

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 18, 2023

**CASE:** 2023-00278N

**Citation:** Metropolitan Toronto Condominium Corporation No. 570 v. Cetin et al., 2023 ONCAT 116

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

**Member:** Laurie Sanford, Member

**The Applicant,**

Metropolitan Toronto Condominium Corporation No. 570

Represented by Tony Bui, Counsel

**The Respondents,**

Feyzullah Cetin

Not appearing

Rocco Maola,

Not appearing

**Hearing:** Written Online Hearing – July 17, 2023 to August 11, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Metropolitan Toronto Condominium Corporation No. 570 (“MTCC 570”) brings this application for an order that Feyzullah Cetin, a tenant in MTCC 579 and Rocco Maola, a unit owner in MTCC 579 and Mr. Cetin’s landlord, bring themselves into compliance with the *Condominium Act, 1998* (the “Act”) and with MTCC 570’s governing documents. MTCC 570 alleges that Mr. Cetin is creating unreasonable noise that is a nuisance. Further, MTCC 570 alleges that Mr. Cetin is violating the parking rules of MTCC 570 by parking his cars in the unauthorised places without permission. MTCC 570 also claims its costs of attempting to enforce compliance and its costs of this proceeding.
- [2] Neither Mr. Cetin nor Mr. Maola joined this proceeding, despite notices of the proceeding served by MTCC 570. For the reasons set out below, I find that Mr. Cetin has violated both the Act and the governing documents of MTCC 570 with persistent and unreasonable noise. Mr. Cetin has also violated the parking rules of MTCC 570 by parking an oversize vehicle in the underground parking and subsequently by parking it in an accessible parking space, using an expired

accessibility parking sticker that was not issued in his name. There is no evidence that Mr. Maola, the landlord, has taken any steps to bring Mr. Cetin into compliance with the Act and the governing documents of MTCC 570. Therefore, under the provisions of the Act, read together with the MTCC 570 governing documents, Mr. Maola is jointly and severally responsible for the noncompliance of his tenant. Costs of attempting to enforce compliance and the costs of this application will be awarded jointly and severally against Mr. Cetin and Mr. Maola.

## **B. NON-APPEARANCE**

- [3] Neither Mr. Cetin nor Mr. Maola joined this case. MTCC 570 submitted that it had served each of them with three Notices of Case by regular mail, as prescribed by Rule 20.1 of the Condominium Authority Tribunal Rules of Practice, effective January 1, 2022 (the “CAT Rules”). The notices were sent on May 29, 2023, June 12, 2023 and July 3, 2023. After the hearing commenced, Tribunal staff sent emails to both Mr. Cetin and Mr. Maola on July 18, 2023 telling them to join the case by July 21<sup>st</sup> and asking them to contact the Tribunal staff if they were having any issues doing that. Neither Mr. Cetin nor Mr. Maola responded and neither joined the case. Subsection 7(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 applies in these circumstances. That subsection provides that where written notices of proceeding have been given in accordance with that Act and the party does not participate, the Tribunal may proceed without that party’s participation and the party is not entitled to any further notice in the proceeding. It was in accordance with this subsection that this hearing proceeded.

## **C. ISSUES & ANALYSIS**

- [4] The issues in this case may be summarised as follows:
1. Does the noise reported by MTCC 570 as coming from the unit occupied by Mr. Cetin constitute a nuisance, annoyance or disruption either under subparagraphs 117(2)(a) and (b) of the Act or under MTCC 570’s governing documents?
  2. Have either Mr. Cetin or Mr. Maola failed to comply with provisions in the Act or in MTCC 570’s governing documents regarding nuisance, annoyance or disruption?
  3. Is Mr. Cetin parking his vehicle in accordance with MTCC 570’s governing documents?
  4. What remedies are appropriate in this case?
  5. Should costs be awarded and, if so, in what amount?

**Issues 1 & 2 – Does the noise reported by MTCC 570 as coming from the unit occupied by Mr. Cetin constitute a nuisance, annoyance or disruption either under subparagraph 117(2)(a) and (b) of the Act or under MTCC 570’s governing**

**documents? If so, have either Mr. Cetin or Mr. Maola failed to comply with the Act or MTCC 570's governing documents?**

- [5] Mr. Cetin's lease started on December 1, 2022. From then to August 1, 2023, MTCC 570 has logged thirty incident reports of noise, some occurring at multiple times on the same night. While some of the complaints of noise were unverified by the security guard who visited the hallway in front of the unit, most of them were corroborated by the security guard in the various incident reports. Most of the complaints concerned loud parties that went on beyond midnight into the early hours of the day or throughout the night. Frequently, Mr. Cetin or one of his guests would agree to turn the volume of music down when requested but the volume would be restored after the guard had left.
- [6] MTCC 570 disclosed the security logs of some of these incidents. For example, on January 25, 2023, shortly after midnight, a complaint was logged of noise coming from Mr. Cetin's unit. A security guard went to the floor and reported loud music noise. When the gatehouse called Mr. Cetin's phone, no one answered. At 1:31 am, there was a further complaint and the noise was confirmed by the security guard. It is not reported what action was taken at this time but at 2:30 am there was a third complaint about the noise volume. At 2:43 am, the guard, having heard the noise from a distance down the hallway, knocked on Mr. Cetin's door but no one responded. The noise continued at 6:35 am. The security guards concluded that there had been an entire night of non-stop music and party noise.
- [7] On April 26, 2023 at approximately 3:54 am, a guard investigated a complaint of loud music and confirmed that there was music and noise that sounded like multiple people shouting and partying. The noise was audible at a distance in the hallway and continued during the ten minutes that the guard was in the hallway. Later that morning, at about 4:37 am, there was a further complaint and the guards discovered three women in the hall speaking to 911. The women claimed they had been physically assaulted by Mr. Cetin. Four police vehicles and a fire truck were called to MTCC 570 as a result.
- [8] In a letter dated March 8, 2023 from Counsel for MTCC 570 to Mr. Cetin and Mr. Maola, Counsel described an incident which was reported to have occurred on March 2, 2023 at about 3:00 am. There was "loud chatter" audible from outside the Unit, in the hallway and at the elevators. There were reports that Mr. Cetin and his guests argued loudly in the hallway in the early morning hours. Mr. Cetin's neighbour reports the same incident in which he testified that there were women in the hall yelling they would not leave until they were paid.
- [9] In another instance, multiple incident reports were filed on the evening of June 26<sup>th</sup> and morning of June 27<sup>th</sup>. Repeatedly, on request, someone in Mr. Cetin's unit would turn the volume of the music down, only to turn it up again within minutes. There were also the intermittent sounds of people talking loudly. MTCC 570 introduced evidence of multiple warning letters to Mr. Cetin and Mr. Maola asking Mr. Cetin to desist in his conduct. MTCC 570 reported that there was no reply from

either individual to these letters.

- [10] Mr. Cetin's neighbour gave a witness statement in which he talked of "constantly being victimized by" Mr. Cetin. He testified that he and his wife are elderly and that she requires a special bed which they had put in the master bedroom, which shares a demising wall with Mr. Cetin's unit. Because of the noise and disruptions, his wife had to move out of the master bedroom. He also now sleeps in a different bedroom. Despite this, both of them still have their sleep disrupted regularly. He reports that at times the noise would continue night after night, getting worse by the night. He referred to incidents on January 24, 28, 29 and 30, 2023. He also testified to recently receiving threatening gestures from Mr. Cetin on his door camera. A video recording of the incident was entered as evidence.
- [11] I accept the undisputed and credible evidence of MTCC 570 and of Mr. Cetin's neighbour.
- [12] Paragraph 117(2)(a) of the Act prohibits activity within a condominium unit or in the common elements if that activity results in "any unreasonable noise that is a nuisance.....". The Act does not define a "nuisance". Previous decisions of the Tribunal have referred to well-established case law on the subject and have found that to support a claim of nuisance there must be an interference that is substantial and unreasonable. There may be an element of frequency and duration involved. A trivial interference will not be enough to support a claim of nuisance. In this case, the neighbour's right to the quiet enjoyment of his unit has been substantially interfered with and this interference continued even after multiple warnings. I conclude that Mr. Cetin's hosting of loud and disruptive parties constitutes a nuisance under subsection 117(2)(a) of the Act.
- [13] Mr. Cetin's activities are also a contravention of the MTCC 570's governing documents. Section 12 of the MTCC 570's declaration says in part:
- However, no condition shall be permitted to exist and no activity shall be carried on in any unit or in the common elements that is likely to damage the property or that will unreasonably interfere with the use or enjoyment by the other unit owners, of the common elements and the other units.
- Section A O3 of MTTC 570's Rules expands on the general statement in the Declaration and prohibits shouting, screaming or "undue noise" caused by "any sound device which disturbs the comfort of any other resident."
- [14] Mr. Cetin's activities have clearly unreasonably interfered with his neighbour's use of his unit and disturbed the comfort of his neighbour to the extent that his wife can no longer use the master bedroom and he has also had to move to a different bedroom. Despite that, they both continue to have their sleep disrupted by Mr. Cetin's parties.
- [15] Mr. Maola's responsibility is less direct. It is Mr. Cetin's activities that are causing the noise nuisance. Mr. Maola's responsibility is dictated by the provisions of the

Act and MTCC 570's governing documents. Subsection 119 (1) of the Act provides that an owner and an occupier of a unit will comply with the Act and the governing documents of the condominium corporation. Subsection 119(2) requires owners to take "all reasonable steps" to ensure that "an occupier of the owner's unit and all invitees" are in compliance with both the Act and the governing documents of, in this case, MTCC 570. Section 26 of MTCC 570's Declaration provides:

Any owner leasing his unit shall not be relieved hereby from any of his obligations with the respect to the unit, which obligations shall be joint and several with his tenant.

Rule D 01 of MTCC 570 begins, "Any owner leasing a suite to a tenant or tenants shall not be relieved thereby from any of the owner's obligations with respect to the suite." While the balance of that Rule talks of damage to the common elements, the first sentence may be read broadly to include the obligation to comply with all the governing documents of MTCC 570.

- [16] Reading section 119 of the Act together with section 26 of MTCC 570's Declaration and Rule D 01, I conclude that Mr. Maola has the same obligations as does Mr. Cetin with regard to the unit and has the additional responsibility of taking reasonable steps to ensure that Mr. Cetin's activities do not create a nuisance. According to MTCC 570, Mr. Maola has taken no steps to stop his tenant's disruptive behaviour and so he is not only in violation of his obligations under the Act, he is, under MTCC 570's Declaration, jointly and severally responsible with Mr. Cetin for the consequences of Mr. Cetin's breach of subsection 117(2) of the Act and of MTCC 570's governing documents.

### **Issue 3 – Is Mr. Cetin parking his vehicles in accordance with MTCC 570's governing documents?**

- [17] MTCC 570 has a registration system for residents' vehicles and Mr. Cetin was issued with a certificate to register two vehicles for parking in assigned parking spots in MTCC 570's underground garage. His two registered vehicles were identified by licence plate number. Rule M.18 prohibits anyone from parking except in accordance with the Rules and Rule M.18 b) prohibits use of the underground parking unless the vehicle is registered with MTCC 570. Under Rule M.16, a vehicle can be no more than 74 inches high. This is to ensure that a vehicle can safely enter and exit the parking garage.
- [18] Mr. Cetin owns a car which exceeds the height restriction by about three inches. He is therefore unable to exit using the exit ramp. He was using the entrance ramp to exit. MTCC 570 warned him at least twice of the obvious danger of doing this and finally threatened to de-activate his transponder to enter and exit the garage. Mr. Cetin then moved his vehicle to an accessible parking spot in the above-ground parking of MTCC 570 and began displaying an accessible parking permit. MTCC 570 produced photographs of Mr. Cetin's vehicle in the accessible parking space and photographs of the accessible parking permit. MTCC 570, using

publicly available information from Services Ontario, determined that the permit had been issued in someone else's name and was, in any event, expired. There is nothing in the rules of MTCC 570 that expressly prohibits parking using an invalid accessibility parking permit. What the MTCC 570 rules do prohibit is the overnight parking in surface parking lots, which Mr. Cetin has been doing. It is also worth noting that under subsection 27(1) of the *Highway Traffic Act*, it is prohibited to have an accessibility permit displayed if the certificate is not correctly issued in accordance with the *Highway Traffic Act* and its regulations.

- [19] MTCC 570 alleges that Mr. Cetin also began parking a second vehicle, not registered with MTCC 570, in various outdoor parking places, including accessibility spots. MTCC 570 produced photographs of this second car in the surface parking areas. When the second car was ticketed by municipal parking enforcement, MTCC 570 alleges that Mr. Cetin moved the car to an underground parking spot, despite the fact that it was not registered for parking there. However, MTCC 570 produced no evidence that the second car was licensed to Mr. Cetin. Therefore, I make no finding about this second vehicle.
- [20] I conclude that Mr. Cetin is violating the parking rules of MTCC 570 by first, parking an oversize vehicle in the underground parking and second, by parking the vehicle overnight in the surface parking area. Again, in this case, Mr. Maola, as the landlord and under MTCC 570's Declaration and Rules, must share in the consequences of Mr. Cetin's violation of the parking rules on a joint and several basis. Mr. Maola is also in violation of his obligation under subsection 119(2) of the Act by not taking any action to enforce compliance with the Act and the MTCC 570 governing documents.

#### **Issues 4 & 5 – What remedies are appropriate in this case?**

[21] MTCC 570 is requesting an order:

1. Requiring Cetin permanently cease and desist from creating any further noise or disruption in breach of s. 117 (2) (b) of the Act and MTCC 570's Declaration and Rules. This includes, without limitation, noise created by loud music, loud discussions and arguments within the Unit/hallways and requiring Cetin ensure his guests/invitees comply with the above;
2. Requiring Cetin permanently cease and desist from operating and parking any vehicles in breach of MTCC 570's Parking Rules. This includes, without limitation, parking any vehicles in accessibility spots without a valid accessibility permit, parking any vehicles in the underground garage without validly registering such vehicles with MTCC 570 and parking any vehicles overnight on visitor spots;
3. Requiring Maola take reasonable steps to ensure Cetin complies with the above; and

4. Awarding MTCC 570's all costs, expenses and fees it incurred to enforce the Respondents' compliance (including costs of this application; and approximately \$10,732.45 to date) in accordance with the indemnity provision in its Declaration. These amounts shall be deemed to be common expenses of the Unit and the Respondents, jointly and severally, shall pay these amounts within thirty days.

[22] Generally, in cases like this, the Tribunal will order the tenant and landlord/owner to comply with the Act and with MTCC 570's governing documents. It is within the jurisdiction of the Tribunal, under subsection 1.44(1) of the Act, to be more specific about the actions necessary to comply with the Act and MTCC 570's governing documents and I am prepared to make such an order, although not in exactly the wording suggested by MTCC 570. For example, it is unclear what a prohibition against "operating" a vehicle in breach of MTCC 570's parking rules would entail.

[23] There are several types of costs that MTCC 570 is claiming. It claims:

1. its pre-application costs of attempting to enforce compliance;
2. its costs of filing the application; and
3. its legal costs of the application.

It also requests that each of these costs, if unpaid, be added to the common expenses payable by Mr. Maola.

[24] Costs incurred prior to the filing of an application to this Tribunal are awarded under subparagraph 1.44(1) 4 of the Act, which allows an order directing a party to the proceeding to pay the costs of another party to the proceeding. Costs incurred both in filing an application with the Tribunal and in conducting the hearing are dealt with in the CAT Rules.

[25] Considering first the costs of attempting to enforce compliance, MTCC 570 produced three warning letters written by counsel for MTCC 570 to Mr. Maola, with copies to Mr. Cetin. The letters were written in March, April and May of 2023 and not only set out incidents of the noise nuisance and the parking violations but also include the provisions of the MTCC 570 governing documents that are alleged to have been violated. These three letters are in addition to two warning letters, in February and March, from MTCC 570 to Mr. Cetin about the outsized vehicle in the underground parking lot, for which no costs are being claimed. MTCC 570 is claiming the cost of producing the first of the three legal letters in the amount of \$3,616. This amount seems excessive for what is called a compliance letter, even recognising that there were two unrelated compliance issues, that is the noise and the parking violations. A review of the bill of costs for this expenditure shows some amounts that do not appear to be directly related to the compliance letter, such as a docket on April 24<sup>th</sup> for a call with the board "re door closers" for \$240 and on June 6<sup>th</sup>, emails and calls "re reno request" for \$280. There is no hard and fast rule about what writing a compliance letter should cost but the cost claimed here is well

outside the usual range seen in Tribunal cases. Given that there were two separate and unrelated violations, I will allow \$900 in costs of the first compliance letter.

[26] MTCC 570 is claiming \$3,248.75 in legal fees for the period from April 4 to June 12, 2023. It is not clear which of these costs relate to the second and third compliance letters and which relate to preparation for legal action, including an application to the Tribunal. For example, there is a \$140 fee on May 9<sup>th</sup> relating to discussions about criminal charges. However, there are also charges relating to the review of the accessible parking permit that Mr. Cetin was using, which makes these compliance letters somewhat more complex than usual. I will allow costs of \$2,000 for the research, preparation and mailing of the second and third compliance letters. This amounts to an award of \$2,900 for attempting to enforce the compliance of Mr. Cetin and Mr. Maola and the obligation will be joint and several.

[27] A remaining question is whether any part of the difference between the \$6,864.75 which MTCC 570 actually paid in legal bills related to Mr. Cetin's violations of its governing documents and the \$2,900 I am allowing for the compliance letters may be recovered. There remains an amount of \$3,964.75 that MTCC 570 incurred in legal fees before bringing this application, most of which related to violations of its governing documents.

[28] MTCC 570's Rule P 02 which addresses the costs for which MTCC 570 may seek indemnification. It reads:

Residents shall indemnify, save harmless and release the Corporation, the Corporation's Representatives and other Residents of and from any "Claim", including, without restriction, any loss, liability, penalty, fine, suit, action, cause of action, proceedings, injury, incident, illness, death, demand, damage, damages, expenses, legal costs on a full indemnity basis, and any such or any other claim of any nature or kind arising from or pertaining to breach by the Resident or those for whom the Resident is responsible of any provision contained in the Corporation's declaration, by-laws or rules, the Act or any other law, regulation, by-law, ordinance, or any other legal or regulatory obligation. The amount of any such Claim shall be borne and/or paid for in full by the owner and/or tenant thereof jointly and severally and may be recovered by the Corporation from either or both of them. By forewarning Residents of these remedies, it is hoped that a congenial life style can be assured in our home environment and that Residents can avoid incurring enforcement expenses.

[29] This section speaks of legal costs that may arise from a "Claim". I give the word claim its customary meaning of a legal claim, demand or loss made against MTCC 570 or suffered by it, none of which circumstances are applicable here. I conclude that there is nothing in the Rules of MTCC 570 which would require a greater award than that which I have made for the writing of the compliance letters. Nor am I persuaded that there is any reason to increase the award of \$2,900 that I am making.



- [30] The recovery of the fees of filing an application is addressed in Rule 48 of the CAT Rules. Usually the unsuccessful party reimburses the successful party for the costs of filing an application. In this case, those fees are \$150 and I will award them to MTCC 570.
- [31] Turning to the legal fees of pursuing the application, MTCC 570 paid \$3,717.70 in legal fees for the period of July 4 to August 8, 2023. A review of the invoice shows that these fees appear to relate exclusively to this application. The cost appears reasonable.

Rule 48.2 of the CAT Rules provides:

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.

- [32] There is also a practice direction that sets out some of the considerations that will determine if costs are to be awarded and, if so, in what amount. Among the factors which may be considered in determining if costs are appropriate are whether a party's conduct was unreasonable, whether the parties attempted to resolve the issues in dispute before the case was filed and any other factors which the Tribunal considers appropriate. In determining an appropriate amount of costs, the practice direction sets out considerations including whether the costs incurred are appropriate and proportional, whether the costs are reasonable and reasonably incurred, including whether there was a legitimate need to incur the cost.
- [33] It is appropriate to award some part of the legal costs that MTCC 570 has incurred in pursuing this matter. This action would not have been necessary had Mr. Cetin complied with the Act and MTCC 570's governing documents or if Mr. Maola had taken any actions to enforce compliance. If either party had made any effort to resolve the issue without recourse to the Tribunal, these costs could have been avoided. I conclude that some legal costs are appropriate in this case.
- [34] In considering the quantum of those costs, I am particularly struck by the fact that neither Mr. Cetin nor Mr. Maola responded to the warning letters or joined this case. MTCC 570 presented compelling evidence and if either Mr. Cetin or Mr. Maola had a response to it, they chose not to present it. This non-responsiveness forced MTCC 570 to pursue this application. In doing so, it incurred legal costs which were reasonable and proportionate to the issues involved. Someone will have to pay these costs, if not the Respondents, then the other unit owners. It would be unfair to oblige the unit owners pay costs which are entirely the result of the actions of Mr. Cetin and the inaction of Mr. Maola. In all the circumstances of this case, I will award the totality of MTCC 570's legal costs of this action, in the amount of \$3,717.70. This liability will be joint and several.

[35] MTCC 570 wishes to add any unpaid amount of the award to the common expenses of Mr. Maola's unit, which they are entitled to do under subsection 1.45(2) of the Act. MTCC 570 also asserts that it is entitled to add any unpaid amount of the award to the common expenses of Mr. Maola's unit under the indemnity provisions of its Declaration. As the provisions of the Act address this point, it is not necessary for me to decide whether the indemnity terms of the Declaration apply.

#### **D. CONCLUSION**

[36] Mr. Cetin persists in throwing disruptive parties regardless of their impact on his neighbours. He flaunts the parking rules of MTCC 570, again regardless of the inconvenience to or the safety of his neighbours. Mr. Maola permits such conduct to continue despite repeated notices to him and his tenant to amend their behaviour. It is appropriate that they should, jointly and severally, be responsible for the consequences.

#### **E. ORDER**

[37] Under section 1.44 of the Act, the Tribunal Orders that:

1. Mr. Cetin shall bring himself into immediate compliance and shall remain in compliance with the Act and with MTCC 570's governing documents. This includes, but is not limited to, ceasing to create noise by playing loud music, and engaging in loud discussions and arguments. Mr. Cetin shall ensure that his guests also comply with this provision of the order.
2. Mr. Cetin shall bring himself into immediate compliance and shall remain in compliance with MTCC 570's parking rules. This includes, but is not limited to, not parking vehicles overnight in the surface parking spaces and not parking oversized vehicles in the underground parking area.
3. Mr. Maola shall take reasonable steps to ensure Mr. Cetin's compliance with paragraph [37] 1 and [37] 2 above.
4. Mr. Maola and Mr. Cetin will be jointly and severally liable to pay the amount of \$6,767.70 to MTCC 570 within 30 days of the date of this Order. This amount is comprised of the following:
  - a. The amount of \$2,900 for attempts by MTCC 570 to enforce compliance with the Act and with its governing documents;
  - b. The amount of \$150 for reimbursement of MTCC 570's filing fees for this application; and
  - c. The amount of \$3,717.70 for the legal costs incurred by MTCC 570 in this application.

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Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: August 18, 2023