

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 7, 2021

CASE: 2021-00090N

Citation: Martis v. Peel Condominium Corporation No. 253, 2021 ONCAT 60

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Laurie Sanford, Member

The Applicant,

Hariette Maris

Represented by Elaine Jair, Counsel

The Respondent,

Peel Condominium Corporation No. 253

Represented by Gareth Stackhouse, Counsel

MOTION ORDER

A. OVERVIEW

- [1] Peel Condominium Corporation No. 253 ("PCC253") moves to dismiss this Application on the grounds that the Condominium Authority Tribunal ("CAT") does not have the jurisdiction to hear it. PCC253 submits that this case is either solely or principally about the application of the *Human Rights Code*, RSO 1990, c. H.19 (the "Code"). The motion submissions were concluded on June 30, 2021, using the online CAT system. It is PCC253's position that human rights issues may only be dealt with by the CAT in the context of a dispute regarding the declaration, by-law or rules of a condominium corporation. As this dispute does not arise in that context, in PCC253's submission, the Application must be dismissed.
- [2] The Applicant, Ms. Hariette Maris, is a condominium unit owner in PCC253. Her son claims an accommodation due to a disability. Specifically, Ms. Maris is requesting, on behalf of her son, that he be permitted to have a dog as an Emotional Support Animal ("ESA"). The dispute concerns the weight of the dog. Ms. Maris' son has already acquired his ESA, a dog which is expected to weigh about 60 to 70 pounds when fully grown. PCC253 contends that the dog must weigh no more than approximately 25 pounds and that this is a reasonable accommodation under the Code. PCC253 takes the position that this case may be

decided without reference to its Declaration, By-Laws, Rules or policies.

- [3] There are three PCC253 documents that are at issue in this Motion. First, there is PCC253's "Pet Rules and Regulations", (the "Pet Rule"). The Pet Rule prohibits dogs in PCC253 and provides no exceptions for service dogs, including ESAs. Second, there is the "Service Animal Policy" ("ESA Policy"). The ESA Policy sets out the requirements for requesting an exemption from the Pet Rule. Included in the ESA Policy are the requirements for the exemption application and restrictions on the type and size of service dog permitted. Those restrictions include a weight limit of 25 pounds. Finally, there is the draft service animal policy, (the "Draft Policy") that was in effect at relevant times and before the ESA Policy was enacted on March 29, 2021.
- [4] Ms. Maris takes the position that this case is about the Rules and policies of PCC253. Specifically, it is Ms. Maris' position that her son may keep his ESA because PSCC253 did not have any valid ESA policies or rules in place at the time the accommodation request was made. It is Ms. Maris' position that PCC253 is seeking to enforce its ESA Policy as though it were a Rule. Ms. Maris submits that the ESA Policy has never been enacted as a Rule and therefore is invalid. Ms. Maris also submits that the dispute involves the Pet Rule. Because the Pet Rule does not specify a weight limit for service dogs, in Ms. Maris' submission, PCC253 may not enforce a weight restriction. It is within the context of the Pet Rule and ESA Policy that the Code accommodation needs to be determined, in Ms. Maris' submission.
- [5] For the reasons set out below, I am dismissing this motion. I find that PCC253 is seeking to enforce, or negotiate from, its ESA Policy. The validity of the ESA Policy is therefore germane. The Pet Rule is also a potential issue if the ESA Policy is found to be invalid. There is also the Draft Policy that was referred to at relevant times during this dispute and its applicability, if any, may also be an issue.

B. ISSUES & ANALYSIS

- [6] Under Ontario Regulation 179/17 to the *Condominium Act, 1998* the CAT has the jurisdiction hear a dispute with respect to provisions in a condominium corporation's declaration, by-laws or rules which "prohibit, restrict or otherwise govern pets or other animals in a unit . . .". Issues such as the validity or enforceability of any such rules fall within the jurisdiction of the CAT.
- [7] To determine the CAT's jurisdiction in this case, the issues I must decide in this Motion may be stated as follows:

1. Is the ESA Policy an issue in these proceedings?
2. Is the Pet Rule an issue in these proceedings?
3. What effect, if any, does the Draft Policy have on these proceedings?
4. Is this matter properly before the CAT?

Issue #1: Is the ESA Policy an issue in these proceedings?

- [8] The Chronology of this dispute is not in dispute except as noted. In December, 1998, PCC253 enacted the Pet Rule prohibiting new dogs coming into the building. The Pet Rule makes no allowance for service animals. In February, 2021, Mr. Martis was prescribed an ESA. The parties dispute the date on which Mr. Martis made his need for an ESA known to PCC253. There is evidence of an email request dated February 10, 2021. On February 12, 2021, PCC253 replied and indicated that the request was a request for exemption from the Pet Rule. The reply set out the information that would be required to be exempted from the Pet Rule, including information about the size of the animal. There was no reference to the allowable weight of an ESA. Sometime after that email but apparently before responding to PCC253, Mr. Maris acquired an ESA, which is expected to grow to 60 to 70 pounds. On February 17, 2021, Mr. Martis provided a response to PCC253 that purported to contain the required information. It was in response to this information that PCC253 wrote to Ms. and Mr. Martis on February 25, 2021 and referred to a maximum weight of 25 pounds for any dog. This letter also referred to the Draft Policy and requested that Mr. Martis ensure that the dog met all the conditions set out in the Draft Policy and schedules to it. On March 29, 2021, the Draft Policy was enacted by the Board of Directors and became the ESA Policy.
- [9] PCC253 submits that the ESA Policy is not relevant to this matter because it was enacted after Mr. Martis made his request for an accommodation and because PCC253 does not seek to enforce the ESA Policy against its owners. The ESA Policy is only to provide guidance, in PCC253's submission. PCC253 submits that the conditions imposed on ESA animals may be varied or added to and that provision is expressly set out in the ESA Policy.
- [10] Ms. Martis submits that PCC253 is seeking to enforce its ESA Policy and in particular the 25-pound weight limit contained in the ESA Policy. PCC253 submits that it might permit a slight variance from the 25-pound weight limit in order to accommodate Mr. Martis. However, there is no evidence before me that PCC253 has considered any other weight limitation or referred to any guidance other than

the ESA Policy in determining what restrictions to place on the weight of Mr. Martis' ESA. Even if PCC253 permits a variance from the 25-pound limit, that limit is apparently the basis for any weight restriction. It appears from the evidence before me that PCC253 initially referred to its Draft Policy and is now attempting to enforce its ESA Policy in this case. Ms. Martis submits that the ESA Policy is in fact an invalidly enacted Rule of PCC253. Accordingly, the validity and enforceability of the ESA Policy are legitimate issues in this case.

Issue #2: Is the Pet Rule an issue in this case

- [11] Ms. Martis originally took the position that the Pet Rule was not an issue in this case. However, in submissions on this motion, Ms. Martis submits the Pet Rule is in dispute. The Pet Rule, in Ms. Martis' submission, does not specify a weight limit on ESAs, or indeed provide for any accommodation for disabilities. In Ms. Martis' submission, she is not requesting the CAT to determine if the weight restriction of 25 pounds is a reasonable accommodation but rather, she "is requesting that CAT determine whether Mr. Martis was reasonable in purchasing his ESA, in light of the declaration, by-laws, rules and policies provided to Mr. Martis at the time of his accommodation request; and whether Mr. Martis should be permitted to have the ESA at the Corporation."
- [12] PCC253 submits that the Pet Rule is not relevant in this matter since PCC253 does not enforce it against those owners with disabilities requiring accommodation. However, it is clear from the correspondence in this case that PCC253 required Mr. Martis to apply for an exemption to the Pet Rule and to meet certain conditions to obtain that exemption. The Pet Rule itself does not provide for exemptions or set out conditions for obtaining them. I conclude that validity, not only of the Pet Rule but of the policies that appear to be in place concerning claiming an exemption from it, are properly an issue in this hearing. The question of the reasonableness of the Pet Rule and the enforceability of the conditions for an exemption are also legitimate matters for the CAT. Ms. Martis submits that at the time of Mr. Martis' request for accommodation, the declaration, by-laws, or rules of PCC253 did not contain any provisions as to the weight of an ESA and therefore no weight limits may now be imposed in this case. That position too brings into question the legitimacy of the Pet Rule and the apparent, informal policy that governed claiming an exemption from it.

Issue #3: What Effect, if any, does the Draft Policy have on these proceedings?

- [13] The parties agree that the Draft Policy is unenforceable against either Ms. or Mr. Martis. PCC253 submits that the Draft Policy is not an issue in this proceeding. Ms. Martis refers to the Draft Policy as being cited in correspondence with Mr.

Martis which refers to the 25-pound weight limit. I agree that a draft policy would not be enforceable. However, it may be relevant for context or as part of the narrative in this matter. Certainly, the correspondence makes clear that PCC253 was relying on the Draft Policy in advising Mr. Martis of the 25-pound weight limit for his ESA.

Issue #4: Is this matter properly before the CAT?

[14] PCC253 submits that this matter could be resolved entirely as a matter of the appropriate accommodation to a disability under the Code. The issue, in PCC253's submission, is whether the weight restriction that PCC253 proposes is reasonable. The question of the reasonableness of the restriction is not what will determine the CAT's jurisdiction to hear this matter. The jurisdictional question is whether this matter is properly before the CAT. The jurisdiction of the CAT, as noted above, extends to disputes about the rules that restrict or govern pets. In this case the ESA Policy and the Pet Rule both purport to restrict or otherwise govern pets in the condominium. There may be circumstances in which the CAT jurisdiction does not extend to policies. However, where a condominium corporation may be attempting to enforce a policy, either directly or indirectly, the question of whether the policy is in reality an improperly enacted rule is a matter that is properly before the CAT. The request for an accommodation is being made in the context of the Pet Rule and the ESA Policy. I conclude that given the issues surrounding both the Pet Rule and the ESA Policy, this matter is properly within the jurisdiction of the CAT.

C. ORDER

[15] The motion to dismiss this Application is denied.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: July 7, 2021