

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 5, 2022

CASE: 2022-00002N

Citation: Friedlander v. York Condominium Corporation No. 427, 2022 ONCAT 27

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

Member: Mary Ann Spencer, Member

The Applicant,

Olga Friedlander

Represented by Victor Yee, Counsel

The Respondent,

York Condominium Corporation No. 427

Represented by Athina Ionita, Counsel

MOTION DECISION

- [1] The Stage 3 – Tribunal Decision proceeding in this matter began on March 17, 2022. The Applicant brought this application for an order requiring the Respondent to enforce its noise rule against the owner of the condominium unit above hers and for an order for compensation for damages incurred.
- [2] Paritosh Mehta is the owner of the unit directly above the Applicant's. The Respondent requests Mr. Mehta be added to this matter as a Respondent, or, in the alternative, as an Intervenor.
- [3] Section 1.38 (3) of the Condominium Act, 1998 (the "Act") states that the "Tribunal may add or remove a person as a party if the Tribunal considers it appropriate."
- [4] Counsel for the Respondent submits that the noise the Applicant alleges she is experiencing began only after Mr. Mehta renovated his unit and that Mr. Mehta will be able to speak to "the activities in the upstairs unit, as well to his efforts to address the Applicant's complaints as well as his interactions with the condominium corporation. Importantly, he can speak to the specifics of any renovations that were performed in his unit." She further submits that Mr. Mehta has the right to be involved in the proceeding in accordance with section 1.39 (1) of the Act which states:

Subject to section 1.41, the Tribunal shall adopt the most expeditious method of determining the questions arising in a proceeding before it that affords to all persons

directly affected by the proceeding an adequate opportunity to know the issues and to be heard on matters in the proceeding.

- [5] Counsel for the Applicant indicated that the Applicant takes no position on this motion. Counsel noted that given the jurisdiction of the Tribunal only recently expanded to include disputes related to provisions of a corporation's governing documents that "prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit...", there is insufficient guidance as to whether the Respondent is to be the condominium corporation or the unit owner. However, he also noted that the Applicant's view is that "it is incumbent on the condominium corporation...to enforce its own Rules against owners/residents."
- [6] The Stage 2 Summary and Order in this matter sets out that, among others, the issues to be addressed during Stage 3 – Tribunal Decision include whether the corporation's rule with respect to flooring was properly enacted and, if it was properly enacted, whether it is enforceable. Based on these issues, I find that the corporation is the proper Respondent in this matter. However, I acknowledge that the Tribunal's decision has the potential to directly impact Mr. Mehta. As Counsel for the Respondent submitted "in the event the Tribunal grants an order requiring the respondent to enforce its Rules, it will have a direct impact on Mr. Mehta, including potentially in a monetary way." Therefore, I direct that Mr. Mehta be added to this proceeding as an Intervenor and be given the opportunity to participate in this matter.

DECISION

- [7] In accordance with section 1.38 (3) of the Act, the Tribunal adds Paritosh Mehta as an Intervenor in this matter.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: April 5, 2022