

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 4, 2025

CASE: 2024-00477N

Citation: Gilmour v. Carleton Condominium Corporation No. 93, 2025 ONCAT 37

Order under Rule 43.1 (g) of the Condominium Authority Tribunal's Rules of Practice.

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Eric Gilmour

Self-represented

The Respondent,

Carleton Condominium Corporation No. 93

Represented by Emily Deng, Counsel

MOTION DECISION AND ORDER

- [1] The Applicant, Eric Gilmour (the "Applicant"), a unit owner in the Respondent, Carleton Condominium Corporation No. 93 ("CCC 93"), filed an application with the Tribunal relating to the charging of his hybrid vehicle when using his designated parking spot. At the outset of this Stage 3 hearing, CCC 93 brought a motion to dismiss the case pursuant to the Tribunal's Rules of Practice on the basis that the Tribunal has no legal power to hear or decide this case.
- [2] As explained below, after considering the submissions from the parties, I have decided to grant the Respondent's motion. The application is dismissed.
- [3] In the problem description provided by the Applicant when he filed the case, he stated that since moving into his unit in May 2024 he had been plugging in his vehicle at his designated parking spot, using the existing plug on the bollard at his parking spot. At some point, CCC 93 cut off power to the plug at the bollard. This case is, essentially, a dispute about the Applicant's right to continue to use the electrical supply in the common element bollards to charge his hybrid vehicle.
- [4] The issue on this motion is whether this is a dispute that falls within the Tribunal's jurisdiction as set out in s. 1 (1) of Ontario Regulation 179/17 ("O. Reg. 179/17") under the *Condominium Act, 1998* (the "Act"). Section 1 (1) (d) of O. Reg. 179/17 includes the following types of disputes relating to the provisions of a

condominium's governing documents within the jurisdiction of the Tribunal:

- (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.

- [5] In his responding submissions, the Applicant states that both clauses 1 (1) (d) (ii) and (iii) are applicable; the former because, given that CCC 93 is attempting to limit what can and cannot be done with vehicles within the common elements, the corporation is “governing vehicles”, and the latter because the outlets on the bollards were specifically included for the use of parked vehicles. He submits that the bollard and outlet are features of the parking space much like the asphalt and concrete curb.

- [6] I understand the logic in the Applicant's submission; the practical consequence of CCC 93's action in cutting off the electrical supply may impact the Applicant's use of his vehicle. However, in order for the Tribunal to have jurisdiction here, there must be a provision in the CCC 93's governing documents that actually 'governs' an automobile or parking in respect of this dispute. There is not. There is no part of the extensive parking rules (Rules 23.1- 23.13) that mention either the bollards or electrical plug-ins and their use by owners. There is no definition of a designated space at all, let alone what it encompasses.
- [7] The Applicant refers to two provisions in CCC 93's Rules – Rule 36 and Table C to the Rules – as a basis for his application. Rule 36 states:

Corporation/Unit Owner Maintenance Responsibilities

An advantage of condominium living is that the Corporation is responsible for maintaining the common elements. The common elements may be defined as everything outside of the interior of your unit, with the exception of your exclusive use area. In this latter case, the Corporation will do necessary repairs for normal wear and tear, but the individual unit owners are responsible for repairing damages, which are not normal wear and tear. Some of the responsibilities of the Corporation include: grass cutting, hedge clipping, tree pruning, snow removal, ice and salting (See following Charts of Maintenance Responsibilities.)

Table C of the Chart indicates that hydro charges for electricity used in common areas (exterior lighting, bollards and site office) are the responsibility of the corporation.

- [8] Neither of these provisions are matters that can be said to relate to automobiles or parking. Read together, they may speak to CCC 93's responsibility for electricity costs used in the bollards, but that is not an issue for the Tribunal.
- [9] Both parties referred me to the Tribunal's decisions in *Kong v. Toronto Standard Condominium Corporation No. 1959*¹ ("Kong") on the issue of jurisdiction relating to electric vehicle charging stations (EVCS). Ms. Kong brought an application to the Tribunal because she wanted to use the EVCS in visitor parking. When the matter initially came to the Tribunal it was dismissed on the basis that the statutory limitation period for bringing the application had passed. Ms. Kong appealed that decision, and, on consent of the parties, the Divisional Court set aside the decision, and the matter was sent back to the Tribunal for determination of the

¹ *Kong v. Toronto Standard Condominium Corporation No. 1959*, 2021 ONCAT 96 (CanLII) and *Kong v. Toronto Standard Condominium No. 1959*, 2021 ONCAT 109 (CanLII)

remaining issues in the application. It is important to note that the Divisional Court did not address any jurisdictional issue. In her decision, the Tribunal Member stated that she understood that it was the Divisional Court's intention that the application be dealt with on its merits, though she stated that it was not clear that either section 1 (1) (d) (ii) or (iii) extend the jurisdiction to disputes over EVCSs. Though the Member's conclusion was that jurisdiction was tenuous, to the extent that the application was brought for interpretation of provisions related to access to visitor parking, it fell within the Tribunal's jurisdiction. The application was, after a hearing, dismissed.

[10] A review of the Kong decisions does not suggest that the issue of a dispute about EVCS was found to fall within the Tribunal's jurisdiction, as submitted by the Applicant, rather, more crucially, there must be a 'provision' in the governing documents which might trigger jurisdiction. As noted above, that is not the case here.

[11] The Applicant may well have had an expectation when he purchased his unit that he would be able to plug in his vehicle at the outlet in the bollard. He may have, as he asserts, satisfied himself that there was no restriction on the use of the outlet when he reviewed documents at the time of purchase of the unit. Those are matters that may possibly be pursued in a different forum. However, the question of whether the Applicant can safely access an electrical supply for his vehicle and on what terms, if any, ought to be a matter that the parties, acting reasonably, can resolve between them. I urge them to do so.

[12] Neither party requested costs, and none are awarded.

ORDER

[13] Pursuant to Rule 43.1 (g) of the Tribunal's Rules of Practice, the Tribunal orders that this application be dismissed.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: March 4, 2025