

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 21, 2024

CASE: 2023-00438N

Citation: MacLellan v. Waterloo South Condominium Corporation No. 22, 2024 ONCAT 67

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

Member: Anne Gottlieb, Member

The Applicant,

Katelynn MacLellan

Represented by Kevin Kok, Counsel

The Respondents,

Waterloo South Condominium Corporation No. 22

Represented by Michelle Kelly, Counsel

Hearing: Written Online Hearing –January 8, 2024 to May 3, 2024
Video Conference – March 13, 2024 & March 20, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Ms. MacLellan challenges indemnification charges (the “chargebacks”) by the Respondent, Waterloo South Condominium Corporation No. 22 (“the condominium corporation” or “WSCC No. 22”). These relate to alleged breaches of provisions in the condominium corporation’s governing documents relating to parking (the “parking rules”). The chargebacks include repairs to the underground parking garage door (the “garage door”), legal fees and administration charges which are purported to arise from enforcement of the parking rules.

[2] WSCC No. 22 submits that Ms. MacLellan has violated the parking rules by permitting a vehicle (the “truck”) owned and/or operated by Matt Snoei, who is a frequent guest and/or former occupant of the unit. The truck was parked in a manner that obstructed other vehicles in the underground parking garage. There is evidence that the truck exceeded the length permitted by the parking rules. It was often parked in a way that made access by other owners to and from their parking

spots, difficult. The truck was sometimes parked in spots not associated with Ms. MacLellan's unit. There are allegations that the parking spaces contained debris, cigarette butts and garbage; that the truck was leaking oil; and that kitty litter was used to soak up oil stains which clogged the drains in the garage floor.

- [3] Ms. MacLellan claims that the enforcement of the parking rules was arbitrary and biased, as other larger vehicles were allowed to remain in the parking garage and other vehicles have had leaks. She says that attempts were made to have the oil leak addressed. She also asserts that damage to the garage door is not her responsibility.
- [4] For the reasons set out below, I find that Ms. MacLellan has failed to comply with WSCC No. 22's governing documents relating to parking and is responsible for the failure of her guest to comply with the parking rules. I order Ms. MacLellan to comply with the *Condominium Act 1998* (the "Act"), the declaration, by-laws, and rules as they relate to parking and to bring any visitor or occupant of her unit into compliance with the parking rules.
- [5] I find that there is a causal connection between the failure to comply with the parking rules, the entry of Mr. Snoei's truck into the parking garage on May 27, 2023, and the resulting damage to the garage door. I order Ms. MacLellan to pay compensation for damages incurred by the condominium corporation for the repair to the garage door in the amount \$3,041.74. I find that there are grounds to compensate the condominium corporation for legal costs reasonably incurred to enforce its parking rules, in the amount of \$1,180.75, and administrative service fees in the amount of \$400. I award no other costs to any party in this proceeding.

B. JURISDICTION AND ISSUES

- [6] The Stage 2 Summary and Order raised the possibility of a jurisdictional matter. When jurisdiction was canvassed as a preliminary issue in this hearing, neither Counsel raised any matters and both asked the Tribunal to proceed to hear this application. Breaches of the parking rules and consequences of those breaches, including chargebacks are within the jurisdiction of this Tribunal.¹
- [7] The issues to be decided in this case are:

¹ The Tribunal is given authority as set out in s. 1.1 of Ontario Regulation 179/17 under the Condominium Act, 1998 ("O.Reg179/17"). Provisions governing parking is identified in ss. 1(1)(d) (iii) and indemnification or compensation that flow therefrom, are covered in ss. 1(1)(d)(iv).

1. Has Ms. MacLellan violated the parking rules?
2. If Ms. MacLellan has violated the parking rules, are the chargebacks reasonable?
 - i. chargebacks for the repair of the garage door
 - ii. chargebacks for legal services
 - iii. chargebacks for administrative services
3. Should an award of costs be ordered for costs relating to Stage 3—Tribunal Decision?

C. ANALYSIS

Issue No. 1 - Has Ms. MacLellan violated the parking rules?

- [8] It is not disputed that Mr. Snoei accessed the parking garage with the knowledge and consent of Ms. MacLellan. Section 119(1) of the Act sets out the requirement that owners and occupiers of units comply with the Act, the declaration, the by-laws and the rules of a corporation.
- [9] There is email evidence commencing February 2023, of complaints about the use by Mr. Snoei of the parking garage. Ms. MacLellan was in receipt of emails from the management of WSCC No. 22 and a letter from its counsel indicating that the truck was leaking oil, that there was garbage and debris left in the parking spaces, and that the truck was obstructing the access of others in the garage.
- [10] Rule 2.13 of WSCC No. 22 prohibits vehicles larger than 18 feet in the underground.² Mr. Heber, a director of WSCC No. 22 and a unit owner for thirteen years, testified that a ‘black crew cab’ was extending out into the driving area affecting his parking spot and those trying to manoeuvre around it. He testified that he spoke directly with Mr. Snoei about it, (referring to him as ‘the gentleman’). He also sent an email to WSCC No. 22’s condominium manager, Dawn Gouveia, to complain that the truck was parked on P3 and was obstructing access and his ability to back into his own parking spot.

²WSCC No. 22 R2.13 “No motor vehicle other than a passenger motor vehicle shall be parked in the underground garage. Motorcycles are not permitted. Small vans and trucks under 18 feet are permitted.”

- [11] The Applicant claims that other trucks park in the parking garage. WSCC No. 22 asserts that it is within the discretion of the board to allow a larger vehicle to park in a deeper parking space. The parking space(s) associated with Ms. MacLellan's unit are not 'deeper'. There is a picture submitted into evidence, taken by Ms. Simao, the building manager, of the truck parked in a way that is not near the back wall of the parking space and is protruding well into the aisle. I accept the evidence that the truck was larger than 18 feet and was obstructing access in the underground, contrary to R1.17 of the parking rules.³
- [12] There is also evidence that the truck was parked in parking spots not associated with the Applicant's unit. Ms. MacLellan states that she had a neighbour's permission to use the parking spot, including overnight, while that owner was away. I was not provided with any corroborating evidence that permission was granted to use someone else's parking spot.
- [13] Mr. Snoei testified that he only used this other parking spot temporarily to change a headlight. This is contradictory to Ms. MacLellan's testimony. There are also pictures taken by the building manager of garbage, cigarette butts and other items in the parking space utilized by Mr. Snoei.
- [14] Pictures taken by the building manager show a trail of oil spots in the parking garage, and oil stains in the parking space used by Mr. Snoei. Mr. Heber testified about an expensive renovation in the garage and a new poly-urethane coating on the flooring. Both Ms. MacLellan and Mr. Snoei testified that they were aware that the condominium corporation had concerns regarding a leak from the truck. Mr. Snoei admitted that he knew the vehicle was leaking oil in February 2023. There is an email from Ms. MacLellan dated March 22, 2023, and another of March 24, 2023, to indicate that an attempt to repair the truck had been made, but that further repair was too costly.
- [15] Ms. MacLellan and Mr. Snoei claim that other vehicles in the underground had leaks and provided pictures of a vehicle with cardboard underneath it. There is no information as to who owns the vehicle and where it is parked. Ms. Simoa states that in other cases of leaks, when the issue was brought to the attention of the owners the vehicles were fixed "within days". This situation was continuing. I accept the evidence of Ms. Simoa as credible.

³ WSCC No. 22 R1.17 "The sidewalks, entry, passageways, walkways and driveways used in common by residents shall not be obstructed by any of the residents or used by them for any purpose other than ingress and egress to and from their respective units and parking areas."

- [16] Ms. Gouveia sent an email dated March 22, 2023, to Ms. MacLellan informing her that the truck would not be allowed into the parking garage. A further email on March 24, 2023, stated that the fob access would be disabled, and the matter would be referred to the condominium corporation's lawyer. I do not need to make any determination on the deactivation of the parking fob, in order to assess the reasonableness of the chargebacks.
- [17] The Applicant submitted two invoices as evidence from Auto Tune Service Centre relating to purported repairs to the leak from the truck. One is dated May 18, 2023, and is typed and stamped "paid in full" relating to the rear main oil crankshaft seal. The other relates to the transmission, motor oil and transmission oil. The latter invoice is handwritten and dated May 30, 2023, and is not marked as paid. Mr. Snoei's testimony as to the reason the second invoice is handwritten, is not credible. I do not find this latter invoice to be persuasive evidence to conclude that the leak in the truck was completely fixed, even at the end of May. In any event, the first invoice confirms that the leak from the truck was ongoing in May 2023.
- [18] I find that there are multiple examples of violations of the parking rules by Ms. MacLellan and Mr. Snoei. Based on the evidence before me, I am satisfied that Ms. MacLellan was aware of the concerns raised by the condominium corporation regarding breaches of the parking rules. I order Ms. MacLellan to comply with the Act, the declaration, by-laws, and rules as they relate to parking and to bring any visitor or occupant of her unit into compliance with the parking rules.

Issue No. 2 - If Ms. MacLellan has violated the parking rules, are the chargebacks reasonable?

- [19] Clause 12 of WSCC No. 22's Declaration states:

Each owner shall indemnify the Corporation against loss, costs, damage or injury caused to the common elements or units (to the extent it is obligated to repair the same) because of any act or omission of such owner or occupant of his unit or any guest or visitor thereof. Any such loss, costs, damages or injury shall be included in such owner's contributions towards common expenses.

- [20] I have found that there have been multiple violations of the parking rules. I have reviewed each category of chargebacks separately, to determine whether the indemnification or compensation to the corporation is reasonable.

Chargeback for the Repair of the Garage Door

[21] Ms. MacLellan and Mr. Snoei both testified that he continued to access the parking garage through the manual opening of the garage door (a button that is pushed). It has been brought to my attention that this building has outdoor parking on the property, which might have been available. Instead, Mr. Snoei continued to park in the parking garage, even though both he and Ms. MacLellan knew that the truck was not permitted under the parking rules. Mr. Snoei testified that either Ms. MacLellan, or her daughter would open the garage door, and grant him access. Ms. Simoa indicated that the button was only to be used in emergencies. Witnesses for the condominium corporation also stated that Mr. Snoei would follow other cars entering the underground.

[22] Counsel for the Applicant submitted:

The parties do not dispute that there was damage to a common element (the Door). The parties do not dispute that the Door hit Snoei's truck, and that Snoei was, at the material time, an occupant, guest, or visitor of the Applicant's Unit. The dispute lies in whether an act or omission of Snoei *caused* the damage to the Door.

[23] There is no evidence that the garage door was not in good working order, prior to May 27, 2023. The condominium manager testified that the mechanical garage doors are inspected and maintained. Mr. Snoei testified that Ms. Maclellan's daughter pushed the button to open the garage door. She did not testify. Video camera surveillance shows the truck starting to enter the parking garage and the garage door coming down on the truck. The video then shows Mr. Snoei getting out of the truck, and hoisting open the garage door, so a 'helpful neighbour' can drive the truck into the garage. That neighbour did not testify. I find it reasonable to draw a causal connection between the entry of the truck into the parking garage on May 27, 2023, and the resulting damage to the garage door.

[24] The Applicant challenged the multiple invoices for the garage door repair from Waterloo Garage Doors Inc. Ms. Gouveia explained that the damage to the garage door required the replacement of the bottom panel. This panel needed to be sourced, approved as an expense by the board and then ordered and installed. There was a temporary fix, which required a further repair, because the garage door made noise. The panel was eventually replaced.

[25] The condominium paid to repair the garage door and is seeking the payment from Ms. MacLellan. There are two indemnification letters from Weigle Property Management dealing with invoices for garage door repairs. The June 1, 2023, letter includes an invoice from Waterloo Garage Doors Inc., dated May 27, 2023,

in the amount of \$1,255.15. There is also a June 29, 2023, letter including an invoice dated June 29, 2023, from Waterloo Garage Doors Inc. for services to the garage door on June 21, 2023, in the amount of \$162.72. These two invoices were charged back to the Applicant and total \$1,417.87.

[26] A third invoice from Waterloo Garage Doors Inc., was submitted into evidence by the Respondent. It is dated January 19, 2024, in the amount of \$1,623.87. It is marked as a final invoice for installation of the garage door panel on January 4, 2024 (the “January invoice”). The January invoice was part of the repairs to the garage door, following the damage on May 27, 2023. I find that Ms. MacLellan is responsible to pay compensation for the repairs to the garage door totaling \$3,041.74. I make this order pursuant to s. 1.44(1)3 of the Act, as compensation for damages incurred by the condominium corporation due to non compliance.

Chargeback for Legal Services

[27] Weigle Property Management, sent six additional demand letters to Ms. MacLellan, each attached to invoices for legal services from Robson Carpenter and an accompanying unit ledger. I have reviewed these invoices carefully and assessed them based on the dates, entries, time allotment, cost per activity and subject matter identified in each invoice. They are as follows:

- letter June 26 2023 invoice March 23 2023 \$511.56
- letter July 20 2023 invoice June 30 2023 \$590.37
- letter August 10 2023 invoice July 31 2023 \$678.00
- letter August 31 2023 invoice August 31 2023 \$508.50
- letter October 16 2023 invoice September 30 2023 \$1,808.00
- letter November 14 2023 invoice October 31 2023 \$791.00

[28] Early in the proceeding, the Respondent withdrew its claim for reimbursement of the first two entries from the invoice dated March 23, 2023, (attached in the letter of June 26, 2023). These entries total \$56.40 (\$63.73 including HST) and were identified by Counsel for the Respondent as not related to this application. I have reviewed the invoice and accept that the balance of it deals with issues related to enforcement of parking rules associated with Ms. MacLellan and/or Mr. Snoei. I

find it reasonable that Ms. MacLellan be charged \$447.83 (\$511.56 minus \$63.73) related to this invoice.

- [29] The June 30, 2023, invoice (attached in the letter of July 20, 2023) contains wholly redacted dates, time allotted, amounts charged, and services provided. The condominium corporation contends that the redactions are to preserve solicitor client privilege. The only unredacted entry with a visible charge is for \$48.60 which was charged for 'send letter to owner's lawyer'. Several entries on this invoice for which there is a direct connection to matters of enforcement are not redacted but have a N/C (no charge) notation. The balance of the invoice is redacted. I was not provided with any additional details from Counsel for the Respondent regarding this invoice. I do not find it reasonable to charge Ms. MacLellan, without her having any details for such charges. I find it reasonable that she be charged \$54.92 (\$48.60 plus \$6.32 HST) related to this invoice.
- [30] I have reviewed the invoice of July 31, 2023 (attached in the letter of August 10, 2023). I accept it as reasonable that these amounts and subject relate to enforcement of parking rules and that Ms. MacLellan be charged the entire amount of \$678.00 relating to this invoice.
- [31] The invoice of August 31, 2023, (attached in the letter of the same date) has several entries that refer to communications with the lawyer for the Applicant, and the CAT application in the subject lines. There are also references made for instructions for a NOL (Notice of Lien). In fact, a lien was not placed on the Applicant's unit, and the matter before the CAT was initiated by the Applicant. As the CAT application was underway, I do not find this to be a reasonable chargeback.
- [32] The two remaining invoices attached to the letters of October 16, 2023, and November 14, 2023, relate to steps and timelines during this application process. The latter is fully redacted as to time, rates, amounts and subject. It is one thing for legal counsel to bill a condominium corporation for legal services on an ongoing basis. It is quite another thing for a condominium corporation to attempt to pass legal fees on to an owner, at a full indemnity rate before the matter has been determined.
- [33] I find that the actions of Ms. MacLellan and Mr Snoei and their non compliance with the parking rules are the reason for the enforcement steps taken by WSCC

No. 22. I order the Applicant to pay a total of \$1,180.75⁴ to WSCC No. 22 under s. 1.44 (1) 3 of the Act, as compensation for the non-compliance of Ms. MacLellan. I find these charges, at the full indemnity rate, to be reasonable. The general principle in *Chan v Toronto Standard Condominium Corporation No 1834*⁵ that other owners should not subsidize the costs of enforcing compliance, should apply to these amounts.

Chargeback for Administrative Services

[34] In total, eight demand letters were sent to the Applicant⁶. Each included a \$50 administration fee, added in the covering letter. Ms. Gouveia testified that \$50 is a fee that the board is aware of, and that owners are charged for additional services which fall outside the standard management contract. I have little doubt that there was extra time spent by management in the administration of the parking rules in this case. I find that Ms. MacLellan is responsible for paying the \$400 in administrative fees.

Issue No. 3 - Should an award of costs be ordered for costs relating to Stage 3-Tribunal Decision?

[35] Both Counsel provided a Bill of Costs and made submissions on costs, at a partial indemnity rate. An award of costs is discretionary. The Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, outlines some of the factors to be considered in deciding whether to award costs under Rule 48. These include the conduct of a party, and whether the parties attempted to resolve the issues before filing the case. Proportionality is also a factor to consider in determining the appropriate amount of costs to be awarded.

[36] Counsel for both parties were co-operative throughout Stage 3 (the "hearing"). Some of the hearing was conducted in writing. Witness testimony was conducted via Teams in a two part video conference. The behaviour of all the witnesses was respectful. There was nothing extraordinary about the length of this case.

[37] The Applicant referred to the Divisional Court decision in *Peel Standard Condominium Corporation No. 779 v Rahman*⁷, where the Divisional Court upheld

⁴ comprised of \$447.83 and \$54.92 and \$678

⁵ *Chan v Toronto Standard Condominium Corporation No. 1834*, 2011 ONSC 108.

⁶ six letters relating to invoices for legal services and two letters relating to the costs for the repair of the garage door

⁷ *Peel Standard Condominium Corporation v Rahman* 2023 ONSC 3758

this Tribunal's interpretation of *Amlani v York Condominium Corporation No. 473*⁸. I accept the Applicant's argument that the Divisional Court has held that attempts to obtain full indemnity for legal costs or other charges absent a court or tribunal order is unreasonable.⁹ However, in this case, the condominium corporation did not go so far as to issue a lien for any of the charges and the cases cited are distinguishable from the present case.

[38] Ms. MacLellan knowingly allowed the continued breach of the parking rules, which resulted in inconvenience to other owners and property damage. As the Applicant, she was only successful in slightly reducing the legal costs directly charged to her. It may have been more appropriate for the condominium corporation to initiate a case at the Tribunal and to include all the compliance related expenses in a claim, rather than demanding payment directly. I find no circumstances in this proceeding that would support a cost order in favour of either party.

D. ORDER

[39] The Tribunal orders that:

1. Ms. MacLellan, comply with the Act, declaration, by-laws, and rules as they relate to parking and use of the parking facilities and bring any visitor or occupier of her unit into compliance with the parking rules.
2. Within 30 days of the issuance of this Order, Ms. MacLellan pay WSCC No. 22:
 - a) \$3,041.74 as compensation for the repair to the garage door.
 - b) \$1,180.75 as compensation for costs for legal services incurred to enforce parking rules.
 - c) \$400 as compensation for administrative services incurred to enforce parking rules.

Anne Gottlieb

⁸ *Amlani v York Condominium Corporation No. 473* 2020 ONSC 5090 at para 14

⁹ *Rahman, supra* at para 36; *Amlani, supra* at para 46

Member, Condominium Authority Tribunal

Released on: May 21, 2024