

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 5, 2024

CASE: 2023-00594N

Citation: Kovalenko v. York Condominium Corporation No. 272 et al., 2024 ONCAT 4

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

Member: Marc Bhalla, Member

The Applicant,

Anton Kovalenko

Self-Represented

The Respondents,

York Condominium Corporation No. 272

Represented by Stephen Malach, Agent

Vanessa Romanino

Self-Represented

Submission Dates: December 6, 2023 to December 22, 2023

MOTION ORDER

- [1] This case was filed by the Applicant unit owner about nuisance/disruption related to smoke migration. I am assigned to Stage 2 – Mediation of the case.
- [2] On December 6, 2023, one of the Respondents brought a Motion to Dismiss the case. Vanessa Romanino requested six (6) orders from the Tribunal in their motion materials. The Respondent seeks an order:
1. dismissing this case;
 2. awarding costs related to the motion and this case to be paid by the Applicant to Vanessa Romanino;
 3. that the Applicant complies with section 117(2) of the *Condominium Act, 1998* (the "Act") and the governing documents of York Condominium Corporation No. 272;
 4. that the Applicant have no contact whatsoever with Vanessa Romanino;

5. that the Applicant cease and desist from making untrue, derogatory and defamatory comments about Vanessa Romanino; and
 6. that Vanessa Romanino maintains the right to pursue further relief/claims against the Applicant.
- [3] Rule 34.3(f) of the Tribunal's Rules of Practice provide that the Tribunal can close a case in Stage 2 if the Mediator dismisses the case (such as if the Tribunal does not have jurisdiction to deal with the issues in dispute).
- [4] As this case is at Stage 2 mediation and not a Stage 3 hearing, I did not find it appropriate to address all motion items. Those motion items that require a more formal process to address are not appropriately dealt with in Stage 2 mediation. Of the six (6) orders requested, I felt that two (2) could appropriately be dealt with during Stage 2 mediation:
1. Is the case brought by the Applicant beyond the Tribunal's jurisdiction?
 2. Is an award of costs related to the motion appropriate?
- [5] The Applicant has presented a case about smoke. The Applicant's reply to the motion speaks to their desire for clean air.
- [6] The Tribunal's jurisdiction comes under the Act. An applicant may submit an application with this Tribunal about nuisance, disruption or annoyance related to smoke or about provisions in a condominium's governing documents about smoke. This is pursuant to Ontario Regulation 179/17 under the Act and section 117(2) thereof. The Applicant has brought this case within the Tribunal's jurisdiction.
- [7] To be clear, this is not an assessment of any party's chances of success at a hearing. It is simply a confirmation that the subject matter of the case as brought by the Applicant falls within the jurisdiction of the Tribunal.
- [8] Rules 48 and 49 of this Tribunal's Rules of Practice speak to the recovery of costs. Rule 49 provides that the Tribunal will not usually order compensation for time spent on a CAT proceeding. I deny the order seeking costs on this basis.
- [9] While I did not hear all of the motion items presented, the balance of the Respondent's requests could be heard in Stage 3 if this case requires a hearing.

ORDER

- [10] The motion is denied.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: January 5, 2024