CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 16, 2025
CASE: 2024-00462N
Citation: 1199831 Ontario Ltd v. Halton Standard Condominium Corporation No. 732, 2025 ONCAT 9

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
1199831 Ontario Ltd.
Represented by Steve Emo, Agent

The Respondent,
Halton Standard Condominium Corporation No. 732
Represented by Maria Dimakas, Counsel

Hearing: Written Online Hearing – November 20, 2024 to January 13, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] 1199831 Ontario Ltd. (the "Applicant") is the owner of a unit in Halton Standard Condominium Corporation No.732 ("HSCC 732") which consists of 29 commercial/industrial units. The Applicant's business operations are varied and include the installation of Christmas lights, snowplowing services and property management. It uses utility trailers to carry out some of those business operations. The Applicant asserts that recent changes to HSCC 732's Rule 15, specifically as they relate to the parking of utility trailers on the property, are not valid and cannot be enforced against it. HSCC 732 states that changes to the parking rule are reasonable, were enacted properly and comply with the *Condominium Act, 1998* (the "Act").

B. BACKGROUND

[2] The Applicant purchased its unit from 3T (1153 Pioneer) Inc., the declarant, by an agreement and purchase and sale (the "APS") dated February 2, 2020. At that time, the condominium had yet to be registered and in fact was not registered until March 17, 2021. A clause in the APS, negotiated by the Applicant (Mr. Emo is its principal) stated that the "Buyer can park trailers in any available parking spots with no parking limits imposed".

[3] The declaration's provision related to parking states:

> 3.3 Parking
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> (a) No specific parking spaces will assisgned to any Unit, nor form part of any exclusive use common element apprutenatn to any Unit. All parking spaces for Owenrs and/or occupants and all employees, customers and vistors to the Condoninium shall be on a first come, first served basis. Nothwithstanding the foregoing, no Owner, its tenants, angents, invitees, customers or employees shall park any vehicle which blocks the loading area appurtenant to the rear of any Unit with access to a loading dock.
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> (b) The Board shall be permitted from time to time to limit parking in certain parking spaces by Owners and/or occupants and their employees and any other vistors to the Condominium in order to facilitate the ingress, egress and turning of large trucks at the loading docks appurtenant to the Units and in order to facilitate customer parking in the lot fronting on to Bentley Street.

[4] HSCC 732's Rule 15 which addressed parking stated:

> No owner will park any vehicle so that it blocks the loading area appurtenant to any Unit. At any time, the Board may require that no parking be permitted on certain areas of the common elements, to allow for ingress, egress to certain units, and the turning of trucks.

[5] In December 2022, HSCC 732 proposed a new parking rule to replace the existing Rule 15, in order to address what it stated was a lack of safety and unfairness that had resulted from the current "first come, first served" system. Owners would be permitted to use no more than two parking spaces in front of any unit at any time. From the Applicant's perspective, the most problematic provisions of the rule are as follows:

> **15. PARKING**
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> **Definitions**

(a) For the purpose of these Rules:

"First come, first served" means owners and/or occupants and all employees, customers and visitors to the Lands may use any available parking space to park a motor vehicle. However, an owner and/or occupant and/or their respective employees and/or agents may not collectively use any more than two (2) parking spaces in front of any unit at any one time unless advance written permission is obtained by the Board.

"Motor vehicle" means an automobile, motorcycle, motor-assisted bicycle and any other vehicle propelled or driven other than by muscular power. Not included in the definition are motor vehicles running only upon rails; motorized snow vehicles; traction engines; farm tractors; utility or recreational trailers; folk lifts; power-assisted bikes; or road-building machines.

"Lands" means all of the land and interests appurtenant to the land described in the description and Schedule "A" to the Declaration and includes any land and interests appurtenant to land that are added to the common elements.

Parking of Motor Vehicles

(d) Parking spaces shall only be used for the parking of a motor vehicle. No parking space shall be used for storage, including but not limited to storing any supplies, inventory, equipment, machinery, or displays.

(e) Parking shall be on a first come, first served basis. No owner and/or occupant and/or their respective employees and/or agents may collectively occupy more than two (2) parking spaces in front of any unit at any given time. Owners and residents who wish to use parking in excess of this limit must submit a prior written request to the Corporation. The Board may approve or deny such requests in its sole and unfettered discretion.

[6] Though the Applicant has raised several objections to the rule changes, it is the exclusion of utility trailer from the definition of motor vehicle which is at the core of this case. However, it became clear through the parties' submissions that this dispute is about more than 'just' the new rule. As noted by the Applicant in its submissions, "it is not merely a case of individual property rights, but one of governance, where adherence to the declaration safeguards fairness, transparency and trust in the condominium's management". Such issues, to a significant extent, are not matters which the Tribunal can decide or remedy. Therefore, I will not respond to every issue alluded to by the parties in their submissions but will distill the evidence and submissions to focus on the matters relevant to issues to be decided by me.

[7] For the reasons set out below, I dismiss this application. Costs are not awarded to either party.

C. ISSUES and ANALYSIS

[8] At the outset of this hearing, the parties agreed that the two issues to be decided are the validity of Rule 15 and costs.

Issue 1: Are the changes to Rule 15, and in particular, the change made that excludes the parking of a utility trailer validly enacted and consistent with the Act and HSCC 732's declaration and by-laws?

[9] Review of the chronology of the rule change provides context for this dispute. The evidence before me is that in May 2022, the board of HSCC 732 sent a survey to owners to assess owners' parking needs. Seven of the 29-unit owners responded; the Applicant did not respond. Flowing from this, a revision to Rule 15 was drafted by HSCC 732's previous counsel. The board approved the proposed change unanimously. The rationale for the revisions, as set out in the evidence, including the testimony of HSCC 732's witness, John Stroiazzo who was a board member at the time, appeared to be that the board was seeking to prevent parking spaces from being used as storage thus reducing the number of parking spaces available for unit owners, their employees and customers.

[10] Notice of the change, and the reasons for it, was sent to all unit owners in a letter dated December 13, 2022. In that letter, HSCC 732 advised owners of their right to requisition a meeting to vote on the parking rule, provided a copy of the proposed rule and attached a copy of s. 46 and 58 of the Act, all in compliance with s. 58(6) of the Act. No owners requisitioned a meeting in response to this notice. However, a town hall meeting was held on December 20, 2022, at which three owners, including Mr. Emo attended, as well as the three board members and HSCC 732's counsel at that time. The new rule was discussed as well as possible changes to the declaration, some of which would also address parking.

[11] As there was no requisition for a meeting, the new Rule 15 became effective, as per s. 58(7) of the Act on January 15, 2023. The Applicant, in its submissions during the hearing, suggested that one of the board members may not have been aware that the rule would prevent trailers from being parked. One of the Applicant's witnesses, a unit owner (who was not a board member at that time), testified that he did not understand the ramifications of the rule; specifically, that it would eliminate the right to park trailers, though he also stated that he did not read the full rule. What a board member understood when he voted in favour of a rule or what an owner understood after receiving the required notice, to the extent that

either read the document, is their individual responsibility and does not impact the process by which the rule came into effect. The new rule, while much longer than the original Rule 15, is not overly complex and the exclusion of trailers in the definition of motor vehicle is clearly stated.

[12] It appears that shortly after the new rule came into effect, HSCC 732 suspended its enforcement as it had also begun the process to amend the declaration. Notice of amendments (which included two provisions related to parking) to the declaration was given to owners in August 2023. The board did not receive the 80% approval threshold required by s. 107 of the Act. In a letter to owners dated March 1, 2024, the board stated that it would therefore resume enforcement of the new parking provisions.

[13] The Applicant, together with other owners, was clearly dissatisfied with how the parking issue was being handled by the board. They organized a vote to remove board members and attempted to renew interest among owners to amend the declaration, to allow for the use of parking spaces for trailers and storage. Both efforts were unsuccessful. These two efforts highlight that there is some dissatisfaction with board governance, but it bears repeating here; these are issues outside of the Tribunal's jurisdictional scope. The issue before me is the validity of Rule 15.

[14] Based on the evidence, I find that the process for a rule change was in accordance with s. 58(6) of the Act. The Applicant submits that it was an abrupt change; it was not. The evidence shows that the required process was followed, and time provided to owners to debate the changes.

[15] The next question to consider is whether Rule 15 is compliant with s. 58(1) and (2) of the Act. Under s. 58 (1) of the Act, a rule must be made for one of the two purposes allowed under the Act.

> The board may make, amend or repeal rules under this section respecting the use of the units, the common elements or the assets, if any, of the corporation to,
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> (a) promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or
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> (b) prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation.

[16] Section 58(2) of the Act requires a rule to be reasonable. It reads, "The rule shall be reasonable and consistent with this Act, the declaration and the by-laws."

[17] Regarding the purpose for the rule change, in its December 13, 2022 letter, HSCC 732 set out its rationale for the proposed rule change as noted at paragraph 9 above. Mr. Stroiazzo in his evidence expanded on those reasons, stating that parking spaces were being used to store utility trailers, large garbage bins, equipment and supplies with the result that owners were complaining to the board about inadequate parking and blocked access to their units. He stated that altercations had occurred between owners and occupants over unavailability of parking spaces. The Applicant disagrees that these issues were severe or continuous problems.

[18] Both parties submitted numerous photographs purporting to show that at any given time there was either plenty of parking available or a lack thereof because of the storage of trailers or bins in parking spaces. The Applicant submitted a record he compiled of parking lot capacity (by percentage of spaces filled) over nine dates between August 27 and December 2, 2024. It is not for the Tribunal to embark on an extensive factual inquiry as to whether the board's decision making about parking space availability was correct, or whether, as the Applicant submitted, the issues rose "to a level of interference with the use of the property that warrants a restrictive rule". It suffices that there was a factual basis for the board, at the relevant time, to act on the parking issues given the situation with which it was dealing. The evidence before me certainly discloses a dispute about how the board exercised its judgment when deciding to amend the rule, but I find there was a nexus between the rule change and the prevention of unreasonable interference with the use and enjoyment of property.

[19] Turning to s. 58(2) of the Act, is the rule reasonable? While I have found that there is a reasonable basis for it, clearly, the Applicant believes it is not reasonable. The Applicant submits that utility trailers are integral to its business and points to the specific inclusion of a term in the APS permitting them. The Applicant's real estate agent at the time of the purchase testified that a key factor in the Applicant's decision to proceed with the purchase was the understanding that trailer parking would be allowed. That may be so and may well explain the Applicant's dissatisfaction with the rule change, but I note that the APS does not take precedence over a declaration or rules. Included in the Applicant's submissions were a summary of discussions with the board about alternative parking for trailers. While I will not review these in detail as they reflect governance matters, they do suggest that the Applicant is not without an option for parking trailers though it may not be its preference. Whether there has been an impact on the Applicant's "reasonable expectation" when it purchased the unit is an issue that would have to be pursued in a different forum.

[20] So, while I take note of the Applicant's concerns, the evidence before me supports the conclusion that the change to Rule 15 was a reasonable response to the factual issues that HSCC 732 sought to address – it reasonably seeks to prevent interference with the use and enjoyment of the property by all owners. It falls within a reasonable range of choices available to the board. It is not for the Tribunal to substitute its opinion for that of the board where the board appears to have acted prudently and within the bounds of what is reasonable.

[21] The next question for me to consider is whether the rule change is consistent with the declaration and by-laws. As set out above, the declaration is broadly worded. There is no definition of 'first come, first served' or 'motor vehicle'. There is no mention of a utility trailer. It is well established law that the fact that a rule cannot be inconsistent with the declaration does not mean that it cannot impose restrictions that go beyond what is provided in the declaration, as long as those restrictions are consistent with what is in the declaration.[1] The fact that an owner may not use more than two parking spaces in front of any unit does not fundamentally alter the 'first come first served' concept. Further, the fact that a definition of motor vehicle is set out in the rule when none was provided in the declaration does not render the rule inconsistent with the declaration. Rules serve to further define the provisions in the declaration – Rule 15 does that in this instance. I find no inconsistency here.

[22] The Applicant takes exception to the reference to "Lands" in Rule 15, suggesting that the use of the word 'lands' "introduces an impermissible expansion of governance authority…" as it includes areas not defined as common elements or assets of the corporation. I give no weight to this argument. The definition of land in Rule 15 is tied to what is described in the declaration and its Schedule "A". It is no broader than what is referenced in the declaration itself.

[23] Based on the foregoing, I conclude that Rule 15 is valid, meeting the requirements of s. 58 of the Act and as such is enforceable.

Issue 2: Is either party entitled to costs?

[24] The Applicant seeks reimbursement of the fee paid to the Tribunal and legal fees in the amount of $2520.00. The Applicant has been unsuccessful and therefore I make no award for costs. Furthermore, I note that the Applicant was self-represented in this matter though it may have consulted with counsel from time to

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[1] *Skyline Executive properties Inc. v. Metropolitan Toronto Condominium Corporation No. 1385 et al* [2002] O.J. 5117

time on matters related to enforcement of the rule. Legal costs incurred on that basis would not, in the normal course, be recoverable.

[25] HSCC 732 requests reimbursement of its legal costs, on a partial indemnity basis though in the significant amount, of $17,489.01.

[26] The cost-related rule of the Tribunal's Rules of Practice relevant to this request is:

> 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.

[27] 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; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties.

[28] HSCC 732 submits that the Applicant brought this case for an improper purpose, in bad faith and that it was an abuse of process and vexatious. In its submissions, HSCC 732 cites the chronology of events that highlight the governance issues. It is undisputed that the Applicant was upset by the rule change and together, with a few other owners, tried to pursue other means to overturn it, but I do not conclude that the Applicant was, in this case, acting in bad faith or improperly as a result. Mr. Emo, on behalf of the Applicant, conducted himself reasonably throughout this proceeding. The language used in submissions by both parties – the Applicant suggesting a "ruse" and HSCC 732 suggesting intentional misrepresentation by the Applicant reflect a mutual distrust and internal strife which is unlikely caused by one party alone, all of which is unfortunate when this is a condominium of just 29 owners, each trying to run a successful business.

[29] HSCC 732 submits this case was to be decided on the procedural and substantive requirements of s. 58 of the Act which underlines the fact that it was a legal analysis that would be required. While HSCC 732 may believe that the Applicant ought not to have sought recourse to the Tribunal given that it had already been unsuccessful in its challenges of the board, the Applicant was nonetheless entitled to pursue a case before the Tribunal. Litigants frequently find themselves on the losing side when a court or tribunal decides questions of law. That does not, in and

of itself, mean that pursuing a case and posing the question was itself improper or vexatious.

[30] In these circumstances, I am exercising my discretion and make no award of costs against the Applicant.

D. ORDER

[31] The Tribunal orders that the application be dismissed without costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: January 16, 2025