

CONDOMINIUM AUTHORITY OF ONTARIO

DATE: August 14, 2024

CASE: 2023-00025N

Citation: York Region Condominium Corporation No. 720 v New Venture Properties Inc., et. al., 2024 ONCAT 127

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

Member: Laurie Sanford, Member

The Applicant,

York Region Condominium Corporation No. 720

Represented by Maria Dimakas, Counsel

The Respondents,

New Venture Properties Inc.

Represented by Angelo Dipardo, Agent

Cycleworx Custom Motorcycles Inc.

Represented by Angelo Dipardo, Agent

Hearing: Written Online Hearing – March 21, 2024, to July 22, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] York Region Condominium Corporation No. 720 (“YRCC 720”) describes itself as an industrial/commercial condominium. New Venture Properties Inc. (“New Venture”) is a unit owner in YRCC 720 and Cycleworx Custom Motorcycles Inc. (“Cycleworx”) is New Venture’s tenant. Cycleworx operates what YRCC 720 describes as a “full-service motorcycle shop”, which includes the restoring, repairing and customization of motorcycles. The shares of both companies are owned by Angelo Dipardo who also operates Cycleworx. Mr. Dipardo participated briefly at the outset of the hearing and requested a mediation. The parties agreed to a mediation/adjudication process. However, Mr. Dipardo did not participate in the mediation or the subsequent hearing.

[2] YRCC 720 alleges that both New Venture and Cycleworx are violating numerous

YRCC 720 rules by parking, storing and repairing motorcycles and other items on the common elements and by obstructing parking spaces by placing pylons on some areas of the common elements.

- [3] For the reasons set out below, I find that New Venture and Cycleworx are in violation of the YRCC 720 rules against leaving or storing garbage, debris, equipment and other materials on the common elements. I also find that New Venture and Cycleworx are in violation of a YRCC 720 rule against storing and repairing motor vehicles on the common elements and against driving on parts of the common elements that are not driveways or parking spaces. I am directing both Respondents to bring themselves into compliance with these rules and remain in compliance with them. I am also directing New Venture and Cycleworx, jointly and severally, to pay YRCC 720 compensation in the amount of \$1,648.44 on account of YRCC 720's legal costs and a further sum of \$150 to reimburse YRCC 720 for the fees it paid the Tribunal.

B. ISSUES & ANALYSIS

- [4] The issues in this case may be summarised as follows:

1. Are the Respondents in breach of any of the following rules of YRCC 720:
 - (a) Rule 5, a prohibition against leaving garbage and debris on the common elements except on garbage day;
 - (b) Rule 13, a prohibition against obstructing common element sidewalks, entries, and driveway;
 - (c) Rule 14, a prohibition against any motor vehicle, except specified vehicles, being parked on the common elements and prohibition against making repairs to such vehicles there;
 - (d) Rule 18, a prohibition against keeping, storing or leaving waste matter, semi-manufactured items, finished products, equipment, parts or other materials on the common elements?
2. What orders, including cost orders, should follow from the findings?

Issue 1(a) - Are the Respondents in breach of Rule 5 of YRCC 720?

- [5] Rule 5 of YRCC 720 reads:

No owner shall not [sic] place, leave or permit to be placed or left in or upon the common elements, including those of which he has exclusive use, any debris, refuse or garbage, except on days designated by the board or manager as garbage pick-up days or he shall directly carry or place same in any area designated by the corporation as a central garbage depository.

- [6] Two people testified on behalf of YRCC 720. Michael Guida, the Property Manager, testified that the problems with Cycleworx begin each year with the coming of warmer weather and last until the weather cools in the Fall, approximately 6 months of the year. It was Mr. Guida's testimony that he has been dealing with Mr. Dipardo, the owner of New Venture and owner-operator of Cycleworx, since 2008, when Cycleworx first became a tenant, about violations of YRCC 720 rules and the multiple complaints from other unit owners or occupiers. While Mr. Guida cited "garbage on the common elements" as one of the rule violations committed by Cycleworx, he did not provide any details of this allegation.
- [7] The other witness for YRCC 720 was Mr. Rick Andrews, a member of the Board of YRCC 720 since 1992 and the President for some of that time. Mr. Andrews testified that Cycleworx "offences" include, "obstructing the common area by storing various items, including garbage, debris, motorcycles and equipment. This obstruction occurs on a daily basis." Mr. Andrews testified that Mr. Dipardo generally denies that the garbage and other materials on the common elements are his.
- [8] A letter from YRCC 720's management to Cycleworx and an earlier landlord on July 21, 2021 seeks the compliance with its rules. The letter states YRCC 720's requirement that Cycleworx permanently remove "tires, debris, BBQ, bins and any other equipment or materials from the common elements to the rear of the unit. The storage of such items is contrary to section 18 of the rules." The letter makes no reference to the prohibition against leaving debris or garbage contained in Rule 5. A subsequent compliance letter from YRCC 720's counsel dated April 25, 2022 also refers to the storage of debris in violation of YRCC 720 Rule 18 but again makes no reference to a violation of rule 5.
- [9] The compliance letters refer to Rule 18 and some part of the conduct that Mr. Andrews complains of might be better dealt with as a violation of that rule, which will be considered below, and which provides:

No part of the common elements shall be used for the purpose of keeping, storing or leaving waste matter, semi-manufactured items, finished products, equipment, parts or other materials.

- [10] I will deal with Mr. Andrew's complaints about "storing various items including, ...

motorcycles and equipment” on the common elements as a possible violation of Rule 18. For now, I will consider the issue of the leaving of garbage and debris on the common elements. The verbs “place” or “leave” contained in Rule 5 may include placing or leaving in the sense of storing for a future use, in this case, disposal. I conclude that Mr. Andrew’s complaints about storing garbage and debris on the common elements would include placing or leaving those items in violation of Rule 5.

[11] As YRCC 720 points out, Rule 41.4 of the CAT Rules of Practice, January 1, 2022, permits the Tribunal to accept as true any fact in a witness’s evidence that the other party has not clearly disagreed with. Neither Respondent contested any of the evidence. Mr. Guida testified to the existence of garbage on the common elements and Mr. Andrews provided testimony about the storage of garbage and debris. Both men linked the garbage on the common elements to the Respondents.

[12] I conclude that there is sufficient evidence in the testimony of Mr. Guida and Mr. Andrews to support a finding that Cycleworx has violated Rule 5 by leaving garbage and debris on the common elements.

Issue 1(b) - Are the Respondents in breach of Rule 13 of YRCC 720?

[13] Rule 13 of YRCC 720 states:

The sidewalks, entries, passageways, walkways and driveways used in common by the owners shall not be obstructed by any of the owners or used by them for any purpose other than for ingress and egress to and from their respective units.

[14] Mr. Andrews testified that Mr. Dipardo had been obstructing the use of parking spaces, which are common element spaces, by placing pylons in the parking stalls. However, it was his testimony that Mr. Dipardo has ceased this activity lately. The July 21, 2021 compliance letter from YRCC 720 management requires the removal of pylons blocking various common element parking spaces.

[15] The problem for YRCC 720 in these allegations is that parking spaces are not mentioned in Rule 13. Rule 13 is very specific and detailed about which common element spaces are reserved exclusively for ingress and egress and cannot be obstructed. Common element parking spaces are not on that list. I find that YRCC 720 has not demonstrated that the Respondents are violating Rule 13.

Issue 1(c) – Are the Respondents in breach of Rule 14 of YRCC 720?

[16] Rule 14 of YRCC 720 reads:

No motor vehicle other than a private passenger automobile, station wagon or commercial vehicle shall be parked on any part of the common elements (including any part thereof, of which any owner may have the exclusive use) nor shall any repairs be made to such motor vehicle on the common elements nor shall any such motor vehicle be left of stored on the common elements awaiting repair and no motor vehicle shall be driven on any part of the common elements other than on a drive way or parking area.

[17] Mr. Guida testified that Cycleworx repeatedly repairs motorcycles on the common elements and stores vehicles on the common elements “that Angelo has said he will get around to repairing one day”. The repairs cause oil spills on the common elements and the parking of motorcycles while awaiting repair results in the kick stands leaving divots in the asphalt. Mr. Guida produced photographs of numerous motorcycles, two trailers and assorted cars, including one car with its hood up. Mr. Guida testified that Cycleworx takes up “an excessive amount [sic] of parking spaces” in storing the motorcycles it services. Mr. Guida testified that Cycleworx “repeatedly parks a truck and trailer in the fire route”. In addition to obvious safety issues, Mr. Guida says that it is difficult for other delivery trucks to manoeuvre around the vehicles. Mr. Andrews referred to repairs not only to motorcycles but also to “other motor vehicles”.

[18] The July 21, 2021, compliance letter requires the removal of the trailer that is parked in parking spaces, and the permanent cessation of the performance of repairs and other work on motorcycles or parts on the common elements, including washing engines. The letter also requires the Respondents to cease using or placing kick stands on the common elements.

[19] In its closing submissions, YRCC 720 submitted that rule 14 addresses four separate restrictions and conditions in that it:

- (a) Restricts the permitted motor vehicles that shall be parked on any part of the common elements only to private passenger automobiles, station wagons or commercial vehicles;
- (b) Prohibits the repair of any motor vehicle on the common elements;
- (c) Prohibits leaving or storing a motor vehicle on the common elements awaiting repair; and,
- (d) Prohibits the driving of a motor vehicle anywhere on the common elements other than on a driveway or parking area.

[20] YRCC 720 states that:

The Applicant is not requesting a finding that Cycleworx motorcycles are not permitted to be parked on the common elements. The Applicant is requesting a finding that Cycleworx is parking motorcycles and motor vehicles on the common elements for the purpose of repairing those motorcycles and motor vehicles on the common elements, and is parking those motorcycles and motor vehicles on the common elements for the purpose of storage while awaiting repairs contrary to rule 14.

[21] The difficulty with YRCC 720's requested relief lies in its interpretation of rule 14. Rule 14 does restrict the kind of motor vehicles that may be parked on any part of the common elements. Rule 14 goes on to prohibit the repair of "such motor vehicle" and the storage of "such motor vehicle" while awaiting repair. The use of the phrase "such motor vehicle" must be read as referring to one or the other subset of motor vehicles; either those motor vehicles that are permitted to be parked or those that are prohibited from being parked. As a matter of both sentence construction and common sense, the motor vehicles that may not be repaired or stored for repair on the common elements are those motor vehicles which are otherwise permitted to be on the common elements. There would be no point in prohibiting repairs to motor vehicles which are not supposed to be there in the first place.

[22] Rule 14 does appear to prohibit the parking of motorcycles on the common elements of YRCC 720. The prohibition would also pre-emptively prevent such activities as repairing or storing motorcycles on the common elements. However, YRCC 720 expressly states that it does not want a finding that Cycleworx motorcycles are not permitted to be parked there and so I will not make that finding. However, what follows from YRCC 720's request is the odd result that motorcycles, because they are not covered in the phrase "such motor vehicle[s]", are not prohibited, under Rule 14, from being repaired or stored for repair on the common elements.

[23] YRCC 720 introduced testimony that Cycleworx also repaired motor vehicles, as opposed to motorcycles, on the common elements and stored them there awaiting repairs. YRCC 720 produced photographs that are consistent with that testimony. One of the compliance letters requires Cycleworx to cease repairing motor vehicles. Mr. Guida testified that Mr. Dipardo was storing "vehicles on the premises that Angelo [Dipardo] says he will get around to repairing one day." Both the repair of motor vehicles on the common elements and the storage of motor vehicles awaiting repair are activities in violation of rule 14. I find that Cycleworx has violated rule 14 in both these activities.

- [24] Concerning the allegation that Cycleworx is taking up an excessive number of parking spaces, YRCC 720's management, in its July 21, 2021, letter to Cycleworx, explains that only one unit has exclusive use parking spaces. The rest of the parking spaces are common element spaces available on a first come first served basis. There is no evidence of a maximum number of permitted parking spaces for any unit owner or occupier. YRCC 720 has not demonstrated that Cycleworx is in violation of any rule in the number of parking spaces it uses.
- [25] The damage caused to the common elements by the divots left by the kickstands is outside the jurisdiction of the Tribunal as it constitutes damage to the common elements and is addressed under section 117(1) of *Condominium Act, 1998* (the "Act"), which is currently expressly excluded from the Tribunal's jurisdiction. YRCC 720 could achieve the desired result by stopping Cycleworx from parking motorcycles on the common elements but, as noted above, that is not the finding that YRCC 720 is requesting.
- [26] YRCC 720 also complains that Cycleworx is parking two of its trailers on the common elements. The trailers are marked "Cycleworx" on the side. These trailers would appear to be commercial vehicles, which are permitted to be parked on the common elements.
- [27] YRCC 720 also provided testimony that Cycleworx was parking its truck and trailer in the fire route. This is in violation of the last part of rule 14, that "no motor vehicle shall be driven on any part of the common elements other than on a driveway or parking area". A fire route is not a driveway or parking area. It appears to be restricted to emergency vehicles. In order to park its truck and trailer on the fire route, Cycleworx must first drive there. I find that Cycleworx is driving its truck and trailer onto the fire route in violation of Rule 14.

Issue 1(d) – Are the Respondents in breach of rule 18 of YRCC 720?

- [28] As noted above, Rule 18 of YRCC 720 prohibits the keeping, storing or leaving of certain items on the common elements. Mr. Andrews testified that Cycleworx was "obstructing the common area by storing various items including... motorcycles and equipment. This obstruction occurs on a daily basis."
- [29] The storage of motorcycles, which is mentioned in Mr. Andrew's testimony, is not specifically prohibited in rule 18. To the extent that the motorcycle might be a "finished product" of Cycleworx' operations, there might be an argument for including motorcycles in the list of items which may not be stored, but there was no evidence produced that this was the case.

- [30] In the two compliance letters, YRCC 720 advised Cycleworx it was violating rule 18 by keeping on the common elements “tires, debris, BBQ, bins and any other equipment or materials”. Tires could be considered waste matter if they were unusable or “parts” if they were still functional. Debris would be included in “waste matter”. Bins might be equipment. BBQ, if it refers to BBQ grills would appear not to be covered in rule 18 but other equipment and material is. I find that Cycleworx is in violation of rule 18 of YRCC 720 in storing tires, bins, debris, equipment and other materials on the common elements.
- [31] As discussed above, under rule 14, Cycleworx is permitted to park its two trailers on the common elements. YRCC 720 has not made out a case for any violation of rule 18 in Cycleworx leaving the trailers there.
- [32] As YRCC 720 notes, New Venture is responsible under subsection 119(2) of the Act for taking “all reasonable steps to ensure that an occupier of the owner’s unit ... comply with this Act, the declaration, the by-laws and the rules.” New Venture was notified of this obligation in the April 25, 2022, letter from YRCC 720’s lawyers. New Venture is responsible for the rule violations by Cycleworx.

Issue 2 – What orders, including cost orders, should follow from the findings?

- [33] YRCC 720 requests an order requiring the Respondents to “immediately and permanently comply” with the above enumerated rules of YRCC 720. In making this request, YRCC 720 goes beyond some of the specific rules and exceeds the findings made in this decision. For example, YRCC 720 is asking that the Respondents immediately and permanently cease to store, among other things, motorcycles and vehicles under rule 5. As noted above, rule 5 deals with debris, refuse and garbage; it does not address motorcycles or vehicles. What YRCC 720 is entitled to is an order that the Respondents bring themselves into compliance with the specific rules they have been found to have violated and to remain in compliance with those rules.
- [34] YRCC 720 also requests costs. It claims reimbursement of its costs of preparing the compliance letter of April 25, 2022, in the amount of \$438.44, and a reimbursement of the amount of \$150 paid in filing fees with the Tribunal. It further claims a total of \$5,496,50 for its costs of preparing and participating in this case.
- [35] The expenses of enforcing compliance are reasonable and, as the successful party, YRCC 720 is also entitled to a reimbursement of its filing fees paid to the Tribunal.
- [36] Concerning the legal costs of this hearing, under Rule 48.2 of the Tribunal’s Rules

of Practice, legal costs of a hearing are not generally awarded. There are, however, exceptions to this general rule. In this case, Mr. Dipardo specifically requested a mediation, signed the Mediation/Adjudication agreement to permit the mediation to be conducted in the course of a hearing, and then did not participate beyond signing the Mediation/Adjudication agreement. YRCC 720 incurred the expenses of reviewing the Mediation/Adjudication agreement and the costs of preparing for and participating in the mediation. It is appropriate that the Respondents should bear the costs of this mediation. YRCC 720 incurred costs of \$1,210 for the mediation and the Respondents will be jointly and severally liable for paying this amount.

C. ORDER

[37] The Tribunal Orders that:

1. Cycleworx and New Venture will immediately bring themselves into compliance with the following rules of YRCC 720 and will remain in compliance with them:
 - (a) Rule 5 against leaving garbage or debris on the common elements;
 - (b) Rule 14 against storing motor vehicles on the common elements while awaiting repairs and the repairing of motor vehicles on the common elements;
 - (c) Rule 14 against driving motor vehicles on the fire route of YRCC 720; and
 - (d) Rule 18 against storing tires, bins, debris, equipment and other materials on the common elements.
2. Under subsection 1.44(1) of the Act, the Respondents will be jointly and severally liable to pay the following amounts to YRCC 720:
 - (a) The amount of \$438.44 in compensation for the expenses of enforcing compliance with YRCC 720's rules;
 - (b) The amount of \$1,210 for the costs of YRCC 720's preparation for and participation in the mediation of this matter; and

- (c) The amount of \$150 for reimbursement of YRCC 720's filing fees paid to the Tribunal for this matter.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: August 14, 2024