

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 30, 2021

CASE: 2021-00035N

Citation: Essex Condominium Corporation No. 25 v. Hornick, 2021 ONCAT 36

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

Member: Marc Bhalla, Member

The Applicant,

Essex Condominium Corporation No. 25

Sean Doyle, Agent

The Respondent,

Duane Hornick

Self-Represented

MOTION ORDER

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 2 - Mediation on February 22, 2021. On March 22, 2021, I ended the mediation and granted the Applicant permission to move this case to a Stage 3 – Tribunal Decision hearing (Stage 3).
- [2] Rule 32.2 of the CAT's Rules of Practice allows for the closure of a case that is not moved to Stage 3 within 30 days. The Applicant failed to pay the required fee to advance to Stage 3. On April 23, 2021, I issued a Notice of Intent to Dismiss offering both parties a chance to make submissions about closing this case. The Applicant made submissions. The Respondent did not.
- [3] This case is like two of the CAT's Dismissal Order cases. In Spallacci v. Wentworth Standard Condominium Corporation No. 566 (Spallacci) and Zamfir v. York Condominium Corporation No. 238 (Zamfir), the CAT dismissed the case after an applicant failed to move to Stage 3 within 30 days.
- [4] While similar, this case can be distinguished from Spallacci and Zamfir. Although the Applicant failed to move to Stage 3 within 30 days, they tried to. The Applicant has submitted - and I verified - that a payment attempt was made to move to Stage 3 before the 30 days passed.
- [5] There are also two cases where the CAT ruled on late requests to move to Stage 3. In Borys Demchuk v. Peel Condominium Corporation No. 94 (Demchuk) and Musharraf Ali Khan v. Metropolitan Toronto Condominium Corporation No. 5812018 (Khan), the CAT denied requests to allow an applicant to move to Stage

3 after 30 days.

- [6] In both cases, a respondent made submissions in support of closing the case.
- [7] The CAT considered four factors offered in *Frey v. MacDonald* [1989] O.J. No. 236 (C.A.) for extending time to move a case forward:
- (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.
- [8] In *Demchuk*, the CAT found that the applicant intended to move the case to Stage 3 but did not offer a compelling reason for failing to do so. This applicant was informed that the deadline would not be extended and of the consequence of failing to meet it. While the delay was short and there would be minimal prejudice to the respondent involved, there was a lack of merit to granting an extension.
- [9] In *Khan*, the CAT also found that the applicant intended to move the case to Stage 3 and that an extension offered minimal prejudice to the respondent involved. The request for an extension also failed due to lack of merit.
- [10] *Demchuk* and *Khan* were cases filed under the CAT's jurisdiction over records. In both, records were sought by applicants and provided by respondents at mediation. Stage 2 - Mediation addressed most issues in both cases. This case is different. The Respondent did not take part in Stage 2 – Mediation. The issue has not been addressed.
- [11] In this case, the payment attempted by the Applicant was unsuccessful. The act of attempting to make payment within the required timeline demonstrates action lacking in the four cited cases.
- [12] The Applicant alleges that the Respondent's behaviour which gave rise to this case continues and the Respondent has been unresponsive. The Applicant suggests it will continue to pursue the matter. Ordering the closure of this case would thus appear to only delay addressing the issue and add cost.
- [13] The Respondent will still have opportunities to participate if an extension is granted. As in *Demchuk* and *Khan*, it appears that if an extension were granted, the prejudice to the Respondent would be minimal and the delay insignificant.
- [14] The Respondent's lack of participation cannot be ignored. It distinguishes this case from *Demchuk* and *Khan*. The Respondent has not taken meaningful action to address the issue or pursue closing this case.

[15] While the Applicant's representative should have realized that their payment failed and taken steps to address this within the 30 days to do so, the facts that they: (i) were new to the CAT system; (ii) were involved in several cases involving the Applicant at the same time, making payment to move others to Stage 3 when their payment attempt for this case failed; and (iii) are not a trained legal representative also contribute to offering understanding in the interest of the CAT providing access to justice.

[16] The circumstances in this case support giving the Applicant a limited extension to make the Stage 3 payment.

ORDER

[17] The Tribunal orders that the Applicant has one week from the date of this order to contact the CAT's administrative staff to arrange payment of the filing fee to move this case to Stage 3 – Tribunal Hearing. Failing to do so will result in this case closing.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: April 30, 2021