

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 30, 2021

**CASE:** 2021-00230R

**Citation:** Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 80

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Ian Darling, Chair

**The Applicant,**  
Ney Calderon  
Self-Represented

**The Respondent,**  
York Condominium Corporation No. 274  
Represented by Luis Hernandez, Counsel

### **DISMISSAL ORDER**

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 2 - Mediation on July 28, 2021. The parties have been unable to resolve the case in Mediation. The Applicant requested the case move to Stage 3 – Tribunal Decision. Under the CAT Rules of Practice (the “Rules”), the CAT can dismiss a case if it determines that the case was filed for an improper purpose. The Tribunal issued a Notice of Intent to Dismiss (the Notice) the case on August 12, 2021. Both parties were given an opportunity to respond to the Notice.
- [2] After reviewing the parties’ submissions, I dismiss this case for the following reasons:
1. Under Rule 17.1, because the Applicant has filed this case with the CAT for an improper purpose.
  2. Under Rule 17.1, because the issues in dispute are so minor that it would be unfair to require the Respondent to go through the CAT process to address them.
  3. Under Rule 32.3, because the CAT does not have jurisdiction to deal with the issues in dispute.
- [3] In this case, the Applicant requested the Respondent’s declaration, by-laws and rules. They also requested minutes from an owner’s meeting in January 2021. The Respondent provided the records during the mediation.

- [4] In response to the Notice, the Applicant confirmed that they received the requested records. The Applicant requested that the case move to adjudication so they could recover \$75 in Tribunal fees and associated legal costs.
- [5] The Applicant asserted that the case should move to the adjudication stage because the condominium rules provided by the Respondent are inadequate. The Applicant stated that a neighbour had provided them with a different version of the rules. The version of the rules provided by the Respondent were updated in 2018. The version of the rules provided by the neighbour were updated in 2009. The Applicant asserts that since there are differences between the two versions of the rules, it demonstrates that the Respondent has not complied with the Act.
- [6] The Applicant has asserted that two different versions of the rules demonstrate that the Respondent is not in compliance with the *Condominium Act, 1998*. The Applicant has not provided anything to substantiate the assertion – other than the existence of an older version of the rules provided by a neighbour. The Applicant has further asserted that the Corporation has not followed the correct process to amend the rules. Disputes over the process for approving condominium rules are generally outside of the current jurisdiction of the CAT. This issue, as described by the Applicant is outside of the Tribunal's jurisdiction as set out in Ontario Regulation 179/17.
- [7] The Applicant also stated that the issue with two sets of rules is before the Tribunal in another case (No. 2020-00381N). That case is still ongoing; however, I caution the Applicant that this is an example of bringing of one or more applications to determine an issue and rolling forward grounds and issues into subsequent applications. This is relevant because may be examples of the criteria the Tribunal uses to determine if an application is vexatious.
- [8] The Respondent submitted that the Applicant has commenced numerous CAT cases, including this one, for an improper purpose. They stated that this is evidenced by the Applicant's actions and statements in this case. They further asserted that “the Applicant's request to advance this case to Stage 3 – Adjudication is purely to further embroil the Respondent in legal proceedings. There are no substantive issues in dispute and, as such, the Applicant has no reasonable prospect of success in this case. Any continuation of these proceedings will only serve to increase the Respondent's costs to respond to this matter, which costs are ultimately borne by the other owners in the condominium.” I accept this characterization of the dispute.
- [9] The current Application was filed with the tribunal as a dispute with respect to an owner's right to access records as outlined in section 55.3 of the Act), and the Applicant requested a penalty if the Respondent has refused to provide the records without a reasonable excuse. I conclude that the Respondent has provided the records, and that there is no evidence of a refusal to provide the records. It would not be fair or appropriate to allow the case to proceed to Stage 3 over the issue of \$75 in Tribunal fees. I do acknowledge that the Applicant paid

\$25 to file the CAT case, and \$50 to move the case to mediation; however, based on the Applicant's own submissions, they received the declaration, by-laws and rules in the context of CAT Case 2020-00381N. This case should have resolved in Stage 1 – Negotiation. I therefore conclude that it was not necessary for the Applicant to file the CAT case to get the records, and that since I have found that the Applicant has filed this case for an improper purpose it would not be appropriate to allow the matter to proceed on the issue of costs alone.

[10] The CAT previously considered whether all the CAT applications submitted by this Applicant were vexatious<sup>1</sup>. The Tribunal made its decision based on the submissions and facts available at that time. That decision found that there were not sufficient grounds to grant the Respondent's motion to declare the Applicant's behaviour vexatious. In this case, I have found that the Applicant has filed this case for an improper purpose. I caution the Applicant that the CAT should not be used to replace the democratic governance processes outlined in the *Condominium Act, 1998*, or to pursue cases with the intent to cause distress to the corporation.

[11] I find that this case was filed with the CAT for an improper purpose. Accordingly, I order that this case be dismissed.

## **ORDER**

[12] The Tribunal orders this case closed in accordance with the CAT's Rules of Practice.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: August 30, 2021

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<sup>1</sup> Calderon v. York Condominium Corporation No. 274 2021 ONCAT 70