

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** February 10, 2023

**CASE:** 2022-00384N

**Citation:** Toronto Standard Condominium Corporation No. 2694 v. Choi et al., 2023 ONCAT 23

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

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

**The Applicant,**

Toronto Standard Condominium Corporation No. 2694

Represented by Gareth Stackhouse, Counsel & Darlene Mezzabotta, Paralegal

**The Respondents,**

Tae Ryung Choi

Self-Represented

Mi-Sug Park

Self-Represented

Barbara Lakatos

Self-Represented

**Hearing:** Written Online Hearing – December 19, 2022 to January 26, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] Toronto Standard Condominium Corporation No. 2694 (“TSCC 2694”) brought an application to the Tribunal for an order directing the Respondents Tae Ryung Choi and Mi-Sug Park (the owners of a unit in TSCC 2694) and Barbara Lakatos (the tenant residing in the unit) to comply with s. 117(2) of the *Condominium Act, 1998*, (the “Act”) and provisions in its declaration and rules regarding noise, smoke, odour and nuisance. The Respondent owners joined the case and participated in Stage 2 - Mediation. The tenant Respondent, Ms. Lakatos, joined the case; however, she stopped participating on August 24, 2022, and the mediation proceeded without her involvement.
- [2] TSCC 2694 and the Respondent owners settled the issues as between them in Stage 2. Ms. Lakatos was not a party to the settlement agreement; the issues between TSCC 2649 and Ms. Lakatos have proceeded in this hearing. The settlement agreement was not confidential and was attached to the Stage 2

Summary and Order. Several of the terms of their agreement are relevant to the issues before me. For example, the owners agreed to pay 80% of the fees incurred by TSCC 2694 in the CAT case prior to the date of the settlement agreement (\$3261.52), as well as 60% of any Stage 3 legal costs incurred, less any costs the Tribunal may order Ms. Lakatos to pay to TSCC 2694, and, if any costs that Ms. Lakatos is ordered to pay are not paid within three months of the decision, the owners will pay those costs.

- [3] In this Stage 3 hearing, TSCC 2694 is seeking an order directing Ms. Lakatos and her guests to comply with the Act, declaration and rules and “costs in this matter that have not been settled with the Owners”. Those costs total \$6263.02 plus the Stage 3 filing fee of \$125.
- [4] For the reasons set out below, I find that Ms. Lakatos has created or permitted noise in her unit which has caused a nuisance and disturbed the comfort and quiet enjoyment of the property by other residents in violation of the Act, the declaration and rules. I order Ms. Lakatos to pay costs to TSCC 2694 in the amount of \$2125 within 30 days of this decision.

## **B. EVIDENCE AND ANALYSIS**

- [5] Given the settlement agreement between TSCC 2694 and the owners, and Ms. Lakatos’ lack of participation, the only evidence and submissions received were from TSCC 2694. The evidence will be weighed on the balance of probabilities. I will only refer to the evidence and submissions relevant to my analysis and the issues to be decided by me.

### **Issue 1: Has the Respondent Ms. Lakatos failed to comply with the Act (s. 117(2)) and provisions in TSCC 2649’s declaration and rules regarding noise and nuisance?**

- [6] The relevant provisions of the declaration and rules relied upon by TSCC 2649 are as follows:

Section 21(a) of the Declaration:

No Unit shall be occupied or used by any one in such a manner as is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Owners of the common elements and the other units...

And rules 2,5, and 19:

(2) No Owner shall do or permit anything to be done in his unit or bring or keep anything therein which will in any way obstruct or interfere with the rights of other Owners, or in any way injure or annoy them....

(5) Owners, their families, guests, visitors and servants shall not create or permit the creation of or continuation of any noise or nuisance which may or does

disturb the comfort or quiet enjoyment of the property by other Owners, their families, guests, visitors, servants and persons having business with him.

(19) Unit Owners and their families, guests, visitors, servants and agents shall not create or permit the creation or continuance of any noise or nuisance which, in the opinion of the Board or the manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other Owners or their respective families, guests, visitors, servants and persons having business with them.

Further, s. 117(2) of the Act states:

(2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; ....

Section 119(1) of the Act states that an occupier of a unit (in this instance, Ms. Lakatos as the tenant) shall comply with the Act, declaration, by-laws and rules of the corporation.

- [7] TSCC 2694 provided evidence through its condominium manager, Hannah Micu. She testified that the corporation started receiving complaints from other residents regarding excessive noise and smoke smell from the unit in which Ms. Lakatos resides in September 2021. Smoking is not prohibited in units. TSCC 2694 submitted 37 incident reports from September 2021 to September 2022. The most common and persistent complaint was noise, usually loud music, around midnight. The incident reports also document occasions when Ms. Lakatos' guests were unruly, and physical altercations occurred. On several occasions, police were called.
- [8] Regarding the noise complaints, more often than not, Ms. Lakatos would turn down the music when TSCC 2649's security staff requested that she do so, though the reports also record incidents where she complied initially, only to turn the music back up after security left.
- [9] TSCC 2694, through its condominium manager, sent numerous emails and letters to the owners and Ms. Lakatos between January and August 2022 advising of the various incidents and requesting an end to them. Legal counsel sent their first letter to the owners and Ms. Lakatos in April 2022, outlining the various complaints and incidents to that point and demanding that the violations of the Act, declaration and rules stop. The owners expressed contrition and frustration with their tenant Ms. Lakatos. They retained a paralegal to assist them with an application before the Landlord and Tenant Board.
- [10] Ms. Lakatos, for her part, stated in an email to legal counsel on May 13, 2022, that

she agreed to follow the Act and condominium documents. Unfortunately, an incident occurred the following day and this was followed by approximately 12 more incident reports through to September 18, 2022, almost all of which involved excessive noise.

- [11] Of note, Ms. Micu testified that TSCC 2694 has had no further incidents involving Ms. Lakatos' conduct since September 2022.
- [12] The evidence before me supports a finding, on the balance of probabilities, that the noise created or permitted by Ms. Lakatos has been of such frequency and duration that it constituted a nuisance.<sup>1</sup> There was a repeated and persistent pattern of noncompliance - chronic noncompliance. It was disruptive to both the staff and other residents of TSCC 2694, disturbing their quiet enjoyment of their property. The fact that there have been no further incidents since September 2022, suggests that Ms. Lakatos, for whatever reason, made a decision to comply with the declaration and rules.
- [13] Arguably, given Ms. Lakatos' apparent compliance for the last four months, there may be little need for an order requiring compliance, and, in any event, compliance is an obligation pursuant to s. 119 of the Act. It appears to be more than a temporary lull in her disruptive conduct; however, given the history of violations, I will order that Ms. Lakatos and her guests comply with the Act, s. 21(a) of the declaration and rules 2, 5 and 19.

## **Issue 2: Is TSCC 2694 entitled to its costs of this proceeding?**

- [14] As noted above, TSCC 2694 is seeking its legal costs from Ms. Lakatos, and on a full indemnity basis.<sup>2</sup> The legal costs consist of the following:
- The portion of the legal costs to the date of the settlement agreement that were not paid by the owners, being 20% of those costs in the amount of \$815.38.
  - Costs incurred between December 1-21, 2022, in the amount of \$838.74.
  - The Tribunal filing fee of \$125 paid on December 9, 2022
  - Costs incurred between January 10-23, 2023, in the amount of \$5424.28.
- [15] 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

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<sup>1</sup> Although TSCC 2649 alluded to smoke and odour emanating from the unit, the evidence before me about these issues was not sufficient to support a finding of violations of the Act, declaration, or rules in this regard.

<sup>2</sup> Though I note that according to the terms of the settlement agreement, the owners agreed to pay 60% of any Stage 3 legal costs incurred, less any costs the Tribunal may order Ms. Lakatos to pay to TSCC 2694

(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.

- [16] TSCC 2694 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order the Respondent Ms. Lakatos to pay \$125 in costs to TSCC 2694, which are the Tribunal fees it paid to move this matter to Stage 3.
- [17] 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.
- [18] 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. And it is rare that full indemnity for legal costs is awarded.
- [19] Regarding the amount claimed against Ms. Lakatos for the legal costs incurred in Stage 2 - Mediation, I will not order these be paid. Ms. Lakatos did not participate in the proceedings and costs incurred there are in no way attributable to her conduct. The mediation resulted in a comprehensive settlement agreement with the owners, including an agreement to pay 80% of the costs incurred to that date, which was not insubstantial. TSCC 2694 has not provided any compelling argument for, in effect, full indemnity for those costs.
- [20] Regarding the amounts claimed since December 1, 2022, (\$6263.02) 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 uncontested. The issues were straightforward and the hearing was uncomplicated. Ms. Micu's written testimony was largely repeated verbatim in the closing submissions. Further, as noted above, there have been no incidents reported since September 18, 2022, yet TSCC 2694 chose to proceed to pursue an order against her. It was entitled to do so, and arguably may have decided it was incumbent upon it to do so. However, in making that decision in December 2022, over two months after the last incident of noncompliance, it made a business decision and chose to incur substantial costs to pursue an order for compliance.

[21] I also note that Ms. Lakatos, for approximately one year, ignored warnings about the noise from TSCC 2649, and did, in May 2022 promise to comply only to continue to play music loudly, disturbing other residents, but unlike in *Peel Condominium Corporation No. 96 v. Psofimis*<sup>3</sup> cited by TSCC 2649, Ms. Lakatos seems to have, as of September 2022, (over two months before this hearing commenced) voluntarily complied. It cannot be said, as of December 2022, that the costs incurred thereafter were to a large extent the consequence of her actions.

[22] 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. In exercising my discretion and weighing the factors noted above, I award costs in the amount of \$2000. I note that by virtue of the settlement agreement, which places considerable liability for costs on the owners, TSCC 2694 can pursue recovery of a significant portion of its costs from the owners. Whether it pursues that is, of course, in its discretion.

### **C. ORDER**

[23] The Tribunal Orders that:

1. Under s. 1.44(1) 1 of the Act, Barbara Lakatos shall comply with s. 21(a) of TSCC 2694's declaration and rules 2, 5 and 19.
2. 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, Barbara Lakatos shall pay costs to TSCC 2694 in the amount of \$2000 and the Tribunal filing fee in the amount of \$125.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

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<sup>3</sup> 2021 ONCAT 48 (CanLII)

Released on: February 10, 2023