

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 21, 2024

CASE: 2024-00015N

Citation: Hassonali v. Middlesex Condominium Corporation No. 314, 2024 ONCAT 46

Order under Rule 19.1 of the Condominium Authority Tribunal's Rules of Practice

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Ahmed Hassonali

Represented by Hetham Karky, Paralegal

The Respondent,

Middlesex Condominium Corporation No.314

Represented by Michelle Kelly, Counsel

MOTION DECISION AND ORDER

- [1] The Applicant, Ahmed Hassonali (the "Applicant"), filed an application with the Tribunal relating to chargebacks levied against him by the Respondent, Middlesex Condominium Corporation No. 314 ("MCC 314"). The case proceeded to Stage 2 Mediation. At the outset of the mediation, MCC 314 brought a motion to dismiss the case pursuant to Rule 19.1 of the Tribunal's Rules of Practice on the basis that the Tribunal has no legal power to hear or decide this case.
- [2] As explained below, after considering the submissions from the parties, I have decided to grant the Respondent's motion. The application is dismissed.
- [3] In the problem description provided by the Applicant when he filed the case, he stated that he was "filing a complaint due to a series of questionable practices related to s. 20 and s. 26 of the Rules Governing the Use of the Common Elements and The Units". Rule 20 states that an owner "shall not place, leave or permit to be placed or left in or upon the common elements...any debris, refuse or garbage except on such days and times as designated by the Board...". Rule 26 deals with indemnification of the corporation for any breach of the rules by an owner. The Applicant has received several chargeback notices in relation to incorrect placement of recycling bags and improper garbage disposal on days not designated for pick up. The amount in dispute is \$369.50 plus a \$100 late fee.

[4] MCC 314 submits that the Tribunal does not have jurisdiction to hear the dispute because the indemnification claim relates to a dispute about garbage disposal and does not fall within the scope of disputes over which the Tribunal is given authority as set out in s. 1.1 of Ontario Regulation 179/17 under *the Condominium Act, 1998* (“O.Reg179/17”)

[5] In responding submissions, the Applicant asserts that more broadly this should be considered to be a dispute about provisions governing the storage of items on common elements bringing it within ss. 1(1)(d) (iii) and (iv) of O.Reg 179/17 which state:

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:

(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.

.....

(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).

[6] The Applicant cited the Tribunal decision in *Ottawa-Carleton Condominium Corporation No. 558 v. El-Hajjar et al.*, 2023 ONCAT 21 (“El-Hajjar”) as being a case in which the “Tribunal dealt with issues beyond mere storage in its narrowest sense, addressing matters of garbage disposal.” In *El-Hajjar*, the Tribunal addressed two rules that dealt with garbage disposal and storage and noted that garbage was not being disposed of but stored on the unit’s balcony/deck and in the front of the building. The Tribunal found that the resident of the unit was inappropriately storing garbage and other items on the common elements and in the unit’s backyard.

[7] Based on the problem description and the documents submitted by both the Applicant and MCC 314, the issue is not that the Applicant is storing items in a unit or on any part of the common elements that “is intended for parking or storage purposes”, but that the Applicant left his recycling out on the garbage pad and not on the recycling pad and on the incorrect day. This is not a question of storage in

the plain and ordinary meaning of the word, but rather noncompliance with what the Applicant characterized as the complex rules about garbage and recycling pick up. The indemnification issue that has flowed from the alleged noncompliance is therefore not related, as per s. 1(1)(d)(iv), to a provision described in the O.Reg 179/17.

- [8] While it is true, as the Applicant submits, that the Tribunal has stated in previous decisions that one of the purposes of its process is to promote healthy condominium communities, it can only do so within the parameters of the jurisdiction given to it by the legislature. Rules relating to where garbage and recycling bags are placed on designated pick-up days, as such, do not fall within its scope. The fact situation of this case does not support the broader interpretation of that jurisdiction that is urged by the Applicant in submissions.
- [9] The Applicant is clearly concerned about MCC 314's process in relation to its infraction notices and subsequent chargeback notices. I make no comment on the consistency or transparency of its process. The Applicant urged the Tribunal to undertake a comprehensive investigation of those matters. This is not the venue for that. Such matters are not within the Tribunal's jurisdiction; rather, they involve questions of governance. However, the parties may wish to consider whether there may be a possible compromise on the chargeback issue in the interest of the community.

ORDER

- [10] Pursuant to Rule 19 of the Tribunal's Rules of Practice, the Tribunal orders that this application be dismissed.

Patricia McQuaid
Vice- Chair, Condominium Authority Tribunal

Released on: March 21, 2024