

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 25, 2021

CASE: 2021-00009N, 2021-00037N, 2021-00038N

Citation: Essex Condominium Corporation No. 25 v. Ferrari et al., 2021 ONCAT 79

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

Member: Nicole Aylwin, Member

The Applicant,

Essex Condominium Corporation No. 25
Represented by Sean Doyle, Agent

The Respondents,

Louie Ferrari
Self-Represented

Ken Porter
Self-Represented

Fabienne Tavener
Self-Represented

Hearing: Written Online Hearing – May 3, 2021 to July 30, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] Essex Condominium Corporation No. 25 (the “Applicant”) asserts that unit owners Ms. Fabienne Tavener, Mr. Louie Ferrari and Mr. Ken Porter (the “Respondents”) are parking their pick-up trucks in the visitor parking lots in breach of the Applicant’s governing documents, specifically its rule 2.18 (the “Rule”), which restricts the use of the outdoor parking lots to visitors. The Applicant has brought this case to the Tribunal to enforce the Rule and has asked the Tribunal to decide two issues:

1. Does the parking of Respondents' trucks in the outdoor visitor parking lots violate the declaration, by-laws and rules of the Applicant?
2. Should the Respondents be allowed to park their trucks in the visitor parking lots?

- [2] The Respondents do not dispute that they are parking their trucks in visitor parking spaces. Nor do they dispute that there is a rule restricting the use of visitor parking to visitors. Rather, it is the Respondents' position that because they have been parking their trucks in the visitor parking area for many years without incident or complaint, they should be allowed to continue to do so. They further assert the Rule is inconsistently enforced and no longer serves their condominium community, thus making it unreasonable. On these facts, they have asked the Tribunal to allow them to continue to park in the visitor parking area.
- [3] The Applicant originally initiated a separate case against each unit owner: Case 2021-00037N against Louie Ferrari; case 2021-00038N against Mr. Ken Porter; and case 2021-00009N against Ms. Fabienne Tavener. However, at the outset of this proceeding, the Applicant requested that the Tribunal merge these cases as all three dealt with the same issues related to the Rule. The Respondents were invited to make submissions regarding the Applicant's request and consented to merge the cases knowing that there would be a single decision to which each of them would be bound.
- [4] As the hearing progressed, it became apparent that this ongoing parking dispute has resulted in an increasingly acrimonious relationship between the Applicant and Respondents. A great deal of this acrimony appears related to the fact that since this dispute began the Respondents submit that they have taken the necessary steps under the Condominium Act, 1998 (the "Act") to requisition the board to call and hold a meeting of owners for the intent of changing or appealing the Rule; yet, the board has not done so. The Respondents submit that such a meeting could have resolved the dispute without the involvement of the Tribunal as it would have allowed for the Rule to be changed.
- [5] The Applicant submits that they are not confident that such a meeting would have resolved the dispute as no specific rule change was proposed. Nonetheless, they note that the reason for the delay in calling a meeting is due to COVID 19 and the resulting public health recommendation that people not gather. The Applicant believes the meeting should be held in person and has declined to hold the meeting online.
- [6] While clearly a live and contentious issue between the two parties, if a meeting is required to be held, when it should be held, and the question of whether the board is meeting its obligations under the Act in this regard, are issues of governance that extend beyond the scope of this Tribunal. While it is understandably frustrating for the Respondents who feel that their requests for a meeting are not being taken seriously, and while I make note of this here to reflect that I heard these

submissions, I also note that such submissions and issues are not relevant to what I must decide. However, while I make no determination on the issue of whether a meeting ought to have been or be held and will not refer to the evidence and submissions provided on this matter, I do note that the Act does provide mechanisms through which owners can call a requisitioned meeting themselves even if the board does not do so and that the Respondents may have that option available to them should they wish to pursue it.

- [7] Finally, at various times throughout the hearing one of the Respondents in particular, Mr. Ken Porter, accused both the board and the condominium manager of improper and illegal behavior. As was made clear to all parties, these allegations deal with issues that are not within the Tribunal's jurisdiction and will not be addressed in this decision.
- [8] For the reasons set out below, I find that the Respondents are in violation of the Rule and cannot continue to park their trucks in the visitor parking area. They will have 90 days from the date of this decision to remove their trucks from the visitor parking lots, after which time the Applicant may begin enforcing the Rule.

B. ISSUES & ANALYSIS

- [9] The Applicant's governing documents contain several rules related to parking. The rule governing the use of the visitor parking is Rule 2.18, which reads as follows:

The parking lots at the front and rear of the building are reserved for visitors and guests only. Condominium residents are expected to park in their designated spaces in the parking garage, Vehicles remaining in the parking lot longer than 24 hours should be registered with the Resident Manager. Unauthorized vehicles are subject to towing at the owner's expense. The driveway and parking area on the west side of the building is reserved for delivery vehicles and moving vans. The Resident Manager should be notified if this area is to be occupied longer than fifteen minutes.

- [10] The Applicant submits that that the Respondents are in violation of the Rule as they park their trucks in the visitor parking lots rather than in their designated parking spaces in the underground garage.
- [11] As mentioned above, the Respondents do not deny parking in the visitor parking lots and acknowledge that there is a rule prohibiting this. According to the Respondents the reason the trucks are parked in the visitor parking lots is because they are too large to fit in the underground parking garage where their designated spots are located.

- [12] The Rule clearly articulates that the parking lots on the front and rear of the building are reserved for visitors and guests and makes clear that unit owners are expected to park in the parking spots designated to them in the parking garage. From the evidence provided, and by the Respondents own admissions, the Respondents are parking their trucks in the lots designated for visitor parking in violation of the Rule. However, whether the Respondents are violating the Rule is not the issue that this dispute turns on. Rather the determinative question in front of me is: Should the Respondents be allowed to park their trucks in this area despite the Rule?
- [13] The Respondents submit that they should be allowed to do so for several reasons. First, they argue that they have been doing so for several years and thus they should be allowed to continue to do so; second, they argue that they are being targeted for enforcement which is unfair; and, third, they submit that the Rule is unreasonable as it has not changed in 30 years and no longer meets the needs of the residents in the building.
- [14] According to the Applicant, it was prompted to enforce the Rule after receiving several complaints from unit owners about the misuse of visitor parking. They note that they cannot comment on why previous boards did not enforce the rules but submit that it is the responsibility of current board members to ensure compliance with the Act and the Applicant's declaration, by-laws, and rules. They note that they have provided ample notice to the Respondents of their intention to 'stiffen up' the enforcement of the Rule.
- [15] It is easy to understand the Respondents' frustration with the Applicant's assertion that they are not permitted to park their trucks in the visitor parking area after having experienced a lax or lenient enforcement of the Rule by previous boards. At the same time, the Applicant is right to assert it has a responsibility to enforce its rules at present.
- [16] While the 'stiffening up' of the enforcement of the Rule is no doubt unwelcome and stressful for the Respondents, who all submit their trucks are for business purposes, it is not, in this case, unfair. There is no conclusive evidence to suggest that the Respondents had permission to park in this area. Ms. Tavener did submit a copy of a 'Confidential Information Form' from 2011 that does show that she was parking a work truck 'outside' but there is no mention of her parking in the visitor parking lots, nor is there anything on the form that would indicate that the board at the time provided her permission to do so. There is no evidence whatsoever to suggest that the other two Respondents were provided any indication that are allowed to park their trucks in the visitor parking lots.

- [17] Moreover, the Applicant provided the Respondents with significant notice of their intention to stiffen the enforcement of the Rule. The Applicant submits that they became aware of the issue of non-enforcement in 2018 when they received several written and verbal complaints from owners that there were no parking spots for their guests due to unit owners parking in the visitor parking spots. Upon receiving these complaints, the Applicant submits they sent a letter to the truck owners in April of 2018 asking them to move their trucks. A second letter, which was submitted as documentary evidence, was then sent in September 2019. In this letter the corporation very clearly advised the recipients that they would begin enforcing the parking rule in February 2020. This letter of September 2019 provided the Respondents with nearly 6-months' notice that they would need to make other parking arrangements. According to the Respondents own submissions, they also received another notification via a letter dated February 26, 2020, that reminded them of the Rule and afforded them another week, until March 5, 2020, to remove their trucks from the visitor parking lots. Given these notices, the Respondents had ample time to make other parking arrangements.
- [18] The Respondents also argue that there are several examples of other people violating the parking rules and taking up parking spots. These examples include residents of nearby buildings (who presumably park in the lot when their own lots are full), people visiting the park across the street who have no connection to the condominium, and other unit owners who park in the visitor parking lot for convenience. They argue that the Applicant's failure to address these issues demonstrates that they are being targeted by the Applicant for enforcement which is unfair.
- [19] The Applicant disagrees and disputes these examples. They note that they have been sending letters to other unit owners who violate the Rule and have instituted and been issuing visitor parking passes to help better enforce the visitor parking rules for everyone.
- [20] I also regard as a legitimate consideration, the concern that if the Applicant allows unit owners to park in the visitor parking lots, which have limited spaces (15 in total), it may reduce the availability of parking for legitimate guests of unit owners. It is reasonable that the Applicant has taken seriously this complaint by other unit owners and responded with ample notice of their intention to stiffen the enforcement of the Rule for all unit owners and visitors alike. In this case, without clear evidence of unfair treatment, deference must be given to the enforcement decisions made by the Applicant's board of directors.
- [21] The Respondents have not persuaded me that the Applicant's enforcement of the

Rule unfairly targets them. While it is true that the Respondents may have benefited from the lax enforcement of the Rule in the past, there is no conclusive evidence to suggest that they were provided permission to do so. There is also no evidence that the Respondents have or are being treated differently than any other unit owner. There was no change of rules midstream, and the Rule applies to all owners regardless of the vehicle they own. The evidence also shows that Applicant is making valid attempts to stiffen the enforcement of the Rule both generally (i.e., through the offering visitor parking passes to help identify approved visitors), and specifically (i.e., through the sending of notices to individual owners who have been identified as violating the Rule). They are not targeting the Respondents in particular. And, lastly, the Applicant provided ample notice that they were going to begin to enforce the rules more firmly and provided the Respondents with plenty of opportunity to make other arrangements, mitigating the fact that the Respondents had been, however improperly, using the visitors parking spots as their own for some time.

[22] The Respondents final argument is that the Rule is unreasonable because the size of the underground parking spaces does not accommodate trucks. This leaves unit owners who wish to own trucks or, as is the case with the Respondents, unit owners who require a truck for business purposes, no parking options. The Respondents note that the Rule has not been changed in over 30 years and state that, while the building may have been built to code in 1978, truck owners now make up a significant portion of the driving population and the rules should recognize and accommodate this fact. They argue that the Rule is no longer reasonable given the popularity of pick-up trucks and the growing population of truck owners.

[23] The Rule is not, on its face, unreasonable. The fact that large pick-up trucks might now be a vehicle of choice for a large portion of the population does not make the Rule unreasonable; nor does the fact that the Rule has remained unchanged for 30 years. The Respondents would have been aware of the size of the parking spots assigned to them when they purchased their units and, thus, would have been aware of the size of the vehicle that could fit in their designated spot. If they owned or chose to purchase a vehicle that did not fit into the spot, this was their choice. And, while I acknowledge that this situation is unfortunate for the Respondents, whose trucks are used and required for business purposes, it is not evidence that the Rule is unreasonable or unfair. Designating specific parking lots as visitor lots and restricting parking in these areas to visitors are rules that fall within a range of what is reasonable. The Rule is not aimed at the Respondents personally. While the Rule may be very inconvenient for owners who do have a large truck, I conclude that it is not unreasonable.

[24] I wish to note that the Respondents provided numerous submissions outlining their attempts to resolve this dispute both prior to the commencement of Tribunal proceeding and during. According to the Respondents, they offered the Applicant several solutions which were rejected, a fact that has caused considerable frustration. While I commend the parties for their attempts to resolve this matter through discussion and negotiation, the fact that a resolution was not reached is not evidence of wrongdoing by either party. It is unfortunate that this dispute was not resolved prior to this hearing but it is also not relevant to the question of whether the Respondents are allowed to park in the visitor parking lots despite the Rule.

[25] Thus, having determined that the Respondents are parking in the visitor parking lots in violation of the Applicant's rules, and having found that, in this case, the Rule is not unreasonable, nor is it being unfairly enforced, the Respondents will be ordered to abide by the Rule. This means that so long as the Rule remains unchanged, the Respondents should refrain from parking their vehicles in the visitor parking area as per the Rule.

[26] Given the fact that this decision will require the Respondents to make other parking arrangements which, given the unique facts of this case, may take some time, I will provide the Respondents with 90 days to bring themselves into compliance with the Rule and remove their trucks from the visitor parking lots. After this time, if the Respondents continue to violate the Rule, then the Applicant may take any lawful action available to it to enforce its rules against the Respondents.

[27] Neither party asked for costs, and none are awarded.

C. ORDER

[28] The Tribunal Orders that:

1. The Respondents abide by Rule 2.18 as currently set out in Essex Condominium Corporation No. 25's rules.
2. The Respondents have 90 days from the date of this Order to comply with Rule 2.18 and remove their vehicles from the visitor parking lots. After this time, if the Respondents continue to violate the Rule, then the Applicant may take any lawful action available to it to enforce its rules against the Respondents.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: August 25, 2021