

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** October 16, 2023

**CASE:** 2023-00142N

**Citation:** Mishibinijima v. Simcoe Condominium Corporation No. 60 et al., 2023 ONCAT 150

Order under Rule 4 of the Tribunal Rules of Practice.

**Member:** Jennifer Webster, Member

**The Applicant,**  
Steve Mishibinijima  
Self-Represented

**The Respondents,**  
Simcoe Condominium Corporation No. 60  
Represented by Sonja Hodis, Counsel

Cynthia Norman  
Self-Represented

### **MOTION ORDER**

- [1] Mr. Steve Mishibinijima (the “Applicant”) is a unit owner in Simcoe Condominium Corporation No. 60 (“SCC60”). He brought an application against SCC60 and the owner of the unit above his unit (the “Upper Unit”), complaining about unreasonable noise and vibration emanating from the Upper Unit.
- [2] On October 2, 2023, the Tribunal issued a decision in relation to two preliminary issues related to the Notice of Case served on respondent Cynthia Norman and the timeliness of the application. In that decision, I allowed the application to continue as a timely application and despite issues with the service of the Notice of Case to Ms. Norman
- [3] When the case resumed after the decision was issued, I set a schedule for opening statements from the parties. SCC60 advised that it had retained counsel and requested an extension of the deadline for its opening statement which I granted.
- [4] In his opening statement, the Applicant referred to a new owner of the Upper Unit.

I asked the parties for their views on whether the new owner should be added as a party to this case. SCC60 took the position that the new owner should be added because she may be affected by the orders being sought by the Applicant in these proceedings. SCC60 also identified the new owner as Christine Sapsford. The Applicant took no position on whether the new owner should be added; he did state, however, that he believed that the new owner should provide witness testimony in the application. Ms. Norman questioned whether it was necessary to add the new owner to the case, and raised concerns about the delays that would be caused by adding Christine Sapsford to the case.

- [5] Section 1.38(3) of the *Condominium Act, 1998* (the “Act”) states that the “Tribunal may add or remove a person as a party if the Tribunal considers it appropriate.” Section 1.39(1) of the Act requires the Tribunal to ensure that all “persons directly affected by the proceeding” have an opportunity to know the issues and to be heard.
- [6] The Applicant claims that there is noise and vibration coming from the Upper Unit that is a nuisance, annoyance or unreasonable disruption under the Act or the governing documents of SCC60. He describes that this noise and vibration has continued from 2019 until the present, and he is seeking an order from the Tribunal requiring that SCC60 investigate the noise and vibration. Although the Applicant has not confirmed that he is seeking an order that the noise and vibration stop, it is clear from his opening statement in this matter that he wants an investigation, and he wants the disruption to end.
- [7] The Applicant claims remedies from SCC60 and from the former owner of the Upper Unit, Cynthia Norman. There is also potential liability of Christine Sapsford, the new owner of the Upper Unit, in relation to the remedies sought by the Applicant. At a minimum, the remedies may require Ms. Sapsford to participate in an investigation into the noise and vibration. However, there may be additional remedies that may require her to refrain from or limit certain activities in the unit that are causing noise and / or vibration.
- [8] I find that Christine Sapsford is directly affected by this proceeding by the potential remedies and that it is appropriate that she be added as a party. Under the Condominium Authority Tribunal Rules of Practice, effective January 1, 2022, an added party is called an “Intervenor”: but is considered as a party for all purposes of the proceeding.
- [9] The process for adding a new party to a case before the Tribunal involves restarting the case. As part of this Order, I direct Mr. Mishibinijima to contact [catinfo@condoauthorityontario.ca](mailto:catinfo@condoauthorityontario.ca) for instructions on re-creating the case and

adding Ms. Sapsford as an intervenor.

[10] In addition, given that the process for adding a new party will take some time, I am adjourning the hearing for six weeks from the date of this Order. During the six-week adjournment, I am providing directions to the parties pursuant to Rule 4.1 which states: “The CAT may give directions or make Orders to provide a fair, focused and efficient process in each Case.”

[11] It is evident that, in this case, there is a recognition that the Applicant experienced noise from the Upper Unit during the years that Ms. Norman’s tenants were living in the Upper Unit. This tenancy ended in June 2023 and the Upper Unit was vacant until Ms. Sapsford became the new owner and occupant. Although the Applicant is able to provide evidence of noise and vibration that he experienced in the past, there is a lack of current or recent evidence related to his experience of noise. Therefore, I am directing the parties to take the following steps during the six-week adjournment to obtain current evidence to assist in the hearing process:

- I direct SCC60 to investigate the nature and source of noise and vibration entering the Applicant’s unit; this investigation must be conducted by an independent third party;
- I direct the Applicant to provide access to his unit for the purpose of the third-party investigation;
- I direct the Applicant to keep a log of any and all experiences of noise and vibration that occur during the next six weeks; this log should be in writing and record the following information: date, time, nature, and duration of noise / vibration; and
- I direct SCC60 to provide Ms. Sapsford with a copy of this order and to request that she keep a written log of her activity in the Upper Unit during the period of the adjournment.

## **ORDER**

[12] The Tribunal orders that:

1. Under section 1.38(3) of the Act and Rule 4 of the Tribunal’s Rules, Christine Sapsford shall be added as an Intervenor in this matter;
2. Under Rule 4 of the Tribunal’s Rules, I direct the Applicant to contact [catinfo@condoauthorityontario.ca](mailto:catinfo@condoauthorityontario.ca) for instructions on re-creating the case and adding Christine Sapsford as an intervenor

3. Under Rule 4 of the Tribunal's Rules, the hearing in this matter is adjourned for six weeks from the date of this Order to allow for adding Christine Sapsford to the case;
4. Under Rule 4 of the Tribunal's Rules, I direct the parties to take the following steps during the six-week adjournment:
  - a. SCC60 shall conduct an independent third-party investigation of the nature and source of noise and vibration experienced in the Applicant's unit;
  - b. The Applicant shall provide access to his unit for the purpose of the third-party investigation;
  - c. The Applicant shall keep a written log of any and all experiences of noise and vibration in his unit; and
  - d. SCC60 shall provide a copy of this order to Christine Sapsford and request that she keep a written log of her activity in the Upper Unit.

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Jennifer Webster  
Member, Condominium Authority Tribunal

Released on: October 16, 2023