehold homes.”

[17] Section 58 of the Act sets out the requirements for making rules. The Tribunal can and does hear cases about the reasonableness of a rule and whether a rule is in accordance with the requirements set out in the Act. However, those cases are in the context of disputes which O. Reg 179/17 provides it with the jurisdiction to hear. There is no dispute within my jurisdiction before me; the dispute about visitors’ parking is about the provisions of the declaration. Therefore, I make no order with respect to any of the rules of the corporation. Further, the order Mr. Crough is requesting is not necessary; as set out above in paragraph 10, s. 119 (1) of the Act states that the corporation must comply with the Act and the governing documents.

[18] For Mr. Crough’s information, with respect to his allegation that the corporation “arbitrarily implemented” the rules, s. 58 (6) sets out the process a corporation must follow. In summary, this includes providing notice to owners which includes a copy of the rules, the date they will become effective, and notification that owners may requisition an owners meeting. If no owners meeting is called within 30 days of the notice, the rules become effective on the proposed date. If an owners’ meeting is called, the owners may vote against the proposed rules. The evidence in this case is that WCECC571 followed this process. On August 22, 2022, WCECC571’s board of directors issued a Notice to Owners that it had approved rules as of that date and, subject to any owners’ meeting being called, the rules would become effective on September 29, 2022. No meeting was called.

[19] Ms. Lake testified that WCEEC571’s board of directors is amending the rules. While the nature of the amendments is unknown, she indicated that some will be removed and others will be changed. When the owners receive the notice required under s. 58 (6) of the Act, if they object to the proposed rules, they will have the opportunity to call an owners’ meeting at which time they can vote against them.

Issue 4: Is the Applicant entitled to be reimbursed for the price of three parking tickets he incurred while parking in the common elements’ parking spaces?

[20] Mr. Crough is requesting the Tribunal order reimbursement of \$165 with respect to three \$55 tickets he received for “unauthorized parking - private property” on February 6, February 11, and March 8, 2023. I note that the tickets were issued by, and subsequently paid to, the municipality.

[21] Mr. Crough acknowledges that owners are prohibited from parking in visitors' parking spaces. His position is that he should not have received tickets because the corporation failed to identify which of the parking spaces in the common elements were the 35 spaces the declaration states are designated as visitors' spaces. The corporation's position is that it provided due notice to the owners of its intent to begin parking enforcement which Mr. Crough chose to ignore.

[22] Ms. Lake testified that the corporation first advised owners of its intent to enforce the visitors' parking restriction at an information meeting it held in July, 2022. It posted a message on the community Facebook page on September 12, 2022. This notice states:

Owners/tenants shall only park in their own designated unit parking. Visitor parking is only for visitors.

Ms. Lake also testified that notices were subsequently delivered to owners' mailboxes on September 22, 2022. I note that the corporation did not enter a copy of this notice as evidence; however, Mr. Crough did not dispute its receipt. On January 24, 2023, a further reminder was posted on the Facebook page. That notice states "All residents vehicles in visitors' parking will be eligible for ticketing."

[23] I asked Mr. Crough why he had parked in the common elements. His response was:

The documents allow me to park on any spots, except the 35 visitor spots. I do not give in to bully's *[sic]* who arbitrarily apply their own rules and are abusing their power and I should not be expected to. My request was for the Respondent to follow the documents and rules as I have been. I should not be punished for the Respondent not following the documents - it is their responsibility to follow the docs. If the 35 parking spots were marked as visitors I would not have parked in any of the 35 visitor spots.

While I have found that the corporation did not have the authority to enforce its prohibition on owners' use of all 62 spaces, I have no reason to believe that its decision was not made in good faith; it appears to have been made by a relatively inexperienced board without the benefit of legal assistance. I note that the corporation's turnover meeting was held on January 20, 2022 at which time the three-member board was elected. The board's apparent misunderstanding of its obligations is reflected in a message Ms. Lake posted on September 13, 2022, presumably in response to feedback from the September 12, 2022 notice advising owners of its intent to enforce parking restrictions. She wrote "we are obliged by the condo authority to provide 61 *[sic]* available parking spots (on our section of the property)." The "obligation" to provide a specific number of spaces is not

something the Condominium Authority would address. While misunderstanding does not excuse decisions that were not consistent with the governing documents, it offers some explanation for them.

[24] The reason Mr. Crough gave for parking in the common elements suggests he did so on a point of principle, particularly given that, on February 7, 2023, the day after he received the first of three tickets, he unsuccessfully asked the municipality to review the infraction. He testified that he does not have more vehicles than can be parked in the driveway or garage of his townhome. While I acknowledge that he did not know which common elements' parking spaces were the 35 designated in the declaration, he equally had no knowledge of which spaces were those that were not designated. He appears to have concluded that he could park in any of the spaces. The conclusion that all parking spots were available to him was unreasonable and arguably imprudent given the corporation's notices indicate that he was made well aware of the risk that he could be ticketed. For these reasons, I am not ordering the reimbursement he requests.

Issue 5: Should an award of costs be made?

[25] Mr. Crough is requesting costs of \$1,175.44 comprised of \$200 he paid in Tribunal fees and \$975.44 in legal fees. WCECC571 requested no costs.

[26] Rule 48.1 and 48.2 of the Tribunal's Rules of Practice state:

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.

Mr. Crough was successful in challenging WCEC C571's enforcement of the prohibition of owners' parking. I am ordering the corporation to cease enforcement of owners' parking in visitors' spaces until the number of spaces identified by signage as visitors' parking equals the number designated in its governing documents. Therefore, in accordance with Rule 48.1, I am ordering WCECC571 to pay Mr. Crough \$200 in respect of the Tribunal filing fees he paid.

[27] I award no further costs in this case. Mr. Crough is requesting reimbursement of

legal fees he incurred in the amount of \$975.44; however, he was not represented by counsel in this matter. The legal fees were incurred in September, 2022, when he consulted a lawyer about the corporation's authority to make rules governing the POTLs. The evidence is that Mr. Crough and Ms. Silveira had an e-mail exchange about the issue and about the meaning of "freehold", at the end of which Ms. Silveira wrote "please review with counsel." Mr. Crough submits that he consulted a lawyer because of unreasonable behaviour by the corporation and that he is entitled to reimbursement in accordance with the Tribunal's Practice Direction on Ordering Costs. While Rule 48.2 of the Rules of Practice and the Practice Direction both indicate that legal fees may be awarded if the behaviour of a party or its representative is unreasonable, that reference is to behaviour during the course of a proceeding before the Tribunal. Nor am I prepared to issue an order for reimbursement under s. 1.44 (7) of the Act. Mr. Crough incurred the legal fees voluntarily; the corporation is not responsible for the fact he chose to do so.

C. ORDER

[28] The Tribunal Orders that:

1. Wentworth Common Elements Condominium Corporation No. 571 shall cease enforcement of owners' parking in visitors' spaces in the common elements until such time that the number of visitors' spaces identified by signage equals the number of visitors' spaces designated in the corporation's governing documents.
2. Within 30 days of the date of this decision, Wentworth Common Elements Condominium Corporation No. 571 shall pay \$200 to Jacob Crough.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: July 31, 2023