

Why Condos Need to Ensure Accessibility Parking is Available for Owners

16 March 2021

Recently, in *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 13, the Condominium Authority Tribunal (“CAT”) confirmed that an owner was entitled to park his vehicle in the one of three outdoor designated accessible parking spaces, despite a sign depicting the area as “Visitor Parking Only”. Furthermore, the Condominium Authority Tribunal confirmed that a condominium corporation cannot recover legal costs from owners on the basis of indemnification clauses in their Declaration by simply asserting such costs.

In this case, the owner owned two designated parking spaces. However, the owner did not use such spaces as a disability impeded his ability to access his condominium unit from the parking spaces. Consequently, the owner frequently parked his vehicle in an outdoor parking space, reserved for accessible parking, that coincidentally happened to be located in the same area as the visitor parking area. While the space in which the owner parked in was marked with the universal accessible parking symbol, the sidewalk behind such space had a sign with arrows pointing in both directions that read, “Visitor Parking Only”. As a result, the condominium corporation held the position that the accessible parking space was for visitor parking only.

The CAT disagreed. The condominium corporation’s Declaration stated that handicap parking was for both owners or visitors who required it. The indoor parking reserved for owners did not contain any accessible parking. As such, the only accessible parking available to owners was the parking located in the visitors parking lot. Contrary to the condominium corporation’s stance, the owner was in compliance with the Declaration.

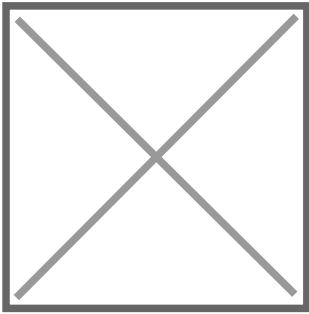
The condominium corporation claimed that it had incurred costs in enforcing compliance with the Declaration and it sought to recover those costs against the owner pursuant to the indemnification clauses in the Declaration. Most notably, the CAT noted that the condominium corporation cannot claim these costs because the owner did not breach the parking provisions of the Declaration. Furthermore, the condominium corporation breached section 134(5) by including its legal costs in the lien against the owner without a court order.

Based on the foregoing, there are three main takeaways for condominium corporations from this case:

- i. condominium corporations should carefully consider whether they have provided sufficient accessible parking spaces to owners and visitors, and to carefully delineate the difference between accessible parking spaces and visitor parking;
- ii. condominium corporations need to keep a careful accounting of the legal costs it seeks to recover from owners and should strive to provide owners with the breakdown of the costs it seeks. Condominium corporations cannot simply impose any costs it wishes against a unitholder by merely labelling them as “common expenses”; and
- iii. lastly, condominium corporations cannot include legal costs in liens against an owner without a court order.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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