

# [Sarros v. York Region Standard Condominium Corp. No. 1445](#)

Ontario Judgments

Ontario Superior Court of Justice

Divisional Court - Oshawa, Ontario

N.L. Backhouse, E.M. Stewart and W.M. Matheson JJ.

Heard: September 22, 2022 by videoconference.

Judgment: September 23, 2022.

Divisional Court File No.: DC-21-1262

[2022] O.J. No. 4227 | 2022 ONSC 5346

RE: Haralambos Sarros, Appellant, and York Region Standard Condominium Corporation No. 1445, Respondent

(21 paras.)

## Counsel

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*Haralambos Sarros, Self-Represented*, Appellant.

*Timothy M. Duggan and Bharat Kapoor*, for the Respondent.

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### ENDORSEMENT

The judgment of the Court was delivered by

**N.L. BACKHOUSE J.**

1 The appellant appeals a September 27, 2021 order of the *Condominium Authority Tribunal* ("CAT") dismissing his application to permit him to keep a certain structure on the balcony of his unit on the basis that CAT misapprehended material evidence before it and erred by treating as evidence information not contained in the record of evidence at the hearing.

#### Background

2 The appellant is the owner of a unit at the respondent Condominium Corporation. The respondent has a rule that permits only "seasonal furniture" to be placed or stored on the balconies of units and requires that balconies not be used for the storage of any goods or materials. The appellant placed a structure on his balcony that was intended to store barbells and weight equipment ("the Structure").

3 On June 8, 2020, the respondent's management wrote to the appellant advising him that the Structure was not "seasonal furniture" permitted to be placed on his balcony and required him to remove it. The appellant stopped using the Structure to store weights but did not remove the Structure. Further letters were written, requesting the removal. The appellant refused, taking the position that he had converted the Structure into a piece of seasonal furniture by adding a piece of wood and by hanging flowers and Christmas lights from it.

4 In February 2021, the appellant commenced an application before the CAT seeking an order permitting him to

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continue to use the Structure on his balcony and requiring the respondent to refund monies that he had paid in connection with the corporation's enforcement efforts.

5 The appellant's application was heard by the CAT by way of a written online hearing. The appellant's evidence about his use and conversion of the Structure was uncontroverted and was accepted by CAT.

6 In the submissions, the appellant put forward dictionary definitions of the words "furniture", "seasonal" and "table" but not the phrase "seasonal furniture". The respondent submitted that a Google search suggested that seasonal furniture included things like tables and chairs. The appellant submitted that a Google search was not conclusive on the question but did not object to the Member considering the result of a Google search.

### **Relevant Rule**

7 Rule 9 of the respondent's Rules made pursuant to the *Condominium Act, 1998*<sup>1</sup> (the Act) was in dispute before the Tribunal:

- 9(a) Use of the Common Elements and Units shall be subject to the Rules which the Board may make to promote the safety, security or welfare of the owners and of the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the Common Elements and of other Units;
- (b) Balconies, terraces, patios and exclusive use areas shall not be used for the storage of any goods or materials.
- (c) Only seasonal furniture is allowed on balconies, terraces, patios and exclusive use areas. All such items shall be safely secured in order to prevent such items from being blown off the balcony, terrace or exclusive use areas by high winds.
- (d) No owner, occupant or tenant shall do or permit anything to be done on a balcony, terrace, patio or exclusive use area which does or may unreasonably disturb, annoy or interfere with the comfort and/or quiet enjoyment of the Units and/or Common Elements by other owners, occupants or tenants.

### **CAT Decision**

8 On or about September 27, 2021, the CAT released the Decision in which its Member, among other things:

- a. found, as a fact, that there was "no question" that the Structure, in its original configuration, was not compliant with the respondent's rules;
- b. accepted the applicant's [appellant's] evidence that he had stopped using the Structure as gym equipment after he received the first letter from the respondent's manager in or about June, 2020 and that the Structure is no longer identifiable as gym equipment;
- c. noted that the term "seasonal furniture" was not defined in the respondent's rules;
- d. found that the applicant [appellant] has not provided a dictionary definition of that phrase, perhaps because this is not a term that could be found in dictionaries;
- e. held that, in the absence of a "more precise definition", a Google search for the term "seasonal furniture" would be of some assistance in determining whether the Structure "could come within the ordinary understanding of 'seasonal furniture' in the context of a condominium balcony";
- f. found that such a search did not produce a structure that looks anything like the Structure the applicant [appellant] has on his balcony;
- g. held that "seasonal furniture", as ordinarily understood, does not bear any resemblance to the Structure;

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- h. found, as a fact, that the Structure was therefore not "seasonal furniture" for the purposes of the corporation's [respondent's] rules;
- i. ordered the applicant [appellant] to remove the Structure from his balcony within 21 days of the CAT Decision;
- j. held that the legal fees paid by the applicant [appellant] were reasonable, and that he was therefore not entitled to a refund of same; and
- k. held that neither party was entitled to costs of the application.

**Standard of Review**

**9** Pursuant to subsection 1.46(2) of the *Act*, an appeal from an order of the CAT lies to this court only on a question of law. Findings of fact or of mixed fact and law are not open to review by this court.<sup>2</sup>

**10** The applicable standard of review is correctness because the Legislature has prescribed a statutory right of appeal on questions of law without establishing a standard of review.<sup>3</sup>

**Analysis**

**11** The two grounds of appeal raised by the appellant are dealt with below. The appellant confirmed that he was not raising procedural unfairness as a ground of appeal.

**1) Did CAT misapprehend material evidence before it?**

**12** The appellant submits that CAT erred by failing to consider the Oxford Dictionary definitions that he provided of "furniture", "seasonal" and "table" and instead accepted the respondent's submission that the Structure is not "seasonal furniture" based on a Google search not in evidence.

**13** I am unable to agree with the appellant's submission that the Member failed to consider the definitions he provided of "furniture", "seasonal" and "table" and had the Member done so, this would have affected the outcome. It can be inferred that the Member considered the definitions provided by the appellant and it was not necessary that this be explicitly set out in the reasons for decision. What the Decision states is that the appellant had not provided a dictionary definition of "seasonal furniture". This is correct. A separate definition of "furniture", "seasonal" and "table" is not a definition of "seasonal furniture". Even if the Appellant had provided a dictionary definition of "seasonal furniture", it would not be dispositive of the appeal.

**14** The Member found:

- a. The appellant did not obtain the Structure with a view to using it as a table or for hanging flower baskets and lights;
- b. The appellant obtained a piece of gym equipment.
- c. It was unlikely that the appellant or anyone else would purchase the Structure with a view to using it as a table to hang flower-baskets or lights;
- d. To the extent that the Structure has seasonal functions, this is limited to the times when the appellant has hung flower baskets and strung lights. For the rest of the time, the Structure is being stored on the appellant's balcony. This is contrary to clause (b) of the rule which prohibits storing goods on a balcony.
- e. Placing a wood board on a structure which was meant as gym equipment does not substantially change the structure so that it is now recognized as a table.

**15** It is clear from these reasons that the Member rejected the appellant's argument that by adding a piece of wood to the Structure it became a table and by using it to hang flowers or lights, it became "seasonal furniture."

**16** The Member described the Structure as "a metal structure 7 feet in height with 4 posts and a board." The member concluded that "seasonal furniture", as ordinarily understood, does not bear any resemblance to the Structure. The member appended a picture of the Structure to the Decision, which was put forward by the appellant and is attached hereto as Appendix A. It is obvious from the picture that this is so. It is clear from the Member's reasons that the appellant's application was rejected because the Structure did not look like the ordinary understanding of "seasonal furniture".

**17** The Member did not misapprehend material evidence giving rise to a question of law. This ground of appeal is rejected.

**2) Did CAT err by treating as evidence information not contained in the evidence?**

**18** The potential use of a Google search was expressly raised in the hearing. The appellant did not object to the Member considering the result of a Google search and made submissions with respect to the relevance and weight to be attached to its results. It was open to the appellant, who is a lawyer, to insist on the Google search result being included in the record and/or to counter the respondent's characterization of what such a search produced. This argument should not be raised for the first time on appeal.

**19** There is no suggestion by the appellant that a wider or different Google search of "seasonal furniture" would contradict the Member's finding that such a search does not produce a structure that looks like the Structure the appellant has on his balcony. It is also clear that the Member considered the Google search as only "of some assistance in determining an ordinary understanding of 'seasonal furniture' in the context of a condominium balcony."

**20** While it would have been preferable for the Google search result which was considered by the Member to have been made part of the record, in the circumstances of this appeal, this does not amount to an error of law.

**Conclusion**

**21** In the result, the appeal is dismissed with costs to the respondent fixed in the amount of \$3000.

N.L. BACKHOUSE J.

E.M. STEWART J.:— I agree.

W.M. MATHESON J.:— I agree.

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**APPENDIX A**



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**1** *Condominium Act, 1998*, [S.O. 1998, c.19](#).

**2** *Gale v. Halton Condominium Corp. No. 61*, [2020 ONSC 5896](#) (Div. Ct.) at para. 9.

**3** *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#) (S.C.C.) at paras. 36- 37.

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