

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 20, 2021

CASE: 2020-00390N

Citation: Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48

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

Member: Nicole Aylwin, Member

The Applicant,

Peel Condominium Corporation No. 96
Represented by Natalia Polis, Counsel

The Respondent,

George Psofimis
Self-Represented

Hearing: Written Online Hearing – March 11, 2021 to April 27, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case pertains to the enforcement of provisions of the declaration, by-laws or rules of a corporation that prohibit, restrict, or otherwise govern pets or other animals in a unit, the common elements, or the assets, if any, of the corporation.
- [2] The Applicant, Peel Condominium Corporation No. 96 ("PCC 96") asserts that the Respondent, Mr. George Psofimis, who is a unit owner in PCC 96, is in breach of the corporation's governing documents, specifically its Rule 2.1 (the "pet restriction rule") which restricts the weight of household pets to 40 pounds. According to PCC 96, Mr. Psofimis is the owner of a German Shepherd dog that exceeds this weight limit.
- [3] PCC 96 also asserts that this is not the first time Mr. Psofimis has owned a dog that contravenes the rules. They submit that prior to obtaining his current dog, Mr. Psofimis owned another German Shepherd dog that exceeded the weight limit. This dog was given legacy status by PCC 96 through a written agreement that stated that Mr. Psofimis would not obtain a new pet in contravention of the rules upon the dog's passing. It is PCC 96's position that despite this agreement, Mr. Psofimis did obtain a new German Shepherd after his previous dog's passing and

that this new dog is in violation of the pet restriction provisions.

- [4] Consequently, PCC 96 has asked the Tribunal to find that Mr. Psofimis is in breach of the pet restriction rule and for an order under section 1.44(1)2 of the *Condominium Act, 1998* (the "Act") restricting Mr. Psofimis from acquiring any further pets in contravention of PCC 96's governing documents. PCC 96 has also requested that the Tribunal order Mr. Psofimis to pay damages and costs related to enforcing the rules.
- [5] Despite having joined and participated in the Stage 2 - Mediation phase of the Tribunal process, Mr. Psofimis did not participate in this Stage 3 - Tribunal Decision hearing. The Stage 2 Summary and Order noted that Mr. Psofimis was aware of the case and ordered him to prepare for the Stage 3 proceeding. At the outset of this Stage 3 hearing, Mr. Psofimis was contacted by Tribunal staff who confirmed that he was aware of the case and his responsibility to participate. Nonetheless, Mr. Psofimis offered no arguments or evidence for the Tribunal to consider in this matter.
- [6] For the reasons set out below, I find that Mr. Psofimis is in breach of PCC 96's Rule 2.1, and, under s.1.44(1)2 of the Act, Mr. Psofimis is ordered to remove his dog from the premises within 30 days of the date of this order.
- [7] I have also determined that under s.1.44(1)3 Mr. Psofimis will be required to pay PCC 96 the amount of \$536.00 in damages as a result of an act of non-compliance.
- [8] Finally, I award costs of \$200 to PCC 96 for the Tribunal fees and the amount of \$3926.75 for legal fees.

B. ISSUES & ANALYSIS

Issue 1: Is Mr. Psofimis in breach of the Corporation's governing documents, specifically its Rule 2.1 that restricts the weight of a "household pet" to 40 pounds?

- [9] Section 2.0 of PCC 96's Rules and Regulations contain several provisions governing animals, pets, livestock, and fowl. Rule 2.1 speaks specifically to household pets. It reads:

No animals, reptiles, fowl or other exotic pets other than two (2) household shall be permitted to be kept on any part of the common elements and in a UNIT.

A "household pet" is defined as a dog, domestic cat or caged bird, weighing no more than 40 pounds.

- [10] PCC 96 provided written testimony from Ms. Alvina Kiselewski to support its assertion that Mr. Psofimis currently owns a dog that violates this rule. Ms. Kiselewski is a director on PCC 96's board of directors (the "Board"). In her testimony, Ms. Kiselewski provided some history between the parties to provide context for the current dispute and issues to be decided. This history is summarized as follows.
- [11] According to Ms. Kiselewski, this is not the first time that Mr. Psofimis has owned a dog that exceeded the household pet weight limits found in the pet restriction rule. Ms. Kiselewski notes that Mr. Psofimis previously owned a German Shepherd ("1st German Shepherd"). After this German Shepherd died, Mr. Psofimis had a second German Shepherd ("2nd German Shepherd"). When PCC 96 became aware of the 2nd German Shepherd they required Mr. Psofimis to register the dog with the condominium through an agreement that provided legacy status for the 2nd German Shepherd. In addition to providing legacy status for the 2nd German Shepherd, the agreement also contained a signed acknowledgement from Mr. Psofimis that he owned a dog that was in violation of the rules, that the Board had made an exception for the 2nd German Shepherd, and that he would not replace the 2nd German Shepherd with another dog weighing over 40 pounds upon its passing. This agreement was signed by Mr. Psofimis in June 2017.
- [12] Sometime between June 2017 and March 2020 the Board become aware that Mr. Psofimis had acquired a new German Shepherd puppy ("3rd German Shepherd") that was likely to contravene the pet restriction rule as it matured. On March 16, 2020, PCC 96 sent a letter to Mr. Psofimis that notified him of such and advised him that he had two weeks to rehome his puppy. PCC 96 followed up on this letter by email on March 31, 2020. Finally, in July 2021, PCC 96 instructed its lawyer to write to Mr. Psofimis to outline the rules and provide Mr. Psofimis with approximately two weeks to remove his dog, which had reached maturity and now exceeded the weight limit as set out in the rules. This letter also noted that should Mr. Psofimis fail to remove his dog, the corporation would commence legal action against him as a unit owner and that he may be responsible for costs incurred by PCC 96 for enforcing the rule.
- [13] Ms. Kiselewski also testified that after the second email of March 31, 2020, Mr. Psofimis verbally confirmed to condominium management that he had no intention of removing his German Shepherd from the property. Thus, PCC 96 believes the German Shepherd continues to reside with Mr. Psofimis.
- [14] Given Ms. Kiselewski's testimony, which I have no reason to question, I agree that it is reasonable to assume that Mr. Psofimis owns and keeps within his unit,

the 3rd German Shepherd dog, which has not been given legacy status by PCC 96. Mr. Psofimis has not offered any evidence to dispute this fact.

[15] However, as per the pet restriction rule it is not dogs, generally, that are restricted but household pets over 40 pounds. The dog owned by Mr. Psofimis must weigh over 40 pounds to violate the rule. In its submissions to the Tribunal, PCC 96 notes that German Shepherds are large dogs, both in their weight and height. PCC 96 cites the American Kennel Club website which indicates that a full-grown male German Shepherd can weigh between 65 and 90 pounds and a female German Shepherd can weigh between 50-70 pounds. Thus, PCC 96 argues that it is reasonable to assume that Mr. Psofimis' 3rd German Shepherd, having matured into an adult dog, now exceeds the weight limit. Again, I agree. Based on these submissions, even a small adult German Shepherd dog - a female at the low end of its weight class - is likely to exceed the 40-pound weight limit. Mr. Psofimis has offered no evidence to suggest his dog weighs 40 pounds or less.

[16] Thus, I find Mr. Psofimis is in breach of PCC 96's governing documents, specifically its Rule 2.1 which restricts the weight of a "household pet" to 40 pounds.

Issue 2: Should the Tribunal order the respondent to remove his dog as per s.1.44(1)2 of the Condominium Act?

[17] As argued by PCC 96, condominium corporations are statutorily mandated to enforce their rules, as per s.17(3) of the Act which reads:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[18] PCC 96 also notes this enforcement is only half of the equation and that there is also a duty on owners to comply with those rules as per s.119(1) of the Act, which provides that:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

[19] They note that these interdependent responsibilities - to enforce and comply - are crucial to maintaining a harmonious condominium community. Here PCC 96 refers

to several pieces of case law, including *York Condominium Corporation No. 26 v. Daniela Ramadan*¹, wherein Justice Strathy notes that

It is quite obvious that unless the corporation takes reasonable steps to enforce its rules, in a reasonable matter, chaos will result. Owners and occupiers are entitled to expect that others will observe the rules and that if they fail to do so, the corporation will take measures to enforce the rules.

- [20] Justice Strathy continues to discuss this interplay between enforcement and compliance and in doing so refers to Wood J. in *Muskoka Condominium Corp. No. 39 v. Kreuzweiser*,² at para. 8, which reads:

Section 19(1) of the *Condominium Act* provides that all owners and occupiers of units must comply with the condominium corporation's declarations and rules. Section 17(3) of the Act requires a condominium corporation to enforce the declaration and rules. These provisions are crucial to the orderly operation of condominiums and for the protection of condominium unit owners and occupiers. The owner of a condominium unit does not have a classic freehold. He or she is not at liberty to deal with property in the same manner as the owner of a single family residential dwelling might be. The nature of a condominium is that in return for the advantages gained through common ownership of certain elements some degree of control over what can be done with those common elements is given up. The details of what is given up are set out in the condominium declaration and its bylaws and rules. It is both the right and obligation of a unit owner or occupier to see that these are obeyed. *Re Carleton Condominium Corporation N 279 v. Rochon et al*, [1987] O.J. No. 417, Ont C.A. Finlayson J.A. at para. 26.

- [21] Additionally, PCC 96 refers to *Metropolitan Toronto Condominium Corp. No. 776 v. Gifford*³ to further demonstrate the important relationship between enforcement and compliance. In this case an elderly couple was ordered to remove their dog and to comply with the rules. Here Herold D.C.J notes,

While I do not disagree that each case must be decided on its own merits, at least by the Court if not by the board who appears to have no discretion, the general message surely must be that enforcement will be expected and exceptions will be rare and will require a court application in any event. A longer-term result of this position surely will be that people will only move into the building if they are prepared to live by the rules of the community which they are joining — if they are not they are perfectly free to join another community whose

¹ 2011 ONSC 6726

² [2010] O.J. No. 1720, 2010 ONSC 2463 (Ont. S.C.J.)

³ (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.)

rules and regulations may be more in keeping with their particular individual needs, wishes or preferences.

- [22] Together, these cases affirm the general proposition that it is the nature of condominium living that, in return for the advantages gained through common ownership of certain elements, some degree of control over what can and cannot be done is relinquished; and, that both enforcement of the rules and compliance with the rules are equally important to ensuring orderly condominium communities.
- [23] I do not know the reasons why Mr. Psofimis has insisted on obtaining a breed of dog the characteristics of which are likely to render him in contravention of PCC 96's rules. However, in choosing to own a unit in PCC 96 Mr. Psofimis has a responsibility to abide by the rules of the community, which, in this case, means abiding by the pet restriction rule which limits the weight of household pets.
- [24] It is also the case that Mr. Psofimis should have reasonably expected that this rule would be enforced by PCC 96. Before beginning this application, PCC 96 took several steps to ensure Mr. Psofimis was aware of the rule and that they would enforce the rule. As discussed above, Mr. Psofimis signed an agreement in 2017 indicating he was aware of the pet restriction rule and would abide by it. PCC 96 also provided documentary evidence that in February of 2019 a notice was sent to all unit owners reminding them of the pet restriction rule. Finally, when the Board became aware that Mr. Psofimis had a pet that was likely to contravene the rules, they provided written notice of the rule and offered Mr. Psofimis two opportunities (March 2020 and July 2020) to rehome his dog voluntarily, which he has not done.
- [25] Based on this evidence, I find that Mr. Psofimis has an obligation under the Act to follow the rules of the Corporation and that PCC 96 has an obligation to enforce their rules, which in this case has meant pursuing for an order to remove the dog.
- [26] Under s.1.44(1)2, of the Act the Tribunal has the power to make an order "prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action." Under this section, I will order Mr. Psofimis to remove his dog from PCC 96 premises within 30 days of the date of this Order.
- [27] I have also been asked by PCC 96 to order that Mr. Psofimis be restricted from obtaining and residing with any new pets that exceed the 40-pound weight limit as set out in the rules. I understand this request is being made based on the history of this dispute, where Mr. Psofimis has demonstrated a pattern of acquiring dogs that are in contravention of the pet restriction rule. I understand that there is a concern that upon compliance with an order to remove this current dog, that it may be

replaced by another that is not in accordance with the rules.

[28] There is no need for me to make such an order. The rules of PCC 96 already prevent Mr. Psofimis from replacing his current pet with a new one that exceeds 40 pounds and as discussed above, Mr. Psofimis is required to follow those rules and I would encourage him to do so.

Issue 3: Should an award of costs or damages be assessed?

[29] PCC 96 seeks reimbursement of its expenses relating to seeking enforcement compliance with the pet restriction rule against Mr. Psofimis, either as an award of costs under s.1.44(1)4 or as compensation for damages under s.1.44(1)3.

[30] Subparagraph 1.44(1)3 and 4 of the Act allows the Tribunal to make an order:

... directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed"; and,

... directing a party to the proceeding to pay the costs of another party to the proceeding.

[31] PCC 96 has asked the Tribunal to award the following amounts:

1. \$721.00 with respect to PCC 96's legal counsel reviewing the matter and drafting the letter dated July 27, 2020.
2. \$200.00 for the costs of bringing this application.
3. \$3,926.75 legal fees incurred with respect to this proceeding.

[32] PCC 96 suggests two bases on which it should be entitled to reimbursement. First, PCC 96 compares its situation to that of the applicant in *Rahman v. Peel Standard Condominium Corporation No. 779* ("Rahman"). PCC 96 suggests that the Tribunal may award damages for acts of non-compliance. In *Rahman*, the Applicant was awarded damages of \$1500 under s.1.44(1)3 of the Act to compensate "some of the time, trouble and expense [the Corporation] has caused him due to its acts of non-compliance."

[33] The circumstances under which a damages award was made to the Applicant in the *Rahman* case are very different than those in this case. In *Rahman*, the condominium aggressively pursued Mr. Rahman for parking violations, issuing him multiple tickets that required him to spend time and energy to cancel at the municipality. The Tribunal also found that Mr. Rahman suffered stress and anxiety

related to this aggressive behaviour for which he had to seek medical help.

[34] The damages award made to Mr. Rahman was to compensate him for some of the aggressive behaviour exhibited by the Respondent that caused significant hardship to Mr. Rahman. As noted, this case is not similar. PCC 96 is not in circumstances like Mr. Rahman's. The necessity of retaining legal counsel to write a compliance letter and pursuing this enforcement action due to Mr. Psofimis' defiant attitude is not comparable to the aggressive and harmful conduct to which Mr. Rahman was exposed.

[35] Second, PCC 96 cites *Chan v. Toronto Standard Condominium Corporation No. 1834*⁴ ("Chan"), for the principle that it is not fair or equitable for all unit owners to subsidize the costs of enforcing compliance when they result from unwarranted conduct by one unit owner.

[36] In Chan, the unit owner, Ms. Chan, was found to have been "persistently non-compliant" and unreasonable with respect to her obligations as a unit owner. She repeatedly ignored letters and warnings from the Corporation advising her of the condominium's rules and the consequences of non-compliance with those rules.

[37] On that basis, the Court justified an award of costs on a full indemnity basis in favour of the condominium, noting that,

...when the Corporation has given repeated warnings of the cost consequences of enforcement to the unit owner and the warnings are ignored, the costs are the consequence of the unit owner's own actions. In these circumstances, the other blameless unit owners should not be made to bear any part of those costs and it is therefore appropriate that the non-compliant unit owner pay the costs on a full recovery basis.

[38] The circumstances in this case are similar. There is no question that Mr. Psofimis was aware of the pet restriction rule. There is also no question that Mr. Psofimis was aware of the potential cost consequences of non-compliance. Here, PCC 96 notes that it has a provision in its rules that alerts owners to the fact that they may be responsible for costs associated with non-compliance. It reads:

Any loss, costs, damages incurred by the Corporation by reason of a breach of any rules and regulations in force from time to time by any Owner shall be borne by such "Owner" and may be recovered by the Corporation against such "Owner" in the same manner as common expenses.

⁴ 2011 ONSC 108 (CanLII)

- [39] Moreover, PCC 96 provided Mr. Psofimis directly with multiple reminders of the pet restriction rule and the consequences of not complying with this rule. They took progressive steps to enforce compliance, and most of these steps did not result in any costs being passed to Mr. Psofimis. First, in 2017, PCC 96 entered into an agreement with Mr. Psofimis wherein PCC 96 provided legacy status to his 2nd German Shepherd and Mr. Psofimis agreed that he would not replace that dog with another that violated the rules when the 2nd German Shepherd passed. Mr. Psofimis signed this agreement and then disregarded it when he became the owner of the 3rd German Shepherd. PCC 96 then sent letters and emails from management – at no cost to Mr. Psofimis – which, were also ignored. Only then did PCC 96 engage their legal counsel to draft the lawyer’s letter of July 27, 2020, presumably to impress upon Mr. Psofimis the importance of both complying with the rules and the consequences of not complying. This lawyer’s letter was also ignored. Finally, PCC 96 made an application to the Tribunal for the enforcement of the rules.
- [40] I agree with the general principle in Chan that it is not fair that other owners be required to pay for another unit owner’s unwarranted conduct. In this case, Mr. Psofimis’ conduct was indeed unwarranted, and willfully so. Not only did Mr. Psofimis fail to comply with the rules, but he also violated the rules after signing an agreement that indicated he would not. Mr. Psofimis left PCC 96 no choice, given that they are statutorily mandated to enforce their rules, but to incur costs to pursue this matter. It was only after multiple, cost free, attempts to enforce compliance that PCC 96 was required to take steps that led to PCC 96 incurring costs. These costs, if not recovered, remain the responsibility of all unit owners. In this case, this does not seem fair given that Mr. Psofimis appears to have willfully ignored all opportunities to comply with the rules. Mr. Psofimis alone should bear the costs of his decision not to comply. Consequently, I award such costs to PCC 96.
- [41] I will address the cost of the legal letter first. The cost of this letter cannot be characterized as ‘costs’, as that term is used in s. 1.44(1)4 of the Act. However, under s.1.44(1)3 of the Act, the Tribunal may make an “order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.” In this case, the requested compensation for damages is the cost of drafting a legal letter to Mr. Psofimis. Should PCC 96 not be compensated for this cost it will result in monetary damage to other owners who would ultimately absorb the cost of the letter. This is a consequence that given Mr. Psofimis’ behaviour, as noted above, is unfair. In this case, to ensure that other unit owners do not bear the cost of Mr. Psofimis’ willfully defiant conduct,

I will direct Mr. Psofimis to pay the amount of \$536.00 to PCC 96 to compensate them for an act of non-compliance. I note that PCC 96 has requested the amount of \$721.00 for the preparation of the letter. However, in the letter sent to Mr. Psofimis, the cost for the letter is stated to be \$536.00 including HST and disbursements. No explanation for the additional \$185.00 claimed in PCC 96's submissions has been provided. Thus, the \$536.00 will stand as the amount awarded.

- [42] The other two costs claimed by PCC 96 are the Tribunal filing fees and legal fees associated with participating in the Tribunal process. I treat these costs as distinct from damages related to acts of non-compliance as they are costs directly associated with this proceeding.
- [43] This Tribunal has regularly found that when an applicant is successful in their application that they are entitled to recover their filing fees as per CAT's Rule 45.1. I find this is also the case here and Mr. Psofimis will be required to pay PCC 96 \$200 for filing fees.
- [44] Regarding the \$3926.75 requested for legal fees, while CAT Rule 46.1 does not generally allow for the awarding of legal fees, I find there are exceptional reasons based on the facts above. The exceptionality is outlined in the previous paragraphs, including that PCC 96 was required to seek an order from the Tribunal for compliance only because Mr. Psofimis deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters and blatantly disregarded the agreement entered into by him, evidently not in good faith, promising to comply, all of which he did without apparent concern for the clear provision of PCC 96's rules that would make him personally responsible for the condominium's costs arising from his non-compliance. Therefore, on these facts an award of costs in the amount of \$3926.75 is warranted.

C. ORDER

[45] The Tribunal Orders that:

1. Under subparagraph 1.44(1)2 of the Act, Mr. Psofimis will within 30 days of the date of this Order remove his dog from PCC 96 property.
2. Mr. Psofimis will pay the following to PCC 96 within 30 days of the date of this Order:
 - a. The amount of \$536.00 under subparagraph 1.44(1)3 of the Act.

- b. The amount of \$200 for PCC 96's Tribunal fees and the amount of \$3926.75 for PCC 96 legal fees.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: May 20, 2021