

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 20, 2023

CASE: 2022-00725N

Citation: Chakravarty v. Metropolitan Toronto Condominium Corporation No. 795 et al., 2023 ONCAT 83

Order under Rule 19 of the Condominium Authority Tribunal's Rules of Practice.

Member: Laurie Sanford, Member

The Applicant,
Bharati Chakravarty
Self-Represented

The Respondents,
Metropolitan Toronto Condominium Corporation No. 795
Represented by Justin McLarty, Counsel

Linda Kahn
Represented by Shaw Pulver, Counsel

MOTION ORDER

- [1] Metropolitan Toronto Condominium Corporation No. 795 ("MTCC 795) brings this motion to dismiss Ms. Chakravarty's Application on the grounds that the Tribunal lacks the jurisdiction to hear it. Ms. Kahn, the other Respondent, supports the Motion. MTCC 795 submits that this Application is in substance based on a claim of harassment. In MTCC 795's submission, there is no provision for harassment in MTCC 795's governing documents and no other source for the Tribunal's jurisdiction. MTCC 795 submits that what it sees as the basis of this Application, a warning letter written to Ms. Chakravarty, was made alleging a violation of subsection 117(1) of the *Condominium Act, 1998* (the "Act") over which the Tribunal has no jurisdiction.
- [2] Ms. Chakravarty owns a condominium unit in MTCC 795 which is occupied by her daughter. According to Ms. Chakravarty, beginning about two years ago, MTCC 795 embarked on a campaign of either harassing or "creating significant serious 'nuisance, annoyance & disruption'" for her daughter and her family. Following a complaint by Ms. Kahn about Ms. Chakravarty's daughter, matters came to a head for Ms. Chakravarty when, on November 4, 2022, MTCC 795 sent her a letter from its lawyers warning her about her daughter's alleged misconduct, demanding that the conduct cease and charging her \$720.39 for the letter (the "Compliance Letter"). She brings this Application for, among other things, a retraction and withdrawal of both Ms. Kahn's complaint and the Compliance Letter, together with

a refund of the \$720.38 charged to her. Ms. Chakravarty originally framed her Application as being based in harassment. However, after this motion was brought, she sought to re-frame it as being about MTCC 795 and Ms. Kahn engaging in activities that are a nuisance, annoyance or disruption.

- [3] Both MTCC 795 and Ms. Chakravarty introduced documentary and testamentary evidence. While I reviewed this evidence, only the submissions of the parties and the specific evidence set out below are relevant to the issues in this Motion.
- [4] The Tribunal gains its jurisdiction under the Act and the regulations to it. Under subsection 117(2), activities which result in an “unreasonable noise that is a nuisance, annoyance or disruption” to others in the condominium are prohibited. Subparagraph 117(2)(b) extends that prohibition to “any other prescribed nuisance, annoyance or disruption” to other residents. The “other prescribed” nuisances, annoyances and disruptions are set out in section 26 of Ontario Regulation 48/01 as, odour, smoke, vapour, light and vibration. Subparagraph 1(1)(c.1) of Ontario Regulation 179/17 gives the Tribunal jurisdiction over disputes in relation to these matters.
- [5] The problem that Ms. Chakravarty faces is that none of the conduct that she complains of in this Application is a nuisance, annoyance or disruption as set out in subsection 117(2) or Section 26 of Regulation 48/01. Her concerns relate to the content of the complaints made against her daughter by Ms. Kahn and MTCC 795 and the way in which MTCC 795 appears to her to be taking Ms. Kahn’s side. She is also concerned that Ms. Kahn appears to be watching her daughter and noting these sightings and, in one case, eavesdropping on her daughter.
- [6] Ms. Chakravarty alleges that MTCC 795 is in breach of multiple sections of the Act. She alleges breaches of section 37 of the Act, which imposes a duty of honesty and good faith on directors and officers of condominium corporations and subsection 117(1) which prohibits conduct or conditions which are likely to cause damage to property or injury to persons. She takes the position that MTCC 795 is in violation of section 135 of the Act, which gives the Superior Court of Justice the jurisdiction to determine if a condominium or condominium unit owners is acting in an oppressive or unfairly prejudicial manner. None of these provisions address either harassment or nuisance. As it happens, the Tribunal has no jurisdiction over any of these provisions.
- [7] Ms. Chakravarty also takes the position that MTCC 795 is not following Condominium Authority of Ontario (“CAO”) best practices in being even-handed between Ms. Kahn and her daughter and herself. The Tribunal has no jurisdiction over CAO best practices or policies.
- [8] Subparagraphs 1(1)(d)(iii.1) and (iii.2) of Ontario Regulation 179/17 extend the scope of the Tribunal’s jurisdiction to include disputes with respect to provisions of a condominium corporation’s governing documents “that prohibit, restrict or otherwise govern” either the activities in subsection 117(2) or section 26 of

Regulation 48/01 or “any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation”. There is an exception to these provisions. Subsection 1(3) of the regulation states that these provisions “do not apply to a dispute that is also with respect to subsection 117(1) of the Act”.

- [9] Ms. Chakravarty refers to section 2(a) of MTCC 795’s rules as extending the Tribunal’s jurisdiction under subparagraph 1(1)(d)(iii.2) of Ontario Regulation 179/17. This rule provides:

Owners and their families, guests, visitors, servants and agents shall not permit the creation or continuation of any noise or nuisance which, in the opinion of the Board of Directors . . . 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 or persons having business with them.

- [10] Ms. Chakravarty takes the position that MTCC 795 may not rely on this rule in its complaints against her daughter. She submits that the rule is unreasonable and is being improperly implemented. While it is not completely clear, there is some suggestion that Ms. Chakravarty is impugning the enactment of this rule as well. MTCC 795 submits that this rule is not relevant to this case because MTCC 795 is not relying on it in its allegations about the conduct of Ms. Chakravarty’s daughter. As noted above, it relies on subsection 117(1) of the Act in its Compliance Letter. This is a complete answer to Ms. Chakravarty’s challenges to the rule and removes the question of the validity of the rule from consideration in this case.

- [11] At the same time, Ms. Chakravarty seeks to rely on section 2(a) of MTCC 795’s rules to support her own case. Leaving aside the obvious contradiction here, Ms. Chakravarty is still left with the problem that section 2(a) does not extend the meaning of a “nuisance” to include the forms of harassment that Ms. Chakravarty says she and her daughter are experiencing, nor does it address conduct that is not a nuisance but is an annoyance or disruption.

- [12] At law, there is an element of frequency and duration that characterises nuisance as well as a requirement that there be a substantial interference in the rights of another. In this case, the principal conduct complained of includes a comparatively small number of warning emails and the Compliance Letter. Ms. Chakravarty argues that nuisance necessarily includes harassment. However, this is not always the case. Harassment can include nuisance, but it can also go beyond that to include physical intimidation or threats or even violence, such as may occur in sexual harassment. Harassing behaviour can also fall short of nuisance. I conclude that while there may be some overlap between nuisance and harassment, they are separate concepts. The fact that MTCC 795 did not use the word harassment in section 2(a) of its Rules is some evidence that it did not intend to extend section 2(a) to include it.

- [13] Ms. Chakravarty relies on two policies of MTCC 795, the MTCC 795 Workplace Violence & Harassment Policy and the Human Rights Policy dated November 2,

2016. MTCC 795 submits these policies are not part of its governing documents. Policies that are not part of the Declaration, the By-Laws or the Rules of a condominium corporation are not recognised under the Act and are not the kind of documents over which the Tribunal has jurisdiction. Ms. Chakravarty refers to the Human Rights Policy because she says her daughter has experienced incidents of racism, including the etching of an odious ethnic slur on the door of her unit. This is deplorable but since it is not part of Ms. Chakravarty's Application, it is not relevant to this decision.

- [14] Ms. Chakravarty also makes allegations of harassment and nuisance against Ms. Kahn, who lives on the same floor as her daughter. Ms. Chakravarty introduced a witness statement from a friend of her daughter's in which the friend testified that at an event in MTCC 795's party room in October, 2021, Ms. Kahn came and sat near them and appeared to be listening to their conversation while using her phone. The friend testified that Ms. Kahn and Ms. Chakravarty's daughter had a brief, pleasant conversation. However, the friend testified that Ms. Chakravarty's daughter was "quite upset and disturbed" and felt it was a "serious nuisance and annoying" and she reported it to the property manager. MTCC 795 submits that Ms. Kahn was not clearly identified during the alleged incident, but I accept the testimony as Ms. Kahn was identified by Ms. Chakravarty's daughter. The incident in the party room apparently took place during a public event and was apparently an isolated incident which does not, on its face, amount to a nuisance, annoyance or disruption.
- [15] Ms. Chakravarty asserts that Ms. Kahn has been making unsubstantiated complaints about her daughter. The making of unsubstantiated complaints is not a matter that the Tribunal can address. On January 28, 2022, MTCC 795 issued a warning to Ms. Kahn to cease and desist from loitering in the hallway, following the residents of Ms. Chakravarty's unit and questioning them. No further details were provided and Ms. Chakravarty makes no reference to the incidents that led to this warning as examples of Ms. Kahn's conduct. Her complaint is that MTCC 795 did not follow up in writing on this letter. Ms. Chakravarty also alleges that Ms. Kahn has been making a note of her encounters with Ms. Chakravarty's daughter. On November 13, 2022, Ms. Kahn wrote to MTCC 795 saying, among other things, that she was making a note of each time she encountered Ms. Chakravarty's daughter. There is no evidence that Ms. Kahn recorded her encounters in the presence of Ms. Chakravarty's daughter or that Ms. Chakravarty's daughter was aware that Ms. Kahn was noting their encounters. There is no evidence of how sustained this conduct by Ms. Kahn has been. Ms. Chakravarty relies on Ms. Kahn's telling MTCC 795 that she is making these notes as an illustration of Ms. Kahn's harassing behaviour. Ms. Chakravarty submits that the conduct of Ms. Kahn are incidents of harassment and nuisance over which the Tribunal has jurisdiction. However, as noted above, there is no provision for harassment in subsection 117(2) of the Act or in MTCC 795's governing documents. Ms. Kahn's conduct, even if proven, does not constitute a form of nuisance under the Act. It also does not rise to the level of a nuisance under MTCC 795's rules. The incident in the party room and the fact that Ms. Kahn is apparently making a note of her

encounters with Ms. Chakravarty's daughter do not, in the circumstances, constitute an annoyance or disruption. The Tribunal does not have the jurisdiction to deal with the complaints that Ms. Chakravarty makes against Ms. Kahn.

[16] Ms. Chakravarty claims a reimbursement of the costs of the Compliance Letter. These types of costs are addressed in subparagraph 1(1)(d)(iv) of Regulation 179/17as, "provisions that govern the indemnification or compensation of a corporation regarding a dispute described in this clause". In order to bring Ms. Chakravarty's claim within that subparagraph, the underlying dispute would have to fall within the Tribunal's jurisdiction under subsection 1(1)(d) of that Regulation. As discussed above, the specific actions that Ms. Chakravarty complains of are not addressed in subsection 1(1)(d) of Regulation 179/17.

[17] Ms. Chakravarty makes a wide range of other allegations against MTCC 795 and Ms. Kahn. These include the following:

1. That MTCC 795 behaved improperly in consulting Counsel in this matter;
2. That MTCC 795 improperly withheld a registered letter from her;
3. That the board acted improperly in refusing to disclose which of the board members voted to issue the November, 2022 Compliance Letter;
4. That MTCC 795 is not following a "consistent methodology" in assessing the validity or complaints and in managing them; and
5. That some members of the board of MTCC 795 interfered improperly in this Application on behalf of Ms. Kahn.

These are examples of Ms. Chakravarty's complaints rather than an exhaustive list. I have reviewed all of the complaints and conclude that the Tribunal does not have the jurisdiction to hear them.

[18] MTCC 795 raised an alternative basis for dismissing this Application. It alleges that Ms. Chakravarty brought the Application as a reprisal for its Compliance Letter and, as such, the case was commenced for an improper purpose. There is no evidence of this before me. Ms. Chakravarty is undoubtedly aggrieved by the warning letter, which she feels is unjustified, and she is within her rights to attempt to pursue her claims. The fact that the Tribunal lacks the jurisdiction to deal with these complaints is not a reflection of the merits of the claims or her motives for bringing them. It is simply the case that these matters cannot be pursued before the Tribunal.

[19] MTCC 795 seeks its costs on this motion. In this case, the Tribunal accepted this matter and agreed to hear it. Ms. Chakravarty was within her rights to proceed. Ms. Chakravarty also claims costs. However, since she has failed in her Application, costs are not appropriate for her either. No order as to costs shall issue.

[20] Given that there is no jurisdiction to hear the allegations made against either Ms. Kahn or MTCC 795 by Ms. Chakravarty, this motion will be granted and the Application dismissed.

ORDER

[21] The Tribunal orders that the motion is granted and the Application is dismissed against both MTCC 795 and Ms. Kahn.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: June 20, 2023