

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 30, 2023

**CASE:** 2023-00195N

**Citation:** Reany v. Waterloo Standard Condominium Corporation No. 670, 2023 ONCAT 121

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

**Member:** Nicole Aylwin, Member

**The Applicant,**

Joel Reany,  
Self-Represented

**The Respondent,**

Waterloo Standard Condominium Corporation No. 670  
Represented by Megan Alexander, Paralegal

**Submission Dates:** August 14, 2023 to August 21, 2023

### MOTION ORDER

- [1] The Respondent, Waterloo Standard Condominium Corporation No. 670 ("WSCC 670") brings this motion to have the Tribunal dismiss the Applicant, Joel Reany's, application due to lack of jurisdiction. At the time of the motion, both parties had provided opening statements, but no evidence had been introduced. I asked both parties to provide submissions specifically on this motion.
- [2] Mr. Reany is the owner of a unit in WSCC 670. Mr. Reany's unit is on the second floor of the condominium, which is the same floor as WSCC 670's gym. Mr. Reany alleges that the use of free weights in WSCC 670's gym is causing unreasonable noise and vibration that is a nuisance and interference with the quiet enjoyment of his unit.
- [3] WSCC 670 takes the position that this case does not come within s. 117(2) of the *Condominium Act, 1998* (the "Act") because it is a case about the maintenance and repair of common elements, which is outside of the jurisdiction of the Tribunal.
- [4] Under Rule 43.1 of the CAT's Rules of Practice the Tribunal can close a case in Stage 3 – Tribunal Decision if the Tribunal determines that it has no legal power to

hear or decide the dispute.

- [5] I have considered the submissions provided by the parties as well as the Tribunal's jurisdiction under the Act, and for the reasons set out below I am not satisfied that the case falls outside the jurisdiction of the Tribunal, and I dismiss this motion.

*Issue: Is the application about an unreasonable noise and vibration that is a nuisance or about repair and maintenance to the comment elements?*

- [6] 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:

(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.

- [7] The "other prescribed nuisances" are defined in s. 26 of Ontario Regulation 48/01 ("O. Reg 48/01") and include vibration.

- [8] Rule 19.1 of the Tribunal's Rules of Practice states that the Tribunal can dismiss an application or case at any time in certain situations, including:

(a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns;

(b) Where a case has no reasonable prospect of success;

(c) Where a Case is about issues that the CAT has no legal power to hear or decide;

(d) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications).

- [9] WSCC 670 has asked the Tribunal to dismiss the case under 19.1(c) as it submits that the noise and vibration Mr. Reany is complaining about is the result of a deficient gym floor (i.e., a deficient common element) that needs repair.

- [10] WSCC 670 argued that it retained a sound engineer to assess the noise, and in the subsequent report from HGC Engineering (which was not put before me), the engineer recommended installation of specific flooring throughout the gym, particularly under the areas with free weights to reduce the transmission of impact noise from the weights being dropped. Thus, WSCC 670 argues that this report establishes that the source of the noise stems from the deficient flooring, not the use of the weights, and that the engineers' recommendations regarding changes to the floor in the gym are facts that establish this as an issue of maintenance and repair.
- [11] WSCC 670 submits that the Tribunal has dismissed several cases that have similar facts to this one and they referred me to cases including, *Nadine Brady v Peel Standard Condominium Corporation No. 947, 2023 ONCAT 8* ("Brady") and *Tarski v. York Region Standard Condominium Corporation No. 1179, 2023 ONCAT 80* ("Tarski").
- [12] In Brady, the Tribunal dismissed the application because it found that the noise the applicant was complaining of was the result of water rushing through pipes and was "not an issue of an activity created or permitted to be carried on by an owner/tenant in another unit" or in the common elements.
- [13] In Tarski, the application was dismissed by the Tribunal for similar reasons, that is, that the probable source of the noise was determined to be the result of the required functioning of the mechanical room, not an activity carried out by or being permitted by another occupant/owner or the condominium.
- [14] I find there is significant differences between the facts in Brady and Tarski and the facts before me here, even in the early stages of the hearing. In both Brady and Tarski, the noise at issue was not the result of an activity by a person or persons, but of the regular functioning of structural/mechanical building features that may require repair to address the noise.
- [15] The problem description filed with the application, as well as the parties' submissions on the motion all suggest that the unreasonable noise complained of may be the result of an activity being carried out by other residents/owners.
- [16] Moreover, I am not satisfied by WSCC 670's argument that because a 'repair' of the floor in the gym may reduce the transmission of noise, that this is a case about maintenance and repair. Just because a repair may be a remedy requested or required, does not automatically remove a case from the jurisdiction of the Tribunal.

[17] Finally, WSCC 670 also referred me to *Sievwright v Toronto Standard Condominium Corporation No. 2023, ONCAT 68*, wherein the Tribunal dismissed the application because it found that the noise at issue, which was a grate in the parking garage floor that made noise when owners drove over it, was the result of owners using the common elements properly for its intended purpose, i.e. driving in and out of the garage. Thus, it was the broken grate not the driver's activity which was the source of the noise. WSCC 670, submits that in this case the users of the gym are simply using the weights for their intended purpose and are not engaged in disruptive activity.

[18] At this stage I do not have enough evidence to determine whether that is the case here. It would be premature to decide the issues in this case in the absence of further evidence than has been put before me on this motion.

[19] For all the above reasons, I find that WSCC 670 has not established that Mr. Reany's case relates to repair and maintenance of the common elements such that it is clearly outside the jurisdiction of the Tribunal, and I dismiss this motion.

## **ORDER**

[20] This motion is dismissed.

---

Nicole Aylwin,  
Member, Condominium Authority Tribunal

Released on: August 30, 2023