

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 25, 2025

CASE: 2024-00331N

Citation: Swanlund v. Carleton Condominium Corporation No. 16, 2025 ONCAT 34

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Nicole Aylwin, Member

The Applicant,
Liane Swanlund
Self-Represented

The Respondent,
Carleton Condominium Corporation No. 16
Represented by Paul Pearson, Agent

Submission Dates: February 5, 2025 to February 14, 2025

DISMISSAL ORDER

- [1] The Applicant, Liane Swanlund, filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 3 - Tribunal Decision on January 23, 2025.
- [2] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision if the CAT determines that that it has no legal power to hear or decide upon the dispute.
- [3] The Applicant is a unit owner of Carleton Condominium Corporation No. 16 (the "Respondent"). The Applicant filed this case because she claims the Respondent has unfairly attempted to enforce compliance with its governing documents. Unfair enforcement is not one of the enumerated causes that can be brought before the CAT. Rather this case was admitted because the Applicant claimed that the reason for enforcement against her is due to the Respondent's alleged assertion that her intended activity constitutes a nuisance, annoyance or disruption, contrary to the Respondent's rules. Nevertheless, I have determined that the subject matter of this case does not actually fall within the CAT's jurisdiction.
- [4] The background of this dispute is as follows. In April of 2023, shortly after the Applicant installed a pergola on her exclusive use patio, she was contacted by the Respondent's condominium manager to inform her that she needed authorization from the board prior to installing any such structure. After some discussions

between the parties, in September 2023 the Respondent requested the Applicant dismantle the pergola. In May 2024, the Applicant again attempted to obtain authorization from the Respondent for the installation of the pergola; it was denied. The Applicant claims that in refusing her authorization to install the pergola the board is unreasonably enforcing provisions in its governing documents. Namely, Rules 18, 19, 24, Article III of By-law No.19 and Article XVI of the declaration, although she notes By-law No.19 and Article XVI of the declaration were only cited by the Respondent at the outset of this case.

[5] Below, I set out these provisions in full as they provide necessary context for the dispute.

Rule 18

No unit owner shall make any change to the common elements without prior written consent thereto of the Corporation, and subject to the Condominium Act, and the Declaration.

Rule 19

No building or structure or tent shall be erected, placed, located, kept or maintained on the common elements and no trailer, either with or without living, sleeping or eating accommodations shall be placed, located, kept or maintained on the common elements.

Rule 24

Only seasonal furniture is allowed on exclusive use balcony and patio areas and said areas shall not be used for cooking or barbecuing.

By-law 19, Article III

Modifications

Unit owner may be permitted to make any one or more of the following modifications to the common elements, subject in each case to the terms and conditions set forth in Article IV hereof (including the requirement for written consent of the Board in each case).

A: Permissible Modifications

1. Modifications to common elements (plumbing, electrical wiring or other services) made in connection with installation of a dishwasher, washing machine or refrigerator which includes plumbing modifications (for ice or water dispenser).
2. Carpeting on balcony [NOTE: Carpets are NOT to be glued on the balcony.]
3. Installing, removing or relocating light fixtures, ceiling fans or new plug and light sockets.

4. Modifications to common elements (electrical wiring or other services) made in connection with installation of dryers.
5. Replacement of the electrical panel.
6. Modifications to common elements (electrical wiring or other services) made in connection with the removal or relocation of partition walls within the unit boundaries.
7. Modification to common elements (plumbing electrical wiring or other services made in connection with the removal of and replacement kitchen sink, toilet, bathtub or bathroom sink.
8. Installation of storm doors.
9. Central air conditioners.
10. Window air conditioners.
11. Decks or patios in exclusive use yard areas.
12. Landscaping, including planting of bushes and hedges, in exclusive use yards.
13. Physical aids for the disabled.
14. Construction of openings between adjacent units.

B. Prohibited Modifications

Any other modifications to the common elements are prohibited, unless they receive approval in accordance with the Act and the Declaration. Without limiting the generality of the foregoing:

Water-cooled air conditioners are prohibited.

Original Construction

Please note that the original construction of the property was as follows:

- a. There were no air conditioners anywhere on the property.
- b. There were no dishwashers anywhere on the property.
- c. There were no washers or dryers in any of the tower units.
- d. There was provision for one washer and one dryer in each of the podium and townhouse units.
- e. The exclusive use yard areas contained nothing other than grass.
- f. The balconies were concrete only.

Article XVI

ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO UNITS BY OWNER

No owner shall make any structural change in or to his unit or any change to an installation upon the common elements or maintain, decorate or repair any part of the common elements (nor any balcony, patio, inner surface of any window or inner surface of any door leading out of any unit of which such owner has the exclusive use) without the prior written consent thereto of the board which consent may be arbitrarily or unreasonably withheld. Any such change shall, if approved by the board, be made in accordance with the provisions of all relevant municipal and other governmental by-laws, rules, regulations or ordinances and in accordance with the conditions of any such approval by the board.

[6] As explained to the Applicant, the CAT's jurisdiction is set out in Ontario Regulation 179/17 ("O. Reg 179/19") which is enacted under the *Condominium Act, 1998* (the "Act"). The CAT has no jurisdiction to deal with disputes other than those which are set out in this regulation. Section 1 (1) (d) of O. Reg. 179/19 includes the following types of disputes relating to the provisions of a condominiums governing documents within the jurisdiction of the CAT:

(i) Provisions that prohibit, restrict, or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.

(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.

(iii.1) Provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General).

(iii.2) 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.

(iv) Provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a dispute described in this clause.

[7] On February 2, 2025, I issued a Notice of Intent to Dismiss ("NOID") as none of

the provisions of the Respondent's governing documents that were identified by the Applicant appeared to be provisions over which the CAT has jurisdiction. I proposed to dismiss this application under Rule 19.1 (c) of the CAT's Rules of Practice, which allows it to dismiss a case where it has no legal power to hear or decide the case.

- [8] I invited both parties to explain to me why this application should or should not be dismissed. The parties were advised that I would consider all the information already provided to me along with the requested submissions.
- [9] I received submissions from both the Applicant and the Respondent; however, the Respondent's submissions were of little assistance as they did not address the question of jurisdiction, but rather focused on the board's responsibility to enforce its rules. I have read carefully all the submissions provided to me by both parties, however, I refer only to those necessary to make my decision.
- [10] The Applicant indicated that she believes that the provisions cited fall under O. Reg 179/19, s. 1 (1) (d) (iii.1) or s. 1 (1) (d) (iii.2).
- [11] Section 1 (1) (d) (iii.1) is not applicable here. It refers specifically to provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or the other prescribed nuisances as set out in s. 26 of Ontario Regulation 48/01 ("O. Reg 48/01"). Such activities are those which may cause unreasonable noise, odour, smoke, vapour, light or vibration. The provisions at issue here do not govern activities related to noise or any of the other prescribed nuisances.
- [12] Regarding, s. 1 (1) (d) (iii.2), the Applicant argues that although none of the provisions explicitly reference nuisance, annoyance or disruption the Respondent is using the provisions in such a way as to restrict a nuisance, annoyance or disruption, thus bringing them into the CAT's jurisdiction.
- [13] As evidence to support this claim, the Applicant pointed to the reasons the board provided when they asked her to dismantle the pergola. These are: no prior authorization had been given, the pergola was "immense", not aesthetically pleasing and "blocks the view of some neighbours".
- [14] The Applicant pointed me to several cases where the Tribunal held that it had the jurisdiction to address provisions under s. 1 (1) (d) (iii.2) that did not use the specific words 'nuisance', 'annoyance' and/or 'disruption', but still addressed behavior or conditions that constituted a nuisance, annoyance or disruption: *TSCC No. 2744 v. Meghan*, 2024 ONCAT 169, *YCC No. 444 v. Ryan*, 2023 ONCAT 81, *Joury v. MTCC No. 1163*, 2022 ONCAT 135.
- [15] The Applicant is correct that in these cases the Tribunal found that the provisions in the governing documents did not have to use the specific words nuisance, annoyance or disruption to place them within the Tribunal's jurisdiction. However, the provisions at issue in these cases sought to specifically govern activities or

conditions that caused unreasonable interference with the enjoyment of another owner's unit and/or common elements, i.e. nuisances, annoyances or disruptions, albeit less narrowly defined than in s. 117 (2).

- [16] This is not the case here. The provisions of the Respondent's rules, by-laws and declaration cited to make the decision not to approve the Applicant pergola are not about such activities. The provisions permit the board to prohibit installation on the common elements for any reasons whatsoever. The CAT's jurisdiction is related to disputes about alleged activities that cause the kinds of nuisances, annoyances or disruptions, enumerated for the purposes of 117 (2) of the Act and that relate to provisions of a condominium's governing documents that govern those or other types of nuisances, annoyances or disruptions.
- [17] Despite the Applicant's attempt to argue that these are provisions that govern a nuisance, annoyance or disruption, it is clear that the crux of the dispute is the fact that the board has denied her permission to install a pergola. It so happens that in this case the Respondent's reasons for the denial have included concerns that could be described as annoyances or nuisance-like, but this is merely incidental and has nothing to do with the essential meaning or the purposes of the provisions in questions.
- [18] For all the reasons above, I find the application should be dismissed as the Applicant is seeking to address compliance with provisions that are outside the jurisdiction of the CAT. Accordingly, I dismiss the application.

ORDER

[19] The Tribunal orders that:

1. This case is closed in Stage 3 - Tribunal Decision under Rule 43.1 of the CAT's Rules of Practice.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: February 25, 2025