

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 30, 2023

CASE: 2023-00232N

Citation: Roszak v. Peel Standard Condominium Corporation No.1059, 2023 ONCAT 158

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

Member: Dawn Wickett, Member

The Applicant,

Peter Roszak
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No.1059
Represented by Bradley Chaplick, Counsel

Submission Dates: October 9, 2023 to October 18, 2023

MOTION ORDER

[1] The Applicant is a unit owner in Peel Standard Condominium Corporation No.1059 ("PSCC 1059"). He claims that he has been living with noise and vibrations transferring into this unit for the last four years. The Applicant alleges that he has been patient to "give them an opportunity to uphold the warranty". Because the issues have not been resolved, the Applicant filed his application with the Tribunal. The problem description in the application states:

Builder, Condo corporation has been informed for the past 4 years of noise, vibration issues transferring from unit above throughout ceiling and hvac. Asked PM to enforce noise by-laws but that did not occur. this is affecting our quality of life. We had to hire a sound engineer out of pocket... builder left issue for condo corporation and PM is not acknowledging the deficiency. Multiple emails to builder and condo corp reporting the deficiency, it was also on year end- 2nd year with Tarion to investigate further Spring 2023.

[2] The Applicant submits that the following would be reasonable remedies to the issues in dispute:

- a) That PSCC 1059 effect repairs to the building and provide an apology letter.
- b) That the owner be permitted to effect repairs to the building on his own (at PSCC 1059's cost).

- c) That PSCC 1059 reimburse the Applicant for the costs associated with selling his unit.
- [3] The Respondent, PSCC 1059 brings this motion to have the Tribunal dismiss this application because it alleges the Tribunal lacks jurisdiction. The motion was brought at the onset of Stage 2 – Mediation.
- [4] In the motion to dismiss, PSCC 1059 submits that the issues in dispute stem from the Applicant's complaints about construction deficiencies and his desire to enforce his Tarion warranty rights. In support of its position, PSCC 1059 referenced the Applicant's requested remedies which are related to repairs.
- [5] PSCC 1059 further submits that the Applicant has not made any claim of wrongdoing against his neighbours.
- [6] The Applicant's claim is that noise and vibration transfers into his unit because of repair and maintenance issues, which are not within the scope of the Tribunal's jurisdiction.
- [7] To be within the scope of the Tribunal's jurisdiction, PSCC 1059 submits the Applicant's claim must be based on human activity that produces noise and vibration pursuant to section 117 (2) of the *Condominium Act, 1998* (the "Act"). Section 117 (2) of the Act reads as follows:
- 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.
- [8] The Applicant submits the Tribunal does have jurisdiction to hear his application. While not stated in his application, in response to the PSCC 1059's motion, the Applicant submits that "There is alleged improper human activity thus this application. There is loud foot stomping in late hours of the night, noise transfer in hvac [*sic*] and loud conversations during partying. They have a child that runs around creating havoc."
- [9] Because the Applicant now claims human activity is the cause of the noise issues, he relied on section 21 (a) and rules 2, 5, and 19 of PSCC 1059's governing documents in support of his position that the Tribunal has jurisdiction to hear his application. These provisions of PSCC 1059's governing documents state that owners, their families, guests, visitors and servants will not engage in behaviour, conduct or activities that will unreasonably interfere with the rights, comfort and quiet enjoyment of others living or visiting in the condominium building.

- [10] Of further support for his position, the Applicant submitted several documents. I have reviewed the documents and I find that they are related to the Applicant's claim of construction deficiencies which allow noise and vibration to transfer into his unit from the unit above. The documentation also speaks the Applicant's endeavors to enforce his Tarion warranty to have the necessary repairs completed.
- [11] I find the Applicant's reply submissions alleging the activities of the occupants living in the unit above are, or contribute to the noise and vibration issue, to be confusing and somewhat contradictory. I say this because in response to PSCC 1059's initial message advising it would be filing a motion to dismiss, the Applicant stated "The defendants tried to blame the upstairs occupants for the noises which is unfair to the owners given that they might not have been aware. it *[sic]* just goes to show that the representatives will try and put the blame on anyone but themselves for failure to provide a quality product... To date has not been resolved with Tarion-Builder and corporation that's why I am asking for your help".
- [12] In considering the evidence before me, I find the substance of this application is the noise and vibrations allegedly transferring into the Applicant's unit because of construction deficiencies and repair issues. The evidence is clear that the Applicant is seeking to have repair and maintenance work completed through his Tarion warranty or, in the alternative, at expense of PSCC 1059. For these reasons, I find issues set out in this application are subject to section 89 and 90 of the Act and/or the provisions of the applicable Tarion warranties.
- [13] Section 89 and 90 of the Act address a corporation's responsibility to repair and maintain portions of the condominium building, including common elements, such as plumbing and infrastructure.
- [14] The scope of the Tribunal's jurisdiction is set out in the Act and the Ontario Regulation 179/17 ("O. Reg 179/17"). Under subparagraphs 1 (1) (c.1) and 1 (1) (d) (iii) of O. Reg 179/17, the Tribunal has jurisdiction to deal with disputes relating to section 117 (2) of the Act or provisions in a condominium corporation's governing documents which prohibit, restrict or otherwise govern disputes described in subsection 117 (2).
- [15] The Act and the O. Reg 179/17 do not give the Tribunal jurisdiction to deal with disputes under section 89 and 90 of the Act. As such, given my finding that this application is about issues under section 89 and 90 of the Act, I find that the Tribunal does not have the jurisdiction to hear matter.
- [16] With respect to the Applicant's allegations that the noise and vibrations stem from the activity carried out by the occupants living in the unit above his, I find it is more likely than not that this allegation was made as a veiled attempt to keep his application within the Tribunal's jurisdiction. In making this finding, I considered the fact that the documentary evidence provided by the Applicant does not contain evidence that he made complaints to PSCC 1059 about the occupants' activity

prior to the filing of this application. Further, the Applicant has not made the occupants a party to this proceeding, and he has not requested remedies in relation to seeking their compliance with PSCC 1059's governing documents.

[17] PSCC 1059 also moved to have this matter dismissed because the application was not filed within two years pursuant to section 1.36 (6) of the Act. In light of my decision to dismiss this application, it is not necessary to consider this matter.

[18] The Applicant requested that the order be made private. This is the second time the Applicant has made this request to the Tribunal. The first time was in the context of an earlier motion to dismiss due to inactivity in Stage 1 – Negotiation, and the request was denied because the Applicant did not provide relevant justification to support the request. The Tribunal's decision on this issue is set out at paragraph 7 of the motion order identified as 2023 ONCAT 140 which states:

The Applicant requested that the Tribunal restrict access to this order for "privacy reasons." When asked to provide further information regarding the request, the Applicant was unable to provide any relevant justification to support the request. The CAT is required to publish its decisions and orders, and the test for a confidentiality order is a high threshold. The Applicant prefers that the decision be private, but that preference does not trump the legislated requirement of the CAT to publish its orders.

[19] Again, in this matter, the Applicant did not provide relevant justification to support his request. I adopt the reasoning set out above and deny the Applicant's request that this motion order be kept private.

ORDER

[20] The Respondent's motion is granted. The application is dismissed.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: October 30, 2023