

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 28, 2021

CASE: 2021-00067N

Citation: TW Cross Investments Ltd. v. Peel Standard Condominium Corporation No. 1052, 2021 ONCAT 58

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

Member: Mary Ann Spencer, Member

The Applicant,

TW Cross Investments Limited

Represented by Fatima Vieira, Counsel

The Respondent,

Peel Standard Condominium Corporation No. 1052

Represented by Marc Kemerer, Counsel

MOTION ORDER

A. INTRODUCTION

- [1] TW Cross Investments Limited (the "Applicant") filed an application with the Condominium Authority Tribunal in which it alleged that Peel Standard Condominium Corporation No. 1052 (the "Respondent") did not follow the requirements set out in the *Condominium Act, 1998* (the "Act") when it amended a provision of its declaration relating to animals. The case proceeded to Stage 3 - Tribunal Decision on May 25, 2021.
- [2] The Respondent has brought a motion to dismiss the application before hearing evidence on the basis that the Tribunal does not have jurisdiction to decide the matter. In accordance with Rules 17.1(b) and 41.1(f) of the Tribunal's Rules of Practice, the Tribunal can close a case in Stage 3 - Tribunal Decision if it determines that it has no legal power to hear or decide upon the dispute. The Tribunal received submissions from both parties on this issue.
- [3] I find that the issue in dispute is within the jurisdiction of the Tribunal. Accordingly, the motion is denied and the hearing will proceed.

B. BACKGROUND

- [4] The Respondent is a commercial condominium corporation comprising 48 units. At

its December 1, 2020 meeting, the Respondent's board of directors passed a resolution to amend subsection 4(j) of the corporation's declaration to allow the units to be used for the operation of a veterinary clinic. The section previously allowed only guide and assistance dogs to be in the units.

- [5] The proposed amendment to the declaration was circulated to owners on January 4, 2021. After receipt of consent to the amendment by over 80% of the owners, the amendment was registered with the Peel Land Registry Office.
- [6] The Applicant alleges that the Respondent did not follow the requirements set out in s.107 of the Act to amend the declaration and is asking the Tribunal to order that section 4(j) of the declaration "is invalid and unenforceable and the Respondent Condominium shall apply to the Director of Titles to delete the amendment to the declaration."

C. SUBMISSIONS

- [7] Counsel for the Respondent submits that the Applicant was not entitled to notice of the amendment to the declaration or to vote on the proposed amendment because it had failed to notify the Respondent of a change of corporate name. Therefore, Counsel argues that the Applicant has no standing in the matter and was not entitled to file its application with the Tribunal. Counsel further submits that the Tribunal has no jurisdiction to hear the matter because the application is not an issue about pets/animals but is an issue about the provisions of s. 107 of the Act which sets out the requirements for amending the declaration.
- [8] Counsel for the Applicant submits that the Applicant was under no obligation to provide its change of name to the Respondent and that as the owner of a unit of the Respondent, the Applicant is entitled, in accordance with s. 1.36 of the Act, to file an application with the Tribunal. She submits that there is no basis to support that the Tribunal's jurisdiction excludes review of procedural requirements respecting the declaration provision and notes that s. 1. 41(1) of the Act states that the Tribunal has exclusive jurisdiction to "determine all questions of fact or law that arise in any proceeding before it."

D. ANALYSIS

- [9] I reject the Respondent's submission that the Applicant was not entitled to file the application with respect to the declaration because it has no standing in this matter. Counsel for the Respondent argues that the Applicant has no standing because it failed "to provide the Corporation with the name change to TW Cross as required by the Act" and "was not entitled to the Notice or to vote on the Proposed

Amendment.” Counsel references sections 46.1(2) and 51.1 of the Act. Section 46.1(2) requires an owner to provide the corporation with notice in writing of its name and unit number within 30 days of becoming an owner. Section 51.1 states that in order to vote at a meeting of owners, an owner’s name must appear or be required to appear in the Record of Owners and Mortgagees that section 46.1 requires a corporation to keep and the owner must be entitled to vote at the meeting.

- [10] The Respondent’s Counsel also referred me to the Tribunal’s decision in *Peel Standard Condominium Corporation No. 857 v. Peel Standard Condominium No. 920*, 2021 ONCAT 19. I find the facts of that case not to be relevant to the issues before me. The cited case was dismissed because the applicant was not asking for records under s. 55 of the Act and was found not to be a unit owner of the respondent but rather a joint owner of property with the respondent.
- [11] The right to apply to the Tribunal for resolution of a dispute is not determined by whether an owner’s name appears on a corporation’s Record of Owners and Mortgagees. Section 1.36 (2) of the Act states that “an owner or a mortgagee of a unit may apply to the Tribunal for the resolution of a prescribed dispute with the corporation, another owner or an occupier or a mortgagee of a unit.” “Owner” is defined in the Act as “a person, including the declarant, who is shown as the owner of a common interest in the common elements and a freehold interest in the parcel of land to which the common interest is attached, as described in the declaration, according to the records of the land registry office in which the description of the corporation is registered”. Exhibit A to the affidavit of V. Miculinic, a Service Ontario print out of a record from Land Registry Office # 43, indicates that the Applicant registered a name change from 2680235 Ontario Ltd. to TW Cross Investments Limited on July 9, 2020. This record verifies that the Applicant is the owner of Unit 28, Level 1 of the Respondent corporation and therefore is entitled to file an application with the Tribunal.
- [12] There are no legislative constraints on an owner’s right to dispute prescribed provisions of the declaration, by-laws or rules of a corporation other than those set out in s. 1(3)(1) of O. Reg. 179/17, none of which are applicable to this case. That an owner may not have participated in the process to establish or amend these governing documents, whether eligible to participate or not, does not prohibit them from challenging them. For example, an owner would be entitled to challenge the reasonableness of a corporation rule even if that rule was established before they became an owner.
- [13] The Respondent further submits that the Tribunal does not have jurisdiction to

hear this matter because the dispute is “solely about process” and the Tribunal’s jurisdiction does not extend to s. 107 of the Act which sets out the requirements to amend a corporation’s declaration. I also reject this submission.

- [14] The disputes over which the Tribunal has jurisdiction are prescribed in O. Reg. 179/17. Section 1(1)(d) of the regulation states these include:

Subject to subsection (3), a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:

- (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.

The provision of the Respondent’s declaration at issue in this case states:

Other than an Employment Unit being used for the operation of a Veterinary Clinic including without limitation surgeries, emergency services and pet care recovery services, no pets or animals of any kind shall be permitted in or about the Employment Units other than a Seeing Eye dog or guide dog, dog to assist the hearing impaired or dog to assist the physically challenged.

This provision does “otherwise govern pets or other animals in a unit” and therefore the Tribunal has jurisdiction to hear a dispute with respect to it. The Applicant is seeking an order from the Tribunal to declare the provision invalid, notwithstanding that its support for its position may focus on process. The Tribunal is not precluded from considering procedural matters in determining the validity of a provision. I note, as Counsel for the Applicant submitted, that s. 1.42 (1) of the Act states that the Tribunal has “exclusive jurisdiction to exercise the powers conferred on it under this Act and to determine all questions of fact or law that arise in any proceeding before it.”

E. CONCLUSION

- [15] I find that the Tribunal does have jurisdiction to hear the Applicant’s application with respect to the amended provision of the Respondent’s declaration. The Respondent’s motion is denied and the hearing will proceed.

- [16] Both parties requested costs in this matter. I will consider requests for costs at the conclusion of the hearing.

F. ORDER

[17] The motion to dismiss this matter is denied.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: June 28, 2021