CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 19, 2018
CASE: 2018-00051R
CITATION: Manorama Sennek, v. Carleton Condominium Corporation No. 116, 2018 ONCAT 4

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

Adjudicator: Ian Darling

The Applicant Manorama Sennek	Self-represented
The Respondent Carleton Condominium Corporation No. 116	Antoni Casalinuovo, Counsel

Written submissions received: April 2 – May 23, 2018

REASONS FOR DECISION AND ORDER

A. INTRODUCTION

[1] Manorama Sennek (the "Applicant") filed an application with the Condominium Authority Tribunal (the "CAT" or the "Tribunal") on February 22, 2018, seeking an order from the Tribunal requiring the Respondent to pay a penalty to her for failure to maintain a record over a 91-month period, from 2010 to 2018.

[2] A preliminary review of the application raised questions as to whether the Tribunal has the legal power to hear or decide the case. The Tribunal requested written submissions from the Users to address the issues identified by the Tribunal, to make a decision whether or not to dismiss the application without a hearing.

[3] After reviewing the Users' submissions, I find that the application is vexatious on the basis that it is an attempt by the Applicant to continue a dispute already determined by the courts and is brought for an improper purpose.

B. ISSUES & ANALYSIS

[4] During the early review process, the Tribunal identified four issues that could affect the CAT's legal authority to deal with the Case. The issues identified by the Tribunal about which the Applicant and Respondent were asked to make written submissions are as follows:

1. Is the Applicant prohibited from filing an application with the Tribunal because of the order of Ontario Superior Court declaring the applicant to be a vexatious litigant?
2. Does the Applicant meet the definition of an Owner?
3. Was the application filed with the Tribunal within the prescribed two-year limitation period?
4. Did the Applicant follow the required process for requesting a penalty from the Respondent for not providing access to records?

[5] In deciding whether to accept the application, the Tribunal is guided by the *Condominium Act, 1998* (the "Act"). Section 1.41(1) of the Act states:

> The Tribunal may refuse to allow a person to make an application or may dismiss an application without holding a hearing if the Tribunal is of the opinion that the subject matter of the application is frivolous or vexatious or that the application has not been initiated in good faith or discloses no reasonable cause of action.

[6] Further guidance is outlined in section 4.6 of the Statutory Powers Procedure Act (the SPPA), and Rule 17.1 of the CAT's Rules of Practice. The CAT Rules of Practice allow the Tribunal to dismiss an Application before it goes through the Tribunal's stages. Examples of grounds to dismiss an application include (but are not limited to) if it is an application that the Tribunal has no legal power to hear or decide or if the application is frivolous or vexatious, or for an improper purpose.

Issue 1: Is the Applicant prohibited from filing an application with the Tribunal by the order of Ontario Superior Court declaring the applicant to be a vexatious litigant?

[7] On August 24, 2017, Justice Sheard in *Carleton Condominium Corporation No. 166 v. Sennek*, 2017 ONSC 5016, issued an order under s. 140 of the *Courts of Justice Act*, to prohibit the Applicant from starting any action, application, motion or proceeding against the condominium corporation or its employees, Board members, condominium manager, etc. without obtaining leave of a judge of the Ontario Superior Court. The order provides some context to the dispute. The initial dispute was relatively minor but grew in complexity. The grounds for the order included the Applicant breaching, or failing to comply with orders, initiating complaints to the Law Society, and suing counsel for the Respondent. The various complaints were determined unfounded, and the statement of claim against counsel was dismissed as "frivolous, vexatious, and an abuse of process". Justice Sheard's order was upheld by the Ontario Court of Appeal (*Carleton Condominium Corporation 116 v. Sennek,* 2018 ONCA 118) in a decision dated February 8, 2018.

[8] Justice Sheard found that the Applicant had met the criteria of a vexatious litigant outlined in *Lang Michener et al v. Fabian e*t al (1987) 1987 CanLII 172 (ON SC), 59

O.R. (2nd) 353 where the following criteria were established to identify a vexatious proceeding:

- bringing of one or more actions to determine an issue which has already been determined;
- where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;
- bringing a proceeding for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- rolling forward grounds and issues into subsequent actions; and
- persistently taking unsuccessful appeals from judicial decisions.

[9] Upon becoming aware of the Order declaring the Applicant to be a vexatious litigant, the CAT requested that the Users provide submissions on the impact of the Order in this matter. The Respondent asserted that the Court's order prohibits the Applicant from filing this application. The Respondent has not provided any case law that satisfies the Tribunal that an order under s.140 of the *Courts of Justice Act* should be interpreted broadly to include tribunals. The Respondent has not satisfied the Tribunal that section 140 applies to tribunals.

[10] The Tribunal is not aware of any case law or other rule of statutory interpretation to suggest that the reference in s. 140(1) to the court order prohibiting the vexatious litigant from starting or continuing a proceeding in "any court" should be interpreted to include a tribunal. It would require very clear wording in either the Court Order or the legislation to bar a person from access to the Tribunal.

Is the application vexatious?

[11] Although I find that the Order does not apply to the Tribunal, I must also consider if the application itself should be allowed to proceed, by assessing the application against the provisions outlined in s. 1.41 of the Act, namely, "if the Tribunal is of the opinion that the subject matter of the application is frivolous or vexatious or that the application has not been initiated in good faith or discloses no reasonable cause of action."

[12] Justice Sheard's Order assessed the totality of the Applicant's behaviour. In this decision, I consider only the application to the Tribunal. With this application it is not necessary to apply all the criteria to assess a vexatious litigant, but it is appropriate to assess if the dispute is a new or a continuation of other applications.

[13] Although this is the first application by the Applicant to the Tribunal, it is a continuation of a dispute that started in Small Claims Court. The initial records dispute started as an application in Small Claims Court. At the hearing in Small Claims Court in February 2016, the Respondent asserted that a record the Applicant

requested did not exist. The Applicant has alleged that this is false and has failed in several attempts to have the Courts make the finding that this record existed.

[14] In the application before this Tribunal, the Applicant has taken the alternative approach to claim that the Respondent's assertion that the record does not exist means that the condominium corporation has failed to maintain a record (over a 91 month period from 2010-2018) that is required to be maintained under the Act and Regulations. The applicant further asserts that the Respondent should therefore be ordered to pay a penalty. While this is a new approach, it is clearly a continuation of the previous dispute.

[15] Further to the question as to whether this is a new application, I note that the Applicant's submission on the question as to whether the vexatious litigant status should apply to this application did not address the question. The Applicant's submission directly connects the subject matter of this application to the subject matter of the previous proceedings. This demonstrates that it is a continuation of the same dispute. I cannot consider this a new dispute when the Applicant's submission directly connects it with an existing legal dispute.

[16] In evaluating the purpose of the application, the Applicant's request for penalty was equivalent to the costs which she had incurred in the court actions. This demonstrates that the Applicant's purpose in bringing this application was, in effect at least, to circumvent the outcome of the prior court proceedings. Whether this is more appropriately characterized as abuse of process or a continuation of the same dispute is moot, as either could be grounds for finding this application to be vexatious.

[17] In submissions to the Tribunal, both the Applicant and the Respondent agree that the statement that the records did not exist was made during a Small Claims Court hearing on February 19, 2016. The CAT was established and started receiving cases on November 1, 2017. The Applicant could have submitted an application to the CAT before the Court of Appeal decision in February 2018 was released but chose not to. The timing of the application to the Tribunal, just two weeks after the Court of Appeal decision, is significant because it supports a finding that this application was filed with improper purpose.

[18] It appears that the Applicant is seeking to use this Tribunal to allow her to get around that order so that she can continue essentially the same dispute as was in those prior court proceedings. The application was received by the CAT on February 22, 2018.

[19] Although I did not find that the vexatious litigation order applies to this Tribunal, or that the Applicant can be found to be a vexatious litigant in the context of these proceedings, I can and do find that the application is vexatious on the basis that it is an attempt to continue a dispute already determined by the Courts and is brought for

an improper purpose. Therefore, I conclude that this application meets the criteria for dismissal as outlined in s. 1.41 of the Act.

[20] Submissions were received from the Users on issues 2-4 as set out in paragraph 4 of this decision; however, as I have decided that the application is dismissed as vexatious, I need not decide those issues.

CONCLUSION

[21] The Tribunal concludes that the Application has been determined to be vexatious and should be dismissed without holding a hearing according to s.1.41 of the Condominium Act.

ORDER

The Tribunal orders that the Case be dismissed.

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Ian Darling
Chair, Condominium Authority Tribunal

RELEASED ON: June 20, 2018