

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 12, 2018

CASE: 2018-00261R

Citation: Musharraf Ali Khan v Metropolitan Toronto Condominium Corporation No. 581
2018 ONCAT 14

Member: Ian Darling, Chair

The Applicant

Musharraf Ali Khan

Atif Khan, Agent

The Respondent

Metropolitan Toronto Condominium Corporation
No. 581

Jennifer Kammer, Representative

ORDER

[1] The Users participated in a mediation to resolve a dispute on the Condominium Authority Tribunal (CAT) Online Dispute Resolution system (CAT-ODR). The mediation was unsuccessful. As the Mediator, I allowed the applicant to move the case to Stage 3 – Tribunal Decision. An applicant has 30 days to request adjudication. If the request is not made within 30 days, the CAT-ODR system closes the applicant's ability to make the request. The applicant did not make the request within the prescribed time period and asks that he be allowed to make a late request for adjudication. Upon receipt of the request, I asked both users to provide written submissions. The respondent opposes the request.

[2] After considering the Users' submissions, I am refusing to grant the extension of time to make the request for adjudication and order that the case be closed. My reasons follow.

ANALYSIS

[3] Rule 25.4 of the CAT Rules of Practice states that the Tribunal will end Stage 2 and close the Case if:

(d) the Mediator finds that the Applicant has abandoned the Case because there has been no discussion between the Users for more than 30 days, or the Applicant has not paid the Stage 3 fee even though they have had more than 30 days to do this.

- [4] Rule 4.2 of the CAT Rules allows the CAT to vary time limits or deadlines.
- [5] The applicant failed to pay the Stage 3 fee within the 30-day period. The request was opened on October 12, 2018. The applicant contacted me on November 13, 2018. The time period to request adjudication expired one day before the applicant contacted me indicating his intention to move the case to Stage 3.
- [6] In deciding whether to give an extension of time to request adjudication, I am guided by the factors for consideration set out in *Frey v. MacDonald* [1989] O.J. No. 236 (C.A.). In *Frey*, the Court set out four factors to be considered in assessing a request for an extension of time as follows:
- i. The existence of a bona fide intention to appeal;
 - ii. The length of the delay;
 - iii. Prejudice to the other party; and,
 - iv. The merits of the appeal.
- When considering these factors, the Court has also stated that ‘the justice of the case’ is the overriding consideration.
- [7] The applicant stated that the request was late because he thought that the deadline was November 23, 2018 to request to move the case to Stage 3.
- [8] The respondent stated that the case should not move forward because the late request demonstrated lack of good faith by the applicant. They further stated that the case should not proceed due to the lack of merit for case.
- [9] I find that the applicant had an intention to appeal. I also find that the delay was a short one - the applicant contacted me one day after the prescribed time expired. However, the applicant has not provided any compelling reason for his failure to exercise his ability to request adjudication other than he thought it was a different date. Users receive an automatic notification through the CAT-ODR system that the period to request adjudication is open. The time period, at 30 days, is generous. The applicant has not stated that he did not receive the notification.
- [10] In considering, the ‘prejudice’ to the respondent if the extension of time was granted, I find that in these circumstances, it would be minimal. Issues such as witness’ fading memories are not at play here.
- [11] The remaining factor is the merits of the appeal. The mediation successfully resolved most of the records requested. The respondent provided the records requested, however, the applicant expressed concern regarding the accuracy and completeness of some of the records. The applicant also requested that a record be created. The accuracy of the records, and the request to create a record would be the issues in Stage 3. The request to create a record, and the issue of whether the record which has been produced is accurate are matters that are outside the current mandate of the Tribunal to decide.

[12] To conclude, although the delay was minor, the 30-day period to request adjudication is lengthy. The records request filed by an applicant is what forms the basis of the dispute before the CAT. Significantly, through the mediation stage, the applicant has been provided with the records in his record request. The justice of the case would not be served by giving the applicant additional time to request adjudication.

ORDER

[13] The Tribunal orders that, the Case be closed because the time to request adjudication has passed.

Member
Ian Darling, Chair.
Condominium Authority Tribunal

Released on: December 12, 2018.