

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** April 7, 2022

**CASE:** 2022-00161N

**Citation:** McLellan v. Turner, 2022 ONCAT 29

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

**Member:** Ian Darling, Chair

**The Applicant,**

Chloe-Jane McLellan

Self-Represented

**The Respondent,**

Maria Turner

Self-Represented

**The Intervenor,**

Carleton Condominium Corporation No. 51

### **MOTION ORDER**

- [1] Chloe-Jane McLellan submitted an application to the CAT. The case was accepted on March 17, 2022. On March 20, 2022, the Respondent, Maria Turner, requested that the Tribunal dismiss this Application. This motion order outlines why I am denying the request.
- [2] The Respondent requested that the Tribunal use its power outlined in section 1.41 (1) of the Condominium Act, 1998 ("the Act"). This section says that the CAT may refuse to allow a person to make an application or may dismiss an application without holding a hearing if the Tribunal is of the opinion that the subject matter of the application is frivolous or vexatious or that the application has not been initiated in good faith or discloses no reasonable cause of action.
- [3] This Application relates to the Tribunal's jurisdiction to resolve and adjudicate noise disputes. At its heart, it relates to whether the sound of a piano being played by one neighbour interferes with another. The Respondent asserted that the Application has not been initiated in good faith. The Respondent points to concerns with the accuracy of the problem description and submits that it contains false or misleading information.
- [4] The Tribunal asked for submissions from the Applicant and condominium corporation in response to the Respondent's motion to dismiss the case.
- [5] The condominium corporation is named in the case as an intervenor. The

corporation did not respond to the Respondent's motion to dismiss the case.

- [6] The Applicant's submissions gave additional context to the dispute, and recounted unsuccessful efforts to involve the condominium corporation in resolution of the noise issue.
- [7] Having reviewed the submissions, I have determined that this application cannot be dismissed as a minor issue. There is dispute between two neighbours that they have not been able to resolve on their own. The dispute appears troubling for both the Applicant and Respondent. The dispute falls within the jurisdiction of the Tribunal. I conclude that it would be premature to dismiss the Application at this time.
- [8] I understand that the Respondent disagrees with the contents of the Application. I can not conclude that the application contains false or misleading information, rather it reflects the Applicant's experiences and interpretation of the situation. The Respondent has different experiences and interpretations of the same issues. In deciding to allow the case to proceed, I am not finding that the description of the issue is true. There are two distinct views of the dispute. In this context, it is appropriate to allow the case to proceed.
- [9] This issue is important for both the Applicant and Respondent. One spoke to the pleasure they get from playing the piano. The other spoke to the impact that the music has on their ability to enjoy their home. It also highlights the important role that condominium corporations can and should play in helping neighbours resolve their disputes. I take this opportunity to remind all parties of the value of working to informally resolve the issues. The CAT dispute resolution process will give the parties an opportunity to resolve the dispute (through Negotiation or Mediation), and if the issues remain unresolved a CAT Member can adjudicate the case.
- [10] The motion to dismiss the case is denied.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: April 7, 2022