

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 10, 2022

CASE: 2022-00347R and 2022-00349N

Citation: Fernandes v. York Condominium Corporation No. 50, 2022 ONCAT 76

Order under section 1.37 (2) of the *Condominium Act, 1998*

Member: Ian Darling, Chair

The Applicants,

Bernard and Maria Coelho Fernandes

Represented by: Ava Naraghi, Counsel

The Respondent,

York Condominium Corporation No. 50

MOTION ORDER

[1] Bernard and Maria Coelho Fernandes submitted two applications to the Condominium Authority Tribunal (CAT) on May 24, 2022. CAT case # 2022-00347R was under the CAT's jurisdiction to hear condominium record disputes. CAT case # 2022-00349N related to the CAT's jurisdiction to deal with noise nuisances. The Applicant requested that the cases be heard together. In response, the CAT proposed to join the applications under section 1.37 (2) of the *Condominium Act, 1998* into a single case for the following reasons:

1. The applications appear to be interrelated.
2. The Parties of both applications are the same, with the Applicants identified as "Bernard and Maria Coelho Fernandes" and the Respondent as "York Condominium Corporation No. 50."
3. The applications were submitted to the CAT on the same date by the Applicants' representative, Ava Naraghi.
4. CAT case # 2022-00347R is a records case. The records requested are directly related to the issues in dispute in CAT case # 2022-00349N.

[2] The CAT requested submissions from both parties. The Respondent did not reply.

[3] In response to the motion, the Applicant cited [1014864 Ontario Ltd. v. 1721789 Ontario Inc.](#), where the court provided a non-exhaustive list of factors to use when

determining whether the balance of convenience favors consolidating proceedings, including:

1. the extent to which the issues in each action are interwoven;
2. whether there is expected to be a significant overlap of evidence or of witnesses among the various actions;
3. whether the parties are the same;
4. whether the lawyers are the same;
5. the timing of the motion and the possibility of delay; and
6. whether any of the parties will save costs or alternatively have their costs increased if the actions are tried together.

[4] I am satisfied that these factors are relevant to the question before me. The issues are intertwined – the records request relates to the noise incidents in the nuisance case; the parties and council are the same; if the issues were heard separately, it may increase the cost and duration of the cases.

[5] The Act allows the CAT to direct that cases be joined if the Tribunal believes it would be fair to determine the issues raised by them together. I have concluded that this is true, therefore, I order that the cases be merged. CAT case # 2022-00347R will be closed. The issues in dispute in both applications will be heard, and all activity for both applications will proceed in CAT case # 2022-00349N. Tribunal staff will upload a copy of the motion to merge the cases (including the problem descriptions for both case), and this order to the documents tab of both cases.

[6] If the case proceeds to Stage 2 - Mediation or Stage 3 – Tribunal Decision, the Tribunal Member(s) assigned to the case will determine the most expeditious method of determining the questions arising in the proceeding.

ORDER

[7] The Tribunal orders that CAT Case # 2022-00347N is closed, and that the issues associated with that application be added to CAT Case # 2022-00349N.

Ian Darling, Chair
Condominium Authority Tribunal

Released on: June 10, 2022