

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** September 22, 2023

**CASE:** 2023-00244SA

**Citation:** Middlesex Standard Condominium Corporation No. 764 v. Segun-Idahor et al., 2023 ONCAT 135

Order under section 1.47 of the *Condominium Act, 1998*.

**Member:** Elisha Turney Foss, Member

**The Applicant,**

Middlesex Standard Condominium Corporation No. 764  
Represented by Kevin Kok, Counsel

**The Respondents,**

Omolola Segun-Idahor  
Self-Represented

Abubakr Barda Dabia  
Self-Represented

**Hearing:** Written Online Hearing – June 15, 2023 to August 24, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] The Applicant, Middlesex Standard Condominium Corporation No. 764 (MSCC 764) filed this case against the unit owner, Omolola Segun-Idahor and the tenant, Abubakr Barda Dabia who occupies the unit. The parties previously entered into a Settlement Agreement dated December 18, 2022 (the “Settlement Agreement”) which concluded Tribunal case 2022-00689N.
- [2] Under subsection 1.47(3) of the *Condominium Act, 1998*, (the “Act”), where a party to a settlement agreement believes another party has contravened the agreement, they may make an application to the Condominium Authority Tribunal (the “Tribunal”) for an order to remedy the contravention, provided that the application is brought within six months after the alleged contravention occurred, or at a later time “if the Tribunal is satisfied that the delay in applying was incurred in good faith and no substantial prejudice will result to any person affected by the delay.”
- [3] The Applicant alleges that the Respondents have breached several terms of the Settlement Agreement. The relevant portions of the Settlement Agreement are the

following:

2. Effectively immediately, the Tenant and any occupants of the residence municipally known as [address] (the "Tenant's Unit"), shall comply with Rule 11 and not park their vehicle(s) in the spots designated for visitors on the common elements.
3. Effective immediately, the Owner, the Tenant, any occupants of the Tenant's Unit, and any guests or invitees of the Owner, the Tenant, and/or the occupants of the Tenant's Unit, shall comply with Rule 1 and not park their vehicle(s) in the designated fire routes on the common elements.

...

6. The Owner and the Tenant acknowledge and understand that if the Owner and the Tenant do not comply with this Settlement Agreement, the Corporation shall file a new CAT complaint and, among other things, seek recovery of its legal costs incurred during this matter from October 12, 2022, to December 7, 2022, in the amount of \$2,537.50.

[4] The Applicant requests an order from the Tribunal for the following:

1. An order that the Owner, Tenant, and Occupant(s) comply with the terms of the Settlement Agreement;
2. An order that the Owner, Tenant, and Occupant(s) ensure that all guests or invitees of the Owner, Tenant, and/or Occupant(s) comply with the applicable terms of the Settlement Agreement;
3. An order awarding the Corporation its legal costs incurred from October 12, 2022 through December 7, 2022 in the amount of \$2,537.50, pursuant to clause 6 of the Settlement Agreement; and,
4. An order awarding the Corporation its costs, on a full indemnity basis, of enforcing compliance in this matter, in the amount of \$ 3,204.65 for legal services provided from June 15, 2023, through July 11, 2023.

[5] The Respondents dispute the allegation that they breached clauses 2 and 3 of the Settlement Agreement. The tenant indicated that his brother was forced to park contrary to the Settlement Agreement terms because access to their driveway was blocked by a moving truck being used by their neighbour. Regarding the other alleged dates of breach of the settlement agreement, the Respondents indicated that the dates occurred after the filing of this application and as such should not be considered in this case.

[6] Accordingly, the issues to be addressed in this case are as follows:

1. Did the Respondents contravene the settlement agreement?

2. If so, what orders should the Tribunal make to remedy the contravention?

**B. DECISION**

[7] For the reasons that follow, I find that the Respondents breached clause 2 and 3 of the Settlement Agreement. I order the Respondents and their guests to comply with the Settlement Agreement. Further, I order the Respondents to pay legal costs of \$2,537.50 incurred from October 12, 2022, through December 7, 2022; the Respondent Tenant and Owner shall be jointly and severally liable to pay. Also, within 30 days of this decision the Respondent Tenant and Owner shall be jointly and severally liable to pay for costs the Applicant incurred with respect to this application and in respect of the Tribunal fees it paid.

**C. ISSUES & ANALYSIS**

**Issue No. 1: Did the Respondents contravene the settlement agreement?**

[8] The Applicant's Representative alleges that the Respondents and/or their guests have breached clause 2 and 3 of the Settlement Agreement as noted above.

[9] The Applicant's Representative provided several dates in 2023 when the alleged breaches occurred: April 27, May 31, June 9, June 13, and June 16, 2023, I address these separately below.

[10] The Respondents argued that the issue for this case is the allegation of a breach on April 27 because only this incident occurred before the application was submitted to the Tribunal on April 28, 2023. They submit that they should not have to respond to allegations that occurred on May 31, June 9, June 13, and June 16, all after the case was filed.

[11] I do not accept the Respondents' submissions. If the evidence shows that the breach of the Settlement Agreement is ongoing, that is relevant to any finding I may make. To suggest otherwise would require the Applicant to file another application for subsequent alleged breaches which is neither efficient nor fair.

April 26, 2023, and April 27, 2023

[12] The Applicant stated that on April 26, 2023, a moving truck obstructed the driveway of the Respondent's unit which meant that those wishing to park in the driveway were not able to do so.

[13] Lori Lawson, president of the MSCC 764's board provided evidence. Ms. Lawson indicated in her witness statement that she noticed that a moving truck was obstructing the Respondent's driveway, but the moving truck was relocated before the end of the day on April 26, 2023. However, Ms. Lawson further explained that she observed a grey Honda Civic, associated with the Respondent's unit, parked in the visitor's parking lot on April 27<sup>th</sup>. Ms. Lawson stated that she knows this vehicle is associated with the unit because the Respondent Owner's husband sent

an email dated January 6, 2023, to the Applicant's Representative confirming the vehicles and licence plate numbers that belonged to the Tenant and/ or Occupants of the unit. This information was also confirmed by the Respondent Owner in an email dated June 12, 2023, to MSCC 764's Property Manager. Ms. Lawson provided these emails.

- [14] In response, the Respondent Tenant provided the witness statement of Baherdin Bashir, their brother and roommate. Mr. Bashir submits that the moving truck incident occurred on April 27, 2023, at about 2:30 p.m. and not on April 26<sup>th</sup>. Two pictures of the blockage by the moving truck were provided in support of his statement. The photographs were not date stamped.
- [15] In reviewing the evidence before me, I find that the evidence of Lori Lawson and supporting emails compelling. The evidence before me supports a finding, on a balance of probabilities, that a resident of the unit did park a vehicle contrary to clause 2 of the Settlement Agreement.

#### May 31, 2023

- [16] The Applicant submitted that a white Nissan was parked on the road in front of the unit on May 31, 2023, which the Applicant Representative states is a fire route.
- [17] In her evidence, Ms. Lawson indicated that she saw a white Nissan parked on the road outside of the Respondent's unit, on May 31, 2023. She emailed this information to the Applicant's Representative on May 31, 2023, and stated that she believed that this white Nissan is driven by a tenant or occupant of the unit. She also provided a picture showing the white Nissan parked on the street blocking the driveway of the unit.
- [18] The Respondents did not provide any statements regarding this incident. Instead, they provided the argument that all allegations that occurred after the date of the filing of this case should not be considered. This argument was dealt with above and dismissed.
- [19] In reviewing the evidence before me, I find Ms. Lawson's evidence compelling and supportive of a finding, on a balance of probabilities, that the Respondents or their visitors did park contrary to clause 3 of the Settlement Agreement.

#### June 9, 2023

- [20] The Applicant alleges that on June 9, 2023, a car parked in a fire route outside of the Respondents' unit. Ms. Joanne Johnston, a MSCC 764 board member, provided evidence. Ms. Johnston stated that she noticed a vehicle parked along the fire route outside of the Respondent's unit on June 9, 2023. Ms. Johnston resides across from the Respondent's unit.
- [21] In her evidence, Ms. Johnston acknowledged that she could not confirm the licence plate. Ms. Johnston claimed that her husband was able to observe that the

driver entered the Respondents' unit after parking; however, Ms. Johnston's husband did not provide evidence and I give this aspect of her testimony no weight.

- [22] Ms. Johnston provided an email dated June 9, 2023, which was sent to the other board members, in which she noted that there was a vehicle parked in a fire route and attached a photo. The photo shows a light-coloured vehicle, parked on the road, blocking the driveway of a unit.
- [23] The Respondents did not provide any statements countering Ms. Johnston's assertions other than to reiterate their argument that all allegations that occurred after the date of the filing of this case should not be considered.
- [24] In reviewing the evidence before me, I find that the evidence of Ms. Johnson supports a finding, on a balance of probabilities the that a resident or visitor of the Respondent's unit did park contrary to clause 3 of the Settlement Agreement.

#### June 13, 2023

- [25] The Applicant alleges that on June 13, 2023, at approximately 3:30 p.m., a resident of the Respondent's unit was observed to have parked a vehicle in a fire route. Victoria Phillips, the senior vice president, and senior condominium manager at MSCC 764 provided evidence.
- [26] Ms. Phillips submitted that she was at the condominium complex for a meeting of the board on June 13, 2023. Upon leaving the meeting, she noticed a car that she recognized as belonging to the Respondent's unit. This car was parked in a designated fire route. She claims that she addressed the driver, but the driver disregarded her.
- [27] Ms. Phillips sent an email to the Applicant Representative dated June 13, 2023, at 3:45 p.m. indicating that observed one of the tenants of the Respondents' unit parked in the fire route. A copy of that email was submitted as evidence.
- [28] Again, the Respondents provided no evidence in response.
- [29] In reviewing the evidence before me, I accept the evidence of Ms. Phillips. The evidence before me supports a finding, on a balance of probabilities that a resident of the Respondents' unit parked a vehicle contrary to clause 3 of the Settlement Agreement.

#### June 16, 2023

- [30] The Applicant alleges that a resident of the Respondents' unit parked in a designated fire route on June 16, 2023.
- [31] Ms. Lawson also testified about this incident. She stated that on June 16, 2023, at 9:00 a.m., she observed that a Honda Civic was parked in a designated fire route.

Ms. Lawson stated that the licence plate was confirmed to belong to a resident of the Respondent's unit based on the Respondent owner's June 12<sup>th</sup> email.

[32] The Respondents did not provide any evidence in response to this allegation.

[33] I find that the evidence from Ms. Lawson is compelling and supports a finding, on a balance of probabilities that a resident of the Respondents' unit did park a vehicle contrary to clause 3 of the Settlement Agreement.

[34] Therefore, based on all the evidence before me, I find that the Respondents did breach clause 2 and 3 of the Settlement agreement.

### **Issue No. 2: What orders should the Tribunal make to remedy the contravention?**

[35] According to section 1.47 (6) of the *Act*, the Tribunal may make any order it considers appropriate if it determines that a party has contravened a settlement agreement.

[36] As noted above, MSCC 764 is seeking its legal costs from the Respondents. The legal costs consist of the following:

- legal costs incurred from October 12, 2022 through December 7, 2022, in the amount of \$2,537.50.
- cost of enforcing compliance in this matter in the amount of \$3,204.65 for legal services provided from June 15, 2023, through July 11, 2023.

[37] The Applicant submits that they attempted a conciliatory approach by working with the Respondents to obtain a settlement agreement. They also submit that the Respondents were aware of the terms of the Settlement Agreement and they voluntarily agreed to the terms.

[38] Given the above, the Respondents clearly had prior notice of exactly what would be owed as the specific amount is set out in the Settlement Agreement. As I have found that the Respondents have breached the Settlement Agreement on several occasions, these costs are now payable. I therefore order the payment of legal costs incurred from October 12, 2022, through December 7, 2022, in the amount of \$2,537.50, pursuant to the Settlement Agreement.

[39] It is appropriate that both the Respondent Tenant and Respondent Owner be jointly and severally liable pursuant to clause 6 of the Settlement Agreement, as both the Respondents agreed to ensure compliance with the terms set out.

[40] Regarding the legal costs related to this proceeding, the Tribunal's authority to make orders is set out in section 1.44 of the *Act*. Section 1.44 (2) of the *Act* states that an order for costs "shall be determined ... in accordance with the rules of the Tribunal." The cost related rules of the Tribunal's Rules of Practice relevant to this case are:

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 disbursement ("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.

- [41] The Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; whether the parties attempted to resolve the issue in dispute before the CAT case was filed; and whether a party has failed to follow or comply with a previous order or direction of the CAT.
- [42] An award of costs is discretionary, and when considering costs, the condominium corporations must show that they acted reasonably and judiciously when incurring legal costs.<sup>1</sup>
- [43] In support of their claim for costs, the Applicant referred to *Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48* ("Psofimis"). This case involved the removal of an owner's dog and the Tribunal awarded the corporation 100% of the legal costs it requested.
- [44] In the Psofimis, the Tribunal noted that the corporation was required to submit an application to the Tribunal "only because Mr. Psofimis deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters and blatantly disregarded the agreement entered into by him, evidently not in good faith, promising to comply...".<sup>2</sup>
- [45] This case differs from Psofimis, as there was no evidence that the Respondents disregarded notices, emails and letters after the Settlement Agreement was entered into. While the Applicant did provide evidence of letters to the Respondents before the Settlement Agreement, the Applicant's Representative did acknowledge that they did not reach out to the Respondents regarding compliance after the Settlement Agreement.

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<sup>1</sup> Essex Condominium Corporation No. 28 v. Pecarski, 2022 ONCAT 116

<sup>2</sup> Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48

[46] The Respondents provided no submissions regarding the Applicant's requests for costs. It is clear that the parties entered into a Settlement Agreement, which the Respondents breached, ultimately causing further legal expense for the Applicant. Yet, there is no evidence to substantiate the cost of \$3,204.65 for legal services provided from June 15, 2023, through July 11, 2023.

[47] Weighing all these elements and the principle of proportionality, an award of costs on a partial indemnity basis is appropriate. Therefore, I award the Applicant \$1,602.32, which is 50% of \$3,204.65 legal costs the Applicant advises they incurred with respect to this application.

[48] Also, the Applicant was successful in proving the Respondents have breached the Settlement Agreement and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order a cost award of \$125 in respect of the Tribunal fees the Applicant paid.

[49] It is appropriate that both the Respondent Tenant and Respondent Owner be jointly and severally liable to pay to these costs.

#### **D. ORDER**

[50] The Tribunal Orders that:

1. Pursuant to s. 1.44 (1) 1 of the Act, the Respondents shall comply with the Settlement Agreement, and in particular shall not park in visitor designated spaces and designated fire routes; and shall ensure their visitors not park in designated fire routes.
2. Pursuant to clause 6 of the Settlement Agreement, the Respondents shall pay \$2,537.50 of legal costs incurred from October 12, 2022, through December 7, 2022; the Respondent Tenant and Owner are jointly and severally liable to pay.
3. Within 30 days of this Order and in accordance with s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, the Respondents shall pay \$1,602.32 for costs the Applicant advises they incurred with respect to this application and \$125 in respect of the Tribunal fees it paid; The Respondent Tenant and Owner are jointly and severally liable to pay.

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Elisha Turney Foss  
Member, Condominium Authority Tribunal

Released on: September 22, 2023