

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 13, 2024

CASE: 2024-00202N

Citation: Teeter v. Simcoe Condominium Corporation No. 8, 2024 ONCAT 125

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

Member: Mary Ann Spencer, Member

The Applicant,

James Teeter

Represented by Lenka Cernova-Cerrato, Agent

The Respondent,

Simcoe Condominium Corporation No. 8

Represented by Shelley Miller, Agent

Submission Dates: July 29, 2024 to August 6, 2024

DISMISSAL ORDER

- [1] The Applicant, James Teeter, is the owner of a unit of Simcoe Condominium Corporation No. 8 ("SCC 8" or the "corporation"). Mr. Teeter filed an application with the Tribunal in which he indicated "the board has failed to assign a spot for my boat according to the mooring policy and failed to provide me with the mooring policy." The parties agreed that the issues to be decided relate to the corporation's enforcement of its governing documents regarding boat mooring, mooring fees and assignment of mooring spaces.
- [2] As a preliminary matter in the Stage 3 – Tribunal Decision proceeding which began on July 5, 2024, Mr. Teeter filed a motion seeking to add the owner of the waterfront property which comprises SCC 8's mooring area as an Intervenor in this matter. In its Order dated July 29, 2024, the Tribunal denied the motion.

[3] The documents the parties submitted with respect to Mr. Teeter's motion, specifically a September 15, 1975 maintenance agreement executed by SCC 8 and Inducon Holdings Limited (the "Agreement"), raised the question of the Tribunal's jurisdiction to decide this matter. The Agreement identifies Inducon Holdings Limited as the then-owner of "certain lands and waterways abutting or near [SCC 8's] property." The Agreement provides SCC 8 with the use of 256 feet of retaining wall located on that abutting property for non-commercial mooring purposes.

[4] The Tribunal's jurisdiction is established in Ontario Regulation 179/17. Section 1 (1) (d) of the regulation provides the following disputes that the Tribunal has jurisdiction to decide which are relevant to this case:

(ii) Provisions that prohibit, restrict or otherwise govern an automobile, motorcycle, van, truck, trailer, bus, mobile home, farm tractor, bicycle, motor-assisted bicycle, motorized snow vehicle, motorboat, rowboat, canoe, kayak, punt, sailboat, raft, aircraft, device used to facilitate the transport of a person with a disability, or any other vehicle drawn, propelled or driven by any kind of power, including muscular power, in a unit, the common elements or the assets, if any, of the 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.

[5] To establish the Tribunal's jurisdiction, SCC 8's boat mooring area must be in a "unit, an asset or the common elements" of the corporation. I advised the parties accordingly and requested submissions on this issue. Having regard to those submissions and for the reasons set out below, I dismiss this application on the basis that the Tribunal does not have jurisdiction to hear it.

[6] It is clear on its face that this case does not involve a unit of the corporation. The question before me is whether the mooring space is either a common element or an asset of the corporation. Clause 1 of the Agreement states:

Inducon shall provide unto the Condominium Corporation, for non-commercial mooring space purposes only, the use of 256 feet of retaining wall along the bank of one of the waterways in lands abutting or near the Property, reserving, unto Inducon the right to change the location of such mooring space from time to time either within the same waterway or to such other waterway in the vicinity of the Property as Inducon may decide.

- [7] Clause 4 of the Agreement states that SCC 8 “shall repair and keep in good repair the portion of retaining wall designated from time to time by Inducon for the exclusive use of the Condominium Corporation.” Clause 9 states that if SCC 8 defaults, Inducon has the right, but not the obligation, to perform the work required to remedy the default and to charge the cost to the corporation. The Agreement has no termination date and is binding on its signatories’ successors.
- [8] The *Condominium Act, 1998* (the “Act”) defines common elements as “all the property except the units” and “property” as “the land, including the buildings on it, and interests appurtenant to the land, as the land and interests are described in the description and includes all land and interests appurtenant to land that are added to the common elements.” Schedule A of SCC 8’s declaration describes the corporation’s property as comprising Lot 34 registered as Number M-111 in the municipal Land Titles Office, subject to an easement in favour of the municipality. The Agreement also states that the corporation’s property comprises Lot 34.
- [9] The Applicant submitted that the mooring space does form part of SCC 8’s common elements, noting that the corporation’s common expenses and its reserve fund study dated May 24, 2022 both include provisions for the maintenance of the retaining wall. Expenses set out in a corporation’s operating budget can include expenditure items which are not common elements; for example, salaries and wages paid to staff. And, while the reserve fund study includes a contingency for replacement of the retaining wall, the study notes “Until legal confirmation is received that the corporation is not responsible for the replacement of the shorewall, a contingency is provided for partial replacement of the shorewall.” It also notes that SCC 8 has paid the minor repair costs from its operating fund.
- [10] SCC 8’s position is that the contingency contained in the reserve fund is an error and that the retaining wall is not a common element. The Respondent’s representative noted that the municipality’s assessment plan indicates separate roll numbers for the corporation and for the property on which the retaining wall is located. She further advised that SCC 8 regards the agreement as a maintenance contract.
- [11] The evidence does not support that the retaining wall forms part of the corporation’s common elements. However, is it an asset of the corporation? Section 18 (1.1) of the Act states:

The assets of the corporation do not include any real property that the corporation does not own or any interest in real property where the corporation does not own the interest.

- [12] The Agreement establishes that SCC 8 does not own the mooring space. The specific question then becomes whether it owns an interest in the property.
- [13] The Applicant submits that certain of the governing documents indicate that the corporation has an ownership interest in the mooring space and referred me to the following provisions. Article XII (i) of SCC 8's declaration states that the corporation may make by-laws authorizing it to enter into agreements for "the supply of services and the use by unit owners of beach and boat mooring areas". The corporation's By-law No. 4 simply authorizes the corporation to enter into the Agreement, a copy of which is appended to but does not form part of the by-law. Article V 1 (i) of By-law No. 1 includes, among the duties of the corporation, "maintaining, repairing and replacing the shorewall and allocating space thereon in accordance with the agreement therefor." Article V 2 (f) includes, among the powers of the corporation, entering into an agreement for the acquisition and maintenance of a portion of the retaining wall.
- [14] While the governing documents and the extent to which By-law No. 1 may incorporate terms of the Agreement may be relevant in deciding whether SCC 8 has met its obligations with respect to the allocation of mooring space to the Applicant, I find they are not relevant to the question of whether it has an ownership interest in the real property. Nor, as noted above in paragraph 9, is the fact that the maintenance costs flowing from the Agreement are included in the common expenses of the corporation an indication of an ownership interest.
- [15] An ownership interest may be established if there is a leasehold interest in the property. While the Agreement has some elements characteristic of a lease, I find that it does not confer leasehold interest in the retaining wall on SCC 8. The Agreement, while providing the corporation with exclusive use of the retaining wall, only provides it for the specific purpose of non-commercial mooring. I note that the Applicant submitted that the Agreement also provides the corporation with exclusive use of the land between the retaining wall and SCC 8's property; however, while the Agreement contains a clause requiring SCC 8 to maintain both its own property and the land between it and the retaining wall "in properly sodded and landscaped condition", it does not give SCC 8 exclusive use of that property, which SCC 8 indicated can be publicly accessed to walk along the waterway. Further, the location of the retaining wall is not specified in the Agreement. The location designated for the corporation's use is at its owner's discretion, and the agreement provides the owner with the ability to designate different locations, notwithstanding that there is no evidence to indicate it has done so in the almost 50 years that the Agreement has been in effect. The corporation's control over the retaining wall is limited; it has a contractual right to use the space, but I find this

does not amount to owning any interest in the real property. Therefore, the retaining wall is not an asset of the corporation as defined in the Act.

[16] I find that the retaining wall is not a unit, a common element or an asset of the corporation. Therefore, the Tribunal has no jurisdiction to hear this matter and the case is dismissed.

ORDER

[17] The case is dismissed.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: August 13, 2024