

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 5, 2024

CASE: 2024-00098N

Citation: Velic v. Niagara South Vacant Land Condominium Corporation No. 144, 2024 ONCAT 134

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

Member: Mary Ann Spencer, Member

The Applicant,

Diana Velic

Represented by: Zed Velic, Agent

The Respondent,

Niagara South Vacant Land Condominium Corporation No. 144

Represented by: Rupjeet Gill, Agent

Hearing: Written Online Hearing – June 24, 2024 to August 23, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Diana Velic, is the owner of a unit of Niagara South Vacant Land Condominium Corporation No. 144 (the “Respondent” or the “corporation”). Ms. Velic alleges that the corporation has failed to enforce the provisions of Article III (6) of its declaration which relate to visitor parking. She requests that the Tribunal order the corporation to install signage identifying its common element parking spaces as visitor parking by permit only and to enter into a contract for parking enforcement with an agency authorized by the municipality.
- [2] The corporation submits that Ms. Velic’s application should be dismissed. Its position is that it has not designated any common element spaces as visitor parking and therefore the provision in Article III (6) of the declaration that states visitor parking areas are restricted to use only by visitors does not apply. It requests its costs in this matter.
- [3] For the reasons set out below, I find that the corporation has not failed to enforce the provisions of its declaration related to visitor parking and I dismiss this

application without costs.

B. BACKGROUND

- [4] Niagara South Vacant Land Condominium Corporation No. 144 is comprised of 35 townhouse units. Each unit has a garage and an exclusive-use common element driveway. There are 15 common element parking spaces located on the property. There is no signage identifying the use of these 15 spaces.
- [5] The corporation's turnover meeting was held on May 3, 2022. The Applicant was a director of the corporation until August 9, 2023. Off-site condominium management services are provided by Cannon Greco Management Limited.
- [6] Article III (6) of the corporation's declaration registered on October 3, 2018 contains three paragraphs under the title "Parking". The provisions set out in those paragraphs can be summarized as:
- No vehicles other than private passenger automobiles may be parked on the common elements including any exclusive use common elements or any part designated for visitor parking unless approved in writing by the property manager or board of directors. No vehicle repairs are permitted anywhere on the common elements.
 - Private passenger automobiles may only be parked in unit garages or on finished driveways unless otherwise permitted by the property manager or board of directors.
 - Common element parking areas designated as visitor parking by the board of directors may only be used by visitors.

The corporation also has two rules dating from October 2018 related to parking. Rule 11 (i) repeats the second provision of the declaration. In addition, it states that vehicles are not to be parked on roadways. Rule 11 (ii) states that no vehicle leaking oil and no inoperative vehicle may be parked on the common elements.

C. ISSUES & ANALYSIS

- [7] The issues to be decided in this matter are:
1. Has the corporation failed to enforce the provisions of Article III (6) of its declaration relating to visitor parking?
 2. If it is found that the corporation has failed to enforce the visitor parking

provisions, what is the appropriate remedy?

3. Should an award of costs be assessed in this matter?

Issue 1: Has the corporation failed to enforce the provisions of Article III (6) of its declaration relating to visitor parking?

- [8] The third provision of Article III (6) of the corporation's declaration restricts the use of any area designated as visitor parking by the board of directors to visitors of unit owners and occupants. It states:

Parking areas, if designated by the Board of Directors of the Corporation as visitor parking, shall only be used for parking vehicles of visitors to the owners or occupants of units.

Ms. Velic is alleging that the corporation is allowing unit owners and occupants to park their vehicles in the corporation's 15 common element parking spaces in violation of the above-noted provision. She is asking the Tribunal to order the corporation (i) to install signage at those spaces with the specific wording "Private Property, Visitor Parking by Permit Only", (ii) to keep accurate records of owners', occupants, and visitors' vehicles, and (iii) to contract with a firm authorized by the municipality to enforce the parking restrictions by having unauthorized vehicles tagged and towed.

- [9] Ms. Velic submitted pictures dated in April and May, 2023 and in May and June, 2024 of vehicles which she indicated belong to unit owners and/or occupants which were parked in the 15 common element spaces. She also submitted a number of undated photographs. The corporation does not deny that unit owners and/or occupants park in the spaces. Its position is that the board of directors has not designated these spaces as visitor parking and therefore their use is not restricted to visitors only.

- [10] Ms. Velic represented herself in this matter until August 12, 2024 when she designated Zed Velic as her representative. However, both Ms. Velic and Mr. Velic made final submissions to the Tribunal. I accepted both because it was apparent that they did not fully understand the role of a representative and because they presented discrete arguments. In contrast to Ms. Velic's request that the Tribunal order the corporation to enforce the declaration, Mr. Velic wrote the following in his final submission, focusing on the corporation's position that it had not designated an area of visitor parking:

...whether and how the guest/visitor parking is enforced is irrelevant to this matter as is a responsibility of the Board to resolve however it sees fit, but

what cannot be disputed is the official and designated use of the Lands as established in the Site Plan and Site Plan Agreement. The Site Plan is very clear to designate the 15 stalls as guest/visitor parking, and it is the duty of the Board (along with guidance from Property Management) to ensure their actions and duties are lawful and do not breach any contractual obligations between the Corporation and the Municipality.

Notwithstanding Mr. Velic's submission, the question of the corporation's compliance with the provisions of its declaration is the central issue in this matter. Section 119 (1) of the *Condominium Act, 1998* (the "Act") requires this compliance:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

- [11] Ms. Velic submitted that the corporation's 15 common element parking spaces have been designated as visitor parking because this is a municipal requirement and therefore the restrictions set out in the declaration should be enforced. She provided a site plan dated December 12, 2017 which, under the title "Land Use Schedule", states "Parking spaces – guests: 15". The plan sets out the location of those spaces on the property. However, there is no indication on this plan that it was accepted by the municipality. In response, Rupjeet Gill, the Respondent's representative, provided a site survey she indicated she had obtained from the municipality in August, 2024 which identifies the area where the 15 parking spaces are located only as "common elements". She noted this plan was stamped as approved by the municipality on September 18, 2018 and submitted that it overrides the site plan provided by Ms. Velic.
- [12] Mr. Velic advised that he has a background in urban planning and property management. He submitted that the corporation is in violation of various statutes, including the Planning Act and municipal zoning by-laws. He noted that the corporation is required to adhere to the approved site plan, which he identified as the plan Ms. Velic provided, and to the site plan agreement with the municipality. Ms. Gill uploaded a copy of the signed site plan agreement on record with the corporation and noted that it does not mention visitor parking.
- [13] The Applicant's argument is that the corporation is in breach of its contractual obligations with the municipality and that, in effect, those obligations override the discretion of the board to designate a visitor parking area set out in the third provision of Article III (6) of its declaration. However, whether the corporation has complied with municipal obligations and/or requirements is an issue outside of the

jurisdiction of this Tribunal. That jurisdiction is established in Ontario Regulation 179/17. Section 1 (1) (d) (iii) provides the Tribunal with jurisdiction only with respect to disputes about provisions of a corporation's declaration, by-laws or rules that "prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes." The question before me is not whether the corporation has breached its contractual arrangements with the municipality but whether it has failed to enforce the parking restrictions set out in Article III (6) of its declaration.

- [14] Ms. Velic provided a number of letters which she submitted indicate that the corporation's board of directors has in fact designated the common element spaces as visitor parking. In a letter dated December 1, 2022 sent to all residents, Property Manager Nick Deacon reminds them that "visitors parking being any parking space other than individual driveways" is reserved for visitors and asks residents to register their vehicles. In a letter to a resident dated March 30, 2023, Property Administrator Ann Faulkner advises the resident that they must cease parking in visitor parking and then quotes the corporation's Rule 11 (i) (mistakenly referred to as Rule 10 in the letter) which refers to a prohibition on parking in common element spaces without approval. Ms. Velic also provided documents indicating that on July 26, 2023, after she complained about a resident parking in the common element spaces, Property Manager Pamela Smith sent a letter to the resident advising them that they could not park in the common element spaces. In this letter Ms. Smith refers to the parking area as "visitors" and quotes the entirety of Article III (6) of the declaration. In a follow up letter dated July 28, 2023, Ms. Smith again reminds the resident that they may not park in the visitor spaces without "approval of the board". I note that only Mr. Deacon's letter referred to an outright prohibition on parking on the common elements.
- [15] Ms. Velic also submitted a copy of a lawyer's review of a status certificate produced by the corporation and a copy of an advertisement for a unit as evidence that the corporation has a designated visitor parking area. I find this evidence is not relevant; the lawyer's letter only refers generally to common element amenities "such as" visitor parking in explaining what common expenses cover and the advertisement was not produced by the corporation.
- [16] Ms. Gill, who is a member of the corporation's board of directors, testified that the board has not formally designated the 15 common element spaces as visitor parking. Similarly, board president Vladen Stegnjaic, who has been a board member since May, 2022, testified that the board has never decided to designate the common element spaces as visitor parking. He noted that it was Ms. Velic, a

board member until August, 2023, who always initiated the discussions on parking but that the board deferred action in the absence of a problem. Xiaoyun (Lisa) Zhang also testified that no decision had been made to designate visitor parking during her tenure as a director from May 31, 2022 to May 31, 2023.

- [17] The witnesses' testimony is supported by the minutes of the corporation's board meetings. Those indicate that at their inaugural meeting held on May 31, 2022, the board asked about options for visitor parking. At their February 1, 2023 meeting, the board requested quotes for signage. At the July 11, 2023 meeting, the matter was deferred. E-mail correspondence between the directors dating from May, 2023 indicates that Ms. Velic was insistent that visitor parking should be used only by visitors but that the other two directors were against introducing the permit system which Ms. Velic apparently wanted to put in place.
- [18] Ms. Gill acknowledged that the letters sent to residents from condominium management have used the term "visitors parking". She noted that these letters were not pre-approved by the board and suggested that the July, 2023 letters were sent at Ms. Velic's sole direction, notwithstanding that the other board members were copied on them. She advised that the board would direct its condominium manager to be more careful with their wording in the future. However, the fact that the letters referred to the 15 common element parking spaces as "visitors" parking does not mean that the spaces were formally designated as such by the board of directors and there is no evidence to indicate they have been. Based on the directors' testimony and the evidence of the board minutes, I find that the corporation has not designated the common element spaces as visitor parking.
- [19] With respect to enforcement of parking restrictions, Ms. Gill referred me to the Tribunal's decision in *Roberts v. Halton Standard Condominium Corporation No. 617 and Yamine*, 2021 ONCAT 21 (CanLII), which, at paragraph 16 states:

... the issue of enforcement of the governing documents is not a foregone conclusion. Courts have clearly stated that while a board has a duty to enforce its own declaration and rules where the violation is causing a problem, not every minor violation of a declaration must be met with an enforcement procedure. A condominium board is vested with some discretion in deciding the manner and extent to which it should enforce its declaration and rules and is owed some deference, provided it acts reasonably and not capriciously.

The second paragraph of Article III (6) states that private passenger automobiles may only be parked in unit driveways or garages unless otherwise permitted by the property manager or board of directors. Ms. Velic submitted that owners, including members of the board, were parking in the common element spaces without

permission but provided no evidence to support this contention. Mr. Stegnjaic testified that the board's approach has been to allow flexibility for residents and that it has addressed parking problems "on fewer than a handful of occasions." In a reply to an enquiry from the owner advised to remove their vehicle from the common element spaces on July 26 and 28, 2023, Ms. Smith advised that the corporation addressed parking violations when it received complaints. In the absence of evidence of any parking problems, I find the corporation's approach to enforcement to be reasonable.

[20] Article III (6) of the corporation's declaration states that designation of visitor spaces is at the board's discretion. I have found that the corporation has not made this designation and therefore the restriction that common element spaces may only be used by visitors does not apply. I have also found that the corporation's complaint-based enforcement of the provision which requires permission to park in spaces other than driveways or garages to be reasonable. The corporation has not failed to enforce the provisions of Article III (6). Therefore, I dismiss Ms. Velic's application.

Issue 2: If it is found that the corporation has failed to enforce the provisions of its declaration relating to visitor parking, what is the appropriate remedy?

[21] I have found that the corporation has not failed to enforce the provisions of its declaration relating to visitors parking and therefore there is no need to address remedy.

Issue 3: Should an award of costs be assessed in this matter?

[22] Ms. Velic is requesting reimbursement of the \$200 she paid in Tribunal fees. The corporation requests costs of \$4,839.38, comprised of \$4,514.38 in legal fees and \$325 in fees charged by its condominium management services firm.

[23] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

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.

[24] Ms. Velic was not successful in this case and therefore she is not entitled to reimbursement of the Tribunal fees she paid.

[25] The corporation was not represented by legal counsel in this Stage 3 – Tribunal Decision proceeding and the Stage 2 Summary and Order indicates that Ms. Gill was its representative during the Stage 2 – Mediation. The legal invoices which it submitted indicate that the corporation was advised by counsel throughout the earlier stages of this matter. It was also charged for extra work performed by its condominium manager.

[26] The award of costs is discretionary. In considering whether costs should be awarded, I am guided by the "Tribunal's Practice Direction: Approach to Ordering Costs" which, among the factors to be considered, includes: the conduct of all parties and representatives; whether the parties attempted to resolve the issue in dispute before the CAT case was filed and the potential impact an order for costs would have on the parties.

[27] It was evident during this proceeding that this case was personal to both the Applicant and to some members of the corporation's board of directors. The Applicant suggested that the board members were refusing to enforce the declaration because they themselves used the common element parking spaces. One of the corporation's witnesses suggested that the case was filed only because Ms. Velic had been removed from the board and replaced by an individual who had in fact used the common element spaces. However, the corporation's representative was more circumspect and there were no issues with the conduct of the parties. Mr. Velic did raise additional issues relating to municipal compliance late in the hearing; however, the corporation presented no request for costs associated with the Stage 3 – Tribunal Decision proceeding. In these circumstances, I find no reason to award costs in this matter.

D. ORDER

[28] The Tribunal Orders that the application is dismissed.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: September 5, 2024