

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 2, 2023

CASE: 2023-00093N

Citation: Trinh et al. v. Toronto Standard Condominium Corporations No. 2745, 2023 ONCAT 64

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

Member: Anna Boudria, Member

The Applicants,

Marc Trinh, Meng Li, Vladimir Sakovets
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No 2745
Represented by Victor Yee, Counsel

Submission Dates: April 11, 2023 to April 19, 2023

MOTION ORDER

- [1] The Applicants filed an application with the Condominium Authority Tribunal (the "CAT") seeking an order to ensure the Respondent addressed the vibration nuisance caused by the gym. The Respondent is Toronto Standard Condominium Corporation No. 2745 ("TSCC 2745"). The case proceeded to Stage 2 – Mediation on March 10, 2023.
- [2] On April 12, 2023, the Respondent filed a motion that has two parts. The first part of the motion is to have seven individuals to be added to the application. The second part seeks the dismissal of the application due to lack of jurisdiction. This issue will either be addressed at the end of the mediation process or added to the Stage 2 Summary and Order.
- [3] The Applicants were given a deadline of April 19, 2023, to submit their arguments regarding the first part of the motion to add seven individuals to the application. However, they have not submitted any further information.
- [4] Section 1(1) (c.1) of *the Ontario Regulations 179/17* establishes the Tribunal's jurisdiction over disputes that includes vibration pursuant to subsection 117 (2) of the *Condominium Act, 1998* (the "Act"). Subsection 1.36 (2) of the Act states that an owner or a mortgagee of a unit may apply to the Tribunal for the resolution of a prescribed dispute with a corporation, another owner or an occupier or a mortgagee of a unit. According to subsection 1.38 (3) of the Act, the "Tribunal may

add or remove a person as a party if the Tribunal considers it appropriate.” Additionally, subsection 1.39 (1) of the Act, the Tribunal has an obligation to “adopt the most expeditious method of determining the questions arising in a proceeding before it that affords to all persons directly by the proceeding an adequate opportunity to know the issues and to be heard on matters in the proceeding.”

- [5] A review of the problem description describes issues related to noise and vibration from the gym upstairs. The Applicants are seeking a resolution to this issue, to either adjust the gym hours or repair the gym flooring. It is not about the individuals making the noise. Instead, the dispute is whether the TSCC 2745 has taken sufficient measures to address the ongoing noise issues for the residents living below the gym.
- [6] The Applicants have chosen TSCC 2745 as the Respondent because they believe it has the necessary resources to address the issues. However, they feel that the measures taken so far - such as posting signs in the gym - have been ineffective.
- [7] Counsel for the Respondent argues that identifying the noise source can be challenging for individual applicants. That TSCC 2745 has taken the necessary steps to identify the individuals responsible for making the noise by reviewing key fob logs, video footage and other relevant records. Additionally, the seven individuals who received notices from the Condominium manager about dropping weights are all TSCC 2745 residents.
- [8] The Respondent also relies on the following cases, *Friedland v. York Condominium Corporation No 427*, *Hovagimian v. Toronto Standard Condominium Corporation No. 1754*, and *Bridglall v. York Condominium Corporations No. 202* to have the seven individuals named to this current matter.¹
- [9] I do not agree with the Respondent's position. The cases that the Respondent has cited are distinguished from the current matter. The cases referred relate to individual units and the Tribunal concluded that it would directly impact the individual unit owners of those units. In contrast, our current matter concerns noise and vibration from a shared element that falls under the responsibility of TSCC 2745 to manage for all unit owners.
- [10] The Applicants were instructed by property management to immediately report any noise disturbance they experienced to security so that it could be investigated to determine the cause of the noise and put a stop to it. In doing so, it created an expectation for the Applicants that any reported issues regarding the noise and vibration would be appropriately addressed by the Respondent.
- [11] I am not of the view that naming seven individuals would be the most expeditious

¹ *Friedland v. York Condominium Corporation No 427*, 2022 ONCAT 27, *Hovagimian v. Toronto Standard Condominium Corporation No. 1754*, 2022 ONCAT 57, *Bridglall v. York Condominium Corporations No. 202*, 2022 ONCAT 60.

method of determining the noise problems that the Applicants face. Instead, it would only serve to further delay this proceeding.

[12] Moreover, if the Applicants had wanted to have those responsible for making the noise, they would have filed a request for records for any gym violations and address this within their application. However, this is not the case; they chose to deal directly with TSCC 2745, which is within their right.

[13] For these reasons, I conclude not to have the seven individuals added to the application.

ORDER

[14] Under the authority of subsection 1.39 (1), the Tribunal finds that the current Application would be the expeditious method for determining the issues.

[15] The issue to dismiss the application is reserved for the end of the mediation proceeding or to be added to the Stage 2 Summary and Order.

Anna Boudria
Member, Condominium Authority Tribunal

Released on: May 2, 2023