

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 24, 2023

CASE: 2023-00290N

Citation: Toronto Standard Condominium Corporation No. 2448 v. Ihejirika et al.,
2023 ONCAT 178

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

Member: Mary Ann Spencer, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2448
Represented by Maria Dimakas, Counsel

The Respondents,

Chidinma Ihejirika
Self-Represented

Subash Chandra Mojumdar
Self-Represented

Hearing: Written Online Hearing – August 14, 2023 to November 2, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Toronto Standard Condominium Corporation No. 2448 (“TSCC 2448” or the “corporation”) requests the Tribunal order the Respondents, Chidinma Ihejirika and Subash Chandra Mojumdar, to comply with the provisions of its governing documents and the *Condominium Act, 1998* (the “Act”) respecting noise and, on a joint and several basis, to pay its legal costs and expenses in this matter.
- [2] Ms. Ihejirika is a tenant occupying a unit of TSCC 2448 owned by Dr. Mojumdar. TSCC 2448 alleges she is creating unreasonable noise which is interfering with the quiet enjoyment of other residents in violation of section 117 (2) of the Act, Article 4.1 (a) of its declaration, and its Rules 2 (a) and (b)

respecting noise. It further alleges that in violation of section 119 (2) of the Act and Article 4.1 (d) of the declaration, Dr. Mojumdar has failed to take reasonable steps to ensure his tenant's compliance.

- [3] Ms. Ihejirika and Dr. Mojumdar both request that this matter be dismissed. Their positions are similar; that Ms. Ihejirika is not creating any noise which exceeds that of day-to-day living in a building which has poor sound insulation. They submit that TSCC 2448 and the witnesses in this matter, for discriminatory reasons, have colluded to create the case against Ms. Ihejirika in order to force her eviction and that she has been the victim of harassment. Dr. Mojumdar also submits that he made reasonable efforts to address the issue when TSCC 2448 first notified him; however, TSCC 2448 has subsequently failed to provide him with sufficient evidence to support its allegations. He requests his costs in this matter.
- [4] For the reasons set out below, I find that Ms. Ihejirika has failed to comply with the provisions of the Act and of TSCC 2448's declaration and rules with respect to noise and I order her immediate compliance. I also find that Dr. Mojumdar has failed to meet his obligation to take reasonable steps to ensure Ms. Ihejirika's compliance and I order him to take such steps. Finally, I order the Respondents, jointly and severally, to pay TSCC 2448 \$4,500 as compensation for damages and \$21,500 in costs, within 30 days of the date of this decision.

B. BACKGROUND

- [5] Ms. Ihejirika has been a tenant in Dr. Mojumbar's unit at TSCC 2448 since March 27, 2022. Shortly after she moved in, TSCC 2448 began to receive complaints from other residents about disturbing noise coming from the unit which security incident reports describe as, among others, banging, screaming, rattling, loud chanting, and loud music. Also shortly after she moved in, Ms. Ihejirika complained to security staff about incidents of disturbing noise and of the odour of cannabis smoking/vaping that she was experiencing from other units.
- [6] The earliest security incident report filed as evidence by TSCC 2448 is dated May 24, 2022. The report indicates that resident Melissa Muzyka, whose unit shares a demising wall with Ms. Ihejirika's unit, reported she heard screaming from that unit. Security staff investigated and confirmed the noise. Later, Ms. Muzyka advised security she had called police after hearing Ms. Ihejirika say "I will burn this building. I will burn them all." The report indicates

that police attended but could not verify the noise. The following morning, Ms. Muzyka made a further report of banging noises from Ms. Ihejirika's unit. The May 25, 2022 incident report indicates that staff verified the sound. Approximately 30 minutes later, police again attended.

- [7] On May 25, 2022, approximately two hours after police had attended, Ms. Ihejirika e-mailed TSCC 2448's assistant condominium manager Dhiraj Kumar. She highlighted that in early to mid-April she had notified security about disruptive noise from Ms. Muzyka's unit. She stated that the disruptive noise, including a dog barking, had continued and asked why nothing had been done to address it or complaints she had made about the odour of cannabis. She stated that security had made a false report to police about the statement that she would burn down the building. She questioned why security was responsive to Ms. Muzyka's complaints when her own had not been investigated and asked why she had been unable to reach the security desk since late April. Mr. Kumar replied that the corporation had investigated the incidents she had reported.
- [8] On May 25, 2022, Mr. Kumar e-mailed Dr. Mojumdar and his spouse who co-owns the unit, to "make the owners aware" of what he described as Ms. Ihejirika's "unusual behaviour." He advised that police had been on site but Ms. Ihejirika had refused to open the door to them. He indicated that she had argued with another resident and been abusive to security staff. He further advised that the record of the use of the building's entry fob indicated she had not left the building for 5 to 6 days. He wrote "we are not exactly sure what is going on but we are concerned with your tenant's well being" and requested the owners' assistance.
- [9] In his June 2, 2022 e-mailed reply to Mr. Kumar, Dr. Mojumdar, who lives in another municipality, advised he had visited the unit on May 29, 2022 and confirmed that his tenant was fine. He noted that Ms. Ihejirika had complained about being bothered by security staff and he asked who had called police on May 25, 2022. He also noted that Ms. Ihejirika worked from home which would explain why she had not used the entry fob for a number of days.
- [10] On June 2, 2022, Mr. Kumar e-mailed Ms. Ihejirika and advised that reports of unusual noise from her unit had been received and requested that he be allowed to inspect the unit. Ms. Ihejirika stated that she had been using the washing machine. She questioned that entry to her unit was needed and

stated security was welcome to listen at her door. She warned that if communication about “unsupported accusations” about noise continued that she would be forced to “explore all legal options.”

- [11] On June 3, 2022, Mr. Kumar again e-mailed Dr. Mojumdar, advised that the corporation was receiving noise complaints, that police had been in attendance, and requested his assistance. He enclosed a link to audio/video recordings of the noise.
- [12] On June 4, 2022, Dr. Mojumdar forwarded Mr. Kumar’s e-mail to Ms. Ihejirika. She replied that the noise in two of the recordings was coming from units above hers and that the other was disruptive noise from Ms. Muzyka’s unit that she herself had complained about with no resolution by management. She also enclosed a recording of noise from another unit which she had taken and a recording of her interaction with police on June 3, 2022 who she advised she had called to investigate after the false report of her threatening to burn the building. On June 6, 2022, Dr. Mojumdar replied to Mr. Kumar and enclosed the recording of Ms. Ihejirika’s interaction with police. He noted that police had concluded that it was difficult to identify the source of noise.
- [13] On June 27, 2022, Mr. Kumar sent a letter to Ms. Ihejirika and the unit’s owners in which he noted there had been loud noises emanating from the unit between 2 and 4 a.m. that day. The letter, under the subject “Noise Complaint – First Notice”, set out the corporation’s noise rule and requested Ms. Ihejirika’s co-operation in lowering the noise.
- [14] In a letter dated June 22, 2022 but delivered to Mr. Kumar on June 27, 2022, Ms. Ihejirika set out the incidents of noise and odour she had reported to security in April, 2022 and again stated that from late April to late May she had been unable to reach the security desk. She reiterated that the May 25, 2022 incident involved a false report to police and suggested that the e-mail he had sent to the unit owners that day indicated that he and/or security were tracking her movements in the building. She denied that she had been making noise on June 24 and 26, 2022 when security staff had knocked on her door which she stated was harassment. She then wrote:

You are hereby formally warned to immediately cease all harassment towards me, directly or indirectly. This includes all communications and “warnings” by which you and security have continued to harass me to date.

If you fail to comply with this demand within 2 business days of receiving it, I will begin a strict legal mandate to hold you and Del Property Management accountable for the damages arising from this harassment.

- [15] On July 4, 2022, Ms. Ihejirika e-mailed TSCC 2448 management and reported three incidents of vandalism of the door to her unit, which she advised she had also reported to police. On June 26, 2022, the peephole viewer in the door was painted over with white-out which she removed. It was then painted over again with white-out and glue. Sometime between June 26 and July 3, 2022, glue was placed into the door's keyhole, preventing it from being locked from outside. On July 11, 2022, she reported a further incident of the peephole being covered by white-out which she also reported to police.
- [16] On September 20, 2022, Ms. Ihejirika notified Mr. Kumar that on September 17, 2022, someone had hit her door "multiple times, sometimes violently". Mr. Kumar replied that this had been security staff who had gone to her unit after receiving noise complaints and he enclosed a video recording. He also notified her that she would be receiving a further notice from the corporation.
- [17] On September 21, 2022, TSCC 2448 sent a further letter entitled "Noise Complaint – Final Notice" to Ms. Ihejirika and the unit owners. It again cited the corporation's noise rules and asked for Ms. Ihejirika's compliance. It noted that failure to comply would result in escalation of the issue to the corporation's solicitor.
- [18] On November 15, 2022, Mr. Kumar sent an e-mail to Dr. Mojumdar and advised that the noise complaints were continuing. I note that the copy of this e-mail entered as evidence does not indicate to whom it was copied. However, on November 15, 2022, Ms. Ihejirika replied to Mr. Kumar and advised that if he had videos to prove the noise that he should pursue legal action. She added that she had caught a security guard spying outside her door two days earlier.
- [19] Dr. Mojumdar responded to Mr. Kumar in a lengthy e-mail on November 17, 2022. He referred back to the corporation's June 27, 2022 notice and questioned that the corporation had sufficient proof, given he had received no audio/video recordings of the incident it cited. He advised that Ms. Ihejirika denied making unreasonable noise and noted that she had indicated that she had made complaints about noise from neighbouring units. He asked if the corporation had determined who had been vandalizing the unit

door. He stated he would deal with the issue if he received proof Ms. Ihejirika was making unreasonable noise but his hands were tied without it. He closed his message by stating that he had already asked Ms. Ihejirika to move out and told her that no notice to him would be required.

[20] On November 28, 2022, Ms. Ihejirika sent a lengthy e-mail to Mr. Kumar in which she set out the incidents of noise and vandalism she had reported and stated:

The recording of the noise I was alleged to have been making was of me praying inside the bedroom of the apartment during the daytime which is covered under religious freedoms in Canada. In view of the persistent harassment I have continued to receive from [unit number redacted] my only recourse is to cry out to God...

She stated that while the corporation had been aggressive in pursuing noise complaints, it apparently had condoned the behaviour of individuals, including security staff, who had been tracking her movements and were involved in criminal harassment. She then stated that the emerging picture was of a plot to have her removed from the building. She further stated that she would have no choice but to pursue her legal options, including a human rights case, as the “harmful and prejudicial actions” were continuing.

[21] On January 18, 2023, at TSCC 2448’s request, Dr. Mojumdar met with Mr. Kumar, Mr. Kumar’s supervisor Genti Bardhoshi, and Counsel for the Applicant to discuss the noise issue. As follow-up to the meeting, on January 27, 2023, Counsel e-mailed Dr. Mojumdar and enclosed copies of security incident reports and audio/video recordings. She noted that it appeared that Ms. Ihejirika was engaged in religious practice and stated that there was no intent to stop her from practicing her religion but requested his co-operation in reducing excessive noise.

[22] On January 27, 2023, Ms. Ihejirika reported a further incident of vandalism to the peephole viewer on her door to Mr. Kumar. She advised that she had notified police.

[23] Security incident reports indicate that on March 11 and 12, 2023, TSCC 2448 gave access to Ms. Ihejirika’s floor to police who had responded to calls from residents about noise. The reports state that on March 11, security provided police with a master key after Ms. Ihejirika did not respond to their knocking on her door. The March 12 report indicates that a resident was advised by

security to call police after she had reported that she heard Ms. Ihejirika “targeting” both her and another resident by name.

- [24] On March 13, 2023, Ms. Ihejirika e-mailed Mr. Kumar. She stated that the report made to police on March 11 was a false report and that security lied to police about noise. She stated that she called police on March 12 and was told that “whoever made the calls could be mentally ill and hearing voices.” She again stated that the corporation was trying to force her to move out.
- [25] On April 3, 2023, Ms. Ihejirika reported to Mr. Kumar that she had been confronted by neighbour Ms. Muzyka who had shouted at her in the corridor and then followed her into her unit after opening her door. She also reported drilling noises coming from neighbour Aniruth Oblah’s unit.
- [26] On April 5, 2023, Ms. Ihejirika wrote to Mr. Kumar to document an incident which she described as water spilling on the floor. She indicated that security had called the fire department and falsely reported that she was turning taps on and off. She stated she had also called police the previous day to report that individuals in Mr. Oblah’s unit were “displaying signs of those having a mental breakdown.” She then wrote that Mr. Kumar and security were working with others as part of a cover-up to gather evidence to have her removed from the building. Shortly after this e-mail was sent, she sent a further e-mail to report that she found tape on the door to her unit. She indicated that she called police who had attended and confirmed that someone was harassing her.
- [27] On April 6, 2023, Counsel for TSCC 2448 sent a letter to Ms. Ihejirika, copying “the registered owner.” The letter summarized 23 confirmed incidents of noise, set out the corporation’s statutory obligation to enforce the provisions of its governing documents, and demanded that Ms. Ihejirika “take immediate steps to permanently abate the excessive noise and unreasonable nuisance.” The letter noted that the corporation had received no request for accommodation on a Code-protected ground and asked her to advise if she intended to assert a Code-protected right in order to allow the corporation to consider it.
- [28] On April 29, 2023, Ms. Ihejirika e-mailed condominium management, copying Dr. Mojumdar and Counsel for the Applicant. She asserted that she had the fundamental right to “freedom of thought, belief, opinion and expression” under the *Canadian Charter of Rights and Freedoms*. She then set out 17 incidents of noise and/or harassment that she had brought to the attention of

the corporation in the period April, 2022 to April 12, 2023. She stated that security had been tracking her movements and were involved in the harassment she was experiencing. She further stated that management had been aware since she sent her November 28, 2022 letter that she prayed in the unit and she found it “highly unlikely” that any request for accommodation would have been entertained by the corporation, again stating that what was clearly emerging was a plot to have her removed from the building.

[29] On May 23, 2023, Counsel for the Applicant replied to Ms. Ihejirika, again copying the registered owner. The letter refuted Ms. Ihejirika’s allegations and noted that the corporation respected her religious beliefs and was only asking that she ensure that her activities did not interfere with the rights of other residents to the quiet enjoyment of their units. The letter noted that a further four incidents of noise had been confirmed since the April 6, 2023 letter had been sent and advised that the corporation would be filing an application to the Tribunal. The application was filed on May 23, 2023.

C. ISSUES & ANALYSIS

[30] The issues to be addressed in this matter are:

1. Has Respondent Chidinma Ihejirika failed to comply with s. 117 (2) of the Act and the provisions in TSCC 2448’s declaration and rules regarding noise and nuisance? If so, what order should the Tribunal make?
2. Has Respondent Subash Chandra Mojumdar failed to comply with s. 119 (2) of the Act and the provisions of TSCC 2448’s declaration related to his responsibility to ensure his tenant’s compliance? If so, what order should the Tribunal make?
3. Should the Tribunal award costs in this matter?

[31] In response to my request for confirmation of the issues by the parties, both Ms. Ihejirika and Dr. Mojumdar requested that I dismiss this matter before hearing evidence and set out their reasons. However, those reasons were summaries of their evidence and their arguments as to why they believed the Applicant’s case had no merit. I advised them that I would not dismiss the case before hearing evidence and that they would have the opportunity to present their cases.

[32] Seven witnesses testified on behalf of the corporation in this matter. When

their names were disclosed, both Ms. Ihejirika and Dr. Mojumdar objected and provided detailed reasons why none of them should be allowed to testify. In summary, they both indicated that all of the witnesses had been involved in a cover-up which occurred because the Respondents had exposed noise and harassment in the building. Because the Respondents' objections were challenges to the credibility of the witnesses before they had testified, I allowed the witnesses and advised the Respondents that they would have the opportunity to cross-examine them and challenge their credibility in their submissions. The Respondents called no witnesses; they each testified on their own behalf.

[33] The evidence submitted in this matter was extensive and some of the parties' submissions were lengthy. In addition to the correspondence I have summarized above, the Applicant uploaded 50 security incident reports and 46 audio/video recordings to the CAT-ODR system. Ms. Ihejirika uploaded 206 audio/video recordings. While I have carefully considered all of the evidence of the parties as well as their detailed submissions in making my decision, I am summarizing the evidence and arguments below.

Has Respondent Chidinma Ihejirika failed to comply with s. 117 (2) of the Act and the provisions in TSCC 2448's declaration and rules regarding noise and nuisance? If so, what order should the Tribunal make?

[34] Counsel for TSCC 2448 submits that Ms. Ihejirika has failed to comply with Section 117 (2) of the Act which states that no person shall create unreasonable noise:

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

She further submits that the Ms. Ihejirika has also failed to comply with Article 4.1 (a) of TSCC 2448's declaration, which states, in part:

No Unit shall be occupied or used by an Owner or anyone else, in such a manner ...that will unreasonably interfere with the use or enjoyment by other owners of the Common Elements or their respective Units...

Further, she submits that the Respondent has also failed to comply with Rules 2 (a) and 2 (b) of TSCC 2448's Rules:

2 (a) Owners and their families, guests, visitors, servants and agents shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the Board or the Manager, may or does disturb the comfort or quiet enjoyment of the Units or Common Elements by other Owners or their respective families, guests, visitors, servants and persons having business with them.

2 (b) No noise shall be permitted to be transmitted from one Unit to another. If the Board determines that any noise is being transmitted to another Unit and that such noise is an annoyance or a nuisance or disruptive, then the Owner of such Unit shall at his expense take such steps as shall be necessary to abate such noise to the satisfaction of the Board. If the Owner of such Unit fails to abate the noise, the Board shall take such steps as it deems necessary to abate the noise and the Owner shall be liable to the Corporation for all expenses hereby incurred in abating the noise (including reasonable solicitor's fees).

Counsel for the Applicant submits that not only does the evidence indicate that Ms. Ihejirika failed to comply with the above-cited provisions but that she has done so willfully. She submits that Ms. Ihejirika has "invented a tale" that TSCC 2448's compliance efforts are designed to evict her, that there is a cover-up of other noise in the building, and, that the corporation's staff has harassed and targeted her due to her ethnic and/or religious background.

TSCC 2448's Evidence

[35] Mr. Kumar testified about the process the corporation follows when it receives residents' complaints about noise. Security staff investigate the complaints by attending at the unit which is the alleged source of the noise. If they verify the noise, they knock on the unit's door and ask the occupant to reduce it. Exercising their judgement, they may also make an audio recording. If the occupant does not answer their door, security calls them. Whether the noise is verified or not, the security staff complete an incident report which is subsequently reviewed by the security supervisor and then provided to condominium management staff. In cases where the noise continues, they send an initial warning letter. If the noise persists, a second letter is sent. If it still persists, the matter is referred to the board of directors.

[36] The 50 security incident reports submitted by TSCC 2448 date from May 24,

2022 to August 13, 2023. However, Mr. Kumar testified that the corporation began to receive complaints from residents about banging noises in April, 2022 but initially could not identify their source.

- [37] Thirty eight of the 50 reports indicate that security staff verified that noise was coming from Ms. Ihejirika's unit. Audio recordings supporting 29 of these 38 incidents were submitted. The reports describe the sounds as screaming, banging, chanting, rattling and loud music, with banging and chanting the most frequent subject of the complaints. The incidents occurred at various times of day, including at 1 and 2 a.m. The complaints were made by residents of six different units, with the most frequent coming from the units beside and below Ms. Ihejirika's unit. The other twelve security incident reports indicate that TSCC 2448's security desk received noise complaints but were unable to verify it was excessive when they attended at the unit.
- [38] Mr. Kumar testified that he became concerned about Ms. Ihejirika after he read the May 24 and 25, 2022 security reports. He indicated that he accessed the entry fob records because of this concern and subsequently wrote to Dr. Mojumdar whose response initially alleviated his concerns. However, he sent the notice dated June 27, 2022 to Ms. Ihejirika and the owners after security staff had confirmed a further seven incidents of noise. He sent the second notice dated September 21, 2022 after a further four verified incidents. He testified that there was then a relatively quiet period but that from November 14, 2022 to December 20, 2022, a further eight incidents were documented. In November 2022, he sought the help of his supervisor, condominium manager Genti Bardhoshi, to address the issue.
- [39] Mr. Bardhoshi testified that that the 50 incident reports filed in this matter represent only a selection of the more significant incidents of noise reported. He stated that residents have made "numerous more complaints" to security but these were not filed by the corporation as evidence either because the incidents could not be verified or because the noise was deemed to be minor. He noted it is not unusual that a complaint cannot be verified because of the time lapse between the time it is received and when a guard is able to investigate. He also stated that he personally had received at least 30 calls from residents about noise from Ms. Ihejirika's unit.
- [40] Melissa Muzyka resides in the unit which shares a demising wall with Ms. Ihejirika's unit. She testified that she began to hear noise in March 2022

which she described as a “whipping” sound and “ritualistic chanting” that then evolved to banging which occurred “round the clock”. She stated that the noise interfered with her ability to sleep and that she filed one to ten complaints a day. She expressed considerable frustration that Ms. Ihejirika did not respond to security and therefore she began to call police. She further testified that she fears for her safety because she has heard Ms. Ihejirika threatening to flood the unit, burn it and to kill. She stated that she is a nurse who works shifts and that because of the stress caused by the noise and threats, she has now been given the use of the corporation’s guest suite when she needs to sleep during the day.

- [41] Katie Hall has lived the unit below Ms. Ihejirika’s since May 2023. She testified that she hears repetitive banging from Ms. Ihejirika’s unit which can continue for as long as an hour and, while it occurs at different times of day, is most persistent between the hours of 11 p.m. to 5 a.m. She testified that the noise interferes with her sleep, work and enjoyment of her home. She indicated that she calls security three times a week but sometimes does not call because her experience is that the banging increases after security has knocked on Ms. Ihejirika’s door. She stated that she feels like a prisoner in her own home.
- [42] Stuart Pinto is the owner of Ms. Hall’s unit. He testified that he received numerous complaints from his previous tenant about disturbing drilling, screaming and banging noises from the unit above. He further testified that before Ms. Hall moved in, he himself occupied the unit for a period of 11 days in May 2023 and heard the noise.
- [43] Aniruth Oblah lives on the floor above Ms. Ihejirika. However, the door to his unit is next to her door and the stairwell leading up to it shares a wall with her unit. He testified that he began to hear “whipping” and “chanting” in April/May 2022 but that he could only hear it when he was at his door. However, he testified that this progressed to yelling and banging which has woken him up and which also caused significant vibration in his unit. He has called both security and police. He further testified that Ms. Ihejirika screams “shut up” at him when he enters his unit and that on one occasion she called police, reporting that he was suffering from a mental breakdown. He stated that police attended but did nothing further after he explained the situation.
- [44] Mark Francis testified that although he does not reside in a unit that is adjacent to Ms. Ihejirika’s, he has heard what he described as a “repetitive

bang/thud” which he stated happens throughout all times of the day or night, almost every day of the week. He stated it has affected his ability both to sleep and, since he works from home, to work. He also testified that on occasion it has scared his dog which then goes to hide in the bathroom.

The Respondent’s Evidence and Position

- [45] Ms. Ihejirika testified that she works full time and is also preparing a PhD thesis. She stated that she has never intentionally caused a disturbance or noise in the unit and noted that although police have attended a number of times, she has never received a ticket. She testified that the building is not soundproof and stated that 30 dB “is legally recognized as a valid threshold that can establish objectivity in this instance and can be used here to differentiate between living noise and unreasonable noise.” She noted that management has yet to produce audio/video recordings to support their June 27, 2022 letter to her, nor has it conducted any acoustical testing to prove that the sound from her unit exceeds that of day-to-day living. She submitted 206 audio/video recordings to support her testimony that there is noise coming from other units in what is a noisy building.
- [46] Ms. Ihejirika stated that she fully exercises her right to practice her Christian faith in her unit under the *Canadian Charter of Rights and Freedoms*. She testified that in November 2022, she made management aware of the fact that she prayed in the apartment but rather than accommodate her, management and security staff are working with the witnesses in this matter to force her out of the building. She submitted that TSCC 2448’s management intended to offer her no accommodation and, referring to the fact that Ms. Muzyka has been given the use of a guest suite, submitted that “this is a blatant double standard and calls into question their assertions that there is no religious or ethnic bias at play here.”
- [47] Ms. Ihejirika testified that she has brought incidents of noise and nuisance from Ms. Muzyka’s unit and others as well as incidents where her personal safety has been threatened to the attention of TSCC 2448’s management who have taken no action. She set out a list of 18 incidents, beginning with three reports she made of noise from Mr. Oblah’s unit in April, 2022. In addition to the incidents contained in her correspondence to management which is set out above under “Background”, she testified that on January 30, 2023, she complained to management about an unknown individual knocking on her door. And, on April 12, 2023, she reported three incidents

of “disruptive behaviour coming from Ms. Muzyka.” She testified that rather than addressing these incidents, management retaliated and, as examples, she cited the fact that it took three days for her lock to be repaired after she reported someone had filled it with glue and a “month or two” for routine restorative work to be done in the unit. She further testified that she has notified management that she has not been able to reach the security desk to file complaints.

[48] Ms. Ihejirika stated that residents of other units who have created noise have not been subject to what she referred to as the aggressive enforcement of noise complaints against her. She also submitted that security regularly tracks her movements and have made false reports. In this regard, she cited a security report dated June 30, 2023 which indicates that she was in her unit when fans were placed in it but stated that she had already been escorted out of the unit when that occurred. She submitted that this example casts doubt on the accuracy of all of the reports.

[49] The report of the June 30, 2023 incident to which Ms. Ihejirika refers states that TSCC 2448 security staff received a report from Ms. Hall that water was leaking through her ceiling. Security staff responded, saw water leaking in a number of spots and heard water in the walls. They knocked on Ms. Ihejirika’s door but received no response. They then called her but also received no response. They then phoned 911 and the fire department responded. However, Ms. Ihejirika did not respond when the fire department knocked on her door. The fire department then called police. Police opened her door with a master key after they too received no response from Ms. Ihejirika. They arrested Ms. Ihejirika who was charged with mischief. The allegation is that she deliberately flooded her unit. Ms. Ihejirika suggested that because police spoke to Mr. Bardhoshi that management collaborated to have her arrested on a false charge. The matter is still before the courts.

[50] In her closing submissions, Ms. Ihejirika included a lengthy list of what she indicated were inconsistent or contradictory statements in the testimony of the Applicant’s witnesses. For example: she challenged Mr. Oblah’s testimony that he was disturbed by noise from her unit because on cross-examination he stated that he does not hear music from another specific unit. She noted that Ms. Muzyka had no video recording of what she testified were Ms. Ihejirika’s threats to burn or flood the building. She also stated that Mr. Bardhoshi’s testimony that the corporation had received no request for accommodation was inconsistent with the fact she had notified the

corporation that she prays in the unit.

- [51] Ms. Ihejirika summarized her review of the Applicant's evidence and submitted that the Applicant has "not been able to show that the bringing of this matter before the Tribunal was not motivated by a desire to single out the Respondents, by some type of religious or racial prejudice, to cover up evidence of wrongdoing by others in the building, including their witnesses, and to claim amounts of money from the Respondent that are not justified." In her reply to the Applicant's closing submission, she submitted that "all the witness testimony contains lies and inconsistencies, and the security incident reports are no better."

The Tribunal's Finding

- [52] In its decision in *Carleton Condominium Corporation No.132 v. Evans*, 2022 ONCAT 97 (CanLII), summarizing *Antrim Truck Centre Ltd. V. Ontario (Transportation)* 2013 SSC 13 (CanLII), the Tribunal wrote at paragraph 20:

...it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

For the reasons set out below, I find that, in violation of s.117 (2) of the Act, Ms. Ihejirika is making unreasonable noise that is a nuisance. I also find that she has failed to comply with Article 4 (1) (a) of TSCC 2448's declaration; the evidence is that the noise has unreasonably interfered with other owners' use and enjoyment of their units. I also find that she has failed to comply with TSCC 2448's Rules 2 (a) and 2 (b) respecting noise. While Rule 2 (a) does not specifically name tenants, its wording, and the wording of the preamble to the rules which states they must be followed by all unit occupants, makes it clear its intent is that no unit occupant may make disturbing noise. Further I do not find that there is any evidence of differential treatment based on Ms. Ihejirika's race or religion. Because of the seriousness of these allegations, I address them in some detail below.

- [53] The fact that there are 50 documented reports of complaints from six different residents about noise emanating from Ms. Ihejirika's unit over a period of approximately 15 months, including 38 in which security verified the noise, is evidence that the noise has interfered with other owners' use and

enjoyment of their homes. For example, with respect to TSCC 2448's first notice dated June 27, 2022, the security reports indicate guards investigated complaints from two different residents which were made on June 24, 25, 26, and 27. One of the reports indicates that the complainant reported that the noise had been going on "all day" and another complainant reported noise had been ongoing for 30 minutes. I note that Ms. Ihejirika challenges the accuracy of all of the reports and cited the June 30, 2023 report as an example because it states she was in the unit when fans were placed there. In fact, that report clearly states the fans were placed after she had left the unit.

[54] The security incident reports are supported by the testimony of the five resident witnesses. Ms. Muzyka, Ms. Hall, Mr. Oblah and Mr. Francis all testified that they heard noise which occurred frequently and disturbed them. Mr. Pinto testified that he heard noise in the short time he occupied the unit he owns. Further, Mr. Bardhoshi testified that he had personally received "at least" 30 complaints.

[55] There is no evidence to support that the witnesses' testimony was untruthful, notwithstanding Ms. Ihejirika's challenge that it was not reliable. For example, Ms. Ihejirika challenged Mr. Oblah's testimony that he does not hear music from a specific unit but hears noise from hers. Factors as simple as the time of day the noise occurs or the frequency or duration of that occurrence could easily explain what Ms. Ihejirika presented as an inconsistency. I note that Ms. Muzyka was also asked if she heard music from that specific unit; her response was that she did hear it on occasion but that it did not last long. Similarly, Ms. Ihejirika highlighted that Ms. Muzyka had no video recordings of the threats she alleged she heard. Ms. Muzyka's testimony on cross-examination was that she had heard Ms. Ihejirika threaten to burn the building but that it happened too quickly for her to record it.

[56] I have reviewed the recordings submitted by TSCC 2448 which support the incident reports and screaming, banging and chanting can be clearly heard. Further, on two of the recordings, Ms. Ihejirika can be heard making what appear to be threats; on November 2, 2022, she is recorded repeatedly shouting "kill them" and on April 1, 2023, she is recorded shouting "slice their throats, strike them, kill them." On March 12, 2023, she can be heard naming the unit numbers of three of the witnesses which lends credence to Ms. Muzyka's testimony not only that she heard threats but also that she fears for

her safety, although I note that noise, not safety, is the issue in this case.

[57] Ms. Ihejirika referred me to the Tribunal's decision in *Toronto Standard Condominium Corporation No. 2136 v. Longhurst et al.*, 2023 ONCAT 30 (CanLII) and submitted that the corporation's recordings are not sufficient evidence of unreasonable noise. At paragraph 18, the Tribunal wrote:

I note that audio/video recordings are of limited evidentiary value in determining whether there is unreasonable noise unless they indicate a decibel level or there is some other benchmark by which to objectively judge the volume of the sound. However, notwithstanding that limitation, my review of the recordings does allow me to conclude that yelling/screaming can be clearly heard in the neighbour's unit.

The recordings linked to TSCC 2448's security incident reports were taken outside the door of Ms. Ihejirika's unit. While the recordings clearly indicate that there was audible noise in the corridor, I agree that by themselves they do not establish unreasonable noise. However, Ms. Ihejirika's argument does not acknowledge the fact that the recordings were made to substantiate resident complaints about being disturbed within their units. Further, the incident reports indicate that in some, although not all, instances, security staff entered the unit of the complainant to verify that the noise could be heard there. And, in response to cross-examination questions from Dr. Mojumdar, both Ms. Hall and Mr. Francis uploaded audio/video recordings that they had taken inside their units. A repetitive thud sound can be heard on those recordings.

[58] Ms. Ihejirika also submitted that the building itself is not soundproof and that there was no evidence to support that the sound complained about exceeded the 30 dB legally accepted limit for day-to-day activity although I note she cited no source for this limit. However, it is not necessary for the Applicant to establish that noise exceeds any specific decibel level to establish that it constitutes a nuisance. The test to decide whether there is nuisance noise is reasonableness and substantial interference; while decibel readings might be helpful, particularly in instances where there is a single complainant, the decibel level of sound is not the sole determinant factor. In this case, Ms. Muzyka, Ms. Hall, Mr. Oblah and Mr. Francis all testified that noise from Ms. Ihejirika's unit caused interference with their ability to sleep and/or work. Notably, Ms. Muzyka has the use of a guest suite because of that disturbance. While Ms. Ihejirika presented this as an example of differential treatment, Ms. Muzyka's testimony made it clear that she would far prefer the

quiet enjoyment of her own unit.

[59] Notwithstanding her submission that audio/video recordings are of limited evidentiary value, Ms. Ihejirika submitted 206 recordings to support her argument that TSCC 2448 is a noisy building. These were taken on 18 dates between August 13, 2022 and September 4, 2023. I have reviewed the recordings and, while it is difficult to determine where some of them were made or what is being recorded, others, such as some taken outside Ms. Muzyka's door, clearly indicate that music can be heard coming from that unit, as can the sound of a dog barking. Similarly, voices can be heard on recordings taken outside another unit's door. Ms. Muzyka's testimony is that Ms. Ihejirika deliberately stood outside her door to provoke the dog. And, in response to a question from Dr. Mojumdar, she stated that she used her television or played music to drown out the noise she was hearing from Ms. Ihejirika's unit. Regardless of the circumstances in which Ms. Ihejirika's recordings were made, they are not evidence that she herself is not creating unreasonable noise. That other residents may also be making noise does not obviate her obligation to comply with TSCC 2448's rules.

[60] Ms. Ihejirika submitted that she has been harassed by security in a concerted effort by the corporation to have her removed from the building and that she has been subjected to "aggressive" enforcement when others in the building have not. She suggested that this was differential treatment motivated by racial or religious prejudice. Section 119 (3) of the Act states:

A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require that a person who is required to comply with this Act, the declaration, the by-laws and the rules shall do so.

Consistent with this responsibility, as set out above in paragraph 35, Mr. Kumar testified that the corporation investigates the complaints its security desk receives. The evidence of the security reports submitted by the Applicant, all of which include the name and/or suite number of the complainant and the time the complaint was received, is that TSCC 2448 did just that. I note that none of the dates of the recordings submitted by Ms. Ihejirika correspond to the list of incidents she testified she reported to TSCC 2448. As Mr. Kumar testified, complaints made to the security desk are investigated; it cannot investigate complaints it does not receive. Ms. Ihejirika cannot claim differential enforcement practices if the incidents of noise she recorded were unreported.

[61] I have also reviewed the list of incidents which Ms. Ihejirika testified she had informed TSCC 2448 about. The evidence does not support that these were not duly investigated or that her complaints were treated differentially as she alleges. Two of the four incidents which relate to noise were made in April, 2022. Mr. Kumar testified that the corporation investigated and could not verify the noise. On cross-examination, Ms. Ihejirika agreed that the corporation had advised her accordingly. The third incident, in June, 2022, indicates that Ms. Ihejirika complained to Dr. Mojumdar, not to TSCC 2448. She notified Mr. Kumar directly about the fourth incident, drilling sounds in Mr. Oblah's unit, on April 3, 2023. It is unclear whether the corporation investigated this specific complaint. However, while Ms. Ihejirika did not testify about any additional incidents of noise she reported, Mr. Kumar testified that the security desk received three noise complaints from her in each of August and September, 2023. He stated that all were investigated, that excessive noise was verified in two cases and those were resolved with the owners at the time.

[62] Among the other incidents Ms. Ihejirika reported to TSCC 2448 are a May 30, 2022 report of loud banging on her door, a July 4, 2022 report of the incidents of vandalism to her door, and a June 13, 2023 report of three incidents involving Ms. Muzyka. The documentary evidence is that in response to the May 30, 2022 report, Mr. Kumar advised Ms. Ihejirika that they had reviewed security tapes and that she thanked them for doing so. With respect to the incidents of vandalism of the unit door's peephole viewer and its lock, all of which Ms. Ihejirika reported to police, there is no evidence to indicate that the corporation was unresponsive. In response to her e-mail reporting the damage, Mr. Kumar advised her that the security patrol of her floor would be increased. He testified that the angles of the cameras on her floor were re-adjusted that month to include her door but that he did not advise her of this, consistent with TSCC 2448's practice not to inform residents of the cameras' location. With respect to the June 13, 2023 report, Ms. Ihejirika agreed on cross-examination that she reported the disturbances ten days, two days and one day after they occurred. I note that in her June 13, 2023 e-mail, Ms. Ihejirika also reported that Ms. Muzyka had falsely reported that a chemical smell was coming from her unit and that police were called. However, the security incident report indicates that the smell, which was identified to be cleaning solutions used on another floor, was reported by another resident. I acknowledge that Ms. Ihejirika was falsely accused in this incident; however, the corporation did not make that accusation.

- [63] Ms. Ihejirika submitted that the fact it took three days to replace her lock after it was damaged is evidence of retaliation by the corporation for her own reporting of incidents. The correspondence filed in this matter does indicate that the corporation initially erred when the damage was reported; Mr. Kumar referred Dr. Mojumdar to a locksmith to fix what is a common element. Mr. Kumar testified that there was no concern for Ms. Ihejirika's safety because the door locked from the inside and that it was replaced when she advised she needed to leave the unit. I do not disagree that the delay in repair was unreasonable; however, there is no evidence to suggest that it resulted from either retaliation and/or prejudice.
- [64] With respect to the January 23, 2023 incident of white-out painted over the peephole of Ms. Ihejirika's door, Mr. Kumar testified that the corporation did identify the responsible individual and took action with them. I note that Mr. Kumar testified that he was not prepared to identify the individual because they feared repercussions from the Respondents; he did testify that the individual advised him that they vandalized the viewer out of frustration with the noise from Ms. Ihejirika's unit and the corporation's apparent inability to stop it. Dr. Mojumdar asked Mr. Kumar whether the individual was a witness in this hearing and stated he did not want their name. When Mr. Kumar declined to answer, Dr. Mojumdar then asked me to compel him to. I did not do so. While Dr. Mojumdar indicated he wanted the information to pursue further action, I noted that he had not requested the specific identity and therefore the answer would not address his stated purpose. Further, the door is a common element which would make follow-up the responsibility of the corporation, not the owner. I also note that Ms. Ihejirika indicated she reported the incidents to police.
- [65] Ms. Ihejirika also testified that security has been tracking her movements. The evidence is that Mr. Kumar did review the entry fob records in May, 2022 when he became concerned about Ms. Ihejirika's well-being after he received a report that she had been heard threatening to burn the building. Mr. Kumar testified that this is the only time he accessed the fob records. There is no evidence to support Ms. Ihejirika's allegations that there is ongoing tracking.
- [66] Ms. Ihejirika also submitted that the corporation was motivated by religious prejudice. In her November 28, 2022 e-mail to Mr. Kumar, she wrote that the sounds the corporation alleged she was making were of her praying in her unit. Mr. Kumar testified that after receipt of this e-mail, on December 14,

2022, the corporation requested a meeting with owner Dr. Mojumdar, which, due to Dr. Mojumdar's availability, was delayed until January 18, 2023. In her January 27, 2023 follow-up e-mail to that meeting, Counsel for the Applicant wrote to Dr. Mojumdar:

Based on the audio recorded in the enclosed videos, it appears that your tenant is engaging in religious practice, which our client respects. By way of confirmation, there is no intention on preventing your tenant from practicing her religion. However, the excessive noise – created by very loud spoken voices and/or chanting, together with impact movements – is disrupting the peaceful enjoyment of other residents.

In his March 8, 2023 response, Dr. Mojumdar wrote that he had advised Ms. Ihejirika that she was free to practice her religion but that she should minimize the sound.

[67] In her closing submission Ms. Ihejirika wrote the following with respect to the testimony of Mr. Kumar and Mr. Bardhoshi:

But nowhere have they detailed what accommodations they have looked into providing for my religious observance, which they have been made aware of and admit to knowing about. This is because they intended to provide no such accommodations, even though there is a requirement to do so in the Canadian Charter of Rights and Freedoms.

The requirement to provide accommodation is set out in the *Human Rights Code* (the "Code"). It is the responsibility of an individual to request accommodation. Ms. Ihejirika's advice to the corporation that she prays in the unit was not a request for accommodation. Counsel for the Applicant, however, did invite her to make such a request in her letter dated April 6, 2023:

The condominium corporation has never received a request from you for accommodation on a Code-protected ground. If you intend to assert a Code-protected right, then please advise so that the condominium corporation can consider, what, if any obligation it may have in relation to same.

Ms. Ihejirika did not respond to this request. It is unreasonable for her to submit that the corporation has acted in a discriminatory manner based on her religious practice when she has not requested any accommodation. It is also somewhat contradictory for her to assert that she makes no noise beyond the normal sound of day-to-day living while also asserting that the

corporation would not accommodate her. I note that it is by no means clear that the noise complained about by residents, for example, loud music and banging noises, stems solely from Ms. Ihejirika's religious practice. Ms. Ihejirika did not offer any explanation for the sounds recorded on the videos submitted by the Applicant, including those that I have set out above in paragraph 56 which contain threatening language.

[68] In summary, the evidence does not support that Ms. Ihejirika has been subjected to either aggressive or differential enforcement based on a Code-protected ground; rather it indicates that the corporation responded to resident complaints, including her own, by investigating them in accordance with its set procedures.

[69] Ms. Ihejirika also submitted that there was a cover-up to force her to leave the building. The only evidence she provided was her contention that TSCC 2448 failed to investigate her own complaints and that the testimony of the witnesses was unreliable, both of which I have found are without merit. Mr. Bardhoshi testified that at no time when he, Mr. Kumar and Counsel for the Applicant met with Dr. Mojumdar on January 18, 2023 did they suggest Ms. Ihejirika be evicted. I note that in her January 27, 2023 correspondence to Dr. Mojumdar, Counsel for the Applicant wrote "as mentioned during our meeting, the condominium corporation's objective is to ensure that all residents, including your tenant, can enjoy their units without unreasonable interference."

[70] The evidence of TSCC 2448's security incident reports, the audio/video recordings submitted in support of those reports, and the witness testimony, persuades me that Ms. Ihejirika is creating unreasonable noise that interferes with the quiet enjoyment of neighbouring units in breach of s. 117 (2) of the Act and TSCC 2448's governing documents with respect to noise. Therefore, I am ordering her compliance.

Has Respondent Subash Chandra Mojumdar failed to comply with s. 119 (2) of the Act and the provisions of TSCC 2448's declaration related to his responsibility to ensure his tenant's compliance? If so, what order should the Tribunal make?

[71] Counsel for TSCC 2448 submits that Dr. Mojumdar has failed to comply with s. 119 (2) of the Act which requires an owner to take reasonable steps to ensure the compliance of the occupants of their unit:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

[72] She further submits that he has failed to comply with Article 4.2 (d) of the TSCC 2448's declaration which requires an owner to address nuisance noise:

In the event that the Board determines, in its sole discretion, acting reasonably, that any noise, odour or offensive action is being transmitted to another Unit and that such noise, odour or offensive action is an annoyance and/or a nuisance and/or disruptive...then the Owner of such Unit shall at his or her own expense take such steps as shall be necessary to abate such noise, odour, or offensive action to the satisfaction of the Board. In the event the Owner of such Unit fails to abate the noise, odour or offensive action, the Board shall take such steps as shall be necessary to abate the noise, odour or offensive action and the Owner shall be liable to the Corporation for all expenses incurred in abating the noise, odour or offensive action, which expenses are to include reasonable solicitor's fees on a solicitor and his own client basis.

[73] Dr. Mojumdar made two very different submissions in this matter. His affirmed written testimony is that he has done everything that TSCC 2448 asked of him and all that he could without further evidence that Ms. Ihejirika was causing unreasonable noise. However, in his submissions, he takes the same position as Ms. Ihejirika; that the building is not soundproof, that the witnesses are not credible, and that the corporation is motivated in this matter by prejudice.

[74] In summary, Dr. Mojumdar's evidence is that he met with Ms. Ihejirika after he received Mr. Kumar's May 25, 2022 e-mail, the corporation's first notification to him of "unusual behaviour" by his tenant, and received assurance from her that all was well. On June 2, 2022, Mr. Kumar e-mailed Dr. Mojumdar again, this time enclosing recordings of noise from her unit. Dr. Mojumdar forwarded the e-mail to Ms. Ihejirika who informed him that the noise was not coming from her unit and sent videos of noise from other units which she had recorded. Dr. Mojumdar's response to Mr. Kumar was that police could not verify the source of noise. There is no evidence to suggest he asked Ms. Ihejirika to minimize the sound from her unit.

[75] At the request of the corporation, Dr. Mojumdar met with Counsel for the Applicant and Mr. Bardhoshi on January 18, 2023 to discuss how the noise

issue could be resolved. On January 27, 2023, Counsel for the Applicant sent Dr. Mojumdar copies of security incident reports and recordings to document the noise residents were complaining about.

[76] Dr. Mojumdar responded on March 8, 2023, indicating that he had met with Ms. Ihejirika. That response, which I note was not disclosed until Dr. Mojumdar included it in his witness statement, was that he had asked Ms. Ihejirika to move out and advised her she did not need to give him notice. He indicated he had offered her another unit he owns which was available at that time. He also advised her she was free to practice her religion but he asked her to minimize the volume. He informed Counsel that Ms. Ihejirika had raised the notices she had received from TSCC 2448 on June 27, 2022 and September 21, 2022 and stated that if the corporation could provide recordings proving the noise allegations made in those notices that she would move out by March 31, 2023. Dr. Mojumdar concluded by stating that he had done everything within his power.

[77] I note that Dr. Mojumdar also inserted copies of messages he had submitted during the Stage 1 and Stage 2 proceedings in this matter into his witness statement, contrary to Rule 5.1 of the Tribunal's Rules of Practice which states that messages posted in those stages are confidential and may not be used in Stage 3 – Tribunal Decision without the member's permission. I was not asked for permission to provide these messages and therefore I have not taken them into consideration. However, I do note that the focus of whether an owner has taken reasonable steps to obtain compliance is on the steps taken before a case is brought before the Tribunal.

[78] In his closing statement, Dr. Mojumdar submitted that:

- The noise Ms. Ihejirika is alleged to be making does not exceed that of day-to-day living which the World Health Organization has determined should not exceed 70 dB, and that management did not provide him with any proof of noise "until now",
- That TSCC 2448 has refused to conduct acoustic tests because it knows the building is not soundproof,
- That TSCC 2448 has failed to provide him with recordings to support its June 27, 2022 and September 21, 2022 notices to the tenant and that any application Dr. Mojumdar makes to the Landlord and Tenant Board (the "LTB") would fail without proof that his tenant's noise exceeds that

of day-to-day living and that other residents' quiet enjoyment of their units had been disturbed,

- That in a meeting on June 3, 2023, he asked Mr. Bardhoshi to arrange a meeting with Ms. Ihejirika and the neighbours who had made complaints to try to resolve the matter because those neighbours were also making noise and that "TSCC 2448 started the legal action by targeting only [Ms. Ihejirika's unit] on the basis of discrimination and revenge instead of solving it by dialogues with all affected parties", and
- That the videos uploaded by the Applicant may not be authentic because an individual's voice can be copied using artificial intelligence.

[79] Dr. Mojumdar also submitted that the witnesses in this matter are not credible and that all are "lying." For example, he challenged Mr. Pinto's testimony that he stayed in the unit between his tenants' occupancies because of a date inconsistency in Mr. Pinto's statement. He challenged the authenticity of the videos uploaded by Mr. Francis and Ms. Hall because they are undated and suggested they were made only in response to his cross-examination question asking them to submit any recordings they had to support their testimony. He further stated that each of the resident witnesses are suspects with respect to "hate crimes" which he described as vandalizing Ms. Ihejirika's door and "repeatedly making racist slurs." I note that he included Mr. Pinto, who was not a building resident at the time the door was vandalized, as a suspect. I also note that Ms. Ihejirika did not testify about any "racist slurs" made to her and that her April 23, 2023 letter to the corporation sent in response to the April 6, 2023 legal letter is entitled "Letter of Notice Regarding Persistent Harassment and Defamation based on Religion."

[80] Dr. Mojumdar summarized his position in his reply statement. He wrote:

The Applicant's evidence are *[sic]* imaginary and fabricated by its own employees on the basis of discrimination and revenge.

He then stated that TSCC 2448's security guards are part of the "same organized group." He also suggested that Counsel for the Applicant filed the application with the Tribunal for her own financial gain and that she could be fabricating her invoices. Dr. Mojumdar appears, incorrectly, to believe the application was initiated by counsel rather than at the direction of the board of directors of TSCC 2448.

[81] I acknowledge that the evidence indicates that Dr. Mojumdar initially did cooperate with TSCC 2448's management. He responded quickly to Mr. Kumar's May 25, 2022 e-mail. And I have no reason to doubt that he did offer Ms. Ihejirika alternate accommodation after meeting with TSCC 2448's management and Counsel for the Applicant on January 18, 2023. However, I find that Dr. Mojumdar has not taken all reasonable steps to obtain Ms. Ihejirika's compliance.

[82] The January 18, 2023 meeting was called after Ms. Ihejirika had been sent two notices on June 27, 2022 and September 21, 2022. There is no evidence that Dr. Mojumdar, who was copied on those notices, made any effort to obtain her compliance then. As set out in his November 17, 2022 e-mail to Mr. Kumar, he questioned that the corporation had proof of unreasonable noise, suggested 70dB was an acceptable level for the sound of day-to-day living and ended by stating that his hands were tied without audio recordings to support the earlier notices. His March 8, 2023 response to Counsel for the Applicant's January 27, 2023 e-mail was that Ms. Ihejirika had agreed to move if she was presented with recordings proving the incidents cited by TSCC 2448 in those notices. He acknowledged that he had reviewed the recordings which Counsel had sent him on January 27, 2023 but it appears that he was not prepared to demand Ms. Ihejirika's compliance; rather, his apparent preference was that she leave voluntarily. There is also no evidence that he responded in any way to the letter sent by Counsel for the Applicant to Ms. Ihejirika on April 6, 2023, on which he was copied. Further, while he submitted that he has asked her many times to minimize noise, the only documentary evidence he provided other than the March 8, 2023 e-mail, is one he sent on July 21, 2023, which I note was well after TSCC 2448 filed its application with the Tribunal:

I hope you are doing well and in good health. As I requested you many times earlier, please make sure that you do not disturb other residents in the building. If any other residents of the building disturb you by making noise, criminal activities and/or attacking you, please immediately register it with the management and/or police as appropriate for record keeping.

[83] Dr. Mojumdar's testimony and submissions are contradictory; he states that he was prepared to issue an eviction notice if he had been provided with the recordings of the incidents referred to in the notices sent to Ms. Ihejirika while at the same time he has challenged the authenticity of the recordings submitted by both the Applicant and the resident witnesses. However, in his closing submission, he wrote "I am just waiting to receive the requested

video recordings and also the sound level in dB to file an application with LTB.” He then goes on to discredit the witnesses and to make the somewhat far-fetched allegation that all of those witnesses, TSCC 2448’s security staff and its condominium managers are part of an organized group seeking revenge.

[84] Dr. Mojumdar has aligned his position with that of Ms. Ihejirika. I note that at the onset of this proceeding, I twice advised the parties that I could not accept requests made by Ms. Ihejirika on Dr. Mojumdar’s behalf unless he indicated that she was representing him in this matter. His submissions, which challenge all of the Applicant’s evidence, make it clear that he does not believe that Ms. Ihejirika is creating unreasonable noise. I have found that Ms. Ihejirika is creating noise that is a nuisance and therefore I am ordering Dr. Mojumdar to take all reasonable steps to obtain her compliance with the provisions in TSCC 2448’s governing documents relating to noise.

Should the Tribunal award costs in this matter?

[85] TSCC 2448 is requesting costs of \$43,988.55, comprised of \$43,788.55 in legal fees and disbursements and \$200 in Tribunal filing fees be paid by Ms. Ihejirika and Dr. Mojumdar, on a joint and several basis. Dr. Mojumdar requests \$47,000 as compensation for the time he spent on this matter and \$1,446.84 as compensation for travel costs. Ms. Ihejirika made no request for costs.

[86] The cost-related rules of the Tribunal’s Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party’s CAT fees unless the CAT member decides otherwise.

48.2 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.

49.1 The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.

- [87] TSCC 2448 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order the Respondents to pay its \$200 Tribunal fees.
- [88] In considering the requests for costs, I am guided by the Tribunal's "Practice Direction: Approach to Ordering Costs" which, among the factors to be considered, includes the conduct of all parties and representatives; whether the parties attempted to resolve the issue in dispute before the CAT case was filed; the potential impact an order for costs would have on the parties; and, the provisions of the governing documents and whether the parties had clear understanding of the potential consequences for contravening them.
- [89] The conduct of the Respondents added to the expense of this proceeding. Both Respondents posted lengthy objections to all seven of the Applicant's witnesses in this matter, essentially challenging the Applicant's ability to present its case. Further, Dr. Mojumdar repeatedly did not follow my instructions. He persisted in posting lengthy messages with submissions and evidence on the CAT-ODR system after being advised to stop multiple times. His cross-examination questions included evidence, opinions, and submissions and required significant time to review. He inserted additional documents in his witness statement after he had questioned whether he needed to disclose all documents during the disclosure event and being advised he did. He posted an additional submission as a message in response to the Applicant's reply submission. Moreover, his submissions had an unnecessarily combative tone. All of the above required both Counsel for the Applicant and the Tribunal to spend considerable extra time to review. For these reasons, I am not considering Dr. Mojumdar's request for costs.
- [90] TSCC 2448 submitted that, in accordance with Article 4.2 (d) of its declaration, it is entitled to reimbursement of its legal fees on a full indemnity basis. I have reviewed the cases to which Counsel for the Applicant referred me, which included *York Condominium Corporation No. 229 v. Rockson*, 2022 ONCAT 46 (CanLII) and *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 (CanLII). In these cases, the Tribunal awarded the applicant corporation 100% of its requested costs and noted that it would not be fair for all owners to pay costs incurred as the result of the unwarranted conduct of one resident.
- [91] I acknowledge that any costs which are not awarded by the Tribunal will ultimately be expensed to the corporation's owners, including those whose

quiet enjoyment of their units has been disturbed by Ms. Ihejirika. However, as the Tribunal noted at paragraph 22 in its decision in *Frontenac Condominium Corporation No. 56 v. Patterson et. al*, 2023 ONCAT 35 (CanLII), “one of the services for which unit owners – including unit owners who rent out their units – contribute to the common expenses, is the carrying out by the corporation of its duty to enforce compliance with the Act and its governing documents.”

- [92] I have reviewed the detailed accounting of its legal fees which the Applicant submitted. \$8,328.10 of the legal fees it requests were incurred before the application to the Tribunal was filed. While the fees include those for preparation of the two legal letters which were sent to Ms. Ihejirika, the invoices include time spent providing advice to management, including on dealing with the reported vandalism. As noted above, it is to be expected that a corporation will incur some costs in fulfilling its duty to enforce its rules. However, I find a partial award to be appropriate. The Tribunal’s Rules of Practice do not contemplate awarding costs which were incurred before its proceedings. Therefore, I am ordering the Respondents to pay \$4,500 to TSCC 2448 as compensation for damages.
- [93] I find the \$35,277.47 in legal fees claimed by the Applicant relating to the Tribunal’s three stage proceedings to be generally proportionate to the issues addressed in this matter; while I necessarily have no knowledge of what transpired during Stages 1 and 2, the Stage 3 - Tribunal Decision proceeding was lengthy. The Respondents’ focus in their case was on allegations of differential treatment to refute the Applicant’s allegation of a breach of its noise rules. They submitted both a large number of documents and audio/video recordings into evidence and very detailed submissions, all of which required significant time to review and respond to.
- [94] While Rule 48.2 is clear that legal fees are not generally awarded, in the circumstances set out in the preceding paragraphs, I am awarding TSCC 2448 \$21,300, representing 60% of the legal fees and disbursements it incurred with respect to the Tribunal proceedings. With the addition of the \$200 in Tribunal fees, the total cost award is \$21,500.
- [95] I am also ordering that the costs be paid jointly and severally by the Respondents as TSCC 2448 requested. I have found that Ms. Ihejirika is creating nuisance noise and disturbing her neighbours and that this behaviour persisted in spite of two notices from the corporation and a letter

from legal counsel. I have also found that Dr. Mojumdar did not take all reasonable steps to address the issue. Both parties are responsible for the lack of quiet enjoyment of their units that the resident witnesses testified they experienced. Further, the April 6, 2023 legal letter made the Respondents aware that the corporation would be seeking costs from them both as did TSCC 2448's application to the Tribunal.

[96] Finally, I note that Dr. Mojumdar submitted that he should not be held solely responsible for any costs awarded because his spouse, who co-owns the unit and who he advised resides at his address, was not named as a Respondent in this matter. However, he did not raise the fact that the unit is co-owned until his cross-examination questions for Mr. Kumar were posted on October 2, 2023, over four months after the application in this matter was filed. The evidence is that TSCC 2448 sent its initial correspondence on May 25, 2022 to both Dr. Mojumdar and his spouse. Mr. Kumar's testimony was that only Dr. Mojumdar had ever responded to the corporation. It is therefore understandable that TSCC 2448 sent its subsequent correspondence to only Dr. Mojumdar. Dr. Mojumdar had ample time to request his spouse be added as a Respondent to this matter. He failed to do so.

D. ORDER

[97] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act, Chidinma Ihejirika shall immediately and permanently comply with section 117 (2) of the Act, Article 4.1 (a) of TSCC 2448's declaration and its Rules 2 (a) and (b) and cease screaming, shouting, loud chanting, playing loud music, and making repetitive banging and/or thudding noises.
2. Under section 1.44 (1) 1 of the Act, Subash Chandra Mojumdar shall immediately comply with section 119 (2) of the Act and Article 4.2 (d) of TSCC 2448's declaration and its Rules 2 (a) and (b) and take all reasonable steps to ensure the compliance of Chidinma Ihejirika with section 117 (2) of the Act, Article 4.1 (a) of TSCC 2448's declaration and its Rules 2 (a) and (b).
3. Within 30 days of the date of this Order, Chidinma Ihejirika and Subash Chandra Mojumdar, jointly and severally, shall pay TSCC 2448,

- (a) under s. 1.44 (1) 3 of the Act, \$4,500 as compensation for damages, and
- (b) under s. 1.44 (1) 4 of the Act, costs of \$21,500.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: November 24, 2023