

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 2, 2023

**CASE:** 2023-00093N

**Citation:** Gamat et al. v. Toronto Standard Condominium Corporation No. 2745, 2023 ONCAT 107

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

**Member:** Marisa Victor, Member

**The Applicants,**

Lylline Gamat, Marc Trinh, Meng Li, Vladimir Sakovets  
Self-Represented

**The Respondent,**

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

**Submission Dates:** June 19, 2023 to July 14, 2023

### **MOTION ORDER**

**A. INTRODUCTION**

- [1] This is a motion brought by the Respondent, Toronto Standard Condominium Corporation No. 2745 (TSCC 2745) requesting that the Tribunal dismiss the Applicants' application due to lack of jurisdiction.
- [2] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision if the CAT determines that that it has no legal power to hear or decide upon the dispute.
- [3] The problem description describes issues related to noise and vibration from the gym above the Applicants' units. The Applicants occupy three different units on the same floor below the gym. The Applicants' position is that the case is not about the conduct of individuals using the gym and making noise. Instead, they say TSCC 2745 has not taken sufficient measures to address the ongoing noise issues for the residents living below the gym.
- [4] The Respondent raised this motion during Stage 2 - Mediation. It was added to the Stage 2 Summary and Order to be determined here in Stage 3. The motion was raised at the outset of the hearing before any evidence was filed.
- [5] The Respondent submits that the Applicants' case is about the following issues

that the CAT does not have jurisdiction over:

1. Disputes about personal injury or illness.
2. Disputes about the repair or maintenance of the common elements.
3. Disputes about TSCC 2745's operational governance decision about the gym's operating hours.
4. Disputes regarding noises coming from a different condominium corporation.

[6] Only Ms. Gamat, from the Applicants, responded to the motion to dismiss.

[7] For the reasons that follow, I dismiss the motion.

## **B. ISSUES**

[8] The issues are:

1. Is the Application about an act that is likely to cause injury or illness to an individual and therefore under s. 117(1) of the *Condominium Act, 1998*,<sup>1</sup> (Act)?
2. Is the Application about repair and maintenance to common elements?
3. Is the Application about TSCC 2745's operational governance decisions?
4. Is the Application about noise coming from a different condominium corporation?

## **C. SUBMISSIONS AND ANALYSIS**

### **Issue 1 - Is the Application about an act that is likely to cause injury or illness to an individual and therefore under s. 117(1) of the Act?**

[9] Section 117(1) of the Act states:

117(1) No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

[10] Section 1(1)(c.1) of the *Ontario Regulation 179/17* (O. Reg 179/17) establishes the Tribunal's jurisdiction over disputes that include noise and vibration pursuant to subsection 117(2) of the Act. Section 117(2) of the Act states as follows:

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<sup>1</sup> S.O. 1998, c. 19

117 (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; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation. 2015, c. 28, Sched. 1, s. 102.

[11] Section 1.36(4)(a) of the Act says that a CAT Application cannot be made “with respect to a dispute with respect to ... subsection 117(1)” of the Act.<sup>2</sup>

[12] Section 1(3) of O. Reg. 179/17 says that the CAT’s jurisdiction over noise and vibration disputes does not apply if the dispute “is also with respect to subsection 117(1) of the Act”.<sup>3</sup>

[13] The problem description reads as follows:<sup>4</sup>

I have been sleeping with ear plugs, and I have difficulty falling asleep for months now. Lylline has been getting migraines from the excessive noise and it heightens her anxiety. Also has hard time staying focus and she has been woken up in the morning as her work schedule is 10am-6pm. She is going to see a doctor this Tuesday regarding her migraines from the constant noise and vibration. Helen our neighbour has been sleeping with her noise cancellation headset. Along with your other neighbour's wife who is waking up every morning with migraines due to the past construction but realized now it is continuing due to the gym (noise/vibration) also.

[14] The Respondent says that the Applicants’ problem description, shows that the application is not within the CAT’s jurisdiction.

[15] The Respondent states that the Applicants’ problem description says that the Applicants are suffering with difficulty falling asleep, migraines, anxiety and health impacts from the noise. The Respondent states that these complaints are about personal injury and therefore within s. 117(1) of the Act and outside of the CAT’s jurisdiction under s. 117(2) of the Act.

[16] The Applicants state, in their problem description, that the use of the gym is causing constant loud noises and vibrations which are disturbing their right to enjoy their units. They ask that the CAT consider their concerns due to the constant noise and vibration that is affecting them.

[17] I find that the problem description does not present a dispute that falls under

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<sup>2</sup> Section 1.36(4) of the Act.

<sup>3</sup> Section 1(3) of the CAT Regulation.

<sup>4</sup> An applicant is required to fill out a problem description when they first start a CAT case.

section 117(1) of the Act. That section relates to acts that are “likely to cause an injury or illness to an individual.” There is no indication here that the application is about anything other than noise from the gym. There is no request in their application for remedies such as monetary compensation for damages related to personal injury.

[18] Section 117(2) of the Act bars unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit. The complaints of lack of sleep, migraines and anxiety due to the noise are consistent with the Applicants’ allegation that the noise is causing a nuisance, annoyance or disruption. The problem description is therefore intended to provide notice of the type of evidence that the Applicants intend to bring about the degree of interference the noise is creating. This may go towards a finding of an unreasonable noise constituting nuisance or annoyance.

[19] I have no evidence before me. I only have the problem description, Stage 2 Summary and Report and the submissions from the parties. It appears to me that the dispute can be characterized as a noise nuisance dispute. That distinguishes this case from *MacQuarrie et al. v. Leeds Condominium Corporation No. 3*.<sup>5</sup> That case was brought after a condominium was damaged by a flood, which forced a number of residents to evacuate. The Applicants there alleged that there was an odour of sewage throughout the first floor of the building and that it was unclear if there are bacteria in the ventilation system might adversely affect the health of residents who remained in the building. The Tribunal member in that case found that the case was fundamentally about flood damage with only a single passing reference to odour.<sup>6</sup>

[20] In the case before me, this appears to be a complaint about noise from the gym that falls squarely within s. 117(2) of the Act. The Applicants complain about the noise from the gym above their unit. They state that rules about noise and vibration are respected throughout the rest of TSCC 2745 and they would like the same for the gym. The Stage 2 – Summary and Report does not mention any personal injury but focuses on the noise complaint. These all indicate that this is a noise nuisance case under s. 117(2) of the Act and not a dispute under s. 117(1) of the Act.

[21] Almost all cases that fall within the jurisdiction of the CAT under s. 117(2) involve allegations of nuisance, disruption and in some cases, risk of injury or illness because of that nuisance or disruption. There has to be more than a passing

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<sup>5</sup> 2023 ONCAT 47.

<sup>6</sup> 2023 ONCAT 47 at para 8.

reference to injury or illness caused by a complaint that falls squarely within s. 117(2) for the case to be deemed outside the jurisdiction of the CAT. Otherwise, it would render the CAT's jurisdiction meaningless, barring the CAT from presiding over the very cases it was legislated to hear.

[22] I find that the Respondent has not established that the Applicants' case falls under s. 117(1) and therefore outside of the CAT's jurisdiction.

## **Issue 2 - Is the Application about repair and maintenance to common elements?**

[23] The problem description says that the Applicants are seeking the following remedies:

We are seeking resolution of hours of 9-9pm or repairing the flooring in the gym to ensure that there is no noise transmitted to our homes.

[24] The Respondent states that the Applicants are seeking as a remedy, an order that TSCC 2745 repair the gym flooring to deal with the noise. The Respondent submits that this shows that the Application is outside of the CAT's jurisdiction because the remedy requires the repair of the common elements. The Respondent states that the CAT does not have jurisdiction over repair and maintenance of the common elements.<sup>7</sup>

[25] The Respondent states that the CAT only has jurisdiction over noise, not the physical flooring installed in the gym and that the Applicants' claim is about deficient soundproofing which is outside the CAT's jurisdiction.

[26] The Respondent relies on *Tarski v. York Region Standard Condominium Corporation No. 1179*,<sup>8</sup> (Tarski) which involved a dispute about noise from a mechanical room. The CAT found that since the condominium could not prohibit or restrict the required functioning of the pumps and equipment in the mechanical room to prevent noise, the CAT had no jurisdiction:

The Tribunal has previously found that building functions are not an "activity" within the meaning of s. 117(2) of the Act. [...] I find that, in this case, the Tribunal does not have jurisdiction over this application because it is not about an activity being carried out by YRSCC 1179 or an activity permitted by YRSCC 1179. If there is an unreasonable noise, then it may be an issue of maintenance and repair of the equipment and structure

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<sup>7</sup> See *Sidhu v. Peel Condominium Corporation No. 426*, 2022 ONCAT 112 at para. 34, *Rahman v. Peel Standard Condominium Corporation No. 779*, 2023 ONCAT 37 at paras. 6 and 19, and *Friedlander v. York Condominium Corporation No. 427*, 2022 ONCAT 110 at para. 57.

<sup>8</sup> 2023 ONCAT 80

of the mechanical room which is not within the jurisdiction of this Tribunal.<sup>9</sup>

- [27] The Respondent submits that in this case the gym amenity is a function of the building. TSCC 2745 is not carrying out an activity in the gym that is causing noise disturbances – the gym weights and equipment do not cause any noise at all, unless an individual drops or slams them. The Respondent states that it does not permit this type of behaviour and that it has provisions in its governing documents that prohibit such noise disturbances from being created by individuals.
- [28] The Respondent submits that this application “is not about an activity being carried out by” TSCC 2745, “or an activity permitted by” TSCC 2745, and therefore should be dismissed.
- [29] Ms. Gamat states, in her response to the motion, that she may have unintentionally brought the Applicants’ concerns outside of the CAT’s jurisdiction. If so, this is due to her lack of legal knowledge. She states that in the past her concerns were raised with the builder, Empire, and that efforts were made to resolve the complaints.
- [30] In reply, the Respondent added that in the past, the builder, Empire, installed additional soundproofing in the gym. Empire has now turned over the building to TSCC 2745. The Respondent says that the gym is outside the 1-year warranty period for new buildings and therefore the builder is unlikely to assist. Further, TSCC 2745 states that it is involved in the Tarion warranty process against the builder and has started construction deficiency litigation against the builder in the Ontario Superior Court of Justice.
- [31] At this early stage in the hearing, I am not satisfied that the matter is about deficient flooring or that the only remedy sought is a repair to the common elements. I do not have any evidence before me to establish that there is deficient construction or damage needing repair which would show that this application is outside of the CAT’s jurisdiction.
- [32] The Applicants’ problem description can be interpreted as offering potential resolutions. It is worth noting that it may have been written with an aim to resolve the case at the negotiation or mediation stage as opposed to for the purpose of establishing remedies in Stage 3.
- [33] The Stage 2 Summary and Report states that after past complaints, the builder’s agent built a platform above the free weight section and put rubber and plastic

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<sup>9</sup> Tarski at paras 32 and 37.

coasters under every machine. While the Applicants say this did not resolve the noise and vibration issues, it is not clear to me that a similar solution would be outside the jurisdiction of the CAT.

[34] In addition, s. 1.44(1) of the Act sets out the CAT's jurisdiction with regard to remedies at the end of a proceeding. The following subparagraphs state that the Tribunal may make any of the following orders:

1. An order directing one or more parties to the proceeding to comply with anything for which a person may make an application to the Tribunal.
2. An order prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action.
- ...
7. An order directing whatever other relief the Tribunal considers fair in the circumstances. 2015, c. 28, Sched. 1, s. 6.

[35] Given those powers, it is possible that the CAT might make an order at the end of the hearing that could be described as a "repair," such as (as has already been done in this case) adding plastic coasters or some other floor covering over top of the common elements, to reduce noise.

[36] This is not to say that this issue is clearly within the jurisdiction of the CAT. But without hearing the evidence, I cannot conclude at this point that it is clearly outside the jurisdiction of the CAT.

[37] Further, the Respondent has not satisfied me that this is not an activity being permitted by the corporation. I do not have governing documents before me. I have no enforcement records establishing that TSCC 2745 has shown that it is not permitting noisy activity to take place. While that may be the case, that is only something I could determine after a full hearing of the matter. At this juncture the Applicants allege that the Respondent is permitting an activity that is causing noise – and that is within the CAT's jurisdiction.

[38] I find, therefore, that the Respondent has not established that the Applicants' case relates to repair and maintenance of the common elements such that it is clearly outside the CAT's jurisdiction.

### **Issue 3 - Is the Application about TSCC 2745's operational governance decisions?**

[39] The problem description states as follows:

Our management on Jan 16 decided to change the gym hours to 4 am – 11 pm shortly after changed back the hours again on Feb 7 to 6 am – 11 pm because I said I will put forth an application due to excess noise in the early am and late pm.

...

We are seeking resolution of hours of 9-9pm or repairing the flooring in the gym to ensure that there is no noise transmitted to our homes.

- [40] The Respondent states that the Applicants are also seeking as a remedy, an order that TSCC 2745 change the gym hours. The Respondent submits that the CAT does not have jurisdiction over operation and governance decisions.<sup>10</sup>
- [41] The Respondent states that the Board decided to maintain the gym hours in its current configuration of 6 am to 11 pm and that this was an operational decision by a duly elected Board of Directors. The Respondent says that because it is individuals who are making the noise, and not the gym weights or equipment on its own, the CAT cannot order the Respondent to change its gym hours when the gym is not what is causing the noise.
- [42] As previously stated, the Applicants' problem description can be interpreted as offering potential solutions. Further, s. 1.44(1) of the Act sets out the CAT's jurisdiction with regard to remedies at the end of a proceeding. Given those powers, it may be that the CAT could make an order at the end of the hearing that would require the Respondent to comply with the Act or its governing documents as has been done in numerous other noise related cases.
- [43] Even if a potential remedy is outside of the CAT's jurisdiction to order, this does not necessarily mean that the subject matter of the entire case is outside the jurisdiction of the CAT. There is a difference between whether the CAT has jurisdiction to hear a case and whether the CAT has jurisdiction to order a particular remedy. Therefore, even if the Applicants have requested a remedy that is outside the CAT's jurisdiction, that alone is not necessarily grounds for dismissal of the entire case on the basis of jurisdiction.
- [44] I find, therefore, that the Respondent has not established that the Applicants' proposed solutions mean that the entirety of the case is clearly outside the CAT's

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<sup>10</sup> The Respondent referred to the following cases to support this statement: Sidhu at para. 1. *Mariam Verjee v. York Condominium Corporation No. 43*, 2019 ONCAT 37 at para. 20. *Bogue v. Carleton Condominium Corporation No. 228*, 2021 ONCAT 67 at para. 25. *Rafael Barreto-Rivera v. Metropolitan Toronto Condominium Corporation No. 704*, 2020 ONCAT 7 at para. 7. *Kallini v. Toronto Standard Condominium Corporation No. 1598*, 2020 ONCAT 37 at para. 18. *Mehta v. Peel Condominium Corporation No. 389*, 2020 ONCAT 32 at para. 16.



jurisdiction.

**Issue 4 - Is the Application about noise coming from a different condominium corporation?**

[45] The problem description says as follows:

Then they started constructions on Kingsway college. It was hard to distinguish between the construction and the gym. To date the Kingsway college tenant has completed their construction. At this point during so much sound noise we did the best we could to get away during those times, such as leaving for the weekend, or working in the office when not even required.

[46] The Respondent submits that the Applicants are not able to determine if the noise that is bothering them comes from the gym or from the Kingsway College School which is a unit owner in a separate condominium corporation – not TSCC 2745. The Respondent states that the CAT does not have jurisdiction over noise coming from a different property that is not part of TSCC 2745.

[47] There is nothing about the other condominium corporation in the Stage 2 – Summary and Order.

[48] Again, I find that the evidence is not clear that the Applicants' statement clearly brings the application outside the jurisdiction of the Tribunal. The vast majority of the problem description and the entirety of the Stage 2 – Summary and Order, issued after the mediation process, relates to the noise coming from the gym. Nowhere in their problem description do they seem to be seeking redress against the Kingsway College School.

[49] I agree that I could not make an order requiring some action to be done by a corporation that is not a party to this application. However, the information I have before me does not indicate that this is what the Applicants are seeking. The problem description is clearly focussed on the Respondent and the solutions being sought are being asked of the Respondent. It appears the complaint is all about the noise from the gym within TSCC 2745.

[50] I find, therefore, that the Respondent has not established that the Applicants' case relates to noise coming from a different condominium corporation and should be dismissed.

**D. CONCLUSION**

[51] The motion is dismissed.

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Marisa Victor  
Member, Condominium Authority Tribunal

Released on: August 2, 2023