

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** October 12, 2022

**CASE:** 2022-00083N

**Citation:** Schnitzler v. Metropolitan Toronto Condominium Corporation No. 1321, 2022 ONCAT 108

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Jennifer Webster, Member

**The Applicant,**

Peter Schnitzler  
Self-Represented

**The Respondent,**

Metropolitan Toronto Condominium Corporation No. 1321  
Represented by Bharat Kapoor, Counsel

**Hearing:** Written Online Hearing – July 4, 2022 to September 25, 2022

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Mr. Peter Schnitzler is an owner of a unit in Metropolitan Toronto Condominium Corporation No. 1321 (“MTCC 1321”). He makes this application to the Condominium Authority Tribunal (“CAT”) to challenge MTCC 1321’s claim for indemnification of \$1,449.23 for its costs in issuing a compliance letter to him on December 16, 2021.

[2] In the compliance letter, MTCC 1321 set out a series of incidents between Mr. Schnitzler and its security staff and identified that Mr. Schnitzler’s conduct in these incidents was contrary to Rules 3 and 8 of its governing documents. Rule 3 prohibits any noise or nuisance that “disturbs the comfort or quiet enjoyment of the units or common elements by other owners or guests.” Rule 8 provides as follows:

All residents, owners, tenants, visitors and contractors are entitled to be treated with dignity, and to be in an environment that is free from discrimination and harassment whether based on race, colour, attire, national or ethnic origin, religion or creed, age, marital or family status, gender, sexual

orientation of offenses, disability or otherwise.

- [3] Mr. Schnitzler wrote to the MTCC 1321 board (“the board”) in response to the compliance letter. He requested all security incident reports related to him for the previous twelve months and a meeting with the board to discuss the letter. The board provided the incident reports, but it advised him that it would only meet with him if he admitted the allegations and indemnified MTCC 1321 for the legal costs of \$1,449.23. Mr. Schnitzler was not prepared to agree to the board’s conditions for a meeting. Nonetheless, Mr. Schnitzler paid the amount of \$1,449.23 to MTCC 1321 after receiving a second notice of intent to lien on March 18, 2022.
- [4] MTCC 1321 challenges the CAT’s jurisdiction to hear Mr. Schnitzler’s application. The issue of the CAT’s jurisdiction was raised by MTCC 1321 through a motion to dismiss earlier in these proceedings, and the decision on the motion<sup>1</sup> was that the CAT had jurisdiction because the compliance letter related to the enforcement of a noise nuisance rule.
- [5] Mr. Schnitzler disputes the alleged conduct outlined in the compliance letter and submits that, even if the allegations were true, the action taken by the board in sending a legal letter without any warning was unreasonable and contrary to section 37(1) of the *Condominium Act, 1998* (“the Act”). He seeks an order from the CAT requiring MTCC 1321 to reimburse the amount of \$1,449.23 and his costs of this application. He also requests that MTCC 1321 be directed to create and follow a four-step rule in the future to respond to concerns in which the four steps would be: investigate, communicate, escalate, and, if necessary, litigate.
- [6] For the reasons set out below, I find that MTCC 1321 did not reasonably incur its costs in issuing the compliance letter and that, therefore, it cannot claim indemnification of such costs from Mr. Schnitzler. I order MTCC 1321 to reimburse the amount of \$1,449.23 to Mr. Schnitzler as well as \$200 in relation to his Tribunal filing fees. I make no order with respect to Mr. Schnitzler’s request for a four-step rule.

## **B. ISSUES & ANALYSIS**

- [7] The issues in the case may be summarized as follows:
1. What is the jurisdiction of the CAT in this matter?
  2. Is MTCC 1321 entitled to claim indemnification for the costs of sending the

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<sup>1</sup> Schnitzler v. Metropolitan Toronto Condominium Corporation No. 1321 - 2022 ONCAT 62

compliance letter to Mr. Schnitzler?

3. What orders, if any, should the CAT make in this matter?

### **Issue 1 – What is the jurisdiction of the CAT in this matter?**

- [8] MTCC 1321 challenges the jurisdiction of the CAT to hear this matter on the basis that the compliance letter involves issues related to allegations that Mr. Schnitzler engaged in aggressive and harassing behaviour towards MTCC 1321's staff. MTCC 1321 says that these issues are outside the CAT's jurisdiction.
- [9] In Stage 2 – Mediation of this application, MTCC 1321 brought a motion to dismiss Mr. Schnitzler's application on the grounds that the CAT did not have jurisdiction. The motion to dismiss was denied in the decision, *Schnitzler v. Metropolitan Toronto Condominium Corporation No. 1321*, 2022 ONCT 62. MTCC 1321 advances the same grounds for dismissal in its present submissions, arguing that the case is not about a noise nuisance but rather about workplace harassment.
- [10] I am not persuaded that there is any basis for re-litigating the issue of jurisdiction. MTCC 1321's compliance letter alleges that Mr. Schnitzler's conduct breached its Rule 3 related to noise nuisance. The fact that the compliance letter also alleges that Mr. Schnitzler has engaged in workplace harassment contrary to MTCC 1321's Rule 8 does not remove or otherwise alter the allegations about a noise nuisance.
- [11] The CAT's jurisdiction is set out in Ontario Regulation 179/17 ("the Regulation") to the Act and under subsection 1.44 of the Act. The CAT has jurisdiction with respect to noise nuisances, pursuant to subparagraph 1(1)(d)(iii.2) of the Regulation which gives the CAT jurisdiction over disputes about provisions in a condominium corporation's governing documents "that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation." Moreover, subparagraph 1(1)(d)(iv) of the Regulation gives the CAT jurisdiction to hear disputes related to provisions "that govern the indemnification or compensation of the corporation...regarding a dispute described in this clause."
- [12] I find that this application involves a dispute related to MTCC 1321's rule prohibiting noise nuisances and the provisions in its declaration and by-laws that require indemnification related to its costs in responding to Mr. Schnitzler's conduct on the common elements. Given the character of the dispute, I find that the CAT has jurisdiction to hear and decide this matter.

## **Issue 2 – Is MTCC 1321 entitled to claim indemnification for the costs of sending the compliance letter to Mr. Schnitzler?**

- [13] In the compliance letter, MTCC 1321 relied on a series of incidents to justify its claim that Mr. Schnitzler was in breach of Rules 3 and 8. Mr. Schnitzler disputes the characterization of each incident.
- [14] The first two incidents are alleged to have occurred on August 25 and 27, 2021. When Mr. Schnitzler requested security incident reports from the board, he received two incident reports related to August 27, 2021, but no report in relation to August 25, 2021. In the two reports for August 27, 2021, the security guard reported that Mr. Schnitzler was rude about an elevator being out of service and that he yelled at her, using a racial slur. I note that the first report for August 27, 2021, was prepared on November 5, 2021, and the second report was prepared on November 9, 2021. Also, the security guard identifies in the reports that the incidents were minor.
- [15] MTCC 1321 offered no evidence in relation to the alleged incidents of August 25 and 27, 2021 beyond the description in the compliance letter, and Mr. Schnitzler only learned the nature of the incidents through his request for the incident reports. I find that the three-month delay in reporting these incidents and addressing Mr. Schnitzler's conduct undermines MTCC 1321's claim that Mr. Schnitzler engaged in a noise nuisance in August 2021, particularly in the absence of any evidence from the security guard.
- [16] Mr. Schnitzler also challenges MTCC 1321's description of incidents on November 9 and 24, 2021 in the compliance letter. He states that the security incident report does not provide an accurate description of his interaction with the building superintendent on November 9, 2021, and he notes that there is no allegation of noise in relation to this interaction. The incident of November 24, 2021, involves a claim that Mr. Schnitzler yelled and swore at the security guard. Mr. Schnitzler says that he did not engage in this conduct and he submitted an audio recording of the interaction to support his description. From my review of the audio recording, there is no yelling or swearing during the conversation between Mr. Schnitzler and the security guard. Instead, I hear a short, but uncomfortable, conversation about proxies for the upcoming board election. Although MTCC 1321 challenges the reliability and accuracy of the recording, the only evidence it provided was the description of the incident in the compliance letter. The security guard who described the incident in a security report did not provide testimony in this proceeding.
- [17] I find that there is insufficient evidence to demonstrate that Mr. Schnitzler engaged

in the conduct identified in the compliance letter. Mr. Schnitzler offers a different description of each incident and MTCC 1321 did not present any evidence that contradicted his version or proven their version of the alleged conduct.

- [18] MTCC 1321 claimed indemnification of \$1,443.92 from Mr. Schnitzler in relation to the legal letter in accordance with the following provision in its declaration:

Declaration – Article VII – Indemnification

Each owner shall indemnify and save harmless the Corporation from and against any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such owner, this family or any member thereof, any other resident of his unit or any guests, invitees or licensees of such owner or resident to or with respect to the common elements and / or all other units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation. All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and recoverable as such.

The same language on indemnification is repeated in Article XII of MTCC 1321's By-Law No. 1.

- [19] MTCC 1321 argues that it made a reasonable decision to send a legal letter to Mr. Schnitzler because it states that a warning letter would not have been effective, and that, therefore, its claim for indemnification is justified pursuant to the provisions in its governing documents. It states that Mr. Schnitzler had previously been warned not to communicate in a harassing and aggressive manner and that he had not heeded this warning.
- [20] I disagree with MTCC 1321's characterization of the previous warning and Mr. Schnitzler's response to it. In an email exchange between Mr. Schnitzler and MTCC 1321's condominium manager on November 24, 2021, Mr. Schnitzler wrote as follows: "Please explain why a guy is cutting tile in the driveway? WTF". The condominium manager responded that he would investigate the issue and then noted "[p]lease do not use foul language when communicating with management of staff." Mr. Schnitzler replied within 15 minutes with an apology for his language, explaining that the language was an indication of his frustration. It is evident that the previous warning was not about harassing and aggressive language, but rather a direction to not use foul language, and that Mr. Schnitzler understood and apologized for this language. I do not accept this email exchange as justification for MTCC 1321's decision not to start with a warning letter.

- [21] MTCC 1321 also says that, given the series of incidents, Mr. Schnitzler was a habitual offender and that, therefore, a warning letter would not be an appropriate response to his conduct. The basis for MTCC 1321's characterization of Mr. Schnitzler as a habitual offender is, however, the series of incidents described in the compliance letter. There is no evidence that any concerns were brought to his attention prior to the letter on December 16, 2021, and, consequently, there was no opportunity for Mr. Schnitzler to change his behaviour. Instead, it appears as though MTCC 1321 gathered a series of complaints in November 2021 dating back to August 2021 in order to support its decision to issue the compliance letter.
- [22] Mr. Schnitzler provided an example of a warning letter that MTCC 1321 issued to another owner and his tenant on June 2, 2021, related to an allegation of harassment. This letter was followed by an email from the condominium manager on June 4, 2021, apologizing for the letter and revoking it after having discussed the issues with the tenant. Mr. Schnitzler argues that this letter shows that MTCC 1321 had a practice of issuing warning letters before engaging legal counsel. Although I do not find that this single letter establishes a standard practice, it does demonstrate a reasonable approach to addressing concerns about the conduct of an owner or resident through a warning letter.
- [23] Section 37(1) of the Act sets out the standard of care required of boards of condominium corporations:
- 37(1) Every director and every officer of a corporation in exercising the powers and discharging the duties of office shall,
- (a) act honestly and in good faith; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- [24] The board of a condominium corporation also has a duty under section 17 of the Act to manage the common elements and to ensure that owners and occupiers comply with the Act and the governing documents. A board can take the steps that it considers necessary to fulfill this duty, provided that such steps are not unreasonable or capricious.
- [25] When incurring legal and compliance costs, condominium corporations must act reasonably and judiciously (see *Metropolitan Toronto Condominium Corporation No. 818 v. Tahseen et al.*, 2022 ONCAT at paragraph 29). In the present circumstances, I find that MTCC 1321 has acted unreasonably in incurring legal costs by obtaining a compliance letter from legal counsel before either warning Mr. Schnitzler or investigating the allegations. MTCC 1321 did not identify the August

2021 incidents to Mr. Schnitzler in a timely way and it did not provide Mr. Schnitzler with an opportunity to participate in an investigation of his alleged conduct or otherwise respond to the allegations. I do not accept MTCC 1321's argument that a warning letter would not have been effective at addressing the alleged conduct. MTCC 1321 escalated to a legal letter without attempting other interventions. Given that I have found that these costs were not reasonably incurred, I consider it fair in these circumstances that Mr. Schnitzler be reimbursed for this amount.

### **Issue 3 - What orders, if any, should the CAT make in this matter?**

[26] Mr. Schnitzler paid the legal costs of \$1,449.23 to MTCC 1321 in March 2022 after he received a second notice of intent to lien. I find that Mr. Schnitzler is not responsible to indemnify MTCC 1321 for these costs because they were not reasonably incurred, and I order MTCC 1321 to reimburse this amount to him.

[27] Mr. Schnitzler has been successful in this application, and I would also order MTCC 1321 to pay his CAT filing fees of \$200, pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

[28] Mr. Schnitzler also requests an order directing MTCC 1321 to create a four-step rule to address concerns moving forward. Although the CAT has the authority under section 1.44(1) 7 to make "an order directing whatever other relief the Tribunal considers fair in the circumstances," I decline to make any order related to a rule for the future. I do not consider that it would be fair to direct the board on its approach to responding to future concerns about the conduct of owners and residents.

### **C. CONCLUSION**

[29] I have found that MTCC 1321 was unreasonable in incurring legal costs through its compliance letter of December 16, 2021 to Mr. Schnitzler. It cannot, therefore, require indemnification from him of these costs.

### **D. ORDER**

[30] The Tribunal Orders that:

1. MTCC 1321 will pay the following to Mr. Schnitzler within 30 days of this Order:

- a. Pursuant to s. 1.44 (1) 7 of the Act, the amount of \$1,449.23 as reimbursement for Mr. Schnitzler's payment of legal costs to MTCC 1321;
- b. Pursuant to s. 1.44 (1) 4 of the Act, the amount of \$200 for Mr. Schnitzler's costs in this matter.

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Jennifer Webster  
Member, Condominium Authority Tribunal

Released on: October 12, 2022