

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 9, 2023

CASE: 2022-00479N

Citation: Lambton Condominium Corporation No. 39 v. Kulahoglu, 2023 ONCAT 20

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

Member: Nicole Aylwin, Member

The Applicant,

Lambton Condominium Corporation No. 39

Represented by Doreen Copeland, Agent

The Respondent,

Engin Kulahoglu

Represented by Sue Manser, Agent

Hearing: Written Online Hearing – October 12, 2022 to January 31, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Lambton Condominium Corporation No. 39 (“LCC 39”), alleges that Respondent, unit owner Engin Kulahoglu, has failed to comply with provisions in its governing documents that restrict the use and parking of motorcycles on condominium property as well as provisions that require unit owners to keep their cats indoors. LCC 39 has asked the Tribunal to order Mr. Kulahoglu to refrain from using his motorcycle on condominium driveways and to remove the motorcycle from his parking space. They have also asked the Tribunal to order that he comply with the pet rules and keep his cat indoors. Finally, LCC 39 has requested costs in the amount of \$275 for its Tribunal fees.

[2] Mr. Kulahoglu takes the position that how the parking rule is written means that only commercial motorcycles are prohibited from parking on common elements or in designed parking spots. Regarding the indoor cat rule, he takes the position that he has tried to keep his cat indoors but has been unsuccessful. He also argues that his cat is not the only cat roaming free in the complex and thus he should not be penalized for allowing his cat to do the same. He does not dispute the fact that his cat goes outdoors and that the rules prohibit this.

[3] For the reasons set out below, I find that Mr. Kulahoglu has failed to comply with LCC 39’s parking rules and its rule regarding pets. However, I do not find that the rules prohibit Mr. Kulahoglu from driving his motorcycle on condominium

driveways, only from parking it in his designated spot or on the common elements. I order Mr. Kulahoglu to remove his motorcycle permanently from his parking spot within 15 days of this decision and order that he keep his cat indoors. I also award LCC 39 costs in the amount of \$275 for its Tribunal fees.

B. ISSUES & ANALYSIS

Issue no. 1: Has the Respondent failed to comply with the rule prohibiting motorcycles in parking spaces and/or on driveways and condominium property? If so, what relief should the Tribunal order?

[4] According to LCC 39, Mr. Kulahoglu is parking his motorcycle in his designated parking space along with his car. It is LCC 39's position that in doing so Mr. Kulahoglu is violating three provisions in the condominium's governing documents, its Rule #33 and Article Four and Article Five its Declaration.

[5] Rule #33, reads:

No commercial trucks, motor bikes, campers, trailers, boats, snowmobiles, machinery or equipment of any kind, other than currently used private vehicles such as passenger cars or vans belonging to the residents, shall be permitted to be parked or stored on any part of the common elements or the designated parking spaces.

[6] Mr. Kulahoglu does not deny parking both his motorcycle and car in his designated parking space. It is Mr. Kulahoglu's position that because of the way in which Rule #33 is written, only commercial motorcycles are prohibited from being parked on the property. His representative argued that because the itemized list of vehicles which are not permitted are separated by commas, and the first vehicle listed is "commercial trucks", all the vehicles that follow should be understood as commercial vehicles, i.e. no commercial trucks, commercial motor bikes, commercial campers, commercial trailers, commercial boats, etc. Thus, since Mr. Kulahoglu's motorcycle is not a commercial motorcycle it is allowed.

[7] LCC 39 takes the position that commas can be used simply to separate items in a series. In this case, the commas are used separate a list of vehicles which are not permitted and that the intention of the rule, which is to prohibit the parking of the types of vehicles listed, is clear and unambiguous.

[8] I am not persuaded by Mr. Kulahoglu's arguments. A plain reading of the rule makes clear that the vehicles listed are prohibited. I do not find it is sufficiently ambiguous as to lead to confusion. In this case, the extensive arguments made by Mr. Kulahoglu's representative over the correct grammatical use of a comma appears to be an attempt to read the rule in such a way that allows for non-compliance with a long-standing rule of the condominium, rather than a case of an honest misinterpretation of the rule. I find that the LCC 39's interpretation of its rule is reasonable and I order that Mr. Kulahoglu comply with the rule as interpreted and permanently remove his motorcycle from his parking space within 15 days of

this decision.

- [9] LCC 39 has also requested the Tribunal find that Mr. Kulahoglu is not allowed to drive his motorcycle on the driveways or property of the condominium. Here LCC 39 cites its noise rule, arguing that motorcycles create unnecessary noise. Rule #10 reads:

No noise nuisance caused by anyone or any device or instrument, which disturbs or may disturb the comfort or quiet enjoyment of other residents, shall be permitted. Radios or musical instruments shall not be used on the common elements.

- [10] To find Mr. Kulahoglu in breach of Rule 10 would require that LCC 39 demonstrate that on the balance of probabilities Mr. Kulahoglu is making noise on his motorcycle that rises to the level of a nuisance and is disturbing the comfort and enjoyment of other residents. It has not done so. There is no evidence in front of me of a rule that specifically restricts the driving of motorcycles on the driveways of the condominium property. So, while Mr. Kulahoglu may not park his motorbike on the property, he is not breaching any rules by driving it on common elements, such as the driveways.

- [11] Having decided that Rule #33 prevents Mr. Kulahoglu from parking his motorcycle in his parking spot, I do not need to decide the issue of if LCC 39's declaration prevents him from parking both his SVU and motorcycle in the same space, since he cannot park his motorcycle there regardless.

Issue no. 2: Has the Respondent failed to comply with the rule requiring cats to be kept indoors? If, so, what relief should the CAT order?

- [12] LCC 39 alleges that Mr. Kulahoglu is in breach of its Rule #16, which requires that cats be kept indoors. Rule #16 reads:

Dogs shall not be allowed upon or kept in or about the unit or on any part of the common elements.

- Cats are allowed but must be kept indoors.

- [13] LCC 39 submitted several complaints received by the board from other unit owners regarding Mr. Kulahoglu's cat, Domates. The complainants accuse Domates of running free and defecating on their lawns and condominium common elements, as well as hunting small animals such as chipmunks and rabbits, which, when Domates is successful, results in dead animals being left in the yards of unit owners.
- [14] LCC 39 submits that after receiving the complaints, they met several times with Mr. Kulahoglu to discuss the issue and to ask for his compliance, but Domates continues to live an active outdoor life.

- [15] There is no dispute about the fact that Domates roams free outdoors and no dispute over the fact that LCC 39 has a rule that restricts cats to the indoors. Mr. Kulahoglu admits that his cat goes outdoors. However, he argues that he is not letting his cat out intentionally, rather, that his cat is a “very determined escape artist”, and that despite his best attempts to keep her indoors, she manages to leave the unit on her own. Mr. Kulahoglu further argues that in enforcing this rule, LCC 39 is being unfair, as he has seen other cats roaming the property and he provided witness statements from neighbours who indicate that they don’t have a problem with Domates roaming free.
- [16] Whether or not other unit owners are bothered by Domates being allowed outdoors is not the standard by which compliance with a rule is determined. While some of Mr. Kulahoglu’s neighbours don’t have an issue with Domates being allowed outdoors, as evidenced by the witness statements he submitted, others do, as evidenced by the complaints made to the board and witness statements submitted by LCC 39. LCC 39 is correct that under s.17(3) of the *Condominium Act, 1998* (the “Act”), they are required to enforce their rules. It must enforce its Rule #16 regardless of how various unit owners feel about Mr. Kulahoglu’s cat.
- [17] Rule #16 clearly states that cats are to be kept indoors. As per s. 119(1) of the Act, unit owners are required to comply with condominium rules. In this case, that means keeping cats indoors, even those cats who may have a proclivity for ‘escaping’. It may be the case, that on occasion, a cat does leave a unit and find itself outdoors. However, the evidence in this case demonstrates an ongoing and repeated pattern of Domates roaming freely outdoors. I also do not find it credible that Domates is escaping on her own with such frequency, particularly considering a letter Mr. Kulahoglu wrote and circulated to his neighbours, wherein he states that he “must allow her [Domates] to go out to be happy”. In this letter, Mr. Kulahoglu also admits that Domates sometimes “walks around” and hunts and brings home small mice, which is what “cats do”.
- [18] Finally, there is no evidence before me to suggest, as Mr. Kulahoglu does, that LCC 39 is enforcing the rule unevenly and targeting him unfairly. Mr. Kulahoglu argues that he has seen other cats on the property and that the board has been surveilling him so that they may target him for enforcement. I do not find either argument persuasive. As LCC 39 notes, they cannot be responsible for ensuring that all cats, regardless of who owns them, stay off condominium property. They can only enforce the rules of the condominium as they apply to unit owners. In this case they have received very specific complaints from unit owners about Mr. Kulahoglu’s cat and thus have acted on those complaints by attempting to enforce the rule in this specific situation. This is not an uneven enforcement of the rules. Moreover, while LCC 39 has clearly gathered evidence, such as videos and photos, to support its claim of a rule infraction, in this case there is no evidence in front of me to suggest that LCC 39 has done so with the intent of “targeting” Mr. Kulahoglu unfairly.
- [19] For the reasons above, I find that Mr. Kulahoglu is in breach of Rule #16, which

requires him to keep his cat indoors. By virtue of s. 119(1) of the Act, Mr. Kulahoglu is already required to comply with the rules, however, so that there is no uncertainty, I will order him to comply with Rule #16 and keep his cat indoors. I would encourage Mr. Kulahoglu to take whatever steps necessary to ensure that Domates does not continue to 'escape' since should he fail to comply with the Rule and this Order, LCC 39 is entitled to take any lawful action available to it to enforce its Rules against Mr. Kulahoglu.

Issue no. 3: Is the Applicant entitled to the reimbursement of the filing fees paid to the Tribunal?

[20] LCC 39 has asked for costs in the amount of \$275 for its Tribunal filing fees. When a case moves to Stage 3 – Adjudication, the typical filing fees paid by an applicant amount to \$200. However, in this instance, two cases involving these parties were merged prior to Stage 3 – Tribunal Decision. As such, LCC 39 paid an additional \$75 in Tribunal fees to file and take the second case to Stage 2 – Mediation, before the cases were merged. Thus, the total amount spent on Tribunal fees to address the issues decided here was \$275.

[21] The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act. Section 1.44(2) states that an order for costs “shall be determined ...in accordance with the rules of the Tribunal.” Rule 48.1 of the Tribunal’s Rules of Practice provides that where a party is successful, the Tribunal fees may be recovered from the unsuccessful party. In this case, LCC 39 was successful and is entitled to recover the fees paid to the Tribunal. I order that Mr. Kulahoglu reimburse LCC 339 for its Tribunal fees in the amount of \$275, within 30 days of this decision.

C. ORDER

[22] The Tribunal Orders that:

1. Pursuant to s. 1.44(1)1 of the Act, Mr. Kulahoglu shall permanently remove his motorcycle from his parking space within 15 days of this decision and comply with LCC 39’s Rule #33, that prohibits the parking of a motorcycle on common elements and in designated parking spaces.
 2. Pursuant to s. 1.44(1)1 of the Act, Mr. Kulahoglu is to comply with LCC 39’s Rule #16, which requires cats to be kept indoors.
 3. Pursuant to s. 1.44(1) 4 of the Act and rule 48.1 of the Tribunal’s Rules of Practice, within 30 days of this decision, Mr. Kulahoglu shall pay LCC 39 \$275 to reimburse its Tribunal fees.
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Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: February 9, 2023