

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** July 27, 2021

**CASE:** 2021-90001R

**Citation:** Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 70

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

**Member:** Ian Darling, Chair

**The Applicant,**

Ney Calderon

Self-Represented

**The Respondent,**

York Condominium Corporation No. 274

Represented Luis Hernandez, Counsel

### **MOTION ORDER**

**A. OVERVIEW**

- [1] Most of the decisions of this Tribunal relate to applicants' entitlement to records or compliance with governing documents. This motion order discusses the Tribunal's powers to close cases, and deal with vexatious applications. It considers the impact of multiple concurrent cases, and whether Ney Calderon (the 'Applicant') is using the Tribunal for improper purposes. In this decision, I dismiss York Condominium Corporation No. 274's (the "Respondent") motions to dismiss the Applicant's five active cases before the Tribunal and decline to impose restrictions on the Applicant being able to file future cases.
- [2] The Applicant has filed several CAT cases with respect to the Respondent's records and disputes related to how pets and parking are regulated under its governing documents. On July 5, 2021, both parties contacted the Tribunal indicating their intent to submit motions seeking to declare the other party vexatious. The CAT gave each party specific timelines for their submissions, between July 9 and 16, 2021.
- [3] The Respondent sought an order from the CAT asking for:
1. A declaration that the following eight (8) CAT applications (the "CAT Cases") filed by the Applicant are vexatious:

- 2020-00381N (Ongoing – Tribunal Decision);
  - 2020-00403N (Ongoing – Tribunal Decision);
  - 2020-00432R (Closed);
  - 2021-00077R (Ongoing – Tribunal Decision);
  - 2021-00175R (Closed);
  - 2021-00185N (Ongoing – Mediation);
  - 2021-00192SA (Ongoing – Tribunal Decision); and
  - 2021-00230R (Ongoing – Negotiation).
2. An order dismissing the following active CAT Cases (the “Active Cases”) on the basis that they are vexatious, that the CAT is being used for an improper purpose, and that they are an abuse of the CAT’s processes:
- 2020-00381N (Ongoing – Tribunal Decision);
  - 2020-00403N (Ongoing – Tribunal Decision);
  - 2021-00077R (Ongoing – Tribunal Decision);
  - 2021-00185N (Ongoing – Mediation);
  - 2021-00192SA (Ongoing – Tribunal Decision); and
  - 2021-00230R (Ongoing – Negotiation).
3. A declaration that the Applicant has participated in the Active Cases in a vexatious manner;
4. An order that the Applicant be required to obtain permission from the CAT to file any future cases;
5. An order that the Applicant pay the Respondent its reasonable expenses, including legal fees on a substantial indemnity basis, incurred in responding to the CAT Cases; and
6. Such further and other relief as the CAT may deem just.
- [4] The Applicant opposed the Respondent’s motions and made a counter motion that extended the scope of the motion. The additional requests were that the Tribunal find that the Respondent had acted vexatiously toward the Applicant. It further requested a finding that the Respondent’s participation within the CAT cases is “characteristically in-favor-of” owners and board members, and that the Applicant’s family and other owners have suffered due to the negligence, non-compliance and vexatious behaviors of the Respondent.
- [5] I will not address the Applicant’s additional requests because to decide those questions would extend beyond the scope of the motion regarding the active cases before the tribunal.

## **B. ISSUES & ANALYSIS**

[6] The parties' submissions responded to three questions:

1. Are the CAT cases vexatious and should the Active Cases be dismissed?
2. Has the Applicant participated in the Active Cases in a vexatious manner, and should they be required to obtain permission from the CAT to file any future cases?
3. Should the Applicant be ordered to pay the Respondent's reasonable expenses or other costs, including legal fees, which it has incurred in responding to the CAT Cases?

### **Issue 1: Are the CAT cases vexatious and should the Active Cases be dismissed?**

[7] The CAT has previously dismissed cases where the application was deemed to be for an improper purpose,<sup>1</sup> and has required an applicant to get permission to file future cases.<sup>2</sup> The CAT has also declined to dismiss cases where it has determined that there is a genuine issue(s) in dispute and has not found they were using the CAT for an improper purpose.<sup>3</sup> The Tribunal's Rules of Practice set out the powers to dismiss cases, designate applications as vexatious, and limit access to the Tribunal. I will provide a brief overview of the relevant rules (Rules 17 and 4.5) before turning to an analysis of the issues.

[8] The power to dismiss cases comes from Rule 17, which states that the Tribunal can dismiss a case in certain situations, including (but not limited to):

1. "Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the Applicant(s)'s concerns;
2. Where a Case is about issues that the CAT has no legal power to hear or decide;
3. Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications);"

[9] Further, under Rule 4.5, if the Tribunal:

finds that a Party has filed a vexatious Application or has participated in a vexatious manner, the CAT can find that Party to be a vexatious litigant and

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<sup>1</sup> Manorama Sennek, v. Carleton Condominium Corporation No. 116, 2018 ONCAT 4; and Michael Lahrkamp v. Metropolitan Toronto Condominium Corporation No. 932, 2018 ONCAT 12

<sup>2</sup> Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 45

<sup>3</sup> Arthur Pullan v. Leeds Condominium Corporation No. 18, 2020 ONCAT 15

dismiss the proceeding as an abuse of the process. The CAT may also require that a Party found to be vexatious to obtain permission from the CAT to file any future Cases or continue to participate in an active Case.

[10] In *Manorama Sennek, v. Carleton Condominium Corporation No. 116*, 2018 ONCAT 4, the Tribunal adopted the criteria established to identify vexatious conduct outlined in *Lang Michener et al v. Fabian et al* (1987) 1987 CanLII 172 (ON SC), 59 O.R. (2nd) 353. These criteria are:

- 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.

[11] The Respondent asserts that the Applicant has acted in a vexatious manner because they have filed eight cases with the CAT. The Respondent also asserts that the issues in dispute in the CAT Cases are all related to one another. Primarily, they focus on three main issues, being the Respondent's:

- enforcement of the parking rules;
- enforcement of the pet rules; and
- responses to Requests for Records.

The Respondent further asserts that the Applicant has not followed the Member's instructions and has acted in a disruptive manner in case 2020-00381N. The Applicant also raised examples where they believe the Respondent has not followed Members' instructions.

[12] It is worth reviewing the issues in dispute in the Active Cases. Cases 2020-00381N, 2020-00403N and 2021-00077R are in Stage 3 – Tribunal Decision. The CAT ordered the cases merged because:

The disputed record in case 2021-00077R is a grounds map regarding a pet walking area that relates to a rule about pets, which is the subject of case 2020-00403N. Because the record request relates to the subject matter of case 2020-00403N, I find that merging all three cases together will provide for

the most fair, focused and efficient process for both parties in terms of their time and resources and will not result in any prejudice to either party.<sup>4</sup>

The effect of the order is that the three cases are being heard as one.

[13] Case 2021-00185N is in Stage 2 – Mediation. In this case, the Applicant is asking the Tribunal to order the Respondent to enforce its parking rules where an owner's car is alleged to be leaking oil onto the common elements. The Respondent filed this motion as the mediation was commencing. Case 2021-00192SA is in Stage 3 – Tribunal Decision. In that case, the Applicant is requesting that the Tribunal enforce a settlement agreement following an alleged breach of the agreement. When the Respondent filed this motion, the Member was still determining the issues to be decided. Finally, case 2021-00230R is in Negotiation. In this case, the Applicant states that the Respondent did not respond to a request for three core records within the 30-day response period. The motion to dismiss the case was made before the parties made any effort to resolve the case.

[14] In this motion, the Respondent has asked the CAT to dismiss all the Active Cases and to restrict the Applicant's access to the Tribunal. The CAT has the power to restrict an Applicant's access. However, these powers should only be used in cases where a party's behaviour is extreme or represents a consistent pattern of abusing the Tribunal's processes with the intent to cause distress to the other party. The Respondent has not demonstrated sufficient grounds for the CAT to take such an extreme step.

[15] The Respondent's submissions do not address any of the criteria to assess vexatious conduct. On review of all eight CAT cases I find that they are related. There is a common theme: the Applicant questions the fairness and consistency of the corporation's enforcement of rules. However, none of the issues have been determined. It is not obvious that the cases will not succeed. Grounds for applications are not rolled forward into subsequent cases. I note that since none of the cases have been decided, it is not relevant to consider that the Applicant has not appealed any decisions. The Respondent has failed to demonstrate that the Applicant has used the Tribunal processes for an improper purpose. Weighing these factors, I conclude that there is no basis to dismiss the Active Cases.

**Issue 2: Has the Applicant participated in the Active Cases in a vexatious manner, and should they be required to obtain permission from the CAT to file any future cases?**

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<sup>4</sup> Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 25

[16] Both the Applicant and Respondent alleged that the other party has not followed CAT Member instructions and has unnecessarily complicated cases. It is my belief that the CAT Members assigned to the Active Cases have the authority and experience to manage the cases. None of the behaviours identified in the motions are sufficient for me to find that the Applicant should be required to obtain permission to file future cases.

[17] I agree that eight is an unusually high number of cases. The Respondent asserts that “the Applicant’s conduct shows a deep mistrust of the Condominium and his frustration with how the directors govern it.” I accept that this assertion may be true. However, the Respondent has not proven their assertion that the “CAT Cases have shown that legitimate cases have been replaced by efforts to improperly use the CAT to direct how the Condominium is run.” The list of active cases shows that each application is related to a different aspect within the CAT’s jurisdiction. The Respondent has not demonstrated that the Applicant is using the CAT for anything other than a legitimate way to resolve multiple disputes.

[18] I understand that the Respondent may find it difficult to respond to all the cases. Being a party to a dispute can be stressful and even overwhelming. This motion order differentiates between filing several CAT applications intended to harass and legitimate attempts to resolve disputes.

**Issue 3: Should the Applicant be ordered to pay the Respondent's reasonable expenses or other costs, including legal fees, which it has incurred in responding to the CAT cases?**

[19] Section 1.44 (2) of the *Condominium Act, 1998* states that decisions on costs are to be determined in accordance with the Tribunal Rules. Under Rule 45.1, the Tribunal may order a party to pay another party’s costs directly related to their behaviour if that behaviour was unreasonable, for an improper purpose, or caused an unreasonable delay. According to Rule 46.1, the Tribunal will not order a User to pay to another User any fees charged by that User’s lawyer or paralegal, unless there are exceptional reasons to do so.

[20] I have found that the Applicant has not behaved in a vexatious manner, accordingly, I make no cost award to the Respondents. I also note that the Applicant requested costs against the Respondent. The Applicant did not identify any specific costs incurred in responding to the motion. I similarly find that there is no basis for a cost award.

[21] I also note that this cost decision is unique to the questions decided in this motion decision. The CAT members deciding the Active Cases will decide the matters in

those cases, including costs, based on the evidence and submissions before them.

### **C. CONCLUSION**

[22] The parties are engaged in five active CAT cases. The CAT process provides opportunities to resolve disputes before cases reach the adjudication stage. Several of the Active Cases are in the negotiation and mediation stages, which gives the parties real opportunities to resolve the cases without the cost and complexity of an adjudication. I encourage the parties to avail themselves of the opportunity to resolve these cases, where possible.

[23] The Respondent identified that there is a common theme across the CAT cases: The Applicant does not believe that the Respondent is fairly and consistently applying their rules. While I have decided not to dismiss these cases, I want to reinforce that the CAT is not the venue to deal with the underlying dispute over whether the corporation should be managed by a condominium manager or operate as a self-managed corporation by the directors. The parties are advised to focus their efforts on resolving the issues in dispute before the CAT, and to save larger discussions for how the community will be managed to the community itself.

[24] I also caution the Applicant that although I deny the Respondent's motion, it is imperative that they understand the decision is based on the submissions presented to date. It is not permission to file meritless Applications or use the CAT for improper purposes. I also note that both parties identified instances where they felt the other had delayed proceedings, ignored direction from the Tribunal, and complicated the process. Both parties are cautioned to ensure that they follow Members' instructions and avoid unnecessarily complicating the process.

### **D. ORDER**

[25] The Motion is dismissed.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: July 27, 2021