

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 2, 2024

CASE: 2023-00684N

Citation: York Region Condominium Corporation No. 925 v. Sargeant et al., 2024 ONCAT 96

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

Member: Roger Bilodeau, Member

The Applicant,

York Region Condominium Corporation No. 925

Represented by Jessica Hoffman, Counsel

The Respondents,

Victor Sargeant

Not Participating

Lucille Sargeant

Not Participating

Sam Ritorto

Represented by Sidney Hagler, Counsel

Hearing: Written Online Hearing – February 20, 2024 to June 6, 2024

REASONS FOR DECISION

A. OVERVIEW

[1] The Respondents, Victor Sargeant and Lucille Sargeant (“Owners”), own a unit (“Unit”) in York Region Condominium Corporation No. 925 (“YRCC 925”). The Respondent Sam Ritorto (“Mr. Ritorto”) is the Owners’ tenant.

[2] From at least early 2020 until May 6, 2024, Mr. Ritorto kept a large German Shepherd dog in the unit, contrary to YRCC 925’s declaration. YRCC 925’s agents and lawyers both requested the removal of Mr. Ritorto’s dog on numerous occasions before filing this application. Mr. Ritorto removed the dog on May 6, 2024, during the course of this proceeding.

- [3] As a result of the dog's removal, the only question left to be determined is whether YRCC 925 is entitled to its costs on a full indemnity basis.
- [4] In reaching my decision, I have reviewed all the evidence and submissions before me but I only refer to the evidence and arguments which are directly related to the issue that I must decide.
- [5] For the reasons set out below I find that the Respondents are jointly and severally liable to pay costs to YRCC 925 on a partial indemnity basis, in the total amount of \$2,992.94.

B. BACKGROUND

- [6] In early 2020 and after receiving complaints from other residents of YRCC 925 about Mr. Ritorto's dog, an agent of YRCC 925 advised the Owners of the pet weight restrictions in YRCC 925's declaration and that Mr. Ritorto's dog was not compliant. Mr. Sargeant indicated that he would pass this information on to his agent who would in turn pass it on to Mr. Ritorto.
- [7] Notwithstanding the above and by keeping the dog in the Unit, Mr. Ritorto failed to comply with YRCC 925's governing documents. For their part, the Owners failed to take sufficient and reasonable steps to ensure that Mr. Ritorto complied with the declaration and they are therefore in breach of the *Condominium Act, 1998* (the "Act") and of YRCC 925's declaration. During the period of April 2020 up to and including August 2023, YRCC 925 tried to obtain compliance by the Respondents on numerous occasions, without success.
- [8] YRCC 925 commenced this application on January 3, 2024. The lawyers for YRCC 925 notified the Respondents of the application by mail on the following dates:
- a) First Notice of CAT Case: January 4, 2024;
 - b) Second Notice of CAT Case: January 17, 2024; and
 - c) Final Notice of CAT Case: February 2, 2024.
- [9] Counsel for Mr. Ritorto joined the case on or about January 25, 2024, albeit with limited involvement. The Owners did not join the case, nor did any representatives or counsel do so on their behalf.

C. ISSUES & ANALYSIS

Issue: Is YRCC 925 entitled to its costs on a full indemnity basis?

[10] The Tribunal's authority to make orders in relation to costs is set out in Section 1.44 (1) 4 of the Act. Section 1.44 (2) of the Act further states that an order for costs

“shall be determined in accordance with the rules of the Tribunal.”

[11] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements (“costs”) incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[12] The Tribunal's Practice Direction: Approach to Ordering Costs provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; the potential impact an order for costs would have on the parties; and whether the parties attempted to resolve the issues in dispute before the CAT case was filed.

[13] YRCC 925 submits that it is entitled to its costs on a full indemnity basis in the amount of \$3,723.92, in accordance with the indemnity provisions found in its governing documents, as well as its filing fees in the amount of \$200.

[14] In support of its position, YRCC 925 relies on the case of Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48 (“Psofimis”), where the CAT ordered the unit owner to pay the condominium corporation's legal fees of \$3,926.75 and the filing fee of \$200 because the unit owner failed to comply with a pet restriction rule despite numerous reminders from the condominium corporation and the potential consequences of non-compliance. In addition, the CAT held that it would be unfair to penalize all unit owners of the condominium,

“given that Mr. Psofimis appears to have willfully ignored all opportunities to comply with the rules. Mr. Psofimis alone should bear the costs of his decision

not to comply.”

- [15] As in the Psofimis case, YRCC 925 further submits that it reminded the Respondents on numerous occasions of its pet weight restrictions and that they could be held responsible for its costs of enforcing that limitation.
- [16] YRCC 925 further submits that it was forced to incur significant legal fees because there was no opportunity to negotiate and/or mediate the matter in a cost-effective manner because of the Respondents’ failure to participate in these proceedings.
- [17] In that regard, YRCC 925 refers to the case of Toronto Standard Condominium Corporation No. 2010 v. Johnson, 2024 ONCAT 22 where the CAT awarded the applicant 75% of its costs because, among other reasons,
- “...Mr. Johnson had full knowledge of this case and chose to not participate at all stages. According to the evidence, Mr. Johnson continues to smoke in breach of the governing documents. His actions demonstrate that he has little regard for his obligations...” (at paragraph 23).
- [18] As noted above, YRCC 925 provided ample notice of these proceedings to the Respondents, who failed to participate and who continued to be in breach of its declaration up to and including May 6, 2024. YRCC 925 is therefore of the view that it would be unfair for all its unit owners to be held responsible for the costs which it has incurred to pursue this application as a result of the Respondents’ non-compliance with its governing documents and failure to meaningfully participate in these proceedings.
- [19] For his part, Mr. Ritorto argues that he should not be ordered to pay YRCC 925’s costs or at minimum, that any such Order should not be allowed on a full indemnity basis despite YRCC 925’s governing documents.
- [20] Mr. Ritorto submits that he retained counsel in August 2023 and that his counsel wrote to the lawyer who was acting for YRCC 925 at that time. His counsel also confirms that he spoke with YRCC 925’s then counsel on August 1, 2023, and that during that discussion, he requested additional time for Mr. Ritorto to make adequate arrangements for a new home for his dog.
- [21] In other words, Mr. Ritorto argues that he did not ignore YRCC 925’s requests and that he retained counsel to help find a solution to this matter, in conjunction with YRCC 925’s counsel. Mr. Ritorto therefore submits that the circumstances of this matter are different than those in the Johnson case referred to by YRCC 925 and that he arranged for the dog to be removed from the Unit as soon as he could.

- [22] In reply, YRCC 925 submits that in referring to the telephone conversation between its counsel and counsel for Mr. Ritorto on August 1, 2023, Mr. Ritorto failed to mention that during that discussion, his counsel advised that Mr. Ritorto needed until September 30, 2023 to remove his dog from the Unit. YRCC 925 also states that its counsel did grant that two-month period for Mr. Ritorto to remove his dog and that it waited a further three months before commencing this application on January 3, 2024, with no further news or contact from Mr. Ritorto or his counsel after August 1, 2023.
- [23] YRCC 925 further submits that since the dog was only removed on or about May 6, 2024, Mr. Ritorto did not take reasonable steps and did not act in good faith to meet the September 30, 2023 timeline which had been put forward by his own counsel.
- [24] In sum, YRCC 925 submits that it has acted reasonably and incrementally throughout this matter and that multiple notices were provided to the Respondents which outlined the cost consequences of a continued breach of the governing documents.
- [25] Based on all the above and the evidence in this case, I am satisfied that the Respondents received multiple notices and letters which notified them that their continued breach of YRCC 925's governing documents would lead to these proceedings, including their potential liability for costs. It is true that Mr. Ritorto finally complied with YRCC 925's pet weight limitations but I find that his limited involvement in these proceedings was too little and too late. In addition, the other Respondents did not participate at any stage of the proceedings.
- [26] The total number of hours billed by YRCC 925's law firm is approximately 16 hours and I find that the amount claimed is reasonable for this type of proceeding. It would be neither reasonable nor fair if all owners of YRCC 925 were to be liable for YRCC 925's costs in these proceedings. On the other hand, the case was shortened by the non-participation of the Respondents and was not complex. I also note that cases where a 100% indemnity for costs was awarded usually involve a situation where there was a full hearing on the substantive issues (see *Durham Condominium Corporation No. 80 v. Occleston*, 2022 ONCAT 103 at paragraph 21).
- [27] Based on the foregoing considerations and upon reviewing the legal fees incurred by YRCC 925 in this particular case, I am ordering the Respondents to pay costs in the total amount of \$2,792.94, being 75% of the amount claimed by YRCC 925, plus the Tribunal filing fees of \$200.

[28] With respect to the proportion of these costs to be borne by each Respondent, I note that Article XIV of YRCC 925's by-laws provides that any loss, cost or damage incurred by YRCC 925 by reason of a breach of any provision of its declaration, by-laws or rules by any owner, or by members of his/her family and/or their respective tenants, invitees or licensees shall be borne and paid for by the unit owner and may be recovered by YRCC 925 against the owner in the same manner as common expenses.

[29] In light of the violations of the Act and of YRCC 925's governing documents by the Owners, I find it is appropriate to hold them responsible to indemnify YRCC 925 in accordance with Article XIV, as mentioned above. However, given that the breach of YRCC 925's governing documents which is at issue in this case was triggered by Mr. Ritorto, it would not be fair for the Owners to be solely responsible for these costs. I therefore order that all Respondents are jointly and severally required to reimburse YRCC 925 for its costs in this matter.

D. ORDER

[30] The Tribunal Orders that:

1. Under section 1.44 (1) 4 of the Act, the Respondents are jointly and severally liable to pay costs in the amount of \$2,992.94 to YRCC 925 within 30 days of this Order, consisting of Tribunal fees of \$200 and a portion of YRCC 925's legal expenses in the amount of \$2,792.94.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: July 2, 2024