

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** September 17, 2021

**CASE:** 2021-00102N

**Citation:** Teeter v. Simcoe Condominium Corporation No. 8, 2021 ONCAT 84

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

**Member:** Monica Goyal, Member

**The Applicant,**

Jim Teeter

Self-Represented

**The Respondent,**

Simcoe Condominium Corporation No. 8

Represented by Sonja Hodis

### **MOTION ORDER**

- [1] The Parties participated in a mediation to resolve a dispute about the absence of accessible parking at Simcoe Condominium Corporation No. 8 ("SCC No. 8") with 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. In order to move to stage 3, an applicant has 30 days to request adjudication and complete payment through the CAT-ODR. If the request is not made within 30 days, the CAT-ODR system restricts the applicant's ability to move to Stage 3. The Applicant did not make the request and complete payment 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 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 July 27, 2021, and ended on August 27, 2021. After the 30-day period, 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 *Borys Demchuk v Peel Condominium Corporation No. 94*, 2019 ONCAT 7 (“*Borys*”) and *Essex Condominium Corporation No. 25 v. Hornick*, 2021 ONCAT 36 (“*Essex*”). I asked the parties to review the *Frey*, *Borys* and *Essex* decisions and to provide submissions that addressed factors identified in those cases.
- [9] The Applicant submits that he had requested adjudication by advising the mediator that he wished to proceed to Stage 3. Further, it was his understanding that the CAT would automatically withdraw the funds from his account after making such a representation to the mediator.
- [10] The Respondent in her submissions states that the Applicant failed to make the request within the 30 day timeline, even after being given instructions by the mediator in messages on June 17, 2021 and July 27, 2021. Further, the Respondent submits that the mediator had told the Applicant the consequences for not meeting the 30-day time period.
- [11] The Applicant contacted CAT on August 31, 2021 after the deadline. He did not provide evidence of having contacted the CAT prior to the Stage 3 deadline, nor did he provide evidence that he had attempted to make payment.
- [12] In assessing the *Frey* factors, I find that the Applicant had an intention to move the Case to Stage 3. The Applicant appears to have not understood that he was required to advance the case through the CAT-ODR system and then pay the fees through the online credit card payment system. As such, I find that although the

Applicant was delayed in making the formal request to move to Stage 3, he did contact the CAT soon after the 30-day period.

[13] In considering the possible prejudice to the Applicant if an extension of time were to not be granted, I find that in these circumstances, it would be significant. While the Applicant was delayed in requesting to move to Stage 3 that delay was short and the delay does not prejudice Respondent.

[14] The last Frey factor for me to consider is the merits of the Case. The Case arose from the Applicant complaint about the lack of accessible parking spots at the SCC No. 8. There was no evidence that the Respondent took steps to accommodate the Applicant's request. The Respondent in her submission said that steps have been taken to resolve the issue, however, no evidence was provided to support those claims. Further, the Applicant denies that the issues of the Case have been resolved.

[15] To conclude, the delay was minor, and the justice of the case would not be served by denying the Applicant an extension of time to request adjudication.

## **ORDER**

[16] The Tribunal orders that an extension of time be granted. The Applicant has seven (7) calendar days to request adjudication.

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Monica Goyal  
Member, Condominium Authority Tribunal

Released on: September 17, 2021