

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** July 15, 2022

**CASE:** 2022-00043N

**Citation:** Toronto Standard Condominium Corporation No. 2745 v. Francois et al., 2022 ONCAT 78

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

**Member:** Emile Ramlochan, Member

**The Applicant,**

Toronto Standard Condominium Corporation No. 2745

Represented by Victor Yee, Counsel

**The Respondents,**

Orlando Klinck Francois

Todd Klinck Francois

Self-represented

**The Intervenor,**

Vijayatharshini Nanthan

Represented by Warren Rigby, Counsel

**Hearing:** Written Online Hearing – February 23, 2022, to May 20, 2022

### **REASONS FOR DECISION**

#### **A. OVERVIEW**

- [1] This case is about the use of a parking space for storage of material that is not permitted by the condominium corporation's Declaration and Rules.
- [2] Toronto Standard Condominium Corporation No. 2745 (the "Applicant") applied for an order that the tenants, Orlando Klinck Francois and Todd Klinck Francois (the "Respondents") and the owner, Vijayatharshini Nanthan (the "Intervenor") remove material from the parking unit. In the alternative the Applicant seeks an order permitting it to enter the parking unit, remove the material, dispose of it, and charge back the costs to the owner of the condominium unit and/or to the Respondents.

- [3] This Respondents did not join the case after the Applicant filed this application with the Condominium Authority Tribunal (CAT), so the case reached Stage 3 – Tribunal Decision as a default proceeding on February 14, 2022.
- [4] During the Stage 3 hearing, one of the Respondents, Orlando Klinck Francois was confirmed to have joined the case but neither Respondent participated in the proceedings. I was satisfied that they were aware of the case, their responsibilities as a party to a case and timelines in the hearing, so I proceeded with the hearing in their absence.

## **B. RESULT**

- [5] For the reasons set out below, I find that the Respondents are storing material in the parking unit in violation of the Declaration and Rules of TSCC No. 2745. I also find that the Intervenor has allowed the Respondents to store material in the parking unit in violation of the Declaration and Rules.
- [6] The Respondents and the Intervenor will have 21 days from the date of this Order to permanently remove the material from their parking unit location. If the Respondents and Intervenor do not comply with this order, then TSCC No. 2745 is permitted to enter the parking unit and remove the material. TSCC No. 2745 can charge the costs incurred removing the material as set out in its Declaration and Rules against all three parties.
- [7] Pursuant to section 1.44 (1) 4 of the Condominium Act, 1998 (the “Act”), I order costs of \$150 paid to the Applicant by the Respondents and Intervenor representing the fees paid to the Tribunal. The Respondents shall pay \$75, and the Intervenor shall pay \$75, for the total of \$150.

## **C. ISSUES AND ANALYSIS**

- [8] The issues to be decided are as follows:
1. Are the Respondents and/or Intervenor in breach of the Corporation’s governing documents, specifically, Article IV, section 4.5 (a) of the Declaration and Rule 10 (a) of the Rules?
  2. What remedies, if any, are available to the Corporation?
  3. Should the Corporation be reimbursed its Tribunal filing fee?

**ISSUE #1: Are the Respondents and/or Intervenor in breach of the Corporation's governing documents, specifically, Article IV, section 4.5 (a) of the Declaration and Rule 10 (a) of the Rules?**

- [9] The evidence supports a finding that the Respondents and the Intervenor have breached Article IV, section 4.5 (a) of the Declaration and Rule 10 (a) of the Corporation's Rules by storing and allowing material to be stored in the parking unit.
- [10] Written witness testimony was submitted by the Corporation's President and Board Member, Victor Yee.
- [11] The uncontested evidence was that the Respondents are tenants/occupants of a parking unit identified as P4-226 and described as Parking Unit 226 on Level D of Toronto Standard Condominium Plan No. 2745. The Intervenor is the owner of the parking unit. This parking unit is located within an underground parking garage which is part of the common elements of the Corporation.
- [12] Mr. Yee testified that between the period beginning on and around December 7, 2021, and continuing through to February 21, 2022, he saw material stored in the parking unit. On December 7, 2021, the Corporation advised the Intervenor, through a letter issued by their condominium management provider, of material improperly stored within the parking unit. The Applicant submitted a letter dated December 7, 2021, addressed to Vijayatharshini Nathan from Chris Gjonej, Property Manager of the condominium and employee of Crossbridge Condominium Services ("Crossbridge") informing the owner of the violation. There was no response to this letter.
- [13] Mr. Yee also testified that the Corporation followed up on January 18, 2022, with a pair of emails – one from the condominium management provider and the other from him. The first was sent to the condominium unit owner, and the second was also sent to the owner and copied to the Respondents email addresses. Submitted into evidence was an "Eau Du Soliel Condominiums Resident Information Form", an email dated January 18, 2022, sent at 10:31 a.m. from Claire Giordano, Junior Property Manager of Crossbridge to an email address identified on the Resident Information Form to be that of the unit owner. Mr. Yee sent another email dated January 18, 2022 at 1:35 p.m., to an address matching those of the unit owner, and separate addresses matching those of the Respondents. Collectively, these emails communicated information about the improperly stored material, and enforcement actions the Corporation would resort to should the parties fail to comply with the Rules. There was no evidence that either the owner, or the tenants responded to these concerns.

[14] The Applicant submitted copies of the Corporation's Declaration dated November 26, 2019, and a document entitled "Eau Du Soleil Condominiums Toronto Standard Condominium Corporation No. 2745 Rules – Updated October 2021". The Applicant also submitted photographs taken on various dates showing material stored in the parking unit (see Appendix A).

[15] The Intervenor submitted a witness statement pertaining to the issues related to the application which was reviewed and considered.

[16] Section 4.5 (a) of the Corporation's Declaration states the following:

Each Parking Unit **shall be used and occupied only for the parking of motor vehicles** as may be from time to time defined in the Rules of the Corporation. It shall be the responsibility of the Owners to ensure that their vehicles can be properly operated and/or parked in the parking structure within the Property... **Each Owner shall maintain his or her Parking Unit in a clean and sightly condition**, notwithstanding that the Corporation may make provision in its annual budget for cleaning of Parking Unit [emphasis added].

[17] Section 10 of the Rules defines "motor vehicle" as follows:

For the purpose of these Rules, "**motor vehicle**" means an automobile, a motorcycle, or a motor assisted bicycle, as those terms are defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 as may be amended from time to time (the "HTA") [emphasis added].

[18] Section 10 (a) of the Rules states the following:

No vehicles, equipment or machinery, other than motor vehicles shall be parked or left on any part of the Common Elements and without limiting the generality of the foregoing, no parking areas shall be used for storage purposes

[19] Based on the Applicant's uncontested evidence before me, and, particularly, the photographs, what has been placed in the parking space is not a motor vehicle. Therefore, the Respondents and Intervenor are in violation Article IV, section 4.5 (a) of the Corporation's Declaration and Section 10 (a) of its Rules. Mr. Yee's testimony and the multiple photographs of the material support this finding.

[20] Subsection 119 (1) of the Act states that an owner and an occupier of a unit shall comply with the Act, the declaration, the by-laws and the rules. As there was insufficient evidence presented during the hearing that the Intervenor complied with this provision to get the Respondents to remove the material in compliance, I find that the Intervenor should also be held responsible for contravening Article IV, section 4.5 of the Declaration and Section 10 of the Rules.

**ISSUE #2: What remedies, if any, are available to the Corporation?**

- [21] The Applicant seeks an order for the Respondents to comply with the Corporation's governing documents by removing the material from the parking unit within 21 days of the date of this order. In the alternative, an order is sought for the Corporation to remove the material from the parking unit. These requests are granted.
- [22] As I have made a finding that the Respondents and the unit owner have breached Article IV, section 4.5 (a) of the Corporation's Declaration and Section 10 (a) of the Rules, I will order that Orlando Klinck Francois, Todd Klinck Francois, and Vijayatharshini Nanthan remove the material from the parking unit within 21 days of the date of this order.
- [23] If the parties do not comply with this order, then TSCC No. 2745 is permitted to enter the parking unit and remove the material from its current parking unit location. The Corporation will also be permitted to charge actual costs incurred to remove the material, as set out in the Rules, against the Respondents, the Intervenor, or both.

**ISSUE #3: Should the Applicant be awarded any costs?**

- [24] Under section 1.44 (1) 4 of the Act, and Rule 48.1 of the Tribunal's Rules of Practice, the Tribunal may order a party to pay another party any reasonable expenses related to the use of the Tribunal, including any fees paid to the Tribunal.
- [25] The Applicant has been successful in this proceeding and asked for the costs incurred throughout the hearing, specifically, the fees paid to the Tribunal. Accordingly, I order that the Respondents and the Intervenor shall pay the Tribunal fees of \$150 to the Applicant.

**D. ORDER**

[26] The Tribunal Orders that:

1. Pursuant to subsection 1.44 (1) 2 of the Act, Orlando Klinck Francois, Todd Klinck Francois, and Vijayatharshini Nanthan will, within 21 days of the date of this Order, remove the material pictured in Appendix A from parking unit identified as P4-226.
2. If Orlando Klinck Francois, Todd Klinck Francois, and Vijayatharshini Nanthan fail to remove the material within the 21 day period, then TSCC No. 2745 is permitted to enter the parking unit and remove all of the items not permitted by the Rules from its current parking location. The Corporation will also be permitted to charge the actual expenses incurred removing these items against

the Respondent, the Intervenor, or both in accordance with the Corporations Rules.

3. Orlando Klinck Francois, Todd Klinck Francois, and Vijayatharshini Nanthan will pay to TSCC No. 2745 their Tribunal fees of \$150. The Respondents shall pay \$75 and the Intervenor shall pay \$75..

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Emile Ramlochan  
Member, Condominium Authority Tribunal

Released on: July 15, 2022

## **APPENDIX A**

