

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** May 25, 2022

**CASE:** 2022-00195N

**Citation:** Hovagimian v. Toronto Standard Condominium Corporation No. 1754, 2022 ONCAT 57

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

**Member:** Laurie Sanford, Member

**The Applicant,**  
Jean Hovagimian  
Self-Represented

**The Respondent,**  
Toronto Standard Condominium Corporation No. 1754  
Represented by Natalia Polis, Counsel

### MOTION ORDER

- [1] Mr. Hovagimian is a unit owner in Toronto Condominium Corporation No. 1754 ("TSCC1754"). He complains of noise from the unit above him, which is owned by David Convery. Mr. Hovagimian experiences the noise about four times a year, usually between 12:30 and 4:00 a.m. and he describes it as "pounding on the floor, yelling, talking loud, screaming and singing". He has been complaining of the noise for approximately four years. He is seeking a monetary penalty on TSCC1754 for its inaction. TSCC1754 takes the position that the noise that Mr. Hovagimian alleges is sporadic and does not constitute a nuisance. It is also the position of TSCC1754 that they have taken reasonable steps to investigate and enforce compliance against Mr. Convery.
- [2] The case has now entered Stage 3 of the Tribunal's process, that is the hearing stage. TSCC1754 wishes to have Mr. Convery added as an "Intervenor" or party to this proceeding. TSCC1754 submits that Mr. Convery has a vested interest in the outcome and should be entitled to put forward his position. TSCC1754 suggests that there is ongoing animosity between Mr. Hovagimian and Mr. Convery.
- [3] Mr. Hovagimian submits that Mr. Convery should not be added as a party. He submits that TSCC1754 has had four years to deal with Mr. Convery and has not effectively stopped the noise he is experiencing. It is too late, in his submission, to add Mr. Convery at this stage and will serve only to muddy the primary matter,

which he submits is TSCC1754's failure to take effective action.

- [4] There are several other matters that will be dealt with in this hearing that may not involve Mr. Convery directly but the issue of the alleged noise and the consequences of it are the principal issues in this hearing.
- [5] Subsection 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." Subsection 1.39 (1) of the Act requires the Tribunal to ensure that all "persons directly affected by the proceeding" have an opportunity to know the issues and to be heard.
- [6] The question is whether Mr. Convery is "directly affected" by this hearing. Mr. Hovagimian is seeking a "penalty", which I interpret as including damages, from TSCC1754 for their failure to deal with the noise he experiences. Mr. Convery is entitled to be speak to the question of whether or not there is a noise coming from his unit, whether that noise, if any, constitutes a nuisance and whether he should be liable for all or any part of any damages awarded.
- [7] Despite the fact that Mr. Hovagimian is currently seeking damages from TSCC1754, it would seem that if a nuisance is found, then the longer-term remedy of some form of cessation or diminution of the alleged noise would be called for. Any order of that nature would necessarily involve Mr. Convery.
- [8] The potential liability of Mr. Convery for either damages or remedial action leads me to conclude that he is directly affected by this proceeding and should be added as a party. Under the Condominium Tribunal Authority Rules of Practice, effective January 1, 2022, added parties are called "Intervenors" but are considered parties for all purposes.
- [9] I want to emphasize that the issues in this proceeding will relate to the allegations of noise from Mr. Convery's unit and what flows from that. This proceeding will not address unrelated issues between Mr. Hovagimian and Mr. Convery.
- [10] I will post instructions for the process of adding an Intervenor on the web site where the hearing is being conducted.

### **ORDER**

- [11] Under the authority of subsection 1.38 (3), the Tribunal adds Mr. David Convery as an Intervenor in this matter.

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Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: May 25, 2022