

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 9, 2024

CASE: 2023-00230N

Citation: Howarth v. Halton Condominium Corporation No. 26, 2024 ONCAT 7

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Nasser Chahbar, Member

The Applicant,

Lawrence Howarth

Self-Represented

The Respondent,

Halton Condominium Corporation No. 26

Represented by Christopher Mendes, Counsel

Submission Dates: November 24, 2023 to November 29, 2023

MOTION ORDER

[1] The Applicant is a unit owner in Halton Condominium Corporation No. 26 ("HCC 26"). He claims that the Respondent's decision to close the indoor pool from the beginning of September to the end of May each year is "a major nuisance". The problem description in the application states:

The indoor pool has not been operational for months. This pool is part of our declaration and must be operational and available to residences at all times. This is clear in Section II (1) and Section III of our Declaration. The closing of the pool, especially over the winter months, clearly affects my use and enjoyment of the facilities.

[2] The Respondent, HCC 26 brings this motion to have the Tribunal dismiss this application for lack of jurisdiction pursuant to section 1.41(1) of the *Condominium Act, 1998* (the "Act") and Rules 19.1 (c) and 34.3(f) of the Tribunal's Rules of Practice. The motion was brought at the beginning of Stage 2 – Mediation.

[3] For the reasons set out below, I find that the Tribunal does not have jurisdiction to hear this application.

The Applicant's Submissions

- [4] The Applicant submits that Rule 7.2.1 of the Respondent's Rules (the "Rules") is causing a nuisance. Rule 7.2.1 states:

Operation: The pool generally opens on the May long weekend and closes and will close following the Labour Day weekend. Specific hours of operation and dates will be provided each season by the Property Manager.

The Applicant claims that pursuant to section 1(1)(d)(iii.2) of Ontario Regulation 179/17 (the "Regulation"), the Tribunal has jurisdiction to hear this application in that Rule 7.2.1 is a disruption to the common elements or the assets of the corporation. The Applicant argues that this "disruption" to a common element is causing a nuisance.

The Respondent's Submissions

- [5] The Respondent submits that the Regulation outlines the prescribed disputes for the purposes of sections 1.36(1) & (2) of the Act. The Respondent references sections 1(1)(a) – (c.1) of the Regulation and more importantly, section 1(1)(d), which provides four subsections to elaborate on the scope of disputes that fall within the Tribunal's jurisdiction. Section 1(1)(d)(iii.2) of the Regulation is of particular relevance in this case, which states:

(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:*

...

(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.

- [6] HCC 26 further states: "The monthly schedule and hours of operation of the Condominium's common element swimming pool do not relate to any items enumerated in the Regulation." They further state: "Articles II(1) and III of the Condominium's Declaration (the "Declaration"), dealing with the specification of common expenses and use of the common elements, similarly do not relate to any items enumerated in Section 1(1)(d) of the Regulation."

Analysis

- [7] The Applicant takes issue with Rule 7.2.1 of the Rules, which is the heart of this dispute. However, even though the effect of this rule may be an annoyance or nuisance to the Applicant, the dispute does not fall within the Tribunal's

jurisdiction. Section 1(1)(d)(iii.2) of the Regulation does not apply to any provision of a condominium's governing documents that may be considered a nuisance, annoyance or disruption. That interpretation broadens the jurisdiction of the Tribunal to include every provision in a condominium's governing documents, which is clearly not the intention of the legislature.

- [8] The scope of the Tribunal's jurisdiction under section 1(1)(d)(iii.2) of the Regulation extends to situations where the provisions in a condominium corporation's governing documents prohibit, restrict or otherwise govern issues that may be analogous, but not identical to those listed under subsection 117 (2) of the Act.
- [9] I do not find that the nature of Rule 7.2.1, which simply speaks to the pool's seasonal schedule, to be of this character. The rule may *be* an annoyance to the Applicant, but that does not classify the rule as one that is *about* an annoyance. While the Applicant may oppose the effect of Rule 7.2.1, merely experiencing an annoyance or disruption is not what brings a case within the scope of the Tribunal's jurisdiction.

ORDER

- [10] The Respondent's motion is granted. This application is dismissed.

Nasser Chahbar
Member, Condominium Authority Tribunal

Released on: January 9, 2024