

Corrected Decision

This decision was amended to update paragraphs [47], [48] and [49] which clarifies reference to the corporation's legal name

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 1, 2024

CASE: 2023-00522N

Citation: Metropolitan Toronto Condominium Corporation No. 838 v. 2353051 Ontario Ltd. et al., 2024 ONCAT 116

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

Member: Laurie Sanford, Member

The Applicant,

Metropolitan Toronto Condominium Corporation No. 838
Represented by Darlene Mezzabotta, Paralegal

The Respondents,

2353051 Ontario Ltd.
Represented by Sukhjinder Bhangu, Counsel

2319009 Ontario Inc.
Represented by Sukhjinder Bhangu, Counsel

Sat Metal Fabrication Inc.
Represented by Sukhjinder Bhangu, Counsel

Hearing: Written Online Hearing – February 7, 2024 to July 8, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] 2353051 Ontario Ltd. and 2319009 Ontario Inc. (collectively, the “Numbered Companies”) are owners of adjacent units in Metropolitan Toronto Condominium Corporation No. 838 (“MTCC 838”). MTCC 838 describes itself as a commercial condominium and Sat Metal Fabrication Inc. (“Sat Metal”) operates a business in the units owned by the Numbered Companies. Sat Metal’s business involves fabricating steel beams into metal frames. MTCC 838 states that the Numbered Companies own Sat Metal and the Numbered Companies do not dispute this.

- [2] MTCC 838 alleges that the three Respondents, the Numbered Companies and Sat Metal, are violating the *Condominium Act, 1998* (the “Act”) and the governing documents of MTCC 838 by parking heavy trucks on the common element laneways, storing steel beams on the common elements, and creating a nuisance by their use of the common elements. The Respondents take the position that Sat Metal is not parking on the common elements or storing goods there. The Respondents position is that trucks hired by Sat Metal deliver goods, the steel beams, to Sat Metal which unloads them. Thus, the Respondents contend, the trucks are not parked, they are stopped on the common elements for the purpose of Sat Metal receiving, unloading and moving the steel beams into its units. By the same token, Sat Metal must, to unload the goods safely, from time to time place the steel beams and other goods on the common elements. The Respondents say this temporary placement is part of unloading and is not storing of goods. The Respondents also deny creating a nuisance.
- [3] At the outset of the hearing, the Respondents brought a motion to dismiss the application on the grounds that the Tribunal lacks the jurisdiction to deal with the matters at issue. For the reasons set out below, I am dismissing the Respondents’ motion. The question of jurisdiction in this case is dependent on the facts found and the Respondents chose to introduce no evidence to support their motion.
- [4] Concerning MTCC 838’s allegations, most of these were unproven. MTCC 838 failed, in most of its evidence, to connect Sat Metal to the violations it alleges. However, MTCC 838 did demonstrate that it was more probable than not that on at least one occasion Sat Metal violated the parking rule of MTCC 838 and on one other occasion Sat Metal stored debris on the common elements in violation of the rules. The evidence did not support the claim of nuisance.
- [5] I am ordering the Respondents to comply with the rules of MTCC 838 regarding both parking and the storage. Both parties requested costs. I am awarding MTCC 838 the sum of \$1,600 as compensation for the compliance letter and nine follow-up emails it wrote to the Numbered Companies and the sum of \$200 in reimbursement of the fees it paid to the Tribunal.

B. ISSUES & ANALYSIS

- [6] The issues in this case were re-stated at the outset of the hearing and may be summarised as follows:
1. Does the Tribunal have the jurisdiction to hear this matter?
 2. Are the Respondents, or any of them, violating the Act or the governing

documents of MTCC 838 that relate to:

- i. Parking;
 - ii. Storage (goods/products), and
 - iii. Nuisance, including the use of the common elements?
3. Should an award of costs and/or compensation be awarded? If so, in what amount?

Issue 1. Does the Tribunal have the jurisdiction to hear this matter?

- [7] At the outset of the hearing, the Respondents raised the question of whether the Tribunal has the jurisdiction to hear this matter. There are two parts to the Respondents' submissions. The first issue, according to the Respondents, is whether Sat Metal is engaged in conduct that violates the rules of MTCC 838 against parking or storing goods on the common elements of MTCC 838. That argument, taken alone, goes to the merits of MTCC 838's allegations. The second part of the Respondent's submission is that the activities Sat Metal is engaged in are not parking and storing goods but are stopping and unloading goods. In the Respondent's submission, these activities were not addressed, either in the rules of MTCC 838 or in the provisions of the Act and its regulations that give the Tribunal its jurisdiction.
- [8] The applicable rules are considered below. The parties agree that there are rules that prohibit the parking of vehicles on the common elements and the storage of goods there. The parties also agree that the relevant provision regarding the jurisdiction of the Tribunal to deal with these allegations is found in subparagraph 1(1)(d)(iii) of Ontario Regulation 179/17 ("O. Reg 179/17") of the Act. This clause gives the Tribunal the jurisdiction to decide disputes about certain provisions of the governing documents of a condominium corporation, including "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."
- [9] MTCC 838 argues that Sat Metal, or third parties at the direction of Sat Metal, are parking large trucks in the common element driveways and that Sat Metal is storing equipment and materials, usually "large steel beams", on the common elements, both activities in violation of MTCC 838's rules. Therefore, MTCC 838 submits the Tribunal has the jurisdiction to deal with this dispute, which it asserts is about parking and storage.

- [10] The Respondents contend that they are not parking; they are merely having third party delivery trucks stop on the common element driveways around the Sat Metal units for the purpose, not of storage of goods, but of receiving and unloading of the steel beams that Sat Metal uses in its metal fabrication business. Stopping and unloading, in the Respondent's submission, are activities not covered in the words "parking" and "storage", the words used in MTCC 838's rules and, in the Respondents' submission, the words which give the Tribunal the jurisdiction to hear the dispute. There are no provisions in either MTCC 838's rules or in O. Reg 179/17, in the Respondents' submission, which govern the activities of stopping and unloading. Therefore, the Respondents argue the Tribunal does not have the jurisdiction to deal with this aspect of the matter.
- [11] The Respondents also dispute the Tribunal's jurisdiction to deal with the allegation that Sat Metal is violating MTCC 838's rules by creating a nuisance. The Respondents do not cite a specific provision addressing the Tribunal's jurisdiction over disputes about alleged nuisance, but they maintain that they are not creating a nuisance and therefore the Tribunal has no jurisdiction. They submit that in 20 years of operation, they have never received a complaint about nuisance.
- [12] MTCC 838 submits that the Tribunal has the jurisdiction to deal with its claim that the Respondents are violating its rules in creating a nuisance. MTCC 838 cites subparagraph 1(1)(d)(iii.2) of O. Reg 179/17 which gives the Tribunal the jurisdiction to decide disputes about a condominium corporation's rules including, "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."
- [13] The decision on the jurisdiction of the Tribunal in this case depends in part on the facts established about the Respondents' activities. I advised the parties that I would therefore defer my decision on jurisdiction until I made my findings of fact on this point. The hearing proceeded but the Respondents chose to enter no evidence, despite being given an opportunity to do so.
- [14] Specifically, the Respondents led no evidence in support of their contention that the trucks delivering Sat Metal's goods are stopping, not parking and that goods are being unloaded rather than stored. They simply made that assertion in their submissions. They attempted to introduce supporting evidence in their submissions, but submissions are not evidence and I gave these attempts no weight. I conclude that the Respondents have not demonstrated that they are stopping rather than parking or unloading rather than storing. This part of the Respondents' motion fails due to the lack of evidence. The question of whether

there is a legal significance to the difference between parking as an activity and stopping or between storing and unloading will be addressed below.

[15] Concerning the issue of nuisance, again the Respondents led no evidence to support their denial that they were creating a nuisance. MTCC 838 submits that the Respondents have conflated the question of jurisdiction with the question of the merits of MTCC 838's claim. I agree that the Respondents' denials that they are creating a nuisance go to the merits of MTCC 838's nuisance claim rather than the jurisdiction of the Tribunal to hear the matter. For this reason, I am dismissing this part of the motion on jurisdiction.

[16] The Respondents' also made submissions about why MTCC 838 had not proved its case on the issues of parking, storage and nuisance. The balance of this decision will address that question.

Issue 2(i) - Are the Respondents, or any of them, violating the Act or the governing documents of MTCC 838 that relate to parking?

[17] The assistant property manager, who is also a condominium manager, (the "Condo Manager") testified that "the Respondents have parked and continue to park commercial motor vehicles like trucks and heavy haul cargo haulers, such as flatbed trailers on the common elements and store large stacks of wood and metal (including debris), which blocks the common element driveways/parking lots and disturbs the quiet enjoyment of the Property by creating a nuisance." MTCC 838 alleges that the Respondents are violating its rules in each of the activities of parking, storing and blocking the common element driveways/parking lots.

[18] MTCC 838 cited a number of its rules that it alleges the Respondents are violating. Rule 14 prohibits the obstruction of common element driveways or the use of them for anything other than ingress and egress to and from their respective units and/or the common elements. Rule 15 more directly addresses the issue of parking. It reads:

No motor vehicle, other than a private passenger automobile, motorcycle, station wagon or commercial van shall be parked in any parking space or elsewhere on the common elements. Without limiting the foregoing, no dump trucks, trailers, boats, snowmobiles, machinery or equipment of any kind shall be parked or left in any parking space or on the common elements.. . .

[19] The Respondents acknowledge that Sat Metal engages third-party owned trucks to deliver the steel beams that Sat Metal uses for its business of fabricating metal frames. However, the Respondents argue that there is no breach of the rules of MTCC 838 for several reasons. First, the Respondents argue that Rule 15 is

ambiguous as it does not specifically prevent the parking of commercial vehicles. In support of this contention, the Respondents cite the case of *Douglas v. Simcoe Condominium Corporation No. 148*, 2022 ONCAT 20. That case concerned the parking of a commercial-use light-duty van on condominium property by a tenant who also used the van as his personal vehicle. Simcoe Condominium Corporation No. 148 (“SCC 148”) alleged that this was a violation of its rule 11, which stated:

No motor vehicle other than a private passenger automobile, station wagon, light duty van or light duty pick-up truck shall be parked on any of the common elements (including any part thereof, of which any owner may have the exclusive use).

- [20] The Tribunal ruled that this wording did not expressly prohibit commercial-use vehicles such as the light-duty van owned by the tenant in that case. The Tribunal found the rule to be ambiguous in that it was unclear if the modifier “private passenger” applied only to the word “automobile” or if it applied to all the listed vehicles. Even if the wording “private passenger” applied to the words “light-duty van”, the Tribunal questioned whether a vehicle, like the van in question, that was used for both personal and commercial purposes, might still qualify as a “private passenger” vehicle. The Respondents argue that by analogy, the wording in MTCC 838’s Rule 15 is ambiguous and does not specifically prevent the parking of commercial vehicles.
- [21] The ambiguity found in the *Douglas* case is a function both of the situation and of the wording of the rule. In this case, both the situation and the rule are different so *Douglas* is of limited applicability here. The question is whether the vehicles that are used to deliver the materials to Sat Metal, which MTCC 838 describes as “commercial motor vehicles like trucks and heavy haul cargo haulers, such as flatbed trailers”, are prohibited from parking in any parking spaces or on the common elements of MTCC 838. The Respondents do not contest the description of the vehicles. I find that the first sentence of Rule 15 is clear in prohibiting motor vehicles, except those expressly excluded from the rule, from parking on the common elements. I agree that the second sentence does not clarify the first but that sentence also expressly says it is not to be read as limiting the first. I conclude that the vehicles used by Sat Metal to deliver its goods are prohibited from parking in the parking spaces or on the common elements of MTCC 838.
- [22] The second submission of the Respondents is that the vehicles delivering goods to Sat Metal are not parking; they are stopping in order to unload the material used by Sat Metal. Rule 15 of MTCC 838 addresses vehicles that are parked. It says nothing about vehicles stopping on the common elements. The term “parked” is not defined, either in Rule 15 or in O. Reg 179/17. The first question about the

Respondents' submission is whether there is a legally significant distinction between the activity of "parking" versus "stopping".

[23] The Respondents cited case law that refers to common law definitions of parking and stopping in the context of the right of reasonable use of public roads. While these cases may bear more directly on the issue of nuisance, I will summarise the findings in the case that I believe most directly relates to the issue of parking versus stopping. This is the case of *City of Mississauga v. 1747114 Ontario Inc.* 2013 ONCJ 623. In the course of an extensive review of the common law applicable in situations, like the present one, where the term "park" is not defined, the Court referred to a 1930 Ontario Court of Appeal decision and said, at paragraph 78:

The Court stated that the right of one with a vehicle upon a highway to stop temporarily for legitimate purposes of his business is quite beyond question The Court modifies the terminology of the trial judge and says that "a driver has the right to stop temporarily on a road to load or unload his vehicle, but this right is limited by the correlative right of others to pass along it" and completes the principle by adding that the right of the driver so to stop must be exercised reasonably, and whether the length of time or the extent of stoppage is reasonable is a question of fact to be determined by the circumstances of each case."

[24] The Applicant cited the definitions in the *Highway Traffic Act*, RSO 1990, c. H.8 ("HTA") as follows:

- i.* "park" or "parking" when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;
- ii.* "stand" or "standing", when prohibited, means the halting of a vehicle, whether occupied or not, except for the purpose of and while actually engaged in receiving or discharging passengers;
- iii.* "stop" or "stopping", when prohibited, means the halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police office or a traffic control sign or signal;

[25] Of note in these citations is that common law carved out an exception to a prohibition against parking on public roadways to recognise a right for people to stop temporarily for the purpose of loading or unloading. The HTA has codified this right in its definitions. While this case deals with private laneways rather than

public highways, it is nonetheless reasonable to conclude that, in the absence of a specific prohibition against stopping for the purposes of unloading commercial goods, the Respondents would have that right despite the prohibition against parking set out in Rule 15. In reaching this conclusion, I note that there is no evidence that there is a separate space set aside for the purpose of loading and unloading.

- [26] The prohibition against obstruction of common element driveways and the prohibition against the use of these driveways for any purpose other than ingress and egress contained in Rule 14 is also relevant. But the term ingress and egress here must be read as including the entry and departure of the goods that the various unit owners and tenants, including the Respondents, use in their business or produce in the course of it. The prohibition against obstruction of the common element driveways is a question of fact. The questions become, then, first: are the Respondents, or any of them, parking or are they stopping (or standing as the HTA provides) for the purpose of unloading; and second, are the Respondents or any of them obstructing the common element driveways in the course of conducting their business?
- [27] While it would not be appropriate to superimpose the definitions of the HTA onto the rules of MTCC 838 which do not contain these definitions, the HTA is useful in setting out some of the criteria that may assist in separating parking from standing or stopping. There is a temporal element in that the standing must be temporary. The purpose and the actual activity of, in this case, unloading, must be ongoing. It is not a defining criterion that the vehicle be occupied. The common law cited by the Respondents introduces an element of reasonableness in the stoppage, reasonable in the length of time and reasonable in the “extent of the stoppage”. Whether or not the motor is running is not mentioned as a criteria.
- [28] MTCC 838 submits that the distinction between parking and stopping is not relevant since the Respondents conceded in their closing submissions that they were parking. In fact, the Respondents attempted in their closing submissions to introduce as evidence the assertion that they parked only in their private parking space, but again, this is not evidence properly before me.
- [29] Turning to the evidence, MTCC 838 introduced the testimony of its Condo Manager and documented complaints, photos and videos. In his testimony, the Condo Manager refers to the Respondents parking on the common elements, which are various laneways in and around the units. His evidence does not address the distinction between parking on the common elements and stopping for the purpose of unloading. For example, he gives no testimony about the length of

time the trucks, or any of them, were stopped or whether there was activity of unloading actually taking place while the vehicles were stopped. He also does not address the degree to which the common element laneways were blocked or obstructed. While the Condo Manager asserts that it is Sat Metal which has hired the trucks and which is unloading the material, he produces no evidence of this beyond his assertion. For example, there is no evidence that Sat Metal is the only tenant who accepts delivery of large metal beams. One of the complainants referred to the fact that other tenants are moving “movable stuff” in and out of their units. The Respondents assert, with no evidence, that there are other unit owners who carry on similar businesses to Sat Metal’s.

[30] The Condo Manager introduced several photographs and videos. This photographic evidence is not particularly helpful to MTCC 838. We see trucks, apparently immobile, on what are described as laneways or in front of what appear to be loading docks. There is no indication of the length of time the trucks have been stopped. It is not obvious from a number of the photos that access to the laneway is totally or even materially blocked. In one photo there is a forklift that appears to be moving some metal beams from the flat bed of the truck. Other than that, there is no photo showing unloading, but it is not possible to conclusively determine whether or not unloading is occurring. On the photographs introduced as Exhibit A-7, some of the photos appear to show trucks at night. This is consistent with the Respondents’ assertion that most of their deliveries and unloading occurs at night. While the Condo Manager testified that the trucks were obstructing the common elements, other units and roadways, the photos do not show this. Perhaps most importantly, none of the photos connects either the trucks or the movement of steel beams to Sat Metal.

[31] MTCC 838 also introduced videos. These purport to show the back laneway by the Respondents’ units. One of the videos shows the back laneway with a small tractor carrying some metal beams. There is a small pick-up truck nearby but there is no evidence that the truck is related to the movement of the metal beams or that the truck is blocking the laneway. A subsequent video shows the small truck with one door open. The small truck is stopped in the middle of the laneway and it is not clear whether there is room for another vehicle to pass. There is no apparent connection between the truck and the movement of the metal beams. There is no evidence that the small truck has any connection to Sat Metal. Another video shows a large truck with men around the truck and on the flatbed and a small tractor nearby. The door of the cab is open. Across the laneway is a vehicle that looks like a small bus and behind the bus there is what appears to be a trailer. The laneway does appear to be largely obstructed but it could be fairly said that any of the three vehicles – the truck, the bus or the trailer - is obstructing the

laneway. It is not clear if a car could pass through if the door to the truck were closed. Again, there is no demonstrated connection between any of the vehicles and Sat Metal.

- [32] The Condo Manager testified that in April, 2021, MTCC 838 began receiving “numerous complaints from other owners/tenants about the Respondents’ operation of vehicles on the common elements . . .” MTCC 838 introduced the written complaints. The text of the first complaint is almost totally redacted. It says only that on April 14, 2022, at 9:38 am, someone named “Bernie” said, “This picture is from this morning around 9:15 am.” There follows a photo of the top of some buildings and the top of some object, which may be a piece of equipment. This complaint does not demonstrate anything of probative value.
- [33] The second complaint, chronologically, is dated July 22, 2022, at 2:58 pm, over a year later. The name of the complainant is redacted. The subject line is “Blocked in at 14:50.” There is no text. A photograph of the sky follows. The next photo shows the side of a building and a large flatbed truck apparently immobile beside it. On the bed of the truck are what appear to be large steel beams. On the far side of the truck is someone who appears to be unloading some of these steel beams using a small forklift. As the Respondents note, there is no evidence that this is a truck making a delivery to Sat Metal nor is there evidence that the man doing the unloading works for Sat Metal. The Respondents assert that the employee shown actually works in another unit in the complex but they introduced no evidence of this. What is apparent in the photo is that on the near side of the truck, there is a private car, also apparently immobile. There appears to be enough space for the private car to continue past the truck out to an apparently open paved area but this is not completely clear. At the very front of the photo, at right angles to the two immobile vehicles, is the dashboard and hood of a second car, presumably the complainant’s car. It is not clear how specifically his access to the roadway is being blocked or whether it is blocked by the truck, the car, or some combination of both. This complaint does not connect the photo to Sat Metal and is of no probative value.
- [34] The third complaint, chronologically, is dated almost a year later, on June 29, 2023 at 2:03 pm. The name of the complainant has been redacted. The complaint refers to “cameras at the back” but there is no photograph attached. The complainant says:
- Sak metal [sic] should not be unloading structural steel out side [sic] on common property without proper liability insurance and disturbing surrounding neighbours for an extended period of time, if something serious happened outside with the steel breaking away from their tow motion would the

Condominium corporation be liable and be covered. [sentence redacted].

The point that I'm trying to make is I do not think this building is suited for such large structural steel to be moved around and cause every neighbour to not be able to move around in the back and do what everyone has to do via moving movable stuff in and out of there [sic] units fast, quickly and efficiently.

[Remaining two paragraphs redacted], [salutation and address redacted].

[35] As the Respondents note, the complainant does not know whether or not Sat Metal has liability insurance. The issue of insurance is, in any event, irrelevant. The complaint seems to be about the movement of the structural steel rather than the parking of the trucks. Also of interest is the comment the complainant makes about every neighbour also moving "movable stuff" in and out of their units. Since the complaint is about a matter – the movement of the steel beams – that is not before me, this complaint has no probative value.

[36] The fourth complaint is dated August 21, 2023 at 5:47 pm. The Complainant's name is redacted but again the email is signed "Bernie". The complaint says:

Thanks Daniel, I was blocked in the parking lot again today. It is now a daily occurrence. They are loading and unloading structural steel and blocking the other units and the laneway. I told the guy that they should not be parking there and he told me he had to, and then did not move the truck. Please check the video around noon. I think we should hire someone to remove the trailer and the truck and trailer as soon as possible.

Here again, there is no evidence who "they" are who are loading and unloading structural steel. Nor is there any evidence of who the "guy" who Bernie says was parking. In fact, it is not clear from the complaint whether it is the loading and unloading of the structural steel or the truck which is blocking the laneway. The complainant does refer to telling someone that "they should not be parking there". Following this complaint, there is a photo of the leaves of a tree. Next is a photo of the back of a truck cab and the front of a truck bed, apparently carrying some metal beams. It is not clear from the photo whether the truck is turning into a laneway or parked at the entrance to the laneway.

[37] The fifth and final complaint is dated September 6, 2023 at 12:52 pm. The name of the complainant and the signature are redacted as are three of the last four paragraphs. The complaint refers to "pictures from today". The unredacted text continues, "Earlier there were two trucks blocking the laneways. The forklift loads and unloads. This is being unlawfully [sic] as a contractor's yard. This truck is not blocking when the picture was taken, but this is obviously a serious problem that

needs to be stopped.” Two blurry photos are attached. The first appears to show the side of a building with a piece of equipment in front of it. The second shows two buildings with two light trucks and what appears to be a heavier truck. None of the vehicles appears to be moving but that is hard to determine. Again, there is no connection made between the trucks and Sat Metal.

[38] I conclude that the complaints, while demonstrating that the complainants are frustrated by what they see as a blockage of their access, do not establish that it is Sat Metal or any trucks hired by it that are parking on or blocking access to the common elements. It should be noted that it was the role of MTCC 838 to investigate these complaints and to provide supporting evidence for them.

[39] The Condo Manager testified that numerous letters, including letters from outside counsel, have been sent to the Respondents complaining of their alleged conduct. However, some of the correspondence introduced is not relevant to this proceeding. For example, there are a number of emails sent to the Respondents relating to a safety inspection of flammable materials storage. Other correspondence complains of dangerous activity in loading and unloading steel beams and alleges a violation of what would now be section 117(1) of the Act as well as breaches of MTCC 838’s declaration dealing with damage to property and the risk of insurance cancellation. Both safety issues related to the storage of flammable goods and allegations of dangerous activities which might affect insurance are not within the jurisdiction of the Tribunal and they were not raised as issues in this proceeding.

[40] There is one letter which is of probative value. It is dated December 15, 2021, and it is from counsel for MTCC 838 to the Numbered Companies recounting alleged violations of the Act and the governing documents of MTCC 838. Most of these alleged violations relate to the storage of goods, which will be discussed below. The last incident referred to in the letter is set out as follows:

October 1, 2021 – property management emailed you, attaching photos showing a large flatbed truck supporting a pile of steel beams which you had been storing on the common elements for several days, giving you a 24-hour time limit to remove the trailer or the Corporation would undertake the work and charge it back to the Units. You replied to this email on October 4, 2021, saying that you needed to store it there due to your business operations. On October 22, 2021, property management replied to you, stating that the steel beams and trailer were still outside and giving you until the end of the day to bring your items inside the Units.

[41] The letter from counsel on December 15, 2021 contains hearsay in that it recounts

the actions of MTCC 838. While hearsay evidence is admissible at the Tribunal, it must be considered with caution for all the reasons that call its reliability into question in courts of law. However, this letter recounts the Numbered Companies responding that they need to store “it” (the trailer) due to their business. While it is unfortunate that MTCC 838 did not include this response in its evidence, the Respondents did not dispute the contents of the December 15, 2021 letter beyond a general denial that they park trucks on the common elements. For the reasons that the Numbered Companies apparently responded to the letter and do not presently dispute its contents, I find that I may rely on the December 15, 2021 letter for the truth of its description of the incident in October, 2021. According to the letter, the trailer was apparently there for at least three weeks. The letter refers to both a flatbed truck and trailer being “stored” on the common elements. Trailers are capable of movement when attached to a cab. Therefore, when stored, they may also be said to be parked. They are certainly “left”. Rule 15 says in part, “Without limiting the foregoing, no dump trucks, trailers, boats, snowmobiles, machinery or equipment of any kind shall be parked or left in any parking space or on the common elements. . . .”

[42] I find that on at least one occasion, for a period of at least three weeks in October, 2021, the Respondents left a trailer on the common elements in violation of Rule 15 of MTCC 838. I also find that the trailer may be said to have been parked on the common elements. In some circumstances, there may be a distinction between the action of “leaving” a trailer and of “parking” it. In this case, I find that the Respondents have both left and parked the trailer.

Issue 2(ii) - Are the Respondents, or any of them, violating the Act or the governing documents of MTCC 838 that relate to Storage (goods/products)

[43] MTCC 838 alleges that the Respondents are storing goods on the common elements in violation of its rules. Rule 8 prohibits the leaving of debris or waste on the common elements except on garbage days and also prohibits the placing of debris anywhere except in the designated garbage site. Rule 19 states, “Owners shall not conduct any of their business activities on the common elements but shall confine their business activities to their units only.”

[44] The Condo Manager testified that the Respondents “store large steel beams on the common elements”. The Respondents take the position that they do not store the steel beams on the common elements, they unload them from the trucks and move them into Sat Metal’s unit.

[45] There are no rules specifically related to the storage of goods on the common elements but the parties agree that such storage is prohibited. Rule 19 would

prohibit the storage of business inventory on the common elements. It is arguable that the rule goes much further and is, perhaps, overbroad in its scope. However, the parties did not raise this issue and I will not make any findings about it.

- [46] The Condo Manager testified to the Respondents storing steel beams and leaving debris on the common elements outside Sat Metal's unit. He produced photos but these photos lack context. For example, there are photos showing wooden stakes or slats against a wall but no indication of how long they have been there or whether they were there on garbage day in accordance with Rule 8. Similarly, there are photos showing steel beams but no indication as to how long they have been there or whether they are obstructing any of the common elements. The complaints do not address the issue of stored waste or goods obstructing the common elements.
- [47] The December 15, 2021 counsel's letter to the Numbered Companies does recite two incidents in which MTCC 838 alleges that the Respondents were storing debris on the common elements. The first of these, beginning on May 5, 2021 is ambiguous as it appears that MTCC 838 gave the Respondents two weeks to remove the debris and it is unclear whether a subsequent report of debris in June was of the same debris. A second incident beginning on June 11, 2021 is clearer. Counsel reports that the management of MTCC 838 emailed the Numbered Companies, attaching a photo that was not, unfortunately, introduced as evidence, which purported to show scrap wood and metal and a buildup of sawdust or metal dust leaning against an exterior wall. The Numbered Companies were given 24-hours to remove the debris. On June 18, 2021, counsel reported that the management of MTCC 838 emailed again attaching a photo showing the debris "still" leaning against the wall. At least one of these incidents resulted in a charge-back to the Numbered Companies. The Respondents do not dispute this account. Counsel says that the Numbered Companies questioned the charge back but there is no evidence that it was not paid. I find counsel's letter to be a credible account of an incident starting on June 11, 2021 and continuing until at least June 18, 2021 in which the Respondents left debris on the common elements for days, in contravention of Rule 8.
- [48] The action of leaving debris may constitute "storing" in the sense of leaving for a future purpose, in this case, disposal. Or it may have the connotation of "abandoning". If it is the former, then the Tribunal would have jurisdiction if the dispute otherwise qualified under subparagraph 1(1)(d)(iii) of O. Reg 179/17. If it is the latter, then the Tribunal might have the jurisdiction to deal with the dispute to the extent that the abandoning of debris constituted a nuisance, annoyance or disruption that was prohibited in the governing documents of MTCC 838. In this

case, it is significant that the counsel's letter refers to "storing" debris on the common elements. It is plausible that Sat Metal was leaving the debris for later disposal. I find that Sat Metal on one occasion, in June 2021, stored debris on the common elements in violation of Rule 8.

Issue 2 (iii) - Are the Respondents, or any of them, violating the Act or the governing documents of MTCC 838 that relate to nuisance including the use of the common elements?

[49] MTCC 838 alleges that the Respondents are creating a nuisance through their parking and their storage of steel beams on the common elements. MTCC 838 has a number of rules which address the kind of nuisance that might be caused by obstructing the common elements or interfering with the quiet enjoyment of the property. It is important to note that none of MTCC 838's rules address activities that might constitute an annoyance or disruption.

[50] I have only found one incident of a trailer being left on the common elements and one incident of debris being left outside. No photographs were provided of either incident so it was not possible to determine the extent of any obstruction or interference. Both these incidents were in 2021 and neither of them appear to have been the subject to a complaint by any other unit owner. These isolated incidents do not rise to the level of a nuisance.

Issue 3 - Should an award of costs and/or compensation be awarded? If so, in what amount?

[51] Both MTCC 838 and the Respondents submitted bills of costs. The Respondents did not succeed on their jurisdictional motion and were found to have violated the rules of MTCC 838 and so are not entitled to costs. MTCC 838 submitted what it labelled as costs of enforcing compliance. However, those costs included the costs of a mediation which it undertook in another forum. It is not obvious that those mediation costs were costs of enforcing compliance or costs of an attempt to resolve the dispute. In any event, those costs were more appropriately addressed as part of the mediation.

[52] The Tribunal will consider reasonable compensation for the costs of enforcing compliance and in this case, I am prepared to allow a reasonable amount for the preparation of the December 15, 2021 letter and for the nine follow-up emails sent by counsel for MTCC 838. There is no separate bill for this work but, based on the detailed nature of the letter and its length, I am prepared to allow \$700 for letter and \$100 for each of the emails, for a total of \$1,600. Further, I will grant the reimbursement of MTCC 838's filing fees with this Tribunal in the amount of \$200.

[53] The balance of the costs claimed by MTCC 838 are for this application. Rule 48.2 of the Condominium Authority Tribunal Rules of Practice, January 1, 2022 reads:

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

[54] I see no reason to deviate from this general rule in this case. No order for the payment of the legal fees of this proceeding will be issued.

C. CONCLUSION

[55] Both MTCC 838 and the Respondents spent considerable time and money on this hearing and neither may be expected to be pleased with the outcome. In finding that the Respondents have breached the rules of MTCC 838 on only two occasions, I am not saying that MTCC 838 does not have legitimate concerns about the conduct of the Respondents. I am also not saying that the complainants do not have cause for their grievances. I am saying that except in the two instances where I have found violation of the rules, MTCC 838 has not proved its case. Rather than accumulating more evidence and returning to the Tribunal with fresh grievances, I urge all parties to reach some negotiated accommodation. Some restrictions on the hours when Sat Metal might unload its raw materials might be appropriate as well as some common-sense guidelines around the temporary storage of the raw materials as it is being moved.

D. ORDER

[56] The Tribunal Orders that:

1. The Respondents will bring themselves into compliance with, and remain in compliance with the Rules 8 and 15 of MTCC 838. Specifically, the Respondents will not park trucks or trailers on the common elements of MTCC 838 and will not store debris on those common elements.
2. The Respondents will pay to MTCC 838 the following sums:
 - a. The amount of \$1,600 as compensation for the costs incurred by MTCC 838 in enforcing compliance with its rules; and

- b. The amount of \$200 to reimburse MTCC 838 for the filing fees it paid to the Tribunal.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: August 1, 2024