

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 25, 2023

CASE: 2022-00473N

Citation: Rahman v. Peel Standard Condominium Corporation No. 779, 2023 ONCAT 9

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

Member: Nicole Aylwin, Member

The Applicant,

Aqib Rahman
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 779
Represented by Megan Molloy, Counsel

MOTION ORDER

A. INTRODUCTION

- [1] In December of 2022, the Tribunal received a motion from the Applicant, Aqib Rahman requesting that the Tribunal disqualify Peel Standard Condominium Corporation No. 779 ("PSCC 779"), counsel from acting in this matter because of a conflict of interest. PSCC 779 is represented by Megan Molloy of Elia Associates.
- [2] For the reasons set out below, I deny the motion. Ms. Molloy is permitted to remain as counsel for PSCC 779 in this matter.
- [3] In making my decision I have fully reviewed the detailed submissions provided by the parties. However, this Motion Order does not refer to every argument made, only those that are relevant to the motion in front of me. I note that there is a protracted conflict between these parties, including previous and ongoing cases between them at this Tribunal and in the courts. In the current Tribunal cases, PSCC 779 has chosen different representatives from the same law firm to represent them. Ms. Molloy is representing them in this case, while Victor Yee, another associate at Elia Associates, is representing them in another Tribunal case which is being heard by a different Tribunal Member. A significant portion of Mr. Rahman's submissions focused on allegations aimed at Mr. Yee. I do not address any allegations made about Mr. Yee in this Motion Order. I address only arguments relating to the question of if Ms. Molloy should be disqualified as counsel in this case. I also do not address any arguments made by Mr. Rahman that relate to the enforcement of orders made in previous Tribunal cases between the parties, as these arguments appear to be an attempt to "roll over" and revisit

issues from previous cases here.

B. ISSUES & ANALYSIS

Issue: Should PSCC 779's counsel, Ms. Molloy be disqualified from acting in this matter?

- [4] Disqualifying counsel should not be done lightly and there should be compelling evidence to lead to such a result. The seminal decision on removing a lawyer is *MacDonald Estate v Martin* 1990 CanLII 32 (SCC), which establishes the factors that should be considered when deciding such a motion. These factors are:
1. whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires the removal of the lawyer;
 2. the right of a party to choose their own counsel, which they should not be deprived of without good cause; and
 3. the maintenance of high standards of the legal profession and the integrity of our system of justice.
- [5] Mr. Rahman has asked the Tribunal to disqualify Ms. Molloy from acting as counsel for several reasons. First, Mr. Rahman argues that a member of this Tribunal, Marc Bhalla is also employed by Elia Associates, and this creates a conflict of interest for Ms. Molloy. Second, he argues, that by virtue of being part of Elia Associates and a colleague of Mr. Yee, who, as noted above is acting as PSCC 779 counsel in other cases involving Mr. Rahman, and against whom Mr. Rahman has made several allegations of fraud, she has a conflict of interest. Third, he argues that lawyers at Elia Associates have authored several public articles "criticizing" this Tribunal and this represents a conflict of interest.
- [6] First let me address the alleged conflict of interest stemming from Mr. Bhalla and Ms. Molloy's association. Conflict of interest cases typically arise under circumstances where a lawyer has received or has access to confidential information that is relevant to the current matter that could be used to prejudice a client. So, the question is: has Ms. Molloy received or had access to confidential information that is relevant to this case directly from Mr. Bhalla or by virtue of being associated with Mr. Bhalla through Elia Associates?
- [7] PSCC 779 argues that in this case the answer to the question is "no." In its submissions, PSCC 779 argues that upon being appointed to Tribunal in 2017, Mr. Bhalla was required to disclose all professional associations and outside activities that could reasonably be perceived to relate to any of the matter that would come before the Tribunal and that his appointment was made on the basis that no information of advantage would be provided to any Elia associate participating in Tribunal matters. To ensure this, upon his appointment to the Tribunal, Elia Associates established a technical "firewall" wherein all its Tribunal files were

stored on a password protected directory. PSCC 779 submits that Mr. Bhalla has not been provided with the password to access this directory. Additionally, to further prevent any disclosure of confidential information Mr. Bhalla is not permitted to use Elia Associates equipment or network to conduct any Tribunal business. Finally, PSCC 779 argues that in adhering with the Law Society of Ontario's *Professional Rules of Conduct* as well as Elia Associates own internal policies, the lawyers at Elia do not speak to Mr. Bhalla about CAT files and have never appeared before him at the Tribunal.

- [8] There is no evidence in front of me that supports the suggestion that Mr. Bhalla has access to, or knowledge of, any of the discussions, evidence or submissions made in relation to this case. I accept PSCC 779's evidence that Elia Associates has strict technical protocols in place to ensure that Mr. Bhalla does not have any access to client information or files that are in front of the Tribunal. Moreover, when Tribunal cases are assigned to a member, other members do not have access to the case and would not be able to obtain any information that could be used prejudicially against a party. The mere assertion that because Mr. Bhalla is employed both by the Tribunal and Elia Associates that there is a conflict of interest is not sufficient to deprive PSCC 779 of their chosen counsel and does not meet the threshold for proving on the balance of probabilities that a conflict of interest exists.
- [9] Next, Mr. Rahman argues that a conflict of interest arises from the fact that Ms. Molloy is a colleague of Mr. Yee, another lawyer at Elia Associates. As noted above Mr. Yee is acting as PSCC 779 counsel in another ongoing case involving Mr. Rahman. Mr. Yee has also acted as PSCC 779's counsel in previous Tribunal cases and other legal matters involving the parties. In his submissions, Mr. Rahman made several allegations of fraud against Mr. Yee. I will not address these allegations. However, Mr. Rahman argues as a colleague of Mr. Yee's, Ms. Molloy has a conflict of interest and should be disqualified. He notes that he has made a complaint to the Law Society of Ontario regarding Mr. Yee, Ms. Molloy and all of their associates and has begun other legal cases against them, and that this complaint and his other applications are evidence of wrongdoing and are grounds to have Ms. Molloy disqualified as counsel.
- [10] PSCC 779 takes the position that making a complaint to the Law Society of Ontario is not grounds for disqualifying counsel. PSCC 779 pointed me to *Shuman v. Ontario New Home Warranty Program*, 2001 CarswellOnt 366 and the cases cited therein and *MacDonald v. MCAP Service Corp.* 2013 ONS. 4473. These cases conclude that counsel owes no duty of care or fiduciary duty to the opposing party and that complaints relating to an opposing counsel's unethical conduct during a proceeding do not provide a basis for a cause of action. One reason for this is to protect counsel from claims by their client's opponents who may attempt to use such claims or complaints to litigate or relitigate issues that they have lost in their main litigation.
- [11] That reason applies in this case as well. In this case, the claim that Ms. Molloy

should be disqualified as counsel, because Mr. Rahman's made a complaint to the Law Society of Ontario and has alleged wrongdoing in other legal applications, appears to be an attempt by Mr. Rahman to introduce previous issues and complaints regarding other matters into this case and litigate relitigate issues that have already been decided or are to be decided elsewhere. Mr. Rahman's own complaint against Mr. Yee and associates and his filing of other cases are not grounds to disqualify Ms. Molloy as counsel.

- [12] I also do not find that a reasonably fair-minded person would disqualify Ms. Molloy from acting as counsel for PSCC 779 simply for being associated with another lawyer or firm against whom Mr. Rahman has made untested allegations of fraud. There is clearly a very adversarial and antagonistic relationship between Mr. Rahman and Mr. Yee and the whole of Elia Associates. However, being a colleague of a lawyer against whom allegations of unethical or fraudulent conduct has been made does not amount to a conflict of interest on the part of Ms. Molloy and does not demonstrate good cause to deprive PSCC 779 of their right to choose their own counsel.
- [13] Mr. Rahman also argues that because Mr. Yee and Ms. Molloy have brought similar motions to dismiss his case in two separate but ongoing Tribunals cases, this demonstrates Mr. Yee and Ms. Molloy are acting with "unified and malicious intent". Again, I note that a lawyer's duty is to their client. They do not owe a duty of care to the opposing party. Acting with alleged "malicious intent" is not grounds for disqualification in this case. Nor is making similar motions in separate cases.
- [14] The evidence in front of me also does not support a finding that on the balance of probabilities that any confidential information that would prejudice Mr. Rahman, is being shared by Mr. Yee and Ms. Molloy. In fact, the opposite is true. As PSCC 779 points out, in this hearing Mr. Rahman himself has repeatedly disclosed details about the procedural matters in his other active Tribunal case, as well as adjudicator instructions and details of his own argument in these cases, despite being instructed not to.
- [15] Finally, Mr. Rahman argues that Ms. Molloy and several of her associates at Elia Associates have published articles that have criticized the Tribunal, its decisions and/or some of the actions taken by various parties at the Tribunal. He asserts that in so doing, Ms. Molloy has demonstrated that she has a conflict of interest insofar as she does not agree with the Tribunal process and/or its decisions. Disagreeing with the any aspect of the Tribunal is not evidence of a conflict, nor is expressing that opinion publicly. Lawyers and the public are entitled to their opinions regarding the Tribunal and its decisions. Any public dissent (or praise, for that matter) by Ms. Molloy and/or other associates at Elia Associates would not lead to a reasonably minded person concluding that the proper administration of justice requires her removal. Such a finding could disqualify a great many lawyers from appearing at the Tribunal.

C. CONCLUSION

[16] For all of the reasons set out above, I do not find that Mr. Rahman has demonstrated on the balance of probabilities that a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires the removal of the lawyer, that there is good cause to deprive the party of the right to choose their own counsel, or that Ms. Molloy's continued participation in this case would impugn the maintenance of high standards of the legal profession and the integrity of our system of justice. I deny the motion to disqualify Ms. Molloy as PSCC 779's counsel.

ORDER

[17] The motion is denied.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: January 25, 2023