

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 9, 2024

CASE: 2023-00708N

Citation: Baker v. Pecarski, 2024 ONCAT 64

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Nicole Aylwin, Member

The Applicant,

Thomas Baker

Self-represented

The Respondent,

Alexander Pecarski

Represented by Christopher Hall, Counsel

The Intervenor,

Essex Condominium Corporation No. 28

Represented by Megan Alexander, Counsel

DISMISSAL ORDER

- [1] The Applicant, Thomas Baker, filed a case with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 3 - Tribunal Decision on April 5, 2024.
- [2] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision if the CAT determines that it has no legal power to hear or decide upon the dispute.
- [3] The Applicant is a unit owner in Essex Condominium Corporation No. 28 ("ECC 28"), the Intervenor in this case. Mr. Baker filed this application against the Respondent, Mr. Pecarski, because he believes Mr. Pecarski is not complying with the condominium's no-smoking rule.
- [4] In his application Mr. Baker described the issue as follows:

Respondent has been ordered to comply with our building no smoking rule #29 and he has ignored the Tribunal. He continues to smoke marihuana in his

unit and since we share a common wall it enters our condo creating a horrible smell making us nauseous and making our unit also smell from his lack of consideration. it has been observed on Oct/02/23, Oct/04/23, Nov/21/23, Dec/04/23 Dec05/23 and Saturday Dec 16/23 , Two letters have been sent from Mgmt. to no avail with one sent 12/07/23 as a warning Letter. Because we are not getting his attention, we ask at this time per condo rules that he seal his unit with verifiable receipts and a fresh coat of paint be done on our unit at his cost!

- [5] At the outset of the hearing, Mr. Baker confirmed that he was asking the Tribunal to decide the following issues:
1. Is the Respondent in violation of the no-smoking rule? If yes, then what order(s) should the Tribunal make in this case?
 2. Is any party entitled to costs? If so, in what amount?
- [6] In the process of confirming the issues, it was noted by the parties and myself that this is not the first Tribunal case between these parties. There have been three other cases involving these parties and issues related to ECC 28's no-smoking rule. These cases resulted in one settlement agreement and two Tribunal decisions.
- [7] The information before me suggests that Mr. Baker is attempting to enforce the previous Tribunal orders through this case and to re-litigate issues already decided by the Tribunal.
- [8] Therefore, I issued a Notice of Intent to Dismiss ("NOID") on April 22, 2024 and proposed to dismiss this application under Rules 19.1 (c) and (d) of the CAT's Rules of Practice, which allows the CAT to dismiss a case where the Tribunal has no legal power to hear or decide the case and where the Applicant is using the CAT for an improper purpose.
- [9] I proposed to dismiss the case for the following reasons:
1. The Tribunal does not have the legal authority to enforce its own orders. Enforcement of a Tribunal order is through the Superior Court of Justice.
 2. Additionally, as per s. 1.46 (1) of the Act, orders made by the Tribunal are final and binding. The Tribunal cannot alter its own orders or re-hear issues it has previously decided.
 3. The Applicant, Mr. Baker, has asked the Tribunal to find that the Respondent, Mr. Pecarski, is in violation of the condominium's no-smoking rule and make

an order for remedies, including compensation for damages due to an act of non-compliance. The Tribunal previously heard and decided these issues in the following cases. *Baker v. Pecarski*, 2023 ONCAT 7 and *Essex Condominium Corporation No. 28 v. Pecarski*, 2022 ONCAT 116. In the former it was concluded that Mr. Pecarski was smoking in his unit and that Mr. Baker was entitled to damages. In the latter, Mr. Pecarski was ordered to comply with the settlement agreement and the condominium's smoking rule.

4. Mr. Baker submits that the Respondent has not been adhering to the condominium's no-smoking rules, citing continuing instances of smoking. He submits that the Respondent, has not "followed thru with the Tribunal's instructions" to cease smoking as he was directed to do in the aforementioned cases, and indicates that in this case he is seeking "more punitive measures" to bring the Mr. Pecarski "into compliance".

[10] I invited all parties to explain to me why this application should or should not be dismissed. Parties were advised that I would consider all the information already provided to me along with the requested submissions.

[11] Based on the parties' submissions, I find the application should be dismissed based on the reasons set out in the NOID, specifically, that Mr. Baker is seeking to have issues that have already been decided by the Tribunal re-heard and is attempting to use this application to gain Mr. Pecarski's compliance with a previous order issued by the Tribunal.

[12] While I make no finding of fact regarding Mr. Baker's claims, I accept that he is incredibly frustrated with the situation. However, it is ultimately up to ECC 28 to enforce its rules and any orders it has received from the Tribunal that require Mr. Pecarski to comply with the rules.

[13] Finally, I note that in replying to my request for submissions on the NOID, those provided on behalf of Mr. Pecarski exceed the scope of what was requested insofar as they attempted to raise new issues related to Mr. Pecarski's right to a Human Rights accommodation for his smoking. Whether or not Mr. Pecarski is entitled to an accommodation is an entirely distinct issue that is not properly in front of me. None of the submissions or evidence provided on that issue were considered by me in making this decision.

[14] In conclusion, for the reasons set out in the NOID, this case is dismissed.

ORDER

[15] The Tribunal orders that:

1. This case is closed in Stage 3 - Tribunal Decision under Rule 43.1 of the CAT's Rules of Practice.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: May 9, 2024