

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 21, 2022

CASE: 2022-00413R

Citation: Shoom v. York Region Standard Condominium Corporation No. 1090, 2022 ONCAT 101

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

Member: Laurie Sanford, Member

The Applicant,
Perry Shoom,
Self-Represented

The Respondent,
York Region Standard Condominium Corporation No. 1090
Represented by Ava Naraghi, Counsel

MOTION ORDER

- [1] Perry Shoom is a unit owner in York Region Standard Condominium Corporation No. 1090 (“YRSCC 1090”) and he has made an application to this Tribunal seeking access to some records of YRSCC 1090. His entitlement to these records is not in issue. Rather, the dispute between the parties is over the fees that YRSCC 1090 proposes to charge for producing the records.
- [2] In the course of the records application, Mr. Shoom has brought this motion seeking to add issues to the hearing. The issues Mr. Shoom wishes to add relate to an incident in which he smelled tobacco and saw someone smoking on an adjacent balcony. Mr. Shoom contends that the smoking was in violation of YRSCC 1090’s governing documents. He submits that YRSCC 1090 responded to his report of the smoking incident in a misleading and non-responsive way. These two issues, the smoking incident and YRSCC 1090’s response to Mr. Shoom’s reporting of it, will be referred to as the “Smoking Dispute”.
- [3] Mr. Shoom submits that the Smoking Dispute is related to his records request in that it exemplifies the way YRSCC 1090 responds to residents. In this case, Mr. Shoom submits, the response accused him of wrongdoing and was designed to intimidate him and discourage his continued request for the records. While he has not requested any records that relate directly to the Smoking Dispute, Mr. Shoom submits that the records he has requested, including records relating to common

area cleanliness and repairs, may prove to be connected to smoking infractions. Moreover, Mr. Shoom suggests that YRSCC 1090's response to his reporting of the smoking incident is directly related to his request for records. Mr. Shoom submits that the Tribunal has the jurisdiction to deal with the Smoking Dispute as a failure to enforce governing documents and as an attempt by YRSCC 1090 to discourage his records application.

- [4] YRSCC 1090 submits that the Smoking Dispute is outside the jurisdiction of the Tribunal to hear and, in any event, should not be joined with the records application as it is unrelated.
- [5] Considering first the question of the Tribunal's jurisdiction to hear the Smoking Dispute, the Tribunal derives its jurisdiction from the *Condominium Act, 1998* (the "Act") and associated regulations. In this case, the relevant jurisdictional sections are Section 1 of Ontario Regulation 179/17 of the Act, subsection 117(2) of the Act and section 26 of Ontario Regulation 48/01 of the Act. Subparagraph 1(1)(d)(iii.1) of Ontario Regulation 179/17 extends the Tribunal's jurisdiction to provisions of YRSCC 1090's governing documents that "prohibit, restrict or otherwise govern the activities described in subsection 117(2) of the Act . . .". Subsection 117(2) of the Act prohibits people from carrying on activities in a unit or common element that results in the "creation of or continuation of . . . (b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or assets, if any, of the corporation." Section 26 of Ontario Regulation 48/01 includes both smoke and odour as a "prescribed nuisance". The Tribunal therefore has the jurisdiction to deal with disputes regarding YRSCC 1090's governing documents relating to smoking as a nuisance and the issue of whether the smoking itself, irrespective of the governing documents, constitutes a nuisance under subsection 117(2) of the Act.
- [6] I conclude that there is not enough evidence before me to determine the question of jurisdiction. YRSCC 1090 submits that the Smoking Dispute relates to one smoking incident which, even if it did rise to the level of a nuisance, has now been dealt with. Therefore, there is no dispute to adjudicate, in YRSCC 1090's submission. Mr. Shoom cites the Smoking Dispute as part of a pattern of conduct on the part of YRSCC 1090 of not enforcing its governing documents and of misleading or withholding information from unit owners about "many issues". Mr. Shoom apparently wishes to expand the issue beyond the Smoking Dispute. The specific provisions of YRSCC 1090's governing documents that Mr. Shoom alleges have been violated are not before me. Mr. Shoom is not apparently alleging that the smoking incident itself constituted a nuisance as opposed to a violation of YRSCC 1090's governing provisions. In the absence of the relevant governing

documents or any allegation of nuisance apart from the governing documents, it is not possible to determine jurisdiction. However, it is not necessary to determine the question of jurisdiction in this motion as the motion is decided on other grounds.

[7] The Tribunal may add two cases together under section 1.37(2) of the Act or under Rule 18.2 of the Condominium Authority Tribunal Rules of Practice if the Tribunal determines that it would be fair.

[8] The Tribunal considered whether to join two separate applications in the case of *Fernandes v. York Condominium Corporation No. 50*, 2022 ONCAT 76 (CanLII). In that case, the Applicants sought to join their records request with their nuisance claim. The Tribunal cited the case of *1014864 Ontario Ltd. v. 1721789 Ontario Inc.*, 2010 ONSC 3306 (CanLII) and set out a non-exhaustive list of factors to be considered in determining whether two applications should be joined in one hearing. That is analogous to what is being requested here. The factors are:

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.

[9] In this case, the parties are the same and, it may be assumed, if the matters were to be heard together, YRSCC 1090 would retain the same counsel. However, the issues do not appear to be interwoven nor does there appear to be an overlap in the evidence or witnesses. Mr. Shoom argues that the matters are interwoven as the Smoking Dispute relates to his request for records. The timing of YRSCC 1090's response to his report of the smoking incident, in his submission, is evidence of a connection between the Smoking Dispute and his records request. Also, depending on the contents of the records he has requested, Mr. Shoom submits that he may be able to associate YRSCC 1090's actions regarding the cleaning and maintenance of the common areas with the enforcement of the smoking provisions of YRSCC 1090's governing documents. YRSCC 1090, on the other hand, notes that Mr. Shoom is not requesting records relating to smoking and there is apparently no overlap in the evidence. Further, YRSCC 1090 submits that if the issue in the Smoking Dispute is nuisance, then there is the possibility that other parties would need to be added as intervenors, complicating the proceedings.

[10] Any request for records may be preliminary to other proceedings but that does not mean that every request for records should be joined with an anticipated matter that may arise from it. In this case, there is no direct connection between the records Mr. Shoom requests and the Smoking Dispute. Mr. Shoom is not requesting records that relate to the Smoking Dispute. The fact that he hopes to connect the records he seeks as a factor in smoking at YRSCC 1090 is too remote to qualify the two issues as “interwoven”. The Smoking Dispute may involve a question of the Tribunal’s jurisdiction to hear the matter. In the records request, the Tribunal’s jurisdiction is well established. The evidence in the records request will relate to the remaining issue; that is, whether the fees that YRSCC 1090 is requesting are reasonable under the Act. The evidence in the Smoking Dispute may be expected to be entirely different, involving different witnesses and different document disclosure.

[11] Concerning whether there will be a savings of costs by joining the matter, YRSCC 1090 notes, there has been no mediation of the Smoking Dispute, which may save time in a future proceeding. Mr. Shoom submits that the lack of mediation stemmed from YRSCC 1090’s refusal to engage but this is not relevant to the consideration of this motion. There is no apparent savings to be had by joining the action and if, as YRSCC 1090 submits, intervenors would need to be added in an adjudication of the Smoking Dispute, their costs would increase if they had to participate in the records request case.

[12] I conclude that the Smoking Dispute should not be joined with the existing records request as the two matters are not sufficiently interwoven to make it fair to join them.

ORDER

[13] I order that the motion is dismissed.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: September 21, 2022