

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 16, 2021

CASE: 2021-00069R

Citation: Sandhu v. York Condominium Corporation No. 42, 2021 ONCAT 65

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

Member: Monica Goyal, Member

The Applicant,
Shivtej Sandhu
Self-Represented

The Respondent,
York Condominium Corporation No. 42
Represented by Bharat Kapoor, Counsel

MOTION ORDER

- [1] The Parties participated in a mediation to resolve a dispute on the Condominium Authority Tribunal Online Dispute Resolution system (CAT-ODR). The Users did not settle their issues at mediation. 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 parties to provide written submissions.
- [2] After considering the Parties' submissions, I do not grant the extension of time to make the request for adjudication. My reasons follow.

ANALYSIS

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

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, which commenced on April 8, 2021, and ended on May 8, 2021. After 5 pm on Friday, May 7, 2021, the Applicant made a request for an extension to move the matter 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:
- 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.
- [7] When considering these factors, the Court has also stated that ‘the justice of the case’ is the overriding consideration.
- [8] These factors were also applied in *Musharraf Ali Khan v. Metropolitan Toronto Condominium Corporation No. 581*, 2018 ONCAT 14 (“*Khan*”) and *Essex Condominium Corporation No. 25 v. Hornick*, 2021 ONCAT 36 (“*Essex*”). I asked the parties to review the *Frey*, *Khan* and *Essex* decisions and to provide submissions that addressed factors identified in those cases.
- [9] The applicant submissions state that the request was delayed because of delays in communication from the Respondent. Further, the Applicant states that the Respondent on more than one occasion indicated to her that the matter would settle and that the parties did not need to move to Stage 3. The Applicant appears to have relied on these representations. The Applicant also states that on May 7, 2021, before May 8, 2021, she did contact the Tribunal to request an extension of time to move to Stage 3.
- [10] In their submissions, the Respondent states that the case should not move forward because they claim that all the records requested and that exist have been provided at no cost to the Applicant. As such, the Respondent states that to allow the extension of time would be prejudicial to them as the matter was settled between the parties. Further the Respondent says that the parties had agreed to broad terms of a settlement agreement and that the requested documents were

provided in advance of a formal settlement agreement being executed.

- [11] In the mediation, the Applicant added an additional records request, to which the Respondent agreed. Further, the Applicant was advised during the mediation that the mediation was not open ended, and that the deadline to pay the fee would not be extended. However, I also know that the “delay” by the Respondent’s Representative that the Applicant refers to is a legitimate concern. Even during the mediation, the Respondent’s Representative was slow to respond to communications.
- [12] In assessing the *Frey* factors, I find that the Applicant had an intention to move the case to Stage 3. The Applicant contacted the Tribunal the eve before the case was to be closed and requested an extension of time. By May 8, 2021, the Applicant had not paid the fees to move the matter to Stage 3. The parties still continued to discuss settlement throughout May, including during the process of submissions on this motion. On June 11, 2021, the Applicant formally requested to move to Stage 3. Parties 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. Further, the Applicant has not stated that she did not receive the notification. As such, I find that the Applicant was delayed in making the formal request to move to Stage 3.
- [13] The Applicant asserted that she relied on the Respondent’s assertion that the matter would settle. She appeared to know that the date to request Stage 3 was upcoming. She did not provide any evidence to suggest that this fact that the matter was going to settle, impacted her ability to request adjudication.
- [14] 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 significant. The Respondent understood that they were settling, and with that understanding provided the documents without receiving any payment for the production of records from the Applicant. The Respondent may have not made that concession if they had not understood that the matter was not settled between the parties.
- [15] The last *Frey* factor for me to consider is the merits of the Case. The Parties consented to adding several additional records to the request during the mediation. The Respondent provided the records requested on December 22, 2020, and February 8, 2021. As part of the resolution of the case, the Respondent agreed to not seek fees for the production of documents, and the Applicant agreed to not seek recovery of the Tribunal fees paid. It would be unfair to allow the case to proceed to stage 3 since the Respondent relied on this understanding to produce the requested documents.

[16] The Applicant's remaining concern appears to be that several bid proposals mentioned in the board minutes were not produced by the Respondent. The Respondent says they do not exist and was willing to make a representation to that fact. The Applicant states that the Respondent did not keep adequate records by failing to retain all the bid proposal records. Whether the Respondent did not keep adequate records could be an issue in Stage 3. However, this case was filed as a dispute under section 55(3) of the *Condominium Act, 1998*, relating to the Applicant's right to access or examine records. As all of the records that were requested were either produced or the Respondent states does not exist, then the remaining issues to be determined in Stage 3 have little merit. It would not be fair to allow the case to proceed when the Respondent understood that the matter was settled and the remaining issues to be determined have little merit.

[17] 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 justice of the case would not be served by giving the Applicant additional time to request adjudication.

ORDER

[18] The Tribunal orders that the case be closed because the time to request adjudication has passed.

Monica Goyal
Member, Condominium Authority Tribunal

Released on: July 16, 2021