

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 13, 2023

CASE: 2023-00012N

Citation: Stone v. Simcoe Condominium Corporation No. 112, 2023 ONCAT 172

Order under section 1.44 of the Condominium Act, 1998.

Member: Nicole Aylwin, Member

The Applicant,
Ross Stone
Self-Represented

The Respondent,
Simcoe Condominium Corporation No. 112
Represented by Kristeen Shannon, Agent

Hearing: Written Online Hearing – June 19, 2023 to November 2, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Ross Stone, is the owner of a unit in the Respondent, Simcoe Condominium Corporation No. 112 (“SCC 112”). Mr. Stone alleges SCC 112 has failed to enforce its governing documents. Specifically, Mr. Stone is concerned that the board of SCC 112 has failed to enforce instances of non-compliance against a former board member. It is Mr. Stone’s position that the SCC 112 board has been “bullied” by this unit owner and thus retroactively approved actions taken by them even though these actions are in violation of the governing documents.
- [2] It is SCC 112’s position that they are unaware of any current violations of the governing documents. They assert that they have taken all steps to enforce the governing documents as they saw fit and to address any violations that occurred.
- [3] Mr. Stone seeks an order requiring SCC 112 to enforce its governing documents and asks the Tribunal to reverse the retroactive approvals SCC 112 provided to the former board member, which he believes in several instances brought this unit owner into compliance with the governing documents.
- [4] For the reasons set out below I find that several of the provisions Mr. Stone wishes to have addressed by the Tribunal are not within the Tribunal’s jurisdiction and thus I make no finding on issues of compliance related to these provisions. Regarding the provisions in the governing documents related to vehicles and

parking, over which the Tribunal does have jurisdiction, I find that SCC 112 exercised reasonable discretion in how they chose to enforce these provisions. I find that they did not fail to enforce their governing documents and I dismiss this application.

B. PRELIMINARY MATTERS

[5] At the outset of the hearing, Mr. Stone raised issues regarding several proposed rules that the condominium had drafted and circulated in draft form to the owners for comment. He was concerned that some of the proposed rules were inconsistent with the declaration. I explained to Mr. Stone that the Tribunal's jurisdiction did not extend to proposed rules, only to those rules that are currently in force, and I would not hear evidence on the proposed rules.

[6] Mr. Stone confirmed his understanding of this and noted that his issue with inconsistency related only to the proposed rules. This left a single issue to be decided in this case: Has SCC 112 failed to enforce its governing documents?

C. ISSUES & ANALYSIS

Issue no. 1: Has SCC 112 failed to enforce its governing documents?

[7] It is Mr. Stone's position that SCC 112 has failed to enforce several provisions in the governing documents, including the following provisions of the Declaration:

Article IX, 3. Exterior Appearance of Common Elements and Units

In order to maintain the architectural integrity and beauty of the buildings, improvements and grounds of the total project...

... the owner may not leave any articles of any description in or about any exterior portion of any unit or common elements which shall contribute to any unsightly or untidy appearance. Each owner shall keep those portions of the common elements of which he has the exclusive use at all times in a neat, clean and orderly condition and free of any rubbish, litter, debris or other unsightly material and the Corporation shall do likewise with respect to the remainder of the common elements. No owner shall harm mutilate destroy or litter any of the landscaping work on or in the common elements, including grass, trees, shrubs, hedges, flowers or flower beds...

... Neither any owner nor the Corporation may attach or construct any fixture awning, shade, deck or patio enclosure or cover, fence, air-conditioning device, fan, window guard, flag, bunting storage structure, piece of equipment or thing of any nature whatsoever to any exterior portion of a unit or the common elements...

...Neither any owner nor the Corporation may install, erect or maintain or permit to be installed erected or maintained any drapes, covering or other materials over, on, inside or outside any aperture, door, skylight or window or balcony unless the same shall be of a buff colour only or the back thereof facing the

exterior of any aperture, door, skylight or window or balcony shall be completely lined with a buff liner or covering sufficient to reflect or show only a buff exterior thereof.

Article IX 5. Vehicles on Common Elements

...

(d) Except as permitted by sub paragraph (a) hereof, no motor vehicle and no trailer of any kind, including, without limiting the generality of the foregoing, any house, tent, boat or snowmobile trailer, camper, land cruiser, or other form of mobile home, and no boat, snowmobile, mechanical toboggan, machinery or equipment of any kind shall be parked, placed, located, kept or maintained on any part of the common elements except motorized snow-ploughs, land mowers, gardening equipment, trucks or buses owned by or rented by the Corporation.

(e) No repairs or adjustment to motor vehicles or automobiles, snowmobiles, trailers or boats may be carried out on the common elements.

[8] And the following "House Rules":

6(a): No one shall harm, mutilate, destroy, alter or litter the Common Elements or any of the landscaping work on the property including grass, trees, shrubs, hedges, flowers and flower beds.

6(c): No antenna, aerial tower or similar structure and appurtenance thereto with the exception of a satellite dish shall be erected or fasted to any unit.

10(c): No motor vehicle and no trailer of any kind, including without limiting the generality of the foregoing, any house, tent, boat, or snowmobile trailer, camper, land cruiser or other form of mobile home, and no boat, snowmobile, mechanical toboggan, machinery or equipment of any kind shall be parked, placed, located, kept or maintained on any part of the Common Elements except when preparing for or returning from use.

10 (d): No repairs to motor vehicles or automobiles, snowmobiles, trailers or boats may be done on the Common Elements except for minor work such as changing, tires, cleaning/washing, etc.

[9] According to Mr. Stone these provisions have been violated by a single unit owner, who at this time is a former board member but who was a board member at the time of the alleged non-compliance. It is Mr. Stone's position that due to the offending unit owner's status as board member, he was allowed to breach the provisions above without consequence and/or has been improperly allowed to appear to come into compliance with the provisions though a serious of retroactive board approvals that "effectively cancel[ed] the violation".

[10] Mr. Stone alleges that the violations by this owner include "general messiness," which consists of debris that is visible from outside the unit, a plexiglass addition at the front entrance of the unit that is not allowed under the rules governing exterior

appearance, the addition of non-compliant flower planters in the common gardens in violation of the rule addressing landscaping, the installation of a non-compliant awning (non-compliant in regard to both its size and color) that violates the rules on exterior appearance, a diamond window covering that does not conform to the rules on exterior appearance, the installation external lighting on the garage which is not allowed under the rules prohibiting the erecting of any appurtenance on the exterior of a unit other than a satellite dish, the parking of a boat trailer in his common element driveway, and the carrying out of vehicle repairs on the common elements.

[11] Mr. Stone argues that the offending unit owner has a duty to comply with the declaration, by-laws, and rules of the corporation as per Article X, 5. of SCC 112's declaration, which states:

All present and future owners, tenants and residents of units shall be subject to an comply with the provisions of this Declaration, the by-laws, the rules and the Condominium Act...

[12] He further argues that continued violations of governing documents by this unit owner have led to increasing acrimony in the community. Mr. Stone argues that the board's failure to enforce the governing documents has resulted in resentment and animosity festering between neighbors and has interfered with the comfort and peaceful enjoyment of the property.

[13] As was explained to Mr. Stone several times throughout the hearing, the Tribunal does not have the jurisdiction to deal with all provisions of the governing documents of a corporation. The Tribunal's jurisdiction to deal with issues of compliance relates to specific kinds of provisions within governing documents. These provisions are those described in Ontario Regulation 179/17 ("O.Reg 179/17"), specifically s.1(1) (d):

1.(1) The prescribed disputes for the purposes of subsections 1. 36 (1) and (2) of the Act, are,

...

(d) subject to subsection (3), a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:

(i) Provisions that prohibit, restrict or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.

(ii) Provisions that prohibit, restrict or otherwise govern an automobile, motorcycle, van, truck, trailer, bus, mobile home, farm tractor, bicycle, motor-assisted bicycle, motorized snow vehicle, motorboat, rowboat, canoe, kayak, punt, sailboat, raft, aircraft, device used to facilitate the transport of a person with a disability, or any other vehicle drawn, propelled or driven by any kind of power, including muscular power, in a unit, the common elements or the assets, if any, of the corporation.

(iii) Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes.

(iii.1) Provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General).

(iii.2) Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

(iv) Provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a dispute described in this clause. O. Reg. 179/17, s. 1 (1); O. Reg. 465/20, s. 1 (1); O. Reg. 655/21, s. 1 (1, 2).

[14] Mr. Stone's concern over the parking of the boat trailer and vehicle maintenance clearly fall within the Tribunal's jurisdiction as per 1.(1) (d) (ii) and 1.(1) (d) (iii) of O Reg 179/17. When Mr. Stone was asked specifically to identify and clarify how the other rules and provisions of the declaration he had identified fell within the jurisdiction of the Tribunal, he indicated that these fell within s.1.(1) (d) (iii.2) "Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation."

[15] Mr. Stone cited Article X, 3. of the declaration to support his position, which reads:

No owner shall carry out any noxious or offensive activity or do or omit to do anything in or about his unit or the common elements which would constitute a nuisance or which interferes or results in interference with or obstruction of the peaceful enjoyment, quiet possession and proper use of the property or any part thereof by its residents, or which would, in the opinion of the Board of Directors in any way injure or unreasonable embarrass, disturb or annoy such residents.

[16] Despite citing this provision, no evidence has been provided, nor arguments made, that reasonably allow me to conclude that the core of Mr. Stone's claim is about nuisance, annoyance or disruption (and/or the failure to enforce provisions related to nuisance, annoyance or disruption).

[17] Mr. Stone argues that the violations he cites fall within the Tribunal's jurisdiction under clause 1(1)(d)(iii.2) as each being an "other nuisance, annoyance or disruption" prohibited or otherwise governed by the rules and declaration provisions he cites. However, this demonstrates a fundamental confusion of categories. Clause 1(1)(d)(iii.2) is not intended to be a catch-all that allows any and every violation of a provision of a condominium's governing documents to be characterized as a nuisance, annoyance or disruption. That interpretation would effectively broaden the jurisdiction of the Tribunal to include every violation of

every provision of every declaration, by-law, or rule, which is clearly not the intention of the legislature. Its intention is to permit enforcement of provisions that deal with situations that are analogous though not identical to those listed under s. 117(2) of the Act. I do not find that the nature of the violations cited by Mr. Stone are of this character.

- [18] Rather, what the evidence shows is that Mr. Stone is frustrated with the fact that a single unit owner appears to be breaching rules and the board does not appear to be enforcing the rules the way Mr. Stone believes they should be. He is also aggrieved by the board's granting of retroactive approvals for the alleged violations. He argues that the board has treated the offending member preferentially due to his prior position on the board. A significant amount of evidence was provided on this point and focused on Mr. Stone's dissatisfaction with how the board has handled this situation. While I understand why Mr. Stone may be frustrated by the board's perceived failure to enforce the rules cited, non-compliance with a rule in and of itself, is not a nuisance, annoyance, or disruption for the purposes of clause 1(1)(d)(iii.2).
- [19] Thus, I find that in this case, Mr. Stone's claims regarding non-compliance with Article IX, 3. "Exterior Appearance of Common Elements and Units" and House Rules 6(a) and 6(c) do not fall within the jurisdiction of the Tribunal and are not within the Tribunal's power to decide.
- [20] However, Mr. Stone does take issue with alleged non-compliance with three provisions that do fall within the Tribunal' jurisdiction: Article IX 5 (d) and Article IX 5 (e) of the declaration and House Rules 10(c) and 10(e) which govern parking and vehicles.
- [21] According to Mr. Stone, for approximately four weeks in the spring and five weeks in the fall of 2022, the same former board member and unit owner discussed above, parked a boat trailer in his common element exclusive use driveway. Mr. Stone argues that the declaration's Article IX 5 (d) prohibits any and all parking of a trailer on the property and that the board failed to enforce this provision of the declaration and failed to enforce rule 10 (c) which also limits trailer parking except for "periods of time when preparing or returning for use".
- [22] SCC 112 argues that Article IX 5(d) of the declaration, which outright prohibits any parking of a trailer, is outdated. It notes that when docks were added nearby to the property (just two years after the condominium was declared) it became amenable to the majority of owners to allow boat trailers to be parked in individual driveways for short periods of time to allow for the seasonal launching and removal of boats. Thus, based on the community context, it has been the practice to allow limited parking of trailers during certain times of the year and rule 10(c) acknowledges this fact. Rule 10(c) reads:

10(c): No motor vehicle and no trailer of any kind, including without limiting the generality of the foregoing, any house, tent, boat, or snowmobile trailer, camper,

land cruiser or other form of mobile home, and no boat, snowmobile, mechanical toboggan, machinery or equipment of any kind shall be parked, placed, located, kept or maintained on any part of the Common Elements ***except when preparing for or returning from use.*** [emphasis added]

- [23] Article IX 5(d) of the declaration clearly prohibits the parking of a trailer on common elements, and it does not provide for the exception in rule 10(c). The rules of a condominium must be consistent with the declaration and in this case rule 10(c) is not and it cannot be relied upon to justify non-enforcement.
- [24] However, SCC 112 acknowledges this inconsistency and submits that it has begun the process of attempting to bring the declaration up to date so that the provisions reflect the current wants and needs of the community and eliminate inconsistencies. In the meantime, it submits that in this case they it did not fail to enforce these provisions. It submits that the board did address the serious breaches of the rule. SCC 112's witness, a current board member, testified that the issue of the extended parking of the boat trailer in the driveway was addressed with the unit owner and was eventually resolved, albeit not as quickly or easily as the board and perhaps the community would have liked.
- [25] Condominium boards do have the discretion to determine how to enforce their governing documents, so long as they act reasonably. Not every minor infraction must be met with enforcement activity and a condominium board is entitled to deference regarding its enforcement decisions unless there is evidence that it has acted in an unreasonable or unpredictable manner.
- [26] Having reviewed all the evidence and submissions, there is not enough evidence before me to conclude that SCC 112 acted unreasonably or capriciously in its decision on how to enforce its governing documents in this instance. I accept SCC 112's witness testimony that they attempted in good faith to resolve the trailer parking issue with the unit owner, and based on the evidence before me, accept that resolving this issue of non-compliance, given the difficulty of dealing with the offending unit owner and the inconsistency between the declaration and rules was likely not straightforward and took some time. Thus, I do not find that SCC 112 failed to enforce compliance. However, I will note that it is clear from the evidence that the inconsistency in the rules and declaration related to trailer parking is likely leading to frustration and confusion about what is and is not allowed and SCC 112 would be well advised to act expeditiously to eliminate any inconsistencies in the governing documents and to standardize their enforcement practices.
- [27] Regarding Mr. Stone's claim that the same unit owner undertook brake repairs in their common element driveway in violation of rule 10 (e) I cannot conclude based on the evidence whether there has been an instance of non-compliance with this rule or that SCC 12 failed to enforce this rule. No evidence was provided as to when this infraction occurred, what the circumstances were, nor is there any evidence of a formal complaint made outside of its brief mention in this application. Simply stating that the rule was broken, does not allow me to conclude one way or

another that the rule was violated, and that SCC 12 failed to enforce this rule.

D. CONCLUSION

[28] Given that the Tribunal has no jurisdiction over the following provisions of the governing documents - Article IX, 3. "Exterior Appearance of Common Elements and Units" and House Rules 6(a) and 6(c), I can make no finding regarding SCC 112's enforcement of these provisions.

[29] In the case of the provisions of the governing documents that deal with parking and vehicles, I find that SCC 112 did not fail to enforce its governing documents.

E. ORDER

[30] The Tribunal dismisses the application without costs.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: November 13, 2023