

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 26, 2023

CASE: 2022-00493N

Citation: Rahman v. Peel Condominium Corporation No. 779, 2023 ONCAT 10

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

Member: Marisa Victor, Member

The Applicant,

Aqib Rahman
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 779
Represented by Victor Yee, Counsel

Submission Dates: December 6, 2022 to January 6, 2023

MOTION ORDER

A. INTRODUCTION

- [1] This is a motion brought by the Applicant, Aqib Rahman ("Rahman"), requesting that the Tribunal disqualify Victor Yee ("Yee"), counsel to Peel Standard Condominium Corporation No. 779 ("PSCC 779"), from acting in this matter.
- [2] Rahman is a unit owner of PSCC 779. He filed his application with the Condominium Authority Tribunal (the "Tribunal" or "CAT") in relation to a dispute regarding misleading parking signage in the parking lot which is part of PSCC 779's common elements.
- [3] PSCC 779 brought a motion to dismiss Rahman's application on the basis that this matter was already determined in a previous CAT Decision (the "Previous Case").¹ I am not dealing with the motion to dismiss in this decision.
- [4] The Applicant then brought a motion to disqualify counsel to the Respondent on the basis of a conflict of interest.
- [5] For the reasons that follow, I find that the Applicant has not shown that counsel to the Respondent should be disqualified from acting in this matter. The Motion is

¹ Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 13 (CanLII)

dismissed.

B. LAW

- [6] The courts have set out the factors that may be considered in a motion to disqualify counsel:
- a. In general, parties have the right to counsel of choice. However, a lawyer may be disqualified if they are in a conflict of interest, or if there is the appearance of a conflict of interest.²
 - b. A lawyer may also be disqualified if they or someone from their firm is a witness in the proceeding.³
 - c. They may also be disqualified if they are likely to make submissions that may call their own credibility into question.⁴
 - d. A lawyer also may be disqualified if they engaged in misconduct and misled the courts during earlier proceedings such that they are likely to become a witness in this proceeding.⁵

C. SUBMISSIONS & ANALYSIS

Background

- [7] There is no dispute that there is a very litigious and antagonistic relationship between the parties. There have been five decisions issued by the CAT between Rahman and PSCC 779 since 2021, in addition to related matters at other tribunals and the Ontario Superior Court of Justice. There is at least one other ongoing CAT case between these two parties.
- [8] This motion was raised at the outset of the hearing to consider the motion to dismiss the application. At the CAT, parties are able to communicate with the Member by posting messages on a message board that is part of the CAT online dispute resolution system ("CAT-ODR"). I instructed the parties not to make their submissions in the message board; submissions were to be provided within documents uploaded to the CAT-ODR. Rahman did not follow these instructions and instead posted a great deal to the message board. The submissions on the message board were not considered. However, I note that those submissions were in essence repetitive of what he put in his submitted documents.
- [9] Prior to allowing Rahman to file his motion, I explained to him the legal test for disqualifying counsel which is described above in paragraph 7. Rahman chose to proceed with his motion having been informed that the test required clear

² MacDonald Estate v. Martin, [1990] 2 S.C.R. 1235, at pp. 1258-1260.

³ Urquhart v. Allen Estate, [1999] O.J. No. 4816 (S.C.J.), at paras. 11-20.

⁴ Forsyth v. Blue Rock Wealth Management Inc., 2015 ONSC 6666, at paras. 47-50.

⁵ Tiago v. Meisels, 2018 ONSC 2717 (CanLII) at paras. 14-15.

evidence.

- [10] In general, Rahman’s evidence consisted of documents relevant to the merits of the Previous Case including letters between Yee as counsel to PSCC 779 and Rahman and emails back and forth from the Board of PSCC 779. PSCC 779’s evidence consisted of primarily complaint letters received from Rahman addressed to many different people and entities all complaining about Yee.

Jurisdiction

- [11] Before addressing Rahman’s submissions, I will first deal with PSCC 779’s submissions on the jurisdiction of the Tribunal to hear this motion.
- [12] The Tribunal’s processes are governed by the *Statutory Powers Procedure Act* (“SPPA”)⁶ read together with the CAT Rules of Practice.
- [13] PSCC 779 submits that the CAT has no authority to remove licensed counsel. PSCC 779 relies on s. 23(2) of the *Statutory Powers Procedure Act* (“SPPA”)⁷ as well as Rule 9.6 of the CAT’s Rules of Practice.
- [14] Both sections state that the Tribunal cannot exclude a licensed lawyer from a hearing. However, I conclude that neither section relied on is relevant to the matter of disqualifying counsel from acting in a specific matter. Instead, these rules relate to who may stay in a hearing should the matter be closed to the public.
- [15] Section 23(1) of the SPPA specifically allows a tribunal to “make such orders or give such directions in proceedings before it as it considered proper to prevent abuse of its processes”. The plain meaning of those words is that tribunals are specifically allowed to control their processes to prevent an abuse of process. Allowing a lawyer to represent a party in a situation when they should be disqualified as counsel would be an abuse of process. Indeed, Rule 4 of the CAT rules confirms this as that rule specifically allows the Tribunal to prevent an abuse of process.

- [16] Rule 4 states as follows:

Tribunal Powers

- 4.1 The CAT may give directions or make Orders to provide a fair, focused and efficient process in each Case.
- 4.2 The CAT may make Orders or give directions to prevent abuse of its processes.

- [17] The goal of the Tribunal, as noted in Rule 2, is to promote fair, timely and efficient

⁶ R.S.O. 1990, c. S. 22

⁷ R.S.O. 1990, c. S. 22

hearings:

2.1 These Rules will be used by the CAT in a way that:

- (a) promotes the fair, timely and efficient resolution of disputes;
- (b) recognizes the need for a clear and easy to use process and system, including for parties without legal representation;

...

2.2 These Rules should be read and understood together with the Statutory Powers Procedure Act and Condominium Act, 1998.

[18] The CAT must promote the fair, timely and efficient resolution of disputes. It would be grossly unfair to allow counsel disqualified for reason of conflict of interest, or because they were required as a witness, to continue to represent a party before the Tribunal.

[19] I find that the CAT is empowered to control its process to ensure the fairness of its proceedings and to prevent abuse of process. As such, the CAT has the jurisdiction to disqualify counsel where appropriate.

Conflict of Interest

[20] I will now turn to the submissions put forward by Rahman in support of his motion.

[21] Rahman submits that Yee is in a conflict of interest because one of Yee's colleagues at the law firm Elia Associates is CAT Member Marc Bhalla ("Bhalla") who is a mediator/arbitrator. Rahman states that this is a conflict of interest because this alleged conflict of interest has been raised in other cases that Rahman is involved in. For example, Rahman is arguing that this is a conflict of interest in a related matter at the Ontario Superior Court of Justice. Rahman also argues that Yee has committed fraudulent misrepresentation, abuse of process and civil fraud.

[22] Rahman also submits that Yee is in a conflict of interest because he and others at his firm have published articles "against" CAT. Rahman states that the articles support the early dismissal of cases. Rahman submits that these articles are a violation of consumer protection laws and mislead the public.

[23] In response, PSCC 779 submits that Rahman's submissions amount to a basic assertion that Yee should be removed because he is employed by the same firm as Bhalla. PSCC 779 states that Bhalla has no involvement in this CAT case and is not in possession of any confidential information about Rahman or the CAT case. In addition, Rahman has never been a client of Elia Associates. Therefore, Yee is not in possession of confidential information from Bhalla or from Rahman that could prejudice Rahman in this case.

- [24] PSCC779 states that Elia Associates has put in place institutional safeguards so that no information would be passed to Bhalla, who has been a member of the CAT since 2017. Those safeguards include a separated, password protected directory that acts as a firewall. As such, Bhalla does not have access to Elia Associates' CAT files. Elia Associates lawyers do not appear before Bhalla at the CAT.
- [25] Rahman has failed to show that Yee is in a conflict of interest. In order to establish a conflict of interest, the Applicant is required to show clear evidence of a conflict. The allegation that Yee is in a conflict of interest because his colleague Bhalla is a member of the CAT does not meet that test. There is no evidence that Bhalla is in possession of any confidential information that could compromise Yee's representation even if the firewall protections failed. Bhalla does not preside over any cases at the Tribunal where Elia Associates lawyers are representing a client. Yee has never represented Rahman and is not in possession of confidential information from him either. Finally, the fact that Yee or anyone else at his firm have published articles, no matter what they say, about the CAT, is not a conflict of interest. Law firms may publish articles about their area of expertise as a form of business development. It is not evidence that is relevant to the test for disqualifying counsel.

Civil Fraud

- [26] Rahman also alleges that Yee should be disqualified because Yee "committed Civil Fraud for his own self-interest with his own agenda at the expense of Mr. Rahman." Rahman states numerous reasons for this "civil fraud". These include allegations about liens on Rahman's property, attempts at defrauding Rahman, PSCC 779's alleged violations of the *Condominium Act 1998*, the duty owed by PSCC 779 to unit owners like Rahman, alleged violations of consumer protection laws related to condominiums, and allegations that Yee is relying on PSCC 779's insurance to cover his legal fees. Rahman states that he is in the process of filing a private complaint to press charges against Yee for fraud, and that the Law Society of Ontario accepted Rahman's complaint against Yee. His evidence is that the Law Society of Ontario complaint was "stayed".
- [27] PSCC 779 states that there is no evidence Yee has committed any fraud. PSCC 779 submits that Rahman cites *Paulus v Fleury*⁸ in his authorities as the test for civil fraud yet fails to prove any of the five elements needed to meet that legal test.
- [28] In addition, PSCC 779 says that this motion is an attempt by Rahman to air his personal grievances towards Yee. For example, PSCC 779 states that Rahman has unsuccessfully complained about Yee to the Law Society of Ontario. Rahman has also unsuccessfully attempted to have Peel Regional Police lay charges against Yee and has also unsuccessfully attempted to lay private charges against

⁸ 2018 ONCA 1072

Yee.

[29] I find that Rahman has not met the test to disqualify counsel on the basis of civil fraud. First, I make no finding that Yee has committed civil fraud. There is no evidence to support this allegation before me. Second, there is no evidence before me that any court has made the finding that Yee is guilty of civil fraud or criminal fraud. Finally, the Law Society of Ontario responded to Yee that the complaint from Rahman has been closed. Yee was not disciplined.

Tactical Motion and Vexatious Litigant Submissions

[30] In opposing the Applicant's motion, PSCC 779 also questions the tactical nature of the motion and suggests that the Applicant can be characterized as a vexatious litigant. I will now turn to those submissions.

[31] PSCC 779 submits that Rahman is strategically bringing the motion to delay the hearing of PSCC 779's motion to dismiss the application. PSCC 779 also submits that Rahman's motion is also tactical in that Yee represented PSCC 779 in the Previous Case and is therefore best placed to represent PSCC 779 in this matter. Having him removed would benefit Rahman.

[32] PSCC 779 also submits that Rahman's motion to disqualify is an abuse of process because Rahman continually fails to follow the directions of the CAT members in both the mediation and the hearing stages.

[33] In addition, PSCC 779 says that Rahman's actions are similar to that of *TSCC No. 2519 v. Emerald PG Holdings Ltd.*⁹ In that case, the court found that the applicant had vilified the opposing lawyer and saw him as the villain who was pulling the strings despite no probative or compelling evidence to substantiate the claims.¹⁰

[34] Finally, PSCC 779 states that Rahman is acting as a vexatious litigant as evidenced by his continual and repeated litigation. PSCC 779 submits that Rahman has brought the same motion against different counsel in multiple ongoing CAT cases. PSCC 779 states that this is the hallmark of vexatious litigants who roll forward allegations into multiple proceedings and advance allegations against the opposing party's legal counsel.

[35] The question of whether or not Rahman is a vexatious litigant is not an issue for me to decide on the motion currently before me and as such I decline to make any findings in that regard.

[36] I also do not find that by bringing this motion before me, Rahman is engaging in an abuse of process. I make this finding based on Rahman's status as a self-represented individual. Had Rahman been represented by counsel; however, I

⁹ 2022 ONSC 3916 (CanLII).

¹⁰ Emerald at para 32.

would have found differently. The legal test was explained to Rahman before he brought the motion, and it was further explained that it was a difficult test to meet requiring clear evidence. Proceeding with this motion has resulted in a significant delay of his own case and a significant use of CAT resources as well as requiring opposing counsel to respond to the allegations. There was no evidence to support his motion. However, Rahman is a self-represented individual, and for that reason, I decline to find an abuse of process in this instance.

[37] In conclusion, I find that Rahman has failed to submit any evidence that could support the legal test for disqualifying counsel in this matter.

D. CONCLUSION

[38] Rahman has not established that Yee, counsel to the PSCC 779, should be disqualified. Parties have the power to select their counsel of choice. As such, disqualification of counsel should only happen in the clearest of cases where the evidence establishes that counsel is in a conflict of interest or must be needed as a witness. While the evidence shows deep animosity between the parties, it does not provide any basis for this motion. The motion is dismissed.

Marisa Victor
Member, Condominium Authority Tribunal

Released on: January 26, 2023