

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 2, 2024

CASE: 2023-00132N

Citation: Watson v. Peel Condominium Corporation No. 544, 2024 ONCAT 18

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

Member: Laurie Sanford, Member

The Applicant,

Karen Watson

Self-represented

The Respondent,

Peel Condominium Corporation No. 544

Represented by Zapour Daghelian, Agent

The Intervenors,

Peel Condominium Corporation No. 559

Represented by Ajit Dudani, Agent

Peel Condominium Corporation No. 571

Represented by Shirley Townsend, Agent

Hearing: Written Online Hearing – October 10, 2023 to January 15, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Karen Watson, a unit owner in Peel Condominium Corporation No. 544 (“PCC 544”), is concerned about what she perceives as persistent and widespread violations of the restrictions on visitor parking contained in the governing documents of PCC 544. PCC 544 shares the visitor parking spaces with two other condominium corporations which were Intervenors in this case. The Intervenors did not actively participate and PCC 544’s agent represented their positions. PCC 544, on its own behalf and on behalf of the Intervenors, takes the position that visitor parking is not a “prevailing issue”. A new management provider for PCC 544 took over in September 2023. It appears to this new management that the previous manager was able to communicate effectively with unit owners who were

using the visitor parking and that those owners are now respecting the visitor parking rules. PCC 544 also states that there is ample space allotted for visitor parking and “to the best of our knowledge no homeowners have expressed dissatisfaction with the availability of parking spaces for their guests”.

- [2] Ms. Watson was unable to prove, on a balance of probabilities, that the abuse of the visitor parking provisions is as widespread as she contends. However, she did show that there were a small number of violations, some of which were blatant. As evidenced by violations of the parking rules that continued, in at least one case, for months, I conclude that PCC 544 is not consistently enforcing the visitor parking rules.
- [3] The parties agree that any solution to the visitor parking violations should be a low cost one. Accordingly, I am directing that PCC 544 chose among a variety of low-cost actions that should minimize future visitor parking violations. How the cost of those actions is distributed between PCC 544 and the Intervenors, I leave to them. I am also awarding Ms. Watson the amount of \$200 as reimbursement of her filing fees for this application.

B. ISSUES & ANALYSIS

- [4] The issues in this case may be summarised as follows:
1. Has PCC 544 either failed to enforce the provisions of its governing documents regarding visitor parking or failed to enforce them consistently?
 2. What orders should be made as a result of these findings?
 3. Did PCC 544 engage in an abuse of process by sending letters from its lawyers to Ms. Watson during the Stage 2 - Mediation in this case?
 4. Can PCC 544 require Ms. Watson to pay compliance costs related to the legal letters issued during the Stage 2 - Mediation?

Issue 1 – Has PCC 544 either failed to enforce the provisions of its governing documents regarding visitor parking or failed to enforcement them consistently?

- [5] Article III, section 6 of PCC 544’s declaration provides for 25 visitor parking spaces as part of the common elements in a complex of approximately 200 units. The visitor parking is to be used by visitors to the property and not to be used by owners or residents. Rule 9(e) of PCC 544’s rules states that a parking permit, issued by PCC 544, is required to park in a visitor parking place between the hours of 2:00 am and 7:00 am. The permit must be visibly displayed on the left front

dashboard and no permit will be issued for more than three days. Rule 9(f) provides that all cars operated by unit owners must be registered with the manager. Each unit owner is to provide the manager with the licence numbers of all motor vehicles driven by residents of that unit. PCC 544 has signs in the visitor parking area advising of the restrictions on parking between 2:00 am and 7:00 am but not of the general prohibition against non-visitor parking.

- [6] Ms. Watson is concerned about what she sees as multiple and persistent violations of the visitor parking provisions. While PCC 544 takes the position that there are ample parking spaces, Ms. Watson notes that most of the parking is clustered at either end of the complex. There is parking available in the centre of the complex but there are few visitor parking spaces there. Ms. Watson notes that snow removal is difficult when too many cars are in the visitor parking spots. She also points out that haphazard enforcement of the visitor parking rules is unfair and encourages more owners to use the visitor parking as overflow parking for their units. She wants what she describes as a “long term solution” to the problem but she wants any solution to be at low cost to herself and her fellow owners, a position shared by PCC 544.
- [7] Ms. Watson introduced multiple photographs and emails to PCC 544 and made a number of statements about what she believes are violations of the visitor parking provisions. However, this evidence was often not persuasive. For example, frequently the photographs showed a parked car, but it was impossible to determine if the car was in a visitor parking place or not. Other photographs showed cars parked in front of the visitor parking signs but the photo did not demonstrate whether the car was owned by a visitor or a resident. Some of Ms. Watson’s statements were also unpersuasive. For example, she recounted a recent day in which she came home to find a car parked in her driveway. She was blocked from using her driveway until the car was removed. The car was owned by a visitor to PCC 544 who was unable to find a visitor parking spot. If it were not an isolated occurrence, this incident might refute PCC 544’s position that there is ample visitor parking but it is not, taken alone, evidence of violations of visitor parking.
- [8] However, Ms. Watson was able to demonstrate, on a balance of probabilities, that in several recent cases the visitor parking provisions have been violated and some of these violations were blatant. In one case, she said that a blue Toyota was parked in a visitor parking spot for over 5 months, from December 2022 to June 2023. It was months after the overnight parking began that the owner of the car obtained a visitor parking permit. Even then, the car was permitted to remain parked after the permit had expired. The car was finally towed by the local

municipality after one of its rear tires was flat. Ms. Watson was able to provide photographs, emails to PCC 544 and testimony to this effect. In another incident, a Jeep was parked in visitor parking for “a few weeks”. Again, there was no evidence of an overnight parking permit. Eventually, in response to complaints from Ms. Watson, the then condominium manager put a notice on the car advising the owner that the car was marked for towing. The security personnel at PCC 544 did not follow up and the car was not towed. In a third example, Ms. Watson advised PCC 544 of an Acura parked for days in the visitor parking, but PCC 544 took no action. There were a few other incidents of prolonged parking in the visitor parking spaces where it was more probable than not that the cars were parked overnight without an overnight permit.

- [9] Ms. Watson asserts, and PCC 544 does not contest, that PCC 544 rarely enforces Rule 9(e) requiring permits for overnight parking and does not enforce Rule 9(f) requiring owners to provide the manager with the licence plate numbers of the cars driven by residents of their units. One challenge to Ms. Watson’s attempts to document violations of the visitor parking rules was the lack of overnight permits on the cars. It was difficult for Ms. Watson to demonstrate which cars were visitor-owned and which were owned by residents. Ms. Watson’s principal concern is with the daytime use of the visitor parking spaces by non-visitors. Here too, her efforts to have PCC 544 investigate possible abuses were hampered by the fact that, because PCC 544 does not enforce Rule 9(f), it does not keep a current registry of the licence plate numbers of the cars of owners and residents. The lack of overnight permits and ongoing car registration also makes it impossible for PCC 544 to state, with certainty, that abuses of the visitor parking are not occurring. PCC 544 has no easy way of determining whether visitors or residents are using the visitor parking from day to day or overnight. I conclude that PCC 544 is not enforcing key provisions in its Rule 9 that would permit it to effectively manage the use of the visitor parking spots. The fact that in several cases cars were left in the visitor parking for days or weeks, and in one case for months, is convincing evidence that PCC 544 is not consistently enforcing its visitor parking restrictions.
- [10] Under subsection 17(3) of the *Condominium Act, 1998* (the “Act”), a condominium corporation, “has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules”. There is an element of discretion implied by the use of the word “reasonable” in this provision. It is not necessary to enforce every minor infraction of every rule. However, the violations shown by Ms. Watson to have occurred in this case are not minor infractions. Moreover, by not enforcing Rules 9(e) and (f), PCC 544 has made it impossible for itself to enforce the visitor parking provisions

in its governing documents. PCC 544 cannot be considered to be taking reasonable steps to enforce its parking rules in these circumstances.

- [11] PCC 544 also takes the position that its previous manager effectively communicated with owners about the visitor parking rules. On February 27, 2023, the previous property manager sent an email to all owners, which said, “In accordance with your Condominium Declaration, visitor parking is ‘designed for use by visitors ONLY, and shall NOT be used by residents’”. There is some evidence that this notice did help reduce violations of the visitor parking rules. However, it did not affect some of the persistent offenders, including the owner of the Toyota who left his car in the visitor parking until June 2023. Nor did this communication coincide with any apparent changes to the enforcement of the visitor parking provisions. It cannot be said to be a sufficient enforcement of the visitor parking provisions and it would be imprudent to rely on this email to enforce compliance in the long term. This notice did not refer to the requirement to obtain permits for overnight parking or to provide licence plate numbers to management.
- [12] I conclude that PCC 544 has failed to enforce the provisions of its governing documents regarding visitor parking consistently. It has also failed to establish the necessary framework of permits and vehicle identification to sufficiently enforce these provisions.

Issue 2 - What orders should be made as a result of these findings?

- [13] The parties agree that any solution to the enforcement of the visitor parking provisions in the governing documents should be low cost. There are several actions that can be taken by PCC 544 which should enforce the visitor parking provisions at a reasonable expense. First, PCC 544 must implement Rules 9(e) and (f) by establishing and operating a system of issuing overnight permits and requiring the provision of licence plate numbers to management. For these measures to be effective, PCC 544 must keep the owner-provided licence plate numbers up to date.
- [14] Ms. Watson raised a number of possible actions that PCC 544 could take to enforce its visitor parking provisions, including ticketing of cars and implementing a “tag and tow” program offered by the local municipality. PCC 544 submitted that it can currently issue “monetary tickets” between the hours of 2:00 am and 7:00 am using a Provincial Offences Officer to issue the tickets. The funds from these tickets go to the local municipality. PCC 544 acknowledges that it could also obtain authorisation to implement a tag and tow program for the hours of 2:00 am to 7:00 am but submits that the requirements for this are extensive. However, Ms. Watson notes, and PCC 544 acknowledges, that the previous condominium management

provider had this authorisation.

- [15] It appears that PCC 544's position is that it can neither issue parking tickets nor implement a tag and tow program during daytime hours without changing its parking signage to signs approved by the local municipality. I accept that in order to implement either the ticketing of cars or the tag and tow program during the daytime, a change in signs is required.
- [16] PCC 544 submits that changing the signs would be expensive, but it was unable to provide an estimate of the cost. There is no evidence before me about what the cost of 25 new signs would be and Ms. Watson submits that the cost for 25 signs should be reasonable. I agree that the cost may be reasonably assumed to be moderate, assuming that PCC 544 puts up signs of equivalent quality and size to the current ones. I will leave it up to PCC 544 to obtain an estimate of the cost and to determine whether the cost is low. But I will direct that PCC 544 obtain the estimate and make a good faith determination of whether this constitutes a low-cost option for its owners. If the cost of the new signs is too high, in PCC 544's view, then the use of daytime ticketing or the tag and tow program may have to be foregone. However, there are other options for daytime enforcement of the visitor parking provisions.
- [17] PCC 544 submits that new signage is not the only expense it would incur if it attempts to enforce the daytime visitor parking provisions in its governing documents. It takes the position that it cannot enforce the provisions of its declaration regarding visitor parking during the day without amending the rules as well as changing the signage, which it submits would involve significant expense. This position is not correct.
- [18] The declaration prohibits use of the visitor parking spaces by non-visitors at any time. The rules impose an additional obligation on persons using the visitor parking spaces overnight to obtain a permit which expires after three days. The rules also require owners to provide their licence plate numbers to PCC 544 management. There is no conflict among these provisions. There is no need to change the rules in order to begin to enforce the provisions of the declaration during the daytime.
- [19] PCC 544 submits that it has been advised by its outside security group that visitor parking areas can only be patrolled between the hours of 2:00 am and 7:00 am, given the current signage. While it is true that monetary ticketing is only available in those hours, PCC 544's declaration prohibits use of visitor parking by non-visitors at any time. That can be enforced day or night. If changing the signage to permit either ticketing or tag and tow is too expensive, it is possible, for example, for the outside security company to place notices on the cars, advising the owners

that they are in violation of the visitor parking rules and asking that that car be removed. Persistent violation of the visitor parking provisions in PCC 544's governing documents could be enforced in the same way that PCC 544 enforces other provisions in its governing documents, including legal letters enforcing compliance.

- [20] It is clear that PCC 544 has not effectively enforced its overnight visitor parking provisions, even with the current monetary ticketing. So, regardless of what enforcement method or methods it chooses, PCC 544 must enforce the visitor parking provisions effectively. PCC 544 submits that its outside security company currently performs random checks of the premises. There is no reason why random checks could not continue if they are made more effective by having a system of overnight permits and daytime registration of owners' vehicles for use by security.
- [21] PCC 544 needs to advise the owners and residents that it is changing its enforcement procedures. Owners and residents need to be made aware that the provisions in the declaration and the rules, including Rules 9(e) and 9(f), will be enforced. If either daytime ticketing or tag and tow enforcement is feasible economically, then owners and residents need to be told that this system will be put in place and what the guidelines will be for a car to be ticketed or towed. If PCC 544 chooses to implement its own enforcement program by, for example, issuing its own notices of violation, then owners and residents need to be informed of this and told what the consequences for persistent violation might be.
- [22] In summary, PCC 544 must begin enforcement of Rules 9(e) and (f), to be better positioned to manage its visitor parking. It must also take effective actions to enforce all of the visitor parking provisions in its governing documents. PCC 544 should implement effective random overnight patrols and monetary ticketing. If the new signs are affordable, then PCC 544 should obtain new signs, satisfactory to the local municipality, and obtain authorisation for and implement either the daytime monetary ticketing or a tag and tow program for daytime unauthorised use of visitor parking. If the new signage would not be affordable, then PCC 544 should begin a process of violation notices to owners who misuse the visitor parking during the day. Regardless of the enforcement option PCC 544 chooses, it must implement it on a consistent basis. Finally, PCC 544 must communicate the new enforcement regime to current owners and residents and advise them of the consequences if the visitor parking provisions are violated. I leave the question of how the enforcement costs are to be shared between PCC 544 and the Intervenor up to them to resolve.

[23] Under Rule 48.1 of the Tribunal's Rules of Practice, Ms. Watson is entitled to be reimbursed by PCC 544 for the filing fees of \$200 she paid to the Tribunal.

Issue 3 - Did PCC 544 engage in an abuse of process by sending letters from its lawyers to Ms. Watson during the Stage 2 - Mediation of this case?

[24] The question of the enforcement of the visitor parking provisions in the PCC 544's Rules and Declaration is the principal issue in this matter. However, Ms. Watson raised two ancillary matters. In the first of these, Ms. Watson submits that PCC 544 sent her a letter during the Stage 2 - Mediation that impeded her ability to communicate with the Mediator and interfered with her ability to present her case. I have reviewed the letter, which was dated September 13, 2023. The letter refers to earlier correspondence, which is not before me. There is nothing in the letter that would restrict Ms. Watson from presenting her case or communicating with the Mediator. The letter deals with alleged violations of a recently enacted PCC 544 Rule called the "Civil Behaviour Rule". I have reviewed this Rule and there is nothing in the Rule that would inhibit Ms. Watson from presenting her case or communicating with the Mediator. The Civil Behaviour Rule mandates civil and respectful conduct by condominium unit owners to each other and to the management of PCC 544. Neither the Rule nor the September 13th letter about it is an abuse of process.

Issue 4 - Can PCC 544 require Ms. Watson to pay compliance costs related to the legal letters issued during the Stage 2 - Mediation?

[25] The second ancillary issue that Ms. Watson raised relates to compliance costs. Ms. Watson raised this issue at the outset of the hearing but led no evidence about it. The compliance costs she is referring to appear to relate to the Civil Behaviour Rule which is not the subject of this hearing. I make no finding on this issue.

C. ORDER

[26] Under section 1.44 of the Act, the Tribunal Orders that:

1. PCC 544 will bring itself into compliance with Rule 9(e) and Rule 9(f) of its Rules by enforcing the requirements:
 - a. that owners of cars that park overnight in the visitor parking spaces obtain permits from the management of PCC 544; and
 - b. that all owners of units provide current licence plate numbers of any cars owned by them or residents of their units to the management of PCC 544.

2. PCC 544 will implement its current monetary ticketing of unauthorised cars using the visitor parking between the hours of 2:00 am and 7:00 am on a diligent and consistent basis.
3. PCC 544 will take the following actions:
 - a. it will obtain an estimate of the cost of making and installing new signs, approved by its local municipality, prohibiting daytime use of the visitor parking spaces by non-visitors; and
 - b. it will make a good faith determination of whether these new signs would be sufficiently low in cost for its unit owners.
4. If the cost of new signs for daytime use of the visitor parking is sufficiently low cost, then PCC 544 will obtain and install these signs.
5. If new signage is installed, then, at PCC 544's option, PCC 544 will obtain authorisation from the local municipality to begin either implementation of daytime monetary ticketing or implementation of a tag and tow program for unauthorised daytime parking in the visitor parking spaces.
6. If the cost of the new signs for daytime use of visitor parking is excessive, then PCC 544 will implement its own enforcement program for daytime visitor parking.
7. PCC 544 will enforce the visitor parking provisions in its governing documents diligently and consistently, regardless of the method or methods it chooses for enforcement.
8. PCC 544 will communicate the new enforcement measures to all owners and residents. The communication will describe the method or methods that PCC 544 has chosen to enforce both the overnight and daytime use of visitor parking spaces. Owners and residents will be told the possible consequences of violation of the visitor parking rules.
9. PCC 544 will pay Ms. Watson the amount of \$200 in reimbursement of her filing fees with the Tribunal.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: February 2, 2024