

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 7, 2022

CASE: 2021-00177N

Citation: Capra v. York Condominium Corporation No. 274 et al., 2022 ONCAT 17

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

Member: Ian Darling, Chair

The Applicant,
Anthony Capra
Self-Represented

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

Nancy and Peter Geburt
Represented by Luis Hernandez, Counsel

DISMISSAL ORDER

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). This case proceeded to Stage 3 – Tribunal Decision on October 8, 2021. It was adjourned pending the resolution of Calderon v. York Condominium Corporation No. 274 (2021-00185N) - a different case with the same essential facts and issues to be decided. The case resumed on January 10, 2022.
- [2] When the case resumed, the parties acknowledged the issues to be decided. Subsequently, the Applicant missed multiple deadlines to provide an opening statement. At my request, the CAT staff contacted the Applicant to ensure that they were aware of the deadlines. I extended several opportunities to upload late submissions. The Applicant also missed these deadlines. I extended several opportunities for the Applicant to notify me if they had difficulty participating in the case and directed them to ask any technical questions to CAT staff. They did not avail themselves of these opportunities.
- [3] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision if the CAT determines that the Applicant has abandoned their case.

- [4] The Tribunal issued a Notice of Intent to Dismiss (the Notice) the case on February 17, 2022, for the above noted reasons. The Applicant failed to respond to the Notice. The Respondent submitted that, for the reasons set out in the Notice, the case should be dismissed.
- [5] The Applicant has repeatedly failed to participate in this stage of the CAT process. As such, I find that this case has been abandoned. I order that this case be dismissed.
- [6] The Respondent requested \$5000 in costs to be awarded against the Applicant. The Respondents assert that they incurred costs in having legal counsel do the following, among other things:
- Review and discuss the matter with them
 - Participate in Stage 1 – Negotiation;
 - Participate in Stage 2 – Mediation, including participating in mediation call(s) with the Mediator and the Applicant; and
 - Participate in Stage 3 – Adjudication, including uploading evidence and preparing an opening statement.
- [7] The Respondent cited the CAT's Practice Direction: Approach to Ordering Costs, stating that the Applicant's conduct was unreasonable, for an improper purpose, or caused a delay or expense.
- [8] The Respondents submit that the case was filed in bad faith, or for an improper purpose. The Respondents' position is that this case was filed in bad faith given the minor nature of the dispute and the vindictive approach as against the corporation's president and his wife. At the outset of the hearing, the Respondent requested the CAT dismiss the case because the issues in dispute are minor. The Respondent stated that the oil leak that was the basis of the case has been repaired and cleaned. Once the issue was resolved, the corporation has determined that no further enforcement action was necessary since the Respondent Owners took remedial action to address the leak. Given my decision to dismiss this case as abandoned, I did not determine the issue of whether or not the issue had been resolved or whether any enforcement action was required.
- [9] The authority to award costs is discretionary. After reviewing the facts and submissions I decline to award any costs. The Respondent did not provide any evidence to support that they had reasonably incurred \$5000 in legal costs.
- [10] I cannot conclude that the Applicant acted improperly during the negotiation or mediation stages of the case. Therefore, I will constrain my analysis to whether it

is appropriate to award costs resulting from the Applicant's action, or inaction in Stage 3. It is true that the Respondent prepared for and participated in the hearing - however, the participation was limited. Further, I note that the issues in this case were essentially the same as those recently argued by the Respondent in the Calderon case cited above. Therefore, the Respondent was already familiar with the issues and arguments to be presented in the context of this hearing. The Respondent's opening statement and reply to the Notice were less than five pages double spaced. I cannot conclude that the Applicant caused an additional delay or expense.

[11] Furthermore, although the Respondent has asserted that the dispute was minor, the CAT has not made that determination. Therefore, there is no finding that the Applicant has acted unreasonably in bringing the case to the CAT.

[12] I find there is no basis to award costs under the Tribunal Rules of Practice.

ORDER

[13] The Tribunal orders that:

1. This case is closed under Rule 43.1 of the CAT's Rules of Practice.
2. Each party will bear their own costs for the proceeding.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: March 7, 2022