

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** October 11, 2023

**CASE:** 2023-00190N

**Citation:** Peel Standard Condominium Corporation No. 718 v. Bai, 2023 ONCAT 170

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

**Member:** Roger Bilodeau, Member

**The Applicant,**

Peel Standard Condominium Corporation No. 718

Represented by Darlene Mezzabotta, Paralegal

**The Respondent,**

Jang (Jamie) Bai

Self-represented

**Hearing:** Written Online Hearing – May 16, 2023 to September 15, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant Peel Standard Condominium Corporation No. 718 (the “Corporation”), filed an application with the Condominium Authority Tribunal (“Tribunal”) against Jang (Jamie) Bai (“Mr. Bai”). Mr. Bai is the owner of a parking unit (the “Unit”), in addition to a residential unit, of the Corporation.
- [2] In its application, the Corporation sought (i) the removal of a derelict vehicle which had been left unattended in the Unit by Mr. Bai since 2018, in breach of the Condominium Act, 1998 (the “Act”) and of the Corporation’s governing documents, (ii) the cost of repairing the Unit’s asphalt parking surface, as well as (iii) its costs in these proceedings.
- [3] Prior to the application being filed, Mr. Bai did not respond to the Corporation’s multiple requests to remove the vehicle and once the application was filed, he did not join the case which then went to Stage 3 – Tribunal Decision as a default proceeding on May 12, 2023. Since Mr. Bai failed to join the case at the onset of Stage 3, I asked the Tribunal staff to contact him and as a result, he joined the

case on May 16, 2023.

- [4] Shortly after Mr. Bai joined the case, the parties came to an agreement for the removal of his vehicle from the Unit and the vehicle has in fact been removed, at Mr. Bai's expense.
- [5] The only outstanding matters are the damage to the Unit's asphalt parking surface, as claimed by the Corporation, as well as its pre-CAT expenses and its costs. The Corporation has provided written submissions on those issues and although he was given every opportunity to make submissions, Mr. Bai has chosen not to participate in the hearing since the removal of his vehicle from the Unit on or about June 2, 2023.
- [6] For the reasons set out below, I have denied the Corporation's claim for damage to the asphalt parking surface but have allowed its claim for pre-CAT expenses in the amount of \$1,215.95, as well as costs in the amount of \$2,645.89, which includes the Tribunal filing fees of \$150.00.

## **B. ISSUES**

- [7] The issues to be addressed in this matter are whether the Corporation is entitled to compensation for damage to the asphalt parking surface of the Unit, as well as to its pre-CAT expenses to enforce compliance and its costs.
- [8] The Corporation submits that pursuant to subsection 1.44(1) 3 of the Act, 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. The Corporation intends to proceed with repairs to the Unit's asphalt parking surface as outlined in a quote dated June 15, 2023, received from AssociaOnCall and which it has filed with this Tribunal, at a cost of \$1,799.81.
- [9] In support of its claim for the repairs to the Unit's asphalt parking surface, the Corporation notes that in the case of Metropolitan Toronto Condominium Corporation No. 818 v. Tahseen et al., 2022 ONCAT 8 (CanLII), the Tribunal awarded 100% of the repair costs to a parking unit.
- [10] The Corporation also submits that it is entitled to a full indemnification of its costs totalling \$4,693.80. According to the Corporation, that amount is comprised of \$150.00 in Tribunal filing fees, \$1,215.95 in pre-CAT legal expenses and \$3,327.85 in costs for this application. The Corporation submits that it should be awarded the full amount of its expenses and costs because they are solely due to the Respondent's lack of response and neglect to remove his vehicle from the Unit, since 2018 and before its application to this Tribunal.

[11] As required by subsection 17(3) of the Act, the Corporation further submits that it took all reasonable steps to obtain Mr. Bai's compliance before incurring any costs or expenses in that regard. The Corporation notes that Mr. Bai was given several notices by both its management and legal counsel and that he was given more than one opportunity to remove the vehicle. His neglect or refusal to do so left the Corporation with no choice but to file this application with the Tribunal.

[12] The Corporation submits that its governing documents, as well as section 1.44 of the Act and Rule 48.1 of the Tribunal's Rules of Practice, authorize the Tribunal to order Mr. Bai to pay the full amount of its costs incurred to obtain compliance and removal of the vehicle by him.

[13] In support of its claim for a full indemnification of its costs, the Corporation has referred to the following decisions:

1. Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48, where the Tribunal awarded 100% of the applicant corporation's requested legal costs. According to the Corporation, the Tribunal noted in that case that the corporation was required to request an order from 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..." (para.44);

2. Muskoka Condominium Corporation No. 39 v. Kreutzweiser, 2010 ONSC 2463, in which the Court wrote as follows at paragraph 15:

"The Corporation repeatedly warned the respondent of the cost consequences of enforcement proceedings. The respondent failed to respond to any communication from the corporation or to comply with its directions. Therefore these costs are to a large extent the consequences of the respondent's own actions.";

3. York Condominium Corporation No. 229 v. Rockson, 2022 ONCAT 46 (CanLII), where the Tribunal wrote as follows at paragraph 22:

"Legal fees not awarded as costs are ultimately paid by all owners of a corporation. It would be neither reasonable nor fair if the owners whose quiet enjoyment of their premises was disrupted by what I can only describe as Mr. Rockson's wilful refusal to comply with YCC 229's noise rules were to be liable for the corporation's cost of obtaining Mr. Rockson's

compliance."; and

d) Toronto Standard Condominium Corporation No. 2804 v. Micoli et al., 2023 ONCAT 21 (CanLII), at paragraph 57:

"While his almost complete non-participation in these proceedings did not directly complicate or prolong them, it is reasonable to consider that his lack of reasonable efforts to address his client's misconduct placed the entire burden of enforcement, including the costs of this case, on the shoulders of the Applicant – or, in other words, on the shoulders of all of the other owners in the condominium – and that it would be fair and appropriate for him to bear a substantial portion of those costs."

### **C. ANALYSIS**

#### **Damage to the Unit**

- [14] In regard to the amount claimed for damage to the asphalt parking surface, I have reviewed the photographs of the Unit and of parking spaces on either side of it for comparison, as provided by the Corporation in support of its claim. I have also reviewed the quote which describes the services to be provided by AssociaOnCall, a maintenance service company partnered with another company, i.e. PARKnGO. The quote describes the proposed work as consisting of cutting out four indentations in the Unit, followed by the removal of the existing asphalt and the installation and grading of new asphalt in those four areas.
- [15] Based on the evidence provided, I am not persuaded that the wheel rims of Mr. Bai's vehicle caused any damage to the Unit, as claimed by the Corporation. The photographs provided clearly show tire thread markings but in my view, that is very different from any damage which could have been caused by bare metal wheel rims impacting the asphalt directly, without tires on them. In addition, the quote refers to 'indentations', as opposed to damage by metal wheel rims and no evidence was presented to support the claim that the alleged damage was actually caused by metal wheel rims 'sinking into the asphalt parking surface', as claimed by the Corporation.
- [16] Furthermore, I am not persuaded that a derelict vehicle with tires on its rims and parked for a lengthy period of time would have caused more damage to the asphalt than a non-derelict vehicle. The photographs of other parking units show similar indentations caused by the tires (as opposed to bare metal wheel rims) of other vehicles and I conclude that in this case, any alleged sinking of parts of the asphalt in the Unit was "par for the course" and is the result of the regular wear and tear in a parking space. As a final note, this case is quite different from the

scenario presented in the Tahseen case referred to by the Corporation, where damage to a parking space was caused by a direct and significant leak of car fluids from the Respondent's vehicle, as supported by the evidence of a civil engineer.

[17] I therefore disallow the Corporation's claim for damages to the Unit.

### **Expenses and Costs**

[18] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Subsection 1.44 (2) states that an order for costs "shall be determined...in accordance with the rules of the Tribunal." The Tribunal's Rules of Practice which are relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a Tribunal Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's Tribunal fees unless the Tribunal member decides otherwise.

48.2 The Tribunal 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 Tribunal 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.

[19] Mr. Bai was given ample notice and opportunities to comply with the Corporation's notices and requests to remove the vehicle, starting in 2018, as well as letters from its legal counsel starting in 2020. As a result, this case has many similarities to the cases cited by the Corporation in support of its claim for costs. However, this Tribunal has decided in several cases, including the Psoufimis, Rockson and Micoli cases cited by the Corporation, that one must distinguish between pre-CAT expenses to obtain compliance, on one hand, and costs associated with the CAT application, on the other. That distinction is clearly set out in Psoufimis as follows, in reference to pre-CAT legal expenses incurred in that case to enforce compliance:

I will address the cost of the legal letter first. The cost of this letter cannot be characterized as 'costs', as that term is used in s. 1.44(1)4 of the Act. However, under s.1.44(1)3 of the Act, 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."

[20] In this case, the requested compensation for that category of damages is the cost

of the legal expenses incurred to enforce compliance by Mr. Bai, including the cost of compliance letters sent to Mr. Bai. I have reviewed the pre-CAT legal expenses incurred by the Corporation to enforce compliance, which total \$1,215.95 over a period of approximately thirty months and in my view, those expenses are reasonable.

- [21] If the Corporation is not compensated for these expenses, it will result in monetary damage to all other owners. To avoid that unfair consequence, I direct Mr. Bai to pay the full amount of \$1,215.95 to the Corporation.
- [22] I turn now to the actual costs of this application. Upon joining the case on May 16, 2023, Mr. Bai indicated that he was late in doing so due to a recent surgery. There is no indication from either party that he was not properly served with the application nor is there any information to indicate that he could not have joined the case before the default phase of the proceeding due to illness or a surgery. There is therefore no information from him to explain why he did not join the case after receiving the Notice of Case and why he did not remove the vehicle from the Unit before the Tribunal proceedings were initiated. I can only note that he joined the case very soon after this case was noted in default, after being contacted by Tribunal staff. He thereafter quickly agreed to remove his vehicle from the Unit at his expense, which has been done.
- [23] I have reviewed the legal fees incurred by the Corporation in this proceeding and note that the majority of the hours claimed were performed by a paralegal. In my view, the legal fees claimed by the Corporation are reasonable.
- [24] I have also considered the cases cited by the Corporation in support of its claim for costs and I note that cases where a 100% indemnity for costs was awarded usually involve a situation where there was a full hearing on the substantive issues: see *Durham Condominium Corporation No. 80 v. Occestone*, 2022 ONCAT 103 at paragraph 21.
- [25] In my assessment and in view of all the circumstances of this case, especially the fact that Mr. Bai did remove the derelict vehicle very soon after joining the case, I am ordering him to pay costs in the total amount of \$2,645.89, being 75% of the amount claimed by the Corporation, plus the Tribunal filing fees of \$150.00.

#### **D. ORDER**

- [26] The Tribunal orders that:

1. Pursuant to s. 1.44 (1) 3 of the Act and within 30 days of this Order, Mr. Bai shall pay the Corporation compensation in the amount of \$1,215.95 in respect of legal fees and expenses which it incurred.
2. Within 30 days of this Order and in accordance with subsection 1.44(1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, Mr. Bai shall pay \$2,645.89 to the Corporation for its costs in this matter.

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Roger Bilodeau  
Member, Condominium Authority Tribunal

Released on: October 11, 2023