

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** February 3, 2023

**CASE:** 2022-00128N

**Citation:** Toronto Standard Condominium Corporation No. 2048 v. Mortazavi, 2023 ONCAT 17

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

**Member:** Patricia McQuaid, Vice-Chair

**The Applicant,**

Toronto Standard Condominium Corporation No. 2048  
Represented by Megan Mackey, Counsel

**The Respondent,**

Houman Mortazavi  
Self-Represented

**Hearing:** Written Online Hearing – April 8, 2022 to January 19, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Toronto Standard Condominium Corporation No. 2048 (“TSCC 2048”), brought an application to the Tribunal for an order directing the Respondent, Houman Mortazavi, a unit owner in TSCC 2048, to comply with provisions in its declaration and rules regarding noise. Specifically, s. 3.1(g) of the declaration which states:

No noise shall be permitted to be transmitted from one unit to another. If the board determines that any noise is being transmitted to another unit and that such noise is an annoyance and/or a nuisance and/or disruptive (regardless of whether that unit is below or wherever situated in relation to the offending unit), then the owner of such unit shall at his own expense take such steps as shall be necessary to abate such noise to the satisfaction of the board. If the owner of such unit fails to abate the noise, the board shall take such steps as shall be necessary to abate the noise and the unit owner shall be liable to the Corporation for all expenses incurred by the Corporation in abating the noise, which expenses are to include reasonable solicitor's fees.

and rules 5.20-5.21 which state:

5.20 No one shall make or permit any improper noises in a unit or on the property or do anything that will annoy or disturb or interfere in any way with other residents.

5:21 No noise caused by any instrument, stereo, television, or other device or otherwise howsoever caused, including noise caused by any pet, which, in the opinion of the board, disturbs the comfort or quiet enjoyment of the property by another resident, shall be permitted.

TSCC 2048 alleges that the Respondent is creating loud banging sounds that reverberate throughout the building and that he is doing so during the day and night. In addition to seeking an order directing the Respondent to comply with the rules, TSCC 2048 is seeking its costs in relation to this proceeding.

- [2] This case moved to Stage 3, the adjudication stage, on April 7, 2022. At that time, the Respondent had not joined the case. He joined the case on April 11, 2022 asserting, among other things, that he had not received proper notice of the application.<sup>1</sup> He requested an adjournment of the case to August 15, 2022. The Respondent denied creating any noise and alleged that other unit owners, in the units directly above and below his, were creating noises. On April 14, 2022, the Respondent commenced two cases before the Tribunal against these unit owners and TSCC 2048. Those cases were apparently stayed soon after he requested the cases move to Stage 3, in response to his adjournment requests in those matters.
- [3] I will summarize the procedural history below as it is relevant to the fact that the Respondent has not participated in the case since October 6, 2022.

## **B. PROCEDURAL HISTORY**

- [4] As noted above, the Respondent requested his first adjournment on April 11, 2022, for medical reasons. This request was supported by a letter from the Respondent's doctor which was signed and bore the doctor's stamp. By order dated May 6, 2022, I granted an adjournment to August 15, 2022, on terms.<sup>2</sup> One of the terms was that the Respondent provide an updated doctor's letter by June 29, 2022. The second term stated that in the event that either of the two cases initiated by him against the other unit owners proceeded to Stage 2 - Mediation, the adjournment would be lifted and the case would proceed. TSCC 2048 subsequently raised a concern that the Respondent had requested that the two cases proceed to Stage 3 and paid the fee for that to occur. The reason behind that step was clarified and I allowed the adjournment to remain in place until August 15.
- [5] On August 26, the Respondent provided another letter from his doctor, dated August 16, stating that the Respondent's medical leave had been extended to September 30 and requested a further adjournment to that date. In response to this request, TSCC 2048 stated that it would like the case to proceed as

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<sup>1</sup> For example, the Respondent also raised issues regarding a lien filed by TSCC 2048 against him as well as allegations related to tort liability. I advised the Respondent that such issues are not within the Tribunal's jurisdiction.

<sup>2</sup> 2022ONCAT47(CanLII)

expeditiously as possible. On August 31, I advised the parties that after weighing the parties' respective interests, I was granting an adjournment to October 3, 2022, with the expectation that the parties would fully engage in the case at that time and would be prepared to provide their lists of witnesses and the documents on which they would be relying in this case.

- [6] On September 30, the Respondent requested another adjournment, to December 30, 2022, based on another medical letter, the content of which was pasted into his message posted in the CAT-ODR system. He indicated that if requested he would upload the doctor's letter. The Respondent also stated in the September 30 message that he would not be available to respond further until October 10 due to various medical appointments, but that he would log onto the CAT-ODR system on October 10 to find out if the adjournment was granted, or alternatively, to follow my instructions including uploading the medical note if need be.
- [7] On October 6, I posted a message requesting that the Respondent provide the doctor's letter, signed and stamped as was the first letter provided in April 2022, after which I would make my decision on the adjournment request. The Respondent was to provide that letter by October 13. Also, on October 14, I requested that the Respondent provide a letter from the doctor which indicated that they were aware of the nature of the case; specifically that it is not an in person proceeding, but an online dispute resolution system available to parties 24/7, that reasonable timelines were provided to parties in terms of their responses to any direction given by the Tribunal, and that they were aware of the allegations giving rise to the case and the issues in dispute.
- [8] I asked that the Respondent provide the information set out above by October 19. Neither of the doctor's letters requested were provided and I extended the time for them to be provided, to October 30. Again, the Respondent did not provide the documents as directed.
- [9] On November 2, I advised the parties through the CAT-ODR system that the Respondent's September 30 adjournment request was denied. Therefore, the next stage of the hearing commenced with directions to the parties to provide their documents and witness statements. The Respondent did not participate further at this point and the hearing proceeded in his absence, through the CAT-ODR system which was accessible to all parties throughout. TSCC 2048's closing submissions were completed on December 21, 2022. I closed the case on the CAT-ODR system on January 19, 2023.
- [10] Within hours of closing the case, Mojgan Yousefi, the Respondent's wife, made a request, through the CAT-ODR system, for an adjournment of the case, to April 30, 2023. Ms. Yousefi purported to be unaware that the September 30 request had been denied and that the case had concluded, despite the fact that the CAT-ODR system is accessible and all messages visible to parties. This request was, in effect, a request to re-open the hearing and then to adjourn to April 30, 2023.

[11] This request was denied on January 23. It is incumbent on a party, especially when seeking multiple indulgences from the Tribunal, to keep themselves informed of the Tribunal's rulings in that regard. To choose not to do so is no excuse. Any further delay in this matter is contrary to the Tribunal's mandate to provide a fair and efficient hearing process, in a timely manner, for all parties.

### **C. EVIDENCE AND ANALYSIS**

[12] For the reasons set out below, I find that the Respondent has failed to comply with TSCC 2048's declaration and rules regarding noise and order him to do so. I also order him to pay \$5150 in costs to TSCC 2048 within 30 days of this decision.

[13] TSCC 2048 provided statements from nine owners who stated that they, or their tenants, have been negatively affected in their homes by noise akin to a banging or tapping, as if someone is hitting a metal object. TSCC 2048 also submitted various incident reports (many of which related to complaints made by the Respondent or his wife, also about noise) and an engineering report from SS Wilson Associates ("Wilson") dated July 6, 2021. A copy of that report appears to have been provided to the Respondent on or about July 22, 2021. The Respondent denies receiving that report. Though the Respondent did post various messages on the CAT-ODR system up until October 6, 2022 in which he set out his position in this matter, when a respondent does not participate in a case, the Tribunal must decide the case based on the evidence provided by the applicant, weighed on the balance of probabilities. I also note that in this decision, I will not refer to all submissions before me; I will only address the evidence and submissions relevant to my analysis and the issues to be decided by me.

#### **Issue 1: Is the Respondent acting in violation of TSCC's rules relating to noise (Rules 5.20 - 5.22), and if so, should the Tribunal issue an order that he comply?**

[14] Robert Hollander, an owner in a unit in TSCC 2048 and a director on its board for approximately 10 years, testified. His unit is six levels above the Respondent. He stated that the noise complained of can be heard throughout the building, including stairwells, hallways and in his unit. He described the noise as a banging noise, comparable to an infrequent drum, usually occurring between 10 pm and midnight, and sometimes as late as 3 am. The noise lasts between 10 seconds to a minute, then occurs again. Mr. Hollander stated that he was one of the first residents to complain about the noise, about two years ago.

[15] Some residents described the noise as a banging noise, like the sound from hitting a metal pipe; others described it as a 'tapping' noise. Their evidence was consistent in that the noise is sporadic, occurring between 9 or 10 pm and midnight, lasting between 15-30 seconds, and that the noise is disruptive and diminishes their quiet enjoyment of their homes. Several residents made recordings of the sound, which were submitted as evidence in this hearing. They described the anxiety caused by the anticipation of the noise in the evenings and loss of sleep.

- [16] I note that Mr. Hollander stated in his evidence that at least two residents have moved from the building due to the ongoing noise emanating from, as alleged by TSCC 2048, the Respondent's unit. While one of the residents who gave testimony has since moved out, there is no evidence before me that they, or any other residents, may have moved out because of the disruptive impact of the alleged noise. There are usually many reasons for the sale of one's home and I will not speculate as to the relative weight of the various reasons.
- [17] Mr. Hollander also testified that since residents first complained about the noise, the board has taken several steps to investigate the cause of the noise and to attempt to resolve the issue, including retaining a plumber to change water regulators located inside the showers of several units to address, and rule out, mechanical issues that could be causing the noise. The board also engaged Wilson to investigate the noise in the spring of 2021. I will review their findings and conclusions below as these provide a helpful independent and probative analysis of the noise issue.
- [18] Wilson took a multi step approach in their investigation. They reviewed the responses of over 25 residents to a questionnaire they developed (and made available to any residents who had submitted noise complaints in the past) to gather information about residents' subjective observations of the noise, including its timing, intensity and duration. The Respondent did not complete that questionnaire. Wilson also listened to audio recordings and noted that the noise was "highly impulsive (in the form of hammering, banging etc.) in nature, rhythmic, and noncontinuous (an unexpected condition for most building equipment, which operate at more or less constant sound levels)." Wilson then placed several sound meters throughout the building. The results of that testing suggested that the source of the noise was very likely a result of human activity, located on the floor on which the Respondent lives. A second round of testing was done, in three suites on the floor below the Respondent's to better determine the exact source of the noise. While the test results suggested the source was the Respondent's unit, a third and final acoustic test was done, this time in the ceiling cavity of the bathrooms of four suites.
- [19] The final set of sound level measurements caused Wilson to conclude that "the only possible source of noise which could produce the results, as measured over the course of several weeks, is unusual and deliberate human activities conducted within the kitchen/bathroom of [the Respondent's unit]". Wilson also stated that they could not determine if the noise was a result of a direct impact upon the piping itself, the surrounding concrete, the sink/tub elements, or some other component, but that the noise was likely related to the piping/plumbing elements, and specifically, to the visible plumbing elements under the counters.
- [20] Following receipt of this report, TSCC 2048 requested access to the Respondent's unit which was granted on July 22, 2021. The Respondent's wife was present. The building's superintendent took photographs which were submitted as evidence. The photographs show pipes under a sink wrapped in plumbers tape with metal

tools underneath, including a hammer.

- [21] Counsel for TSCC 2048 sent a letter to the Respondent on July 22, 2021 which demanded that the Respondent “immediately stop pounding on your plumbing pipes”. Citing rule 5.20, they stated: “This is the only warning you will receive about this behavior.” TSCC 2048 also demanded payment of \$14175.67 (the costs incurred to investigate the source of the noise) and legal costs of \$1113.29.
- [22] Based on the evidence before me, set out above, and weighed on the balance of probabilities, I find that the noise is being transmitted from the Respondent’s unit - banging and/or tapping as described by many residents is disturbing their quiet enjoyment of their homes. As noted above, the residents’ evidence was credible and consistent. The Respondent’s actions are in breach of s. 3.1 (g) of the declaration and rules 5.20 and 5.21. The residents’ subjective observations were supported objectively through the investigations of Wilson. The Wilson report reflected an investigation that was detailed and thorough.
- [23] As noted at paragraph 2, above, the Respondent alleges that other unit owners are creating noise and disturbing his quiet enjoyment. Many (over 20) of his complaints made to TSCC 2048 are in evidence before me. Whether or not he is experiencing noise from other units, does not mean that he is not responsible for creating noise that is heard in other units. Both things may be true and may also suggest a current of acrimony among some of the residents. The Respondent’s ongoing issues with the resident of the unit above his have been documented. TSCC 2048 sent a letter to the Respondent on December 14, 2020 about his alleged interactions with that resident. TSCC 2048’s view was that the noises the Respondent sometimes heard were normal and not excessive. Of note, counsel stated in that letter that; “Condominium resident’s daily activities will inevitably create some noise and it is unrealistic to expect complete silence in your condominium unit”. The distinction, vis a vis the noises emanating from the Respondent’s unit, is that these are not the consequence of activities of daily living but appear to be a deliberate action on the part of the Respondent to create noise in a manner likely to annoy and disturb others.
- [24] I have found this to be in breach of the provisions of the governing documents, and it is, as well a violation of s. 117(2)(a) of the *Condominium Act, 1998* (“the Act”) which states that no person shall carry on an activity which results in the creation of an unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit. Whether or not the noise - the tapping or banging, occurring as it does sporadically, constitutes a nuisance, its impact, occurring in the evening hours and with some frequency when it does, is an annoyance and disruption that causes anxiety and has proved to be disturbing to residents.
- [25] At paragraph 19 of its submissions, TSCC 2048 asserts that the Respondent chose to “deliberately harass and terrorize the entire condominium community for no apparent reason than a malicious intent to inflict harm on his neighbours.” In making my findings, I need not, and do not, determine the motive for his actions.

To do so, is, given the evidence before me, mere speculation.

## **Issue 2: Is TSCC 2048 entitled to its costs of this proceeding?**

[26] TSCC 2048 seeks reimbursement of all its costs in this matter, either as an award of costs or as damages. Regarding an award equivalent to its legal costs as damages, it appears to be basing that on the allegation noted in the paragraph above, that puts the Respondent's motive at the center. I am not making a finding on motive and therefore will assess the claim for legal costs, pursuant to s. 1.44(1) 4 of the Act and the cost rules of the Tribunal. TSCC 2048 is not seeking any costs it incurred before the application was filed.

[27] Section 1.44 (1) 4 states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Section 1.44 (2) states that an order for costs "shall be determined...in accordance with the rules of the Tribunal." The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[28] TSCC 2048 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order the Respondent to pay \$150 in costs to TSCC 2048, which are the Tribunal fees it paid.

[29] TSCC 2048 claims \$22196 in legal fees, on a full indemnity basis. Counsel acknowledges that "costs are likely higher than a corporation typically incurs in a CAT case", but suggests that this is due to the long-time frame over which the incidents occurred, the large volume of evidence to be reviewed and witnesses to be interviewed (nine provided statements), as well as the adverse impacts on the community which meant that TSCC 2048 needed to do everything it could to ensure it was successful in this proceeding. While in no way diminishing the impact on this condominium community, the facts here, in terms of the time frame of complaints are not dissimilar to many cases before the Tribunal<sup>3</sup>. And in virtually every case before the Tribunal, a condominium corporation is doing its utmost to be successful in the proceeding in order to obtain compliance with its governing

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<sup>3</sup> In Toronto Standard Condominium Corporation No. 1791 v. Franklin 2022 ONCAT 98 (CanLII) cited by TSCC 2048, the corporation was addressing noise complaints since 2018.

documents. This present case is not distinguished on that basis.

- [30] The Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, provides guidance regarding the awarding of costs. In this Practice Direction, the Tribunal outlines some of the factors the Tribunal may consider in deciding whether to order costs under Rule 48. These factors include the conduct of a party or its representative in the hearing, whether the parties attempted to resolve the issues before the case was filed, the provisions of the governing documents, and whether the parties had a clear understanding of the potential consequences for contravening them. The principle of proportionality has been articulated by the courts as an overarching consideration in determining the appropriate quantum of costs.
- [31] The courts and this Tribunal have also articulated the principle that it can be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner. It is also well-established law that an award of costs is discretionary and that condominium corporations must act reasonably and judiciously when incurring legal and compliance costs. I do not accept that the legal fees claimed here are proportional to the nature and complexity of the issues in this hearing which were, in the end, uncontested.
- [32] There was certainly delay in bringing this case through to the hearing, because of the many adjournment requests from the Respondent. However, TSCC 2048 made minimal submissions in response to those requests. It was required to respond to matters that arose in the related cases filed by the Respondent, but those are not costs of this proceeding, and while noted as costs incurred by TSCC 2048, it is not claiming those costs here.
- [33] TSCC 2048 submits that the Respondent repeatedly ignored its numerous attempts to secure voluntary compliance. I note, however, that while there are in evidence, two letters from counsel to the Respondent regarding compliance issues; only one of these, in July 2021, related to the issues in this proceeding. Further, Mr. Hollander, as board president, provided no evidence about 'repeated attempts' to secure compliance from the Respondent related to the issues here. Nor was the Respondent specifically warned of the indemnification provisions related to a CAT proceeding. Indeed, the July 2021 letter, wherein it did seek indemnification of costs incurred to date, stated that it would be the only warning he would receive about his noise creating behavior.
- [34] Accepting that it would be unfair for the other owners to bear the whole cost of enforcement, the question is what is an appropriate amount for the Respondent to pay in these circumstances. I refer to the case cited by TSCC 2048, *Toronto Standard Condominium Corporation No. 1791 v. Franklin*, (a case in which the respondent did participate in the hearing and the Tribunal awarded \$3500 in costs) at paragraphs 44 – 45:

"[44] Finally, in both *Rockson* and *Psofimis* the legal costs claimed by the Applicants



were \$9101.02 and \$3926.75 respectively. In this case, TSCC 1791 is requesting nearly double what was awarded in Rockson and nearly triple what was awarded in Psofimis, when as discussed above, the behavior of the Respondent in those two cases was worse than that of Mr. Franklin. I am also not persuaded that the costs claimed by TSCC 1791 in this case are proportional to the nature and complexity of the issue in dispute and the hearing process. The issues in this case were straightforward and the hearing uncomplicated, yet the fees claimed are substantial. While there was, as noted above, some delay in the hearing due to inappropriate behaviour and some additional work required, the extra work was largely borne by the Tribunal and the behaviour ceased after several warnings. It should not have accounted for a substantial increase in legal costs.

[45] It is also worth noting that enforcing compliance – which includes, at times, litigating – is part of “doing business” for a condominium corporation. Not all issues of non-compliance will or should result in a condominium being awarded the full or even partial legal costs associated with enforcing their rules. This is the kind of activity for which unit owners contribute to the common expenses. Consistent with this, the Tribunal’s Rule 48.1 is clear on the fact that “[t]he CAT generally will not order one Party to reimburse another Party for legal fees or disbursements (“costs”) incurred in the course of the proceeding.”

[35] In another case cited by TSCC 2048, *Toronto Standard Condominium Corporation No.2138 v. Palmer*,<sup>4</sup> the condominium corporation was successful and claimed almost \$9000 in legal costs. One of the respondents participated in the case. The Tribunal concluded that the amount claimed was not proportional to the nature and complexity of the issues in dispute and awarded \$4000 in legal costs, slightly less than 50% of the amount claimed.

[36] These cases highlight that the awarding of legal costs is discretionary and involves a balancing of factors. This case does not present as overly complex. Persuasive evidence was provided through the Wilson report which was obtained in July 2021. The Respondent did not participate in the hearing on the merits. Every case where the Tribunal finds that there is a violation of s. 117(2)(a) of the Act is serious for the residents impacted by another resident’s behavior. The facts here are not appreciably more significant than any other, though the legal costs claimed are significantly greater than is claimed in any of the cases referred to above. Weighing all the factors, I award legal costs to TSCC 2048 in the amount of \$5000.

#### **D. CONCLUSION**

[37] In making this order that the Respondent comply with the declaration and rules, which he is, in any event, required to do under the Act, I am very aware that though he did not participate in this hearing, he vehemently denies that he is creating the noise complained of, despite the preponderance of evidence. He points to others as the source of the noise. There are other cases before the Tribunal, initiated by the Respondent. There appear to be cases before the courts

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<sup>4</sup> 2022 ONCAT 104 (CanLII)

between the parties as well. In other words, a history of acrimony which the orders here are unlikely to change. This is unfortunate for all concerned living within this condominium community. As recently stated by the Tribunal in *Hovagimiam v. Toronto Standard Condominium Corporation No. 1791*<sup>5</sup> at paragraph 65:

“Living in a condominium has its challenges. Communal living requires civility, compromise and patience. Far too often, the parties before this Tribunal have notably failed to demonstrate one or more of these attributes. All people or organisations involved in the management or regulation of condominiums must speak with one voice against aggression, verbal or physical, within a condominium.”

## **E. ORDER**

[38] The Tribunal Orders that:

1. Under s. 1.44(1) 1 of the Act, Houman Mortazavi shall immediately comply with s. 3.1(g) of TSCC 2048’s declaration and rules 5.20 and 5.21 regarding noise.
2. Under s. 1.44(1) 2 of the Act, Houman Mortazavi shall refrain from creating loud banging or tapping sounds in his unit by any means and which sounds will reverberate throughout the building, and, but not limited to, creating loud banging or tapping sounds on the piping/plumbing elements in his unit.
3. Within 30 days of this Order, in accordance with s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal’s Rules of Practice, Houman Mortazavi shall pay costs to TSCC 2048 in the amount of \$5000 and the Tribunal filing fee in the amount of \$150.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

Released on: February 3, 2023

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<sup>5</sup> 2023 ONCAT5 (CanLII)