

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 21, 2025

CASE: 2024-00530N

Citation: Senitzoglou v. Toronto Standard Condominium Corporation No. 2729, 2025 ONCAT 81

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

Member: Roger Bilodeau, Member

The Applicant,

George Senitzoglou

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2729

Represented by Shawn Pulver, Counsel

The Intervenor,

Danny Edwards

Self-Represented

Hearing: Written Online Hearing – December 12, 2024 to April 13, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is the owner of a unit of the Respondent, Toronto Standard Condominium Corporation No. 2729 (“TSCC 2729”). The Intervenor is the Applicant’s tenant (“tenant”), and he parks his van in an outdoor parking space owned by the Applicant. TSCC 2729 claims that the tenant’s van is in violation of its Rules and its Declaration on account of the van’s height.
- [2] The Applicant seeks an order that his tenant be allowed to park his van in the designated parking space, as well as for the reimbursement of his filing fees of \$200. He also seeks an order that TSCC 2729 should revise its Rule 8 in regard to the height of vehicles. For its part, TSCC 2729 alleges that the height of the tenant’s van exceeds the limit prescribed by its governing documents and that it should be removed from the parking space, at the expense of the Applicant and

Intervenor. TSCC 2729 also seeks substantial indemnity costs.

- [3] The Intervenor did not participate in this case, although he was given notice of it by the Applicant and by Tribunal staff. Be that as it may, I am satisfied that the Intervenor was aware that this case was proceeding and that he has chosen not to participate.

B. RESULT

- [4] For the reasons set out below, TSCC 2729 is entitled to enforce the relevant provision of its Declaration which prescribes a limit in regard to the height of motor vehicles which occupy a parking space and to seek the removal of the van from the Applicant's parking space. I make no order as to costs.

C. BACKGROUND

- [5] The Applicant took possession of his unit in June 2020 and the tenant has been his first and only tenant since that date. The Applicant concedes that due to his oversight, the GMC Savannah van belonging to the tenant, as well as the vehicle belonging to the tenant's partner, were not registered with TSCC 2729 until mid-April 2024.
- [6] The parties disagree as to how often the tenant's van is parked in the outdoor parking spot owned by the Applicant. TSCC 2729 maintains that the van is in the parking spot intermittently and that other vehicles have also been using that parking spot.
- [7] For their part, the Applicant and tenant state that the van has been in the Applicant's parking spot continuously since June 2020. The Applicant further states that the tenant told him at the time of signing the lease of his intention to park the van in the parking spot because it is close to the unit. They also add that the tenant's partner has used a street parking permit for her vehicle at all relevant times. In sum, the Applicant and tenant maintain that there has never been an issue until now about the van being in the Applicant's outdoor parking spot since the tenant moved into the unit over 4 years ago.
- [8] For the record, the van is plain white in color with no commercial markings whatsoever. It is a personal van which the Applicant's tenant uses for his work. With a rack and ladder on its roof, the van's height is 238.7 cm (214 cm without the rack), being 48 cm above the 1.90 metre height limit.
- [9] The parties disagree on whether it is a commercial vehicle or not. The Applicant states that it is not a commercial vehicle as defined by Ontario Regulation 419/15

under the *Highway Traffic Act* because its weight is well below the threshold of 4,500 kilograms set out by that regulation. He also adds that no damage or safety concerns have arisen at anytime as a result of the van being parked in the parking space.

[10] For its part, TSCC 2729 reiterates that its Rule 8 only allows for “private passenger automobiles, station wagons, compact vans, sport utility vehicles or motorcycles as customarily understood.” It goes on to add that a van with a rack and ladder on its roof is customarily understood as being a commercial vehicle. It also adds that on the GMC website, the GMC Savanah Cargo is listed in its Commercial section. It, therefore, concludes that the van is a commercial vehicle and not a passenger automobile as customarily understood.

[11] The Applicant received TSCC 2729’s initial complaint by way of an email from its then condominium manager on April 8, 2024. The relevant excerpts from that email read as follows:

There is a commercial vehicle (looks like Lic#BT 63932) that continues to parking (sic) in your parking spot (#49) at...This vehicle is actually against the rules as commercial vehicle are not permitted to park on the premises. Kindly cease parking this vehicle as I am being asked to ticket and/or tow any vehicles on the premises that are against the Condominium Documents.

As can be seen, there was no mention of the vehicle’s height.

[12] The next day, the Applicant and the then condominium manager spoke by telephone about this matter and, more specifically, about the height of the van. During that conversation, the fact that the van exceeded 1.90 m was raised for the first time by the condominium manager.

[13] On April 11, 2024, the Applicant responded by email to the then condominium manager to explain that the vehicle is not a commercial vehicle and to ask for an exemption to the height requirement, adding that the height of the vehicle does not affect any residential unit, parking, or overall enjoyment of the common elements or resident spaces of TSCC 2729. In that email, the Applicant also gave several examples of contemporary vehicles which exceed the height requirement, even without a roof rack. He also asked the board of TSCC 2729 to consider revising its Rule 8 to accommodate modern-sized vehicles.

[14] On April 15, 2024, TSCC 2729 responded that the vehicle was too long to be in the Applicant’s parking space, in spite of there being no restriction on vehicle length in its Rules. Neither party offered evidence in regard to its length. From a picture of the van in the parking space, which was provided by TSCC 2729, one

can see that the van's bumper likely exceeds the length of the parking space by 3 or 4 inches.

- [15] After the Applicant filed his application with the CAT, the new condominium manager (John Benjamin Hishon) sent an email to the Applicant on October 22, 2024 stating that a resolution offer would be for the tenant to obtain a city street parking permit for his van and that TSCC 2729 would write a letter in support of that permit, stating that there was no other space to park the vehicle. In that email, TSCC 2729 also wrote as follows in regard to the impact of the tenant's van being parked in the Applicant's parking space, without offering any evidence or proof in that regard:

This decision is made to ensure the character of the community, protect the property from damage and protect the physical and mental health of the community.

- [16] As a final point or further alternative, TSCC 2729 requested in its submission that the Applicant's parking spot should only be used for the vehicle belonging to the tenant's partner (being a Mercedes E53) and that the van should be parked elsewhere.

- [17] For ease of reference, TSCC 2729's Rule 8 reads as follows:

For the purpose of these Rules, "motor vehicle" means a licensed and roadworthy private passenger automobile, station wagon, compact van, sport utility vehicle (SUV) or motorcycle as customarily understood. No motor vehicle parked upon any Common Elements or in any Parking Unit shall exceed a height of 1.90 meters. For the purpose of these Rules "motor vehicle" shall not include a trailer, boat, snowmobile, go-cart, all terrain vehicle (ATV) or truck of any kind.

- [18] In addition, TSCC 2729's Declaration defines a motor vehicle and the corresponding height limitation as follows:

Motor Vehicle means and shall be restricted to a private passenger automobile, motorcycle, station wagon, minivan, sport utility vehicle (SUV) or truck not exceeding 1.90 metres in height, truck, trailer, recreational vehicle, motor-home, boat and snowmobile, save and except that the words "Motor Vehicle" shall not exclude any type of commercial, construction or loading vehicle which is used by the Declarant or any of its employees, agents, representatives or contractors in the course of constructing, completing, servicing or maintaining this Condominium

- [19] As a final point, TSCC 2729's Declaration provides that parking units are to be

used only as set out in the following segments of s. 4.03 (a):

Parking Units to be used by the Unit Owners or such Unit Owner's occupants ("Residential Parking Units") shall be used and occupied only for Motor Vehicle parking purposes, in strict accordance with the Rules in force from time to time. ... The Board shall have the right from time to time to exclude such other vehicles as the Board may wish to exclude from the use of Residential Parking Units. ... and it shall be the responsibility of the Owner to ensure that their vehicles can be properly operated and parked in parking areas of this Condominium. In no instance shall any portion of any motor vehicle parked within a Residential Parking Unit protrude beyond the boundaries of the Parking Unit and consequently encroach upon any portion of the Common Elements or upon any other Parking Unit.

D. ISSUES AND ANALYSIS

Issue 1: Is the Applicant in violation of TSCC 2729's governing documents (i.e. the Declaration and/or Rules) as they relate to the height restriction for parking a motor vehicle?

- [20] The Applicant recognizes that his tenant's van exceeds the TSCC 2729's height restriction but that the violation is not egregious enough to impact the TSCC 2729' community. He takes that position on the basis of the van's height without the roof rack, being 214 cm and which does exceed TSCC 2729's height limit for motor vehicles.
- [21] For its part, TSCC 2729 has provided a photograph of the van in the parking space. That photograph shows that the roof rack is installed on the van's roof and there was no evidence from any party that the roof rack is installed or not installed at various times. For the purposes of assessing this matter, I therefore accept that the relevant height of the van must take into account the rack which is installed on its roof. All parties agree that the height of the van with the roof rack measures 238.7 cm.
- [22] I find that the language in the relevant provisions of TSCC 2729's Declaration and Rules is clear in that the height of motor vehicles in a parking unit is limited to 1.90 m.
- [23] As a result, the van's height exceeds the height limit for motor vehicles set out in TSCC 2729's governing documents. The Applicant and his tenant are therefore in breach of the relevant provisions of TSCC 2729's Rules and Declaration in that regard.

Issue 2: Are TSCC 2729's parking rules in relation to the height restriction of a motor vehicle reasonable?

[24] This question can also be framed as whether TSCC 2729's Rule 8, which imposes a height restriction for motor vehicles in a parking space, is valid and enforceable.

[25] The Applicant submits that TSCC 2729's vehicle height restriction is unreasonable, and that the height of his tenant's van does not affect any residential unit, parking area or overall enjoyment of the common elements or resident spaces of TSCC 2729. He goes on to provide several examples of personal vehicles in today's world which exceed TSCC 2729's vehicle height restriction, even without a roof rack. He is, therefore, of the view that Rule 8 is outdated and is requesting that TSCC 2729 should revise that rule to accommodate contemporary vehicles.

[26] For its part, TSCC 2729 submits that the test for the reasonableness of a rule is found in a combined reading of s. 58 (1) and (2) of the *Condominium Act, 1998* (the "Act"), which provide as follows:

58 (1) 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,

(a) promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or

(b) prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation.

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

[27] TSCC 2729 further submits that its restriction on vehicle height in parking units is reasonable on account of the fact that the parking space is located in its central courtyard, which is landscaped and surrounded by residential units. It adds that its parking area is in full view of all owners' windows and that both owners and the Board have expressed their preference for a parking lot reserved for vehicles measuring 1.90 metres or less in height, as well as the temporary parking of service vehicles, to maintain the residential nature of the landscaped parking lot. TSCC 2729 argues that commercial/service type vehicles such as the tenant's van change the character of its neighbourhood, affect its only green space and negatively impact the visual enjoyment of the courtyard.

[28] Notwithstanding the respective submissions of the parties in regard to the

reasonableness of Rule 8, I do not need to decide that question in light of the wording of the relevant provision of the Declaration and the fact that the criteria of reasonableness, among others, which is set out in s. 58 (2) of the Act, only applies to rules. Those criteria do not apply to TSCC 2729's Declaration, which in this case provides an explicit and enforceable height limit for motor vehicles in a parking space.

- [29] Before concluding this section, I also wish to add for the benefit of all concerned that the criteria which are set out in s. 58 (1) and 58 (2) of the Act do not constitute a "test" for the reasonableness of a given rule which is adopted by a condominium corporation. The impact of those two subsections is rather to establish three separate criteria for determining whether a condominium rule is valid and enforceable.

Issue 3: What remedy, if any, should be directed in this case?

- [30] Under s. 1.44 (1) 2 of the Act, I order that TSCC 2729 is entitled to enforce the relevant provision of its Declaration which prescribes a limit on the height of motor vehicles which occupy a parking space and to seek the removal of the van from the Applicant's parking space. As a result, I find that the tenant is prohibited from parking his van in the Applicant's parking space on account of the van's height.
- [31] On a separate point, this Tribunal has no authority to order TSCC 2729 to revise its Rules or its Declaration in regard to vehicle height or any other matter, as requested by the Applicant. On the other hand, TSCC 2729 is at liberty to do so in accordance with the conditions and limitations which are set out in the Act.

Issue 4: Should there be an award of costs?

- [32] The Applicant seeks an order requiring TSCC 2729 to reimburse him for the Tribunal's fees (\$200) that he paid to file this application. For its part, TSCC 2729 seeks substantial indemnity costs on the grounds that this case is about a reasonable request to remove the tenant's van from the Applicant's parking space on the basis of a clear breach of its Declaration and Rules.
- [33] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Section 1.44 (2) states that an order for costs "shall be determined in accordance with the rules of the Tribunal."
- [34] The Tribunal's Rules of Practice include the following rules that are relevant to the issue of costs:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

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.

[35] It is well established that any award of costs is discretionary. In this case, the Applicant was unsuccessful, but I am struck by the fact that TSCC 2729 pursued the enforcement of its governing documents in an awkward manner which was not always consistent with its governing documents. In particular, its position for wanting the van removed from the parking space ranged from the van being a commercial vehicle, followed by concerns about its height, its length, as well as the character of the community and, finally, the physical and mental health of the owners. In addition, TSCC 2729 did not enforce the relevant provision of its governing documents for 4 years. Although enforcement can be pursued or stepped up at any time, the fact remains that TSCC 2729 could have acted much sooner in terms of pursuing the enforcement of its governing documents vis-à-vis the Applicant and his tenant in regard to the limitations on the height of vehicles in a parking space.

[36] In the circumstances of this case, as well as in accordance with the Act and the Tribunal's general rule in regard to costs set out in its Rule 48.2, I decline to exercise my discretion, and I therefore make no order as to costs.

E. ORDER

[37] The Tribunal orders that:

1. TSCC 2729 is entitled to enforce the relevant provision of its Declaration which prescribes a limit on the height of motor vehicles which occupy a parking space and to seek the removal of the tenant's van from the Applicant's parking space;
2. There is no order as to costs.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: May 21, 2025