

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** March 9, 2021

**CASE:** 2021-00044N

**Citation:** Metropolitan Toronto Condominium Corporation No. 1195 v. Solomon, 2021 ONCAT 20

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

**Member:** Ian Darling, Chair

**The Applicant,**

Metropolitan Toronto Condominium Corporation No. 1195

Represented by Rachel Fielding, Representative

**The Respondent,**

Michelle Mihal Solomon

Represented by Allan Weiss, Representative

**Hearing:** Written Submissions – February 5, 2021 to February 24, 2021

### **MOTION DECISION**

- [1] In this Motion Decision, I decide and explain why the Condominium Authority Tribunal (CAT) should not defer consideration of an Application pending the conclusion of a Human Rights Tribunal Ontario (HRTO) proceeding.
- [2] Metropolitan Toronto Condominium Corporation No. 1195 (MTCC1195) filed an Application with the CAT seeking an order from the Tribunal to require Michelle Mihal Solomon (the "Respondent") to comply with MTCC1195's rules.
- [3] After they received notice of the case, the Respondent brought a motion to defer the CAT Application because they had already filed an HRTO application over the same dispute. The HRTO application alleges that MTCC1195's rules are being applied in a discriminatory manner.
- [4] In requesting the deferral, the Respondent asserted that:
  1. The Respondent advised the MTCC1195 of their intention to file an HRTO application in advance of doing so, and then informed MTCC1195 once the

HRTO application had been filed. Despite these notices, MTCC1196 filed its CAT Application after being informed of the HRTO case.

2. Since both Applications are effectively identical, and concern the same material facts, permitting them to proceed concurrently would allow for a multiplicity of proceedings.
3. As this dispute is a human rights matter, the Respondent is well within their rights to have it determined by the HRTO.

[5] MTCC1195 disagreed with the motion and submitted that the CAT has the jurisdiction to adjudicate all matters relating to a rule that restricts or otherwise governs pets in a unit.

[6] Both Parties contrasted the potential costs of the CAT Application. MTCC1195 asserted that the CAT is the only forum in which the issues in dispute can be dealt with in the most just, cost effective and expeditious manner. The Respondent asserted that they commenced the HRTO application before the CAT Application, and in so doing, incurred significant legal costs. They further assert that it would be unfair to compel the Respondent to pay for legal representation in two identical matters.

[7] In considering the request to defer, I note the intent to ensure that multiple cases do not run concurrently, and if the case is not deferred there is a risk of inconsistent decisions. However, deferral is not automatic.

[8] Although the HRTO application was filed first, it had yet to be approved when MTCC1195 filed with the CAT. Both cases are in their early stages. The HRTO case is not appreciably more advanced so as to persuade me that the CAT case should be deferred in favour of the HRTO case.

[9] In response to the request for submissions, both parties referred to *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513, 2006 SCC 14. MTCC1195 stated that it demonstrates that the CAT must consider human rights issues as they arise in the course of a hearing. The Respondent submitted that since this dispute is only of a human rights nature, it should be considered by the HRTO. In *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 1 the CAT considered a similar issue, finding:

[20] Regarding the Applicant's HRTO Claim, since the decision of the Supreme Court of Canada in *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513, 2006 SCC 14, it is understood that the HRTO does not have exclusive jurisdiction over the interpretation and

application of the Ontario Human Rights Code (the "Code"). A tribunal has authority to apply the Code where issues of human rights properly arise within the context of a case before it. Therefore, it is the HRTO, not this Tribunal, that might have reason for dismissing the complaint before it, if it is found that the Applicant's issues under the Code are fully addressed here. Further, it is possible that the range of remedies that can be ordered by this Tribunal under the Code are more limited than what is available through the HRTO, and the Applicant may be fully justified in pursuing a claim there while the extent to which his claims under the Code will be addressed in these proceedings remains uncertain.

[10] The jurisdiction of the CAT is outlined in Ontario Regulation 179/17 s.1.(1)

d. a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:

(i) Provisions that prohibit, restrict or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.

[11] The dispute arises from the way in which MTCC1195 seeks to apply their rules that "prohibit, restrict or otherwise govern pets". MTCC1195's rules restrict the size of dogs. The Respondent has a disability and requires a dog that is larger than the rule allows. MTCC1195 Pet Rule # 24 states that *"The Corporation may provide appropriate exemptions to these Pet Rules in respect of a 'service dog' or other animal which may be reasonably required by an owner to accommodate a disability under the Ontario Human Rights Code."* MTCC1195 has accepted that the Respondent requires a large dog. They seek to require the Respondent's dog to wear a muzzle in common areas. In doing so, they are asserting provisions that govern pets or other animals.

[12] In their submissions the Respondent stated that they do not dispute the existence of the pet rules, or even MTCC1195's ability to enact such rules. Rather, they asserted that the disability requires accommodation in light of these Rules, and that the refusal to accommodate is discriminatory. I find that it is clear from the submissions and the CAT Application that MTCC1195 has accepted the accommodation request, but the dispute is how the Pet Rules are applied in relation to the accommodation.

[13] Under section 1.42 (1) of the *Condominium Act, 1998*, the Tribunal has exclusive jurisdiction to exercise the powers conferred on it ... and to determine all questions of fact or law that arise in any proceeding before it. The central issue in dispute is the application of rules over which the Tribunal has an exclusive jurisdiction. The

case is about the application and exemption of the Applicant's rules. I conclude that it is appropriate that the CAT Application should be allowed to proceed.

**ORDER**

[14] The Motion is denied. The Tribunal orders that the case proceed.

---

Ian Darling  
Chair, Condominium Authority Tribunal

Released on: March 9, 2021