

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 30, 2024

CASE: 2023-00554N

Citation: York Condominium Corporation No. 202 v. Szabo et al., 2024 ONCAT 76

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

Member: Roger Bilodeau, Member

The Applicant,

York Condominium Corporation No. 202

Represented by Tony Bui, Counsel

The Respondents,

Jessica Szabo

Self-represented

Julia Szabo

Represented by Jessica Szabo, Agent

John Szabo

Represented by Jessica Szabo, Agent

Hearing: Written Online Hearing – November 1, 2023 to May 9, 2024

REASONS FOR DECISION

A. OVERVIEW

[1] The Applicant, York Condominium Corporation No. 202 (“YCC 202”), claims that the Respondents John Szabo, Julia Szabo and Jessica Szabo (“Respondents”) have failed to comply with section "O" of its Rules (the “Pets Rules”) which stipulate, among other things, that:

1. no occupants may keep any pets weighing over 25 pounds (Rule O.03);
2. all pets must be registered with the management of YCC 202 (Rule O.05);
and

3. if YCC 202's Board of Directors determines that a pet must be removed from the premises, this must be done within 45 days of a written notice to that effect (Rule O.15).
- [2] The Respondent, John Szabo, is the sole owner of a unit in YCC 202 (the "Unit") but does not reside in the Unit, which is occupied by his adult daughters and co-Respondents, Julia and Jessica Szabo. The Respondents currently own and keep two dogs in the Unit, namely Buster and Bentley.
- [3] YCC 202 requests an order requiring the Respondents to:
1. permanently remove the two dogs currently in their Unit;
 2. comply with the Pets Rules for any future pet(s) they wish to bring into the Unit; and
 3. fully indemnify YCC 202 for its costs, expenses and legal fees incurred to enforce the Pets Rules in this matter, for a total amount of \$12,021.75.
- [4] Jessica Szabo acknowledges that Buster's weight is over the 25-pound limit and states that any and all documentation pertaining to Buster's status as a support dog was diligently provided, as per the request of the office staff of YCC 202. She also states that Bentley is not above the 25-pound limit and that information on his weight was provided to the office staff of YCC 202. As a final point, she urges the Tribunal to confirm the original approval of Buster as a support dog and to order the office of YCC 202 to provide ample notice regarding any updated documentation requirements.
- [5] In reaching my decision, I have reviewed all the evidence and submissions before me but I only refer to the evidence and arguments directly related to the issues which I have to decide.
- [6] For the reasons set out below, I find that the Respondents are in breach of some aspects of YCC 202's Pets Rules. Within 60 days of the date of this decision, I therefore order the Respondents to provide documentation which will justify an exemption for Buster from the Pets Rules on the basis of a disability-related accommodation. Within the same timeframe, they must provide a veterinarian's certificate showing Bentley's weight, in compliance with the Pets Rules, as well as ensuring that Bentley's information is updated on their Resident Information Form, subject to meeting the weight limit requirement.
- [7] If the Respondents do not comply with the above orders, YCC 202 can require the removal of one or both dogs, in accordance with the Pets Rules.

- [8] Finally, the Respondents must pay the following to YCC 202, within 60 days of the date of this Order:
- a) \$2,000 in damages for legal fees incurred by YCC 202 to obtain compliance with the Pets Rules; and
 - b) costs in the amount of \$6,601.73, plus the Tribunal filing fees of \$150.

B. BACKGROUND

- [9] For the purposes of this case, it is useful to set out a chronology of events, as described below.
- [10] Mr. John Szabo purchased the Unit in or about January 2020. Before taking possession of the Unit, he received a status certificate from YCC 202 on October 23, 2019. The status certificate contained the YCC 202's core documents, including the Pets Rules.
- [11] Mr. Robert Arthurs ("Mr. Arthurs") was the Condominium Manager of YCC 202 during the timeframe of October 2019 until in or about January 2020. Mr. Arthurs met with the Respondents, Julia and Jessica Szabo, in or about January 2020 to conduct a welcome orientation to the YCC 202 building, as well as providing them a welcome package which highlighted the key rules and information of YCC 202, including the Pets Rules.
- [12] Ms. Rosemary Kelly ("Ms. Kelly") is the current Condominium Manager of YCC 202, having succeeded Mr. Arthurs in that role in or about January 2020.
- [13] On December 3, 2021, it was brought to the attention of YCC 202's management that a new dog (i.e., Buster) was on the premises, either visiting and/or residing in the Unit.
- [14] The management of YCC 202 immediately sent a notice to all residents on the floor where the Unit is located reminding them of the Pets Rules and requesting all residents to register any pets by December 10, 2021. The notice also stated that visitors were not permitted to bring dogs into the units. The Respondents did not respond to that notice.
- [15] On December 20, 2021, staff and residents of YCC 202 informed Ms. Kelly that Buster remained on the premises. On the same day, Ms. Kelly sent a letter to Julia and Jessica Szabo advising them of the Pets Rules and requesting that they provide a veterinarian's certificate stating the dog's breed and current weight by

December 31, 2021. There was no response to that letter.

- [16] On April 11, 2022, Ms. Kelly received an email from the Board of Directors of YCC 202 (“Board”) stating that during a floor inspection, members of the Board had witnessed someone from the Unit entering the elevator with a large dog. Ms. Kelly believes that the dog in question was Buster, based on the Board’s description of the dog. Ms. Kelly sent another letter to the Respondents on that day, seeking the same information as in the previous letter, with no response.
- [17] Based on further notifications from residents that Buster continued to reside in the Unit, Ms. Kelly sent another letter to the Respondents on April 25, 2022, again seeking the same information as in the previous letters. There was no response to that letter.
- [18] On August 1, 2022, Julia Szabo responded to Ms. Kelly by email. With that email, she provided a copy of Buster’s registration and photo ID Card bearing the title Assistance Dogs of America – Canadian Support Dog (“ADA”), issued in July 2022. This was the first time that the Respondents took the position that Buster is a support dog.
- [19] In or about December 2022, Ms. Kelly and her staff discovered that a second dog (i.e., Bentley) was residing in the Unit. According to Ms. Kelly, Bentley appeared to be a large labradoodle that weighs more than 25 pounds. On December 2, 2022, Ms. Kelly sent a letter to Jessica and Julia Szabo requiring that they provide a veterinarian’s certificate confirming Bentley’s breed and current weight. There was no response to that letter.
- [20] Before resorting to YCC 202’s legal counsel, Ms. Kelly sent a letter to the Respondents on March 1, 2023 to give them a final opportunity to comply with the Pets Rules. There was no response to that letter.
- [21] On April 28, 2023, YCC 202’s lawyers wrote to Julia and Jessica Szabo, with copy to John Szabo, indicating that:
1. Buster was oversized and that his ADA certificate does not confirm that any of the Respondents require him as a service animal for reasons relating to any disabilities. The Respondents were asked to provide medical documentation within 30 days of that letter to confirm any disability-related considerations which could exempt Buster, as an oversized pet, from the Pets Rules;
 2. Bentley was oversized and must be removed from the Unit; and

3. failure to comply would result in an application to the Tribunal and that YCC 202 would seek its costs against the Respondents.

- [22] Jessica Szabo left a voicemail for YCC 202's legal counsel on May 9, 2023 seeking clarification on what type of documentation was required for Buster. On May 25, 2023, YCC 202's lawyers responded in a letter to Julia and Jessica Szabo about the requirements to seek an exemption from the Pets Rules for Buster and also noted that since there was no request for accommodation being sought with respect to Bentley, they were required to immediately remove it from the Unit. There was no response to that letter.
- [23] On July 17, 2023, YCC 202's lawyers sent a letter to Julia and Jessica Szabo, with copy to John Szabo, requiring that both dogs be permanently removed from the Unit by August 31, 2023. In regard to Buster, the letter stated that the Respondents could avoid the request to remove him if proper documentation confirming an accommodation-based need for Buster was received by the same date. They also reiterated YCC 202's intention to bring an application to the Tribunal if they did not comply. There was no response to that letter.
- [24] On July 19, 2023, copies of all the above letters were sent by YCC 202's lawyers to John Szabo, at his own address, with no response.
- [25] Ms. Kelly states that both dogs remain in the Unit, to this date.
- [26] YCC 202 filed this application on October 10, 2023 and it was accepted by the Tribunal on October 20, 2023. The Respondents did not join nor participate in Stages 1 and 2. As a result, the Stage 3 proceedings were initiated on November 1, 2023. The Respondent Jessica Szabo joined the case on November 16, 2023 and indicated that she would represent all respondents.
- [27] At various times since the start of these proceedings, Ms. Szabo has complained that the Tribunal processes are difficult to manage. She states that she attempted to obtain guidance from Tribunal staff in terms of how to respond to the application but that she was met with silence.
- [28] I have verified her complaints with Tribunal staff and I am satisfied that Ms. Szabo received the same level of support which is provided to all self-represented parties, if not more, as well as clear instructions from myself at various stages of the proceedings, including repeating some information or directions more than once.
- [29] As will be explained further below, the parties are at loggerheads in regard to the procedures and requirements which would allow the two dogs to remain on the

condominium property, such that the following issues are in dispute and will be decided by me:

1. whether the Respondents are in breach of Rule O.03 (25-pound animal weight restriction and production of a weight certificate), and if so, are they entitled to an accommodation from the application of that rule;
2. whether the Respondents are in breach of Rule O.05 (registration of pets);
3. whether the Respondents are in breach of Rule O.15 (removal of pets within 45 days upon written notice); and
4. whether the Respondents are required to indemnify YCC 202 for all enforcement-related costs and expenses pertaining to this matter?

C. ISSUES & ANALYSIS

Issue No 1: Whether the Respondents are in breach of Rule O.03 (25-pound animal weight restriction and production of a weight certificate), and if so, are they entitled to an accommodation from the application of that rule?

[30] Rule O.03 reads as follows:

“25lbs

O.03. No Occupant may acquire or bring into any unit or upon the common elements any pet weighing in excess of 25 pounds, other than an existing pet residing in a unit prior to the date this rule comes into effect. Within 30 days of the Board’s written request at any time, the owner of a pet shall provide a certificate signed by a veterinarian certifying the exact weight of the pet.”

[31] YCC 202 submits that both of the Respondents’ dogs exceed the weight restriction, that neither dog is exempt from the Pets Rules and that the Respondents have not provided a veterinarian’s weight certificate for either dog within the 30-day period provided for by Rule O.03. YCC 202 submits that the Respondents’ refusal to provide a veterinarian’s certificate certifying each dog’s weight within 30 days of a request by YCC 202 constitutes a breach of Rule O.03

[32] YCC 202 further states that it has made numerous requests to the Respondents to remove both dogs from the Unit and noted that it would reconsider its position in regard to Buster if the Respondents provided appropriate documentation confirming a disability-related need for Buster. Despite multiple follow-ups, YCC 202 further submits that the Respondents have not done so.

Position of the parties in regard to Buster

- [33] According to YCC 202 and in addition to the above, the Respondents have maintained a concerted effort to ignore the fact that Buster was never “approved”, “confirmed” or “exempt” from the Pets Rules.
- [34] Jessica Szabo concedes that Buster is in breach of the weight restriction. She also submits that the Respondents diligently provided documentation to YCC 202 attesting to Buster's status as a support dog and justifying his exemption from the Pets Rules, including an official service animal certification, a doctor's note referring to her disability and her need for a support dog, as well as the Resident Information Form which includes Buster. She also indicated that Buster serves as a support animal for the Szabo family but did not elaborate on the meaning of the term ‘family’ in that context.
- [35] Jessica Szabo adds that Buster was duly registered and incorporated into their building's fire plan as a support dog. In her view, these documents were approved by YCC 202.
- [36] Jessica Szabo also alleges that there was often disorganization within the office of YCC 202, resulting in lost documents and disputes over payments. In her view, this concern casts doubt on YCC 202's position that it has not received her documentation. No other particulars or evidence were filed by her in this regard.
- [37] On cross-examination, Jessica Szabo stated that to the best of her recollection, the documentation attesting to Buster's status as a support dog was submitted to the YCC 202 office in or about May 2022 and that the email confirmation of the approval of Buster as a service dog by the YCC 202 office came in on June 2, 2022. On the other hand, I note that the email correspondence in that regard between the Respondents and the YCC 202 office shows that it took place on August 1 and 3, 2022.
- [38] In response to the email of Julia Szabo of August 1, 2022, which included the ADA registration, Ms. Kelly wrote on August 3, 2022:
- “Good morning Julia and Jessica,
Thank you for providing information regarding your support animal. Please note we will now be able to update you and Buster onto our fire plan. Ensure that “Buster” wears a service animal vest at all times, or his ID tag must be attached to his collar at all times. Please update your resident form (see attach) with Buster included for our records.”

[39] In response to Ms. Kelly's email, Julia Szabo wrote on August 3, 2022:

"Thank you, Rosemary! Buster currently wears his support animal ID tag on his collar. Please see attached the filled-out form as per your request. Please let me know if you have any other requests."

[40] Jessica Szabo reiterated that Buster is duly registered with the ADA. She argues that the ADA is a civil rights law that prohibits discrimination based on disability. She adds that as a person with a disability, she relies heavily on the use of a service animal. As a final point, she also adds that Buster is registered under the AODA ("Accessibility for Ontarians with Disabilities Act"). No evidence or legal references were filed by the Respondents in support of the validity of this argument in a Canadian context or to demonstrate that there is such a registry under the AODA.

[41] In response to questions from the Tribunal, Jessica Szabo stated that Buster is an Aussiedoodle that was first brought into YCC 202 in June 2021.

[42] She also asserted that it was Mr. Arthurs, and not Ms. Kelly, who handled the orientation to the YCC 202 building with the Respondents when they moved into the Unit in January 2020. In addition, she maintains that the Respondents dealt with Ms. Jennifer Joseph in regard to their support animal and that Ms. Kelly was not involved. Late in this proceeding, Jessica Szabo did file a copy of what appears to be the headings of email messages sent by Ms. Joseph on May 17, 2021 and by Ms. Nelida Iglesias on June 17, 2022, but without any content under either heading.

[43] Jessica Szabo also added that upon moving into the building in January 2020, the Respondents already had a dog (prior to Buster and Bentley) which weighed 38 pounds and that they were told it was fine, that they were not told to register that dog and that they never did. She maintains that they made Mr. Arthurs aware of this before moving in and that there were no issues (Mr. Arthurs has since passed away).

[44] On a different topic, Jessica Szabo added that a doctor's note dated December 8, 2021 was provided to YCC 202 on that date. She states that the Respondents knocked on the door of the YCC 202 office but that the response from inside the office was someone shouting "we're closed" and that the Respondents therefore dropped the note in the office mail slot. There is no indication or acknowledgement that this note was ever received by YCC 202.

[45] In sum, Jessica Szabo is of the view that Buster's approval as a support dog was

unequivocally granted by YCC 202 and she now seeks to underscore the unexpected nature of the purported reversal by YCC 202 in regard to Buster's approval as a support dog, in the absence of any concrete rationale.

- [46] Jessica Szabo urges the Tribunal to enforce YCC 202's approval of Buster as a support dog and to mandate the YCC 202 office to provide ample notice regarding any updated documentation requirements. She also expresses her willingness to cooperate with any requests in the spirit of coming to an amicable resolution.
- [47] YCC 202 maintains that the Respondents did not "diligently provide" any information about Buster, as requested. Between December 20, 2021 and April 25, 2022, YCC 202 states that Ms. Kelly asked the Respondents to provide a veterinarian's certificate confirming Buster's weight on three separate occasions. A veterinarian's certificate confirming weight was only provided for Bentley on December 22, 2023, in the course of this Application. None has yet been provided for Buster.
- [48] YCC 202 submits that the Respondents grossly misconstrued the contents of the email message sent to them by Ms. Kelly on August 3, 2022, in which she thanked the Respondents for providing the ADA Registration and confirmed the addition of Buster to YCC 202's fire plan. YCC 202 argues that the Respondents conflated Buster "being added to the fire plan" with "approval as a service dog".
- [49] YCC 202 maintains that Ms. Kelly received the ADA Registration on August 3, 2022, without any medical documents or notes. YCC 202 argues that the ADA registration is not a legitimate document justifying an accommodation for the Respondents and nor does it verify Buster's status as a support dog.
- [50] In regard to Jessica Szabo's submission on the topic of which YCC 202 agents or officials dealt with the Respondents at all relevant times, YCC 202 argues that her position on this topic is irrelevant to the central issue of the Respondents' compliance with YCC 202's governing documents, more specifically the Pets Rules.
- [51] YCC 202 disputes ever receiving a doctor's note in regard to Jessica Szabo's disability and the necessity of a support dog until this hearing, despite the numerous requests made by it since December 2021. It further submits that even now, the note provided during this hearing does not confirm that Jessica Szabo has a disability, as required under the Ontario Human Rights Code.
- [52] YCC 202 pointed out that the Ontario Human Rights Commission has issued a policy document outlining the scope of medical documentation required when

seeking an accommodation for disability-related needs.¹ In summarizing that document, YCC 202 submits that individuals seeking accommodation should provide medical documentation stating:

1. that the person has a disability;
2. the limitations or needs associated with the disability;
3. whether the person can perform the essential duties or requirements of the job, of being a tenant, or of being a service user, with or without accommodation; and
4. the type of accommodation(s) that may be needed to allow the person to fulfill the essential duties or requirements of the job, of being a tenant, or of being a service user, etc.

[53] YCC 202 also submits that the ADA registration does not meet the basic requirements for medical documentation.

[54] In sum, YCC 202 submits that the Respondents have not provided any documentation which establishes a disability-related need for accommodation such as to exempt Buster from Rule O.03.

Position of the parties in regard to Bentley

[55] YCC 202 states that the Respondents have never explained their breach of Rule O.03 in regard to Bentley. YCC 202 adds that a veterinarian's certificate for Bentley was only presented by the Respondents late in this proceeding, but not to YCC 202 management within 30 days as required by that rule.

[56] YCC 202 further submits that the abovementioned veterinarian's certificate is from an examination in October 2022, at which time Bentley was three months old and weighed 22.4 pounds. There is no evidence of his current weight and they submit that it is very probable that he now weighs substantially more than that.

[57] In regard to a screen shot of a document filed by the Respondents titled "Description Of Bentley's Weight Documentation", purporting to confirm that Bentley's full-grown weight is as noted in the veterinarian's certificate of October 2022, YCC 202 argues that it is materially deficient in that it is undated, the author's identity is not indicated and there are cut-off statements that cannot be

¹ **Exhibit A-8** – Policy document from Ontario Human Rights Commission re: medical documentation required for accommodation requests at pp. 1-2.

discerned on the face of the document.

[58] Jessica Szabo submits that Bentley is a mini Aussiedoodle and within the 25 pound weight limit of the Rule. However, she did not provide any documentation to support that, except for the veterinarian's certificate filed late in this proceeding which shows Bentley's weight as being 22.4 pounds on the date of the certificate, i.e. October 27, 2022

[59] In response to questions from the Tribunal on April 9, 2024, Jessica Szabo stated that Bentley weighs 24 pounds but offered no certifications in support.

Analysis

[60] As a starting point, the Resident Information Form dated January 2020 does show that a dog was indicated as being in the Unit when Julia and Jessica moved into it and since that form was attached to Ms. Kelly's affidavit, I can infer that YCC 202 was aware of that dog. I also note that there was a change in management at YCC 202 in or about January 2020, being the period when Mr. Arthurs left the position of Condominium Manager and Ms. Kelly assumed that role. That change in management may explain in small part, but not excuse, why the Respondents were so surprised by the subsequent requests of YCC 202 asking them to ensure that Buster and Bentley were in compliance with the Pets Rules, in comparison to what may have been told to them by management in regard to another dog upon moving into the Unit in January 2020.

[61] Whether or not a dog was in the Unit when the Respondents moved in, the fact is that the Respondents later proceeded to acquire Buster and Bentley at different intervals, respectively in or about June 2021 and in or about August 2022. In the course of doing so, the Respondents should have known that those two new dogs needed to be in compliance with the Pets Rules. All the more so since upon moving into the Unit, Julia Szabo acknowledged having received on January 27, 2020, the Welcome Package documentation which included a document on 'Pets and Parking', among others.

[62] On December 10, 2021, YCC 202 posted a message on all floors of its buildings asking all residents to ensure that all pets were in compliance with the Pets Rules. In spite of Buster clearly being with them at that time, the Respondents did not respond to that notice.

[63] I will now deal with each of the two dogs in turn and before doing so, I wish to point out that their behavior is not in issue.

Buster

- [64] Between December 20, 2021 and April 25, 2022, Ms. Kelly wrote to the Respondents on three occasions asking them to comply with Rule O.03 by providing a veterinarian's certificate stating Buster's breed and current weight.
- [65] On August 1, 2022, being well past the last 30-day period to provide that information to YCC 202, the Respondents sent an email to YCC 202 which included the ADA registration card showing Buster as a support dog, as well as the Resident Information Form, also showing Buster as a support dog. They did not then nor have they since provided a veterinarian's certificate stating Buster's breed and current weight. By all accounts, there was no further message or follow-up from Ms. Kelly in regard to Buster, following her message to Julia Szabo on August 3, 2022.
- [66] The next correspondence addressed to the Respondents in regard to Buster was from YCC 202's lawyer on April 28, 2023. In addition to referencing Rule O.03, that letter was the first to request documentation which would support an exemption from the Pets Rules on account of a disability. In my view, it was a perfectly legitimate request but it is striking that there was no mention of that requirement to the Respondents until that date. That letter is the first indication that YCC 202 needed more than compliance with Rule O.03 for the Respondents to be allowed to keep Buster in the Unit. It was also the first indication by YCC 202 that the ADA registration and Resident Information Form were insufficient in and of themselves to support Buster's status as a support dog. The relevant portion of that letter reads as follows:

"The Corporation recognizes that it has a duty to accommodate people with disabilities and may, under appropriate circumstance, permit exemptions to the above-noted pet rule. The Board of Directors appreciates that you have submitted preliminary information about your request, but they require further information to confirm the nature and scope of their duty to accommodate a disability and any disability-related need for a rule exemption before they can depart from enforcing the rules."

- [67] That letter allowed for a 30-day period for the Respondents to provide the requested information to YCC 202 or its lawyers. Whatever the Respondents may have thought before April 28, 2023, in terms of what was needed to ensure that Buster could remain in the Unit, was no longer the case. It is true that they had submitted the ADA registration and may have been led to believe that such registration was sufficient, especially based on Ms. Kelly's message to them on August 3, 2023. However, that was no longer the case as of April 28, 2023.

[68] At that point, the Respondents could have inquired further from the YCC 202 office or its lawyers of what was required of them.

[69] Jessica Szabo did leave a voicemail message to the YCC 202 lawyers in early May 2023. The YCC 202 lawyers did follow up with her in writing on two occasions after her voicemail, to no avail and with no further response from her or any other of the Respondents until Jessica Szabo's sporadic involvement in this application.

[70] I agree with YCC 202 that the ADA registration is insufficient, at least in Ontario, to justify or support a pet's exemption from its Pets Rules.

[71] I also agree with YCC 202's position that in keeping with Ontario's human rights legislation and policies, the type of information that a person seeking an accommodation is generally expected to provide includes:

1. that the person has a disability;
2. the limitations or needs associated with the disability;
3. whether the person can perform the essential duties of their role or in their capacity as a condominium resident, with or without accommodation; and
4. the type of accommodation that may be needed.

(See also the recent decision of this Tribunal in Carleton Condominium Corporation No. 165 v. Steele, 2024 ONCAT 60, where similar factors are enumerated at paragraph 23)

[72] Based on all the above, I find that the Respondents were in breach of Rule O.03 in relation to Buster from January 20, 2022 (being 30 days from the first letter of December 20, 2021) up to August 1, 2022.

[73] While I sympathize with the Respondents' reasons for believing they were in compliance with Rule O.03 as of August 2022, based on the email they received from Ms. Kelly, this was no longer the case when they received the letter from YCC 202's lawyer in April 2023. In spite of that letter, they did nothing to resolve the situation.

[74] As a result, the Respondents are also in breach of Rule O.03 since June 30, 2023, being the deadline imposed by YCC 202 in their lawyer's second letter of May 25, 2023 which was addressed to the Respondents.

[75] Given the circumstances of this case and my determination of this issue vis-à-vis

Buster, I will grant the Respondents a period of 60 days from the date of this decision to provide documentation to YCC 202 to justify an exemption for Buster from the application of Rule O.03 on the basis of a disability-related accommodation.

Bentley

[76] I give no credence to the veterinarian's certificate provided by the Respondents, late in this proceeding, because it is based on an examination of Bentley which took place when he was still in infancy, i.e. on October 27, 2022. In my view, the relevance of that certificate is further undermined by its reference to Bentley as being an Aussiedoodle, which is inconsistent with Ms. Szabo's assertion that he is a mini Aussiedoodle. In addition, Ms. Szabo has offered inconsistent information on his weight on at least three occasions during this hearing.

[77] I also agree with YCC 202's position that the screen shot of a document filed by the Respondents titled "Description of Bentley's Weight Documentation" is materially deficient.

[78] In regard to the application of Rule O.03 vis-à-vis Bentley and based on the evidence provided by YCC 202, I find that the Respondents are in breach of Rule O.03 in that they have not provided a veterinarian's certificate which confirms Bentley's current weight. They are in breach of that rule since January 2, 2023, being 30 days after the first letter sent to them by Ms. Kelly.

[79] In the circumstances of this case and in keeping with my determination of this matter in regard to Buster, I will grant the Respondents a period of 60 days from the date of this decision to provide to YCC 202 a certificate signed by a veterinarian certifying Bentley's exact weight, in compliance with Rule O.03.

Issue No. 2: Whether the Respondents are in breach of Rule O.05 (registration of pets)?

[80] Rule O.05 states as follows:

"Registered

O.05. Each Occupant shall be responsible to register with the Management Office each pet residing in the Occupant's unit in accordance with the required particulars referred to on the Corporation's Residents Information Form, included in the Corporation's Welcome Package and also sent to homeowners and residents to be updated annually."

[81] As noted above, YCC 202 confirms that Buster was designated on the Resident

Information Form on August 1, 2022. In regard to Bentley, YCC 202 submits that the Respondents have not registered Bentley on the Resident Information Form in accordance with Rule O.05.

[82] For her part, Jessica Szabo states that all documentation in regard to Bentley was submitted to the YCC 202 office before the change in management and that if any forms or documents were lost as a result of a change of management, that she was not notified. She did not provide the particulars of this apparent change of management by YCC 202.

Analysis

[83] It is true that between December 20, 2021 to April 25, 2022, Ms. Kelly wrote to the Respondents on three occasions asking them to provide a veterinarian's certificate stating Buster's breed and current weight. This was followed by three letters from YCC 202 lawyers requesting the same information. However, I have reviewed that correspondence as provided by YCC 202 in this proceeding and note that none of those letters refers to Rule O.05 nor to any requirement for the Respondents to register Bentley (or any dog) on the Resident Information Form.

[84] Based on the evidence, the Respondents would have been made aware of that requirement during the Welcome Orientation and by way of the documents in the Welcome Package when they moved into their building. It is also noteworthy that they had registered a previous dog when they moved into the Unit in January 2020, as shown by the Respondents' Resident Information Form attached to Ms. Kelly's affidavit. However, I also note that Rule O.05 does not prescribe a time limit to register a pet. The onus is on each owner or occupant of a unit to do so.

[85] Given all the circumstances of this case and on a balance of probabilities, I will allow the Respondents the benefit of any doubt that Bentley's registration was submitted to YCC 202 at some point in time but that it was overlooked by YCC 202 or in the alternative, that the Respondents have omitted to do so by reason of an oversight on their part.

[86] As a result, I order the Respondents to ensure that Bentley's information is updated on their Resident Information Form within 60 days of the date of this decision, subject to meeting the weight limit requirement provided for in Rule O.03.

Issue No. 3: Whether the Respondents are in breach of Rule O.15 (removal of pets within 45 days upon written notice)?

[87] YCC 202 submits that the Respondents have not removed their two dogs within 45

days of a written notice to do so, in breach of Rule O.15 which states as follows:

“Removal

O.15. When the Board has made a determination that a pet must be removed from the common elements and a unit in which it resides, the Board shall give written notice to the applicable owner of the pet requiring removal of the pet. The owner of the pet shall permanently remove it from the unit and the common elements and the pet owner shall find an alternative good home for the pet within 45 days after the Board has given written notice requiring removal of the pet. An animal deemed to be dangerous shall be removed from the common elements forthwith and shall be removed from the unit in which the pet resides within 24 hours thereafter, or at such later date as the Board may specifically permit in writing, subject to such safety conditions as may be imposed by the Board.”

[88] YCC 202 further submits that by way of correspondence sent to the Respondents, Ms. Kelly and YCC 202’s lawyers both repeatedly demanded that the Respondents remove their two dogs from the Unit. YCC 202 adds that these demands were reasonable, following the Respondents’ failure to bring their dogs into compliance with the Pets Rules.

[89] For their part, the Respondents submit that there are no grounds for the removal of either dog and also refer to YCC 202’s approval of Buster as a support dog.

Analysis

[90] YCC 202 did send numerous letters to the Respondents requesting removal of one or both dogs on various occasions during the period of December 20, 2021 to March 1, 2023. This was followed by letters to the same effect from YCC 202’s legal counsel, with their final letter of July 17, 2023 requesting that both dogs be removed by August 31, 2023.

[91] The Respondents have not removed their dogs as requested because, as this case shows, they dispute the applicability of the rules requiring them to do so.

[92] Based on the evidence before me, I find that the Respondents are in breach of Rule O.15 but given my above determinations vis-à-vis both dogs in regard to Issue 1, YCC 202 can require the removal of one or both dogs in accordance with Rule O.15 if the Respondents do not provide the requested documentation for each dog within 60 days of the date of this decision, in compliance with the requirements for the application of Rule O.03.

Issue No. 4: Are the Respondents required to indemnify YCC 202 for all enforcement-related expenses pertaining to this matter?

[93] YCC 202 submits that it has incurred \$12,021.75 in total costs, expenses and fees to enforce the Respondents' compliance with the Pets Rules. YCC 202 has appended a full breakdown of these costs, expenses and fees to its submissions, namely \$2,655.00 in pre-Tribunal expenses to obtain compliance, as well as its costs in the amount of \$9,216.75 associated with the application to this Tribunal, plus the Tribunal fees of \$150. YCC 202 seeks a full indemnification of those amounts from the Respondents.

[94] As a starting point, YCC 202 submits that it is entitled to those amounts on the basis of the indemnity provisions in its Declaration and Rules.

[95] YCC 202 further submits that the Tribunal's discretion to award costs should be guided by its Rules of Practice ("Rules") and its Practice Direction: Approach to Awarding Costs ("Practice Direction"), in particular on the following headings found in the Practice Direction:

1. Whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense / The conduct of all parties and representatives, including the party requesting costs: I have noted YCC 202's submissions under this heading but since they all relate to the Respondents' conduct before the hearing, I will consider those submissions under the other headings shown below because this heading of the Rules is meant to address the conduct of the parties during the hearing;
2. The Respondents only responded to this matter at Stage 3 of this application: YCC 202 submits that it considered exempting Buster from the Pets Rules but the Respondents refused to provide any medical evidence in support of an accommodation. YCC 202 goes on to state that it took a patient and reasonable approach to resolve this dispute before bringing this application to the Tribunal. It adds that Jessica Szabo's participation on behalf of all Respondents was unproductive and disruptive. She failed to respond to the Tribunal's preliminary questions, missed Tribunal timelines (seeking extensions after the fact) and was unresponsive to simple questions asked on cross-examination. In its view, Ms. Szabo displayed little respect for the Tribunal's authority, thereby wasting time and resources in the process. YCC 202 further submits that the Respondents' submissions reflect a cavalier and egregious disregard for the Tribunal's procedures and fact-finding functions;

3. The potential impact of an order for costs on the parties: YCC 202 argues that its costs and expenses are collectively funded by its owners, none of whom contributed to or are liable for the Respondents' breaches of the Pets Rules. As such, the absence of a full costs award against the Respondents would be unfair to YCC 202 and its owners. This Tribunal has reaffirmed in many cases the principle that it would be unfair for compliant owners to subsidize the costs of enforcing compliance by another owner; and
4. Whether the parties attempted to resolve the issues before filing the application: As noted above, YCC 202 states that it attempted to do so but was unsuccessful and that the Respondents ignored YCC 202's warnings and demands. Even before this hearing, YCC 202 submits that the Respondents refused to respond to this application after being notified of the case. Their conduct precluded the possibility of resolving this dispute in Stage 1 (Negotiation) or 2 (Mediation) of this application and forced this Tribunal and YCC 202 to go through the avoidable time and expense of a hearing.

[96] YCC 202 adds that its costs and expenses are modest and were reasonably incurred. It further submits that the Respondents were sufficiently warned that YCC 202 would seek its costs and expenses against them on a full indemnity basis if they did not comply with the Pets Rules. YCC 202 argues that this application was avoidable but for the Respondents' actions, or lack thereof.

[97] YCC 202 goes on to add that this application is analogous to a decision of the Tribunal in *Durham Standard Condominium Corporation No. 259 v. McGee et al.*, 2023 ONCAT 92. In that decision, the Tribunal awarded the condominium corporation its costs and fees since the condominium corporation's indemnification provisions provided for such and because the respondents made "little or no effort" to curtail the breaches of the corporation's rules. However, the Tribunal reduced the condominium corporation's recovery to 80% of its costs since it appeared that the breaches stopped once the matter proceeded to stage three.

[98] In this case, YCC 202 submits that the Respondents remain in breach of the Pets Rules and that accordingly, there should be no reduction in its costs.

[99] The Respondents reject YCC 202's claim for costs. In their view, the initial approval of Buster was unequivocally granted by YCC 202 and upon the sudden emergence of inquiries in that regard, Jessica Szabo maintains that she promptly sought clarification by attempting to engage with YCC 202. She also emphasizes the unexpected nature of the purported reversal in YCC 202's position vis-à-vis Buster, in the absence of any concrete rationale.

[100] Jessica Szabo also submits that this was the Respondents' first involvement in a proceeding of this nature and that she was unaware and unsure of how to manage the deadlines and processes.

[101] In reply, YCC 202 asserts that the Respondents' submissions reflect the unfortunate fact that despite numerous warnings, the Respondents have refused to accept any responsibility for the consequences and adverse effects of their actions, or lack thereof. As a result of the Respondents' position in this case, YCC 202 states that it has continued to accrue legal fees and reiterates its request for a full indemnification of its costs and expenses against the Respondents.

Analysis

[102] The Tribunal's authority to make orders related to costs is set out in Section 1.44 (1) 4 of the *Condominium Act, 1998* (the "Act"). Section 1.44 (2) of the Act further states that an order for costs "shall be determined in accordance with the rules of the Tribunal."

[103] The costs-related rules of the Tribunal's Rules relevant to this case provide as follows:

"48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense."

[104] As indicated and referred to by YCC 202 in its submissions, the Tribunal's Practice Direction provides guidance regarding an award of costs. I must also consider that this Tribunal has decided in several cases, namely *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48, that one must distinguish between pre-Tribunal expenses to obtain compliance, on one hand, and costs associated with the Tribunal application, on the other. That distinction is clearly set out in *Psofimis* as follows:

"I will address the cost of the legal letter first. The cost of this letter cannot be characterized as 'costs', as that term is used in s. 1.44(1)4 of the Act.

However, under s.1.44(1)3 of the Act, the Tribunal may make an “order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.”

[105] In this case, the requested compensation for that category of damages is the cost of the legal expenses incurred to enforce compliance by the Respondents before this application was filed, in large part for reviewing the matter and preparing four compliance letters sent to them. I have reviewed the pre-Tribunal legal expenses incurred by YCC 202, which total \$2,655.00. In my view, those expenses are considerable for the type of work involved and in the circumstances of this case, I will allow the Applicant the sum of \$2,000.00 for those expenses.

[106] I have also reviewed the actual costs of this application, being the legal fees incurred by YCC 202 since late September 2023 to early May 2024 and in my view, the total amount of \$9,216.75 is reasonable and proportionate to the matter at hand.

[107] If YCC 202 is not compensated by the Respondents for these costs in the amount of \$9,216.75, all other unit owners of YCC 202 will bear these costs. However, awarding costs is discretionary and if they are to be awarded, I must also determine who shall bear the burden of these costs as between the parties. In conducting that exercise in this particular case, I have considered the factors set out below:

1. this case has gone on for much longer than should have been the case because the Respondents repeatedly failed to participate in this matter in a timely manner and when they did, they did not always appear to do so meaningfully;
2. the Respondents did not check for messages or notifications from the Tribunal on a daily basis, nor from all appearances on a regular basis. Although this case got underway in early November 2023, it was only in late February 2024 that Jessica Szabo advised the Tribunal of her limitations in regard to checking Tribunal matters on a regular basis due to her work and professional travel schedule, despite having been asked to so advise very early on in the proceeding;
3. the Respondents missed deadlines to file evidence or submissions and sought extensions to do so after the fact;
4. Jessica Szabo’s responses on cross-examination and to other questions were often partly or non-responsive, contradictory or argumentative;

5. In mid-February 2024, Jesscia Szabo indicated that she was in the process of securing legal representation, which would among other things facilitate regular communications and responses with the Tribunal. By late February 2024, she changed course to indicate that she would not do so, all of which served no purpose other than to further delay this proceeding;
6. the Respondents did not file any response in regard to YCC 202's claim for costs associated with the enforcement of its Pets Rules vis-à-vis Bentley; and
7. the Respondents were advised by the Tribunal that by filing submissions in mid-April 2024, well past the deadline for doing so, there would be an impact on the costs in this matter.

[108] In addition to the above, I am of the view that YCC 202 was for the most part successful in its claims against the Respondents. However, the results are qualified by the fact that in my view, YCC 202 must bear responsibility for the confusion or ambiguity in their various verbal and written communications with the Respondents during the period of January 2020 up to March 1, 2023.

[109] In my assessment and in view of all the circumstances of this case, I therefore order the Respondents to pay costs in the total amount of \$6,601.73, being 70% of the costs in the amount of \$9,216.75 claimed by YCC 202, plus the Tribunal filing fees of \$150.

[110] On a different but related topic, YCC 202 also requested an order under subsection 1.44(1) 5 of the Act that the Respondents should pay the costs of the Tribunal. In the circumstances of this case, I decline to make such an order.

D. CONCLUSION

[111] In my view, this case highlights the importance of consistency in terms of the processes and requirements on how all pets are allowed to be brought onto a condominium property, from day one. This case should also serve as a reminder that condominium residents have a duty to make themselves aware of all rules and regulations on that topic, as well as to be in compliance with those rules.

[112] In regard to this particular case and if not already done, YCC 202 could consider amending its rules or forms, or both, so as to state explicitly what is required for any owner seeking an exemption from the Pets Rules on the grounds of a disability-related accommodation.

E. ORDER

[113]The Tribunal Orders that:

1. Under subparagraph 1.44(1) 2 of the Act and within 60 days of the date of this Order,
 - a. the Respondents must provide documentation to YCC 202 which will justify an exemption for Buster from the application of Rule O.03 on the basis of a disability-related accommodation;
 - b. the Respondents must provide to YCC 202 a certificate signed by a veterinarian certifying Bentley's exact weight, in compliance with Rule O.03; and
 - c. the Respondents must ensure that Bentley's information is updated on their Resident Information Form, subject to meeting the weight limit requirement provided for in Rule O.03.
2. In such case that the Respondents do not comply with the above orders, YCC 202 can require the removal of one or both dogs in accordance with Rule O.15.
3. The Respondents must pay the following to YCC 202 within 60 days of the date of this Order:
 - a. The amount of \$2,000 in damages, under subparagraph 1.44(1) 3 of the Act; and
 - b. The amount of \$6,601.73 in costs, plus the Tribunal filing fees of \$150.00, for a total of \$6,751.73, in accordance with subsection 1.44(1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: May 30, 2024