

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 5, 2019

CASE: 2018-00222R

CITATION: Borys Demchuk v. Peel Condominium Corporation No. 94, 2019 ONCAT 7

Member: Ian Darling, Chair

The Applicant

Borys Demchuk

Self-Represented

The Respondent

Halton Condominium Corporation No. 386

Angela Floriani, 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 the case be reopened to allow 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 do not grant the extension of time to make the request for adjudication. 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 applicant was able to pay the Stage 3 fee from January 10, 2019 until the case

was closed on February 11, 2019. The applicant contacted the CAT to request additional time to request adjudication after the case was closed.

- [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:
- a. The existence of a bona fide intention to appeal;
 - b. The length of the delay;
 - c. Prejudice to the other party; and,
 - d. 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] These factors were also applied in *Musharraf Ali Khan v Metropolitan Toronto Condominium Corporation No. 5812018 ONCAT 14*, where the CAT did not allow a similar late request. The tribunal directed the users in this case to review that decision, and to make submissions that addressed factors identified in *Frey* and *Khan*.
- [8] The applicant submitted that the request was late because he had trouble identifying witnesses during the Hearing Readiness phase of Stage 2. The applicant further asserted that the respondent was granted an extension during the mediation, and that there was an interruption in his internet for 6 days.
- [9] The respondent stated that the case should not move forward for four reasons. They claim that all the records requested have been provided; that the applicant had added additional records requests during the process; that there was a delay in the process that advantaged the applicant and prejudiced the respondent; and that if the case went to Stage 3, the respondent would incur extra costs. because the late request demonstrated lack of good faith by the applicant.
- [10] Because I acted as the Mediator in this case, I know that the applicant was advised during the mediation that the mediation was not open ended, that he could identify the witnesses during the disclosure period in Stage 3, and that the deadline would not be extended. Despite these warnings, the applicant did not move the case to Stage 3. I also know that the “delay/extension” that the respondent refers to in its submissions was made to give the applicant sufficient time to pay the respondent the reasonable fee for the production of the records he sought, and for the respondent to then produce the records to fulfil the request. This brief delay did not disadvantage either User but allowed for the resolution of the requested records.
- [11] In assessing the *Frey* factors, I find that the applicant had an intention to move the case to Stage 3. I also find that the delay was a short one - the applicant

contacted the Tribunal one day after the Case was closed. However, the applicant has not provided any compelling reason for his failure to make the request for adjudication. 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.

- [12] The applicant asserted that there was a 6-day interruption in internet services but did not provide any evidence to support this assertion, or dates in order to understand when it occurred, and how it would have impacted his ability to request Stage 3.
- [13] In considering the possible prejudice to the respondent if an extension of time were to be granted, I find that in these circumstances, it would be minimal. Issues such as witness' fading memories are not at play here.
- [14] The remaining factor is the merits of the Case. The mediation successfully resolved the issues stemming from the records requested on the April 29, 2018 Request for Records Form. The applicant paid a reasonable fee, and the respondent provided the records. The applicant added several additional records during the Mediation. These requests were not on the proper form and had not been considered by the respondent prior to the Mediation. It would not be fair to allow the case to proceed when the applicant has not completed a proper request for the records.
- [15] To conclude, although the delay was minor, the 30-day period to request adjudication is lengthy. The applicant was advised of the consequences of missing the deadline. The Request for Records submitted to a condominium corporation 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 all of the records included in his request. The justice of the case would not be served by giving the applicant additional time to request adjudication.
- [16] The application to reopen the case is denied.

Member
Ian Darling, Chair.
Condominium Authority Tribunal

Released on: April 5, 2019