

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** July 27, 2023

**CASE:** 2023-00127N

**Citation:** Milne v. Toronto Standard Condominium Corporation No. 1579 et al., 2023 ONCAT 102

Order under section 1.47 of the *Condominium Act, 1998*.

**Member:** Victoria Romero, Member

**The Applicant,**

David Milne

Self-Represented

**The Respondents**

Toronto Standard Condominium Corporation No. 1579

Represented by Inderpreet Suri, Counsel

Wai Sing & Brothers Co. Ltd.

Kelvin Achie, Agent

Alex Boyce-Vienneau

Self-Represented

### **CONSENT ORDER**

- [1] In the Condominium Authority Tribunal's (CAT) online dispute resolution system, the Parties agreed to settle this case in Stage 2 - Mediation.
- [2] Under Rule 34.3 of the CAT's Rules of Practice, the CAT can close a case in Stage 2 - Mediation if the Parties agree to the CAT making a consent order that resolves the dispute.
- [3] The Applicant owns and resides in unit 302 in the Corporation. Wai Sing & Brothers Co. Ltd. owns unit 102 in the Corporation. Unit 102 is currently tenanted by Alex Boyce-Vienneau and is being used as a commercial gym called "Breakdown Fitness". The lease between Wai Sing & Brothers Co. Ltd. and Alex Boyce-Vienneau for Unit 102 expires on September 30, 2023 and Alex Boyce-Vienneau has agreed to not renew his lease and vacate Unit 102 by September 30, 2023. The Applicant maintains that since September 2022, he has continued to experience excessive noise and vibration in unit 302 as a result of the activities being performed in the commercial gym. As a result of the complaints by the Applicant, the Corporation issued a warning letter to Wai Sing & Brothers Co. Ltd.

- [4] With the consent of the Parties, the CAT orders that this case has been resolved, based upon the terms and conditions set out in this consent order. The Parties agree that this Consent Order only resolves the noise complaints of the Applicant in relation to noise/vibration coming from the commercial gym from September 2022 up until the date this Consent Order is issued.

## **ORDER**

The Tribunal makes the following Order:

- [5] Alex Boyce-Vienneau, Breakdown Fitness and any occupants or visitors of Breakdown Fitness shall immediately and permanently stop using any and all assault air bike machines in the commercial gym.
- [6] Alex Boyce-Vienneau and Breakdown Fitness shall only install and use spin bikes in the commercial gym with an appropriate mat underneath them (with the following specifications: Blue mat called "the Crash Mat", 6 inches deep and 3 feet by 3 feet, suitable for weight up to 400 pounds).
- [7] Alex Boyce-Vienneau and Breakdown Fitness shall have no more than two individuals exercising in the commercial gym at the same time. No individual shall exercise in the gym before 7 a.m. on any day of the week, with the exception of one couple exercising at the gym at 6 a.m. once a week on either a Tuesday or a Thursday.
- [8] Alex Boyce-Vienneau and Breakdown Fitness shall ensure that no individuals in the commercial gym use slam/medicine balls.
- [9] Alex Boyce-Vienneau and Breakdown Fitness shall ensure that no equipment shall be thrown against the walls or floors of the commercial gym.
- [10] Alex Boyce-Vienneau and Breakdown Fitness shall ensure that no individuals use any weights in the commercial gym without ensuring that there is an appropriate mat underneath them and on the surface of the floor on which they will use the weight (with the mat to have the following specifications: Blue mat called "the Crash Mat", 6 inches deep and 3 feet by 3 feet, suitable for weight up to 400 pounds). This includes but is not limited to lifting weights for exercises such as deadlifting, chest press, overhead press and single arm rows. Furthermore, Alex Boyce-Vienneau and Breakdown Fitness shall ensure that all users of the gym do not drop any weights.
- [11] Alex Boyce-Vienneau and Breakdown Fitness shall immediately and permanently post at least one (1) sign in the commercial gym which is visible to all users of the gym detailing how equipment is to be used (with mats) and what equipment is not allowed to be used in the commercial gym.

- [12] Alex Boyce-Vienneau and Breakdown Fitness shall terminate and not renew their lease with Wai Sing & Brothers Co. Ltd. for Unit 102 in the building after September 30, 2023. Alex Boyce-Vienneau and Breakdown Fitness shall vacate Unit 102 by September 30, 2023.
- [13] Wai Sing & Brothers Co. Ltd. shall ensure and shall be responsible for ensuring that Alex Boyce-Vienneau, Breakdown Fitness and any future tenant who uses 102 as a commercial gym complies with this Order and the conditions for using the commercial gym mentioned in this Order (specifically paragraphs 5-11).
- [14] Wai Sing & Brothers Co. Ltd. shall ensure that any future tenant of Unit 102 is aware of this CAT proceeding and is provided with a copy of this Consent Order prior to signing any lease with Wai Sing & Brothers Co. Ltd. Wai Sing & Brothers Co. Ltd. shall work with any and all future tenants of Unit 102 to ensure no soundproofing measures are needed to prevent the transmission of unreasonable noise/vibration from Unit 102 into other units or common elements prior to tenanting Unit 102 for any commercial operations being carried out in Unit 102.
- [15] The Applicant and the Respondents agree that this Order only resolves the noise complaints of the Applicant in relation to noise/vibration coming from the commercial gym from September 2022 up until the date this Order is issued.
- [16] Wai Sing & Brothers Co. Ltd. and Alex Boyce-Vienneau shall be provided with two (2) warnings regarding a breach of paragraphs 9 and 10 of this Consent Order. The first two breaches of paragraphs 9 and 10 of this Consent Order will result in warnings to Wai Sing & Brothers Co. Ltd. and Alex Boyce-Vienneau. The third breach of paragraphs 9 and 10 of this Consent Order will be dealt with at the Superior Court of Justice. Other than paragraphs 9 and 10 of this Consent Order, any first breach of any paragraphs of this Consent Order will be dealt with by the Superior Court of Justice.
- [17] Any future noise complaints unrelated to the Consent Order may be dealt with by the Corporation separately.
- [18] To establish a breach of paragraphs 5-11 of this Consent Order, the Applicant must report any noise complaints to the Corporation's agents in real time (contemporaneously). The Corporation's agents can be any one of the following: the Corporation's security guards, superintendent or the property manager. If the Corporation has an agent present and available during the time the complaint is reported, the agent shall investigate the complaint and attend the commercial gym to determine whether paragraphs 5-11 of this Consent Order are being breached. If, in the agent's sole and reasonable opinion, any of the provisions noted in paragraphs 5-11 of this Consent Order are being breached, it shall be considered an official breach of this Consent Order. The agent shall create written and detailed reports in relation to his/her observations.

[19] Within 30 business days of this Order, Wai Sing & Brothers Co. Ltd. and Alex Boyce-Vienneau shall jointly and severally pay the Applicant his costs (CAT fees) of this Application in the amount of \$75. The amount shall be paid to the Applicant by a mailed cheque or e-transfer (using the email used by the Applicant in the CAT proceeding). The Applicant and Respondents agree to waive and not collect or pursue any other damages, costs and/or penalties, or any other amounts, from each other pertaining to this application.

**COMPLIANCE**

[20] If either the Applicant(s) or Respondent(s) fail to comply with any of the terms of this order, it may be enforced by through the Ontario Superior Court of Justice.

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Victoria Romero  
Member, Condominium Authority Tribunal

Released on: July 27, 2023