

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 12, 2024

CASE: 2023-00510N

Citation: Metropolitan Toronto Condominium Corporation No. 1031 v. Lengyel, 2024 ONCAT 10

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

Member: Ian Darling, Chair

The Applicant,

Metropolitan Toronto Condominium Corporation No. 1031
Represented by Jessica Hoffman, Counsel

The Respondent,

Evelyn Lengyel
Self-Represented

The Intervenors,

Metropolitan Toronto Condominium Corporation No. 1056
Represented by Rabab Meen, Counsel

Metropolitan Toronto Condominium Corporation No. 965
Represented by Ava Naraghi, Counsel

Submission Dates: December 4, 2023 to December 15, 2023

MOTION ORDER

[1] The Respondent submitted a Motion related to an Application with the Condominium Authority Tribunal (CAT). Evelyn Lengyel (the "Respondent") has submitted a motion that asks for:

1. A confidentiality order related to the case.
2. A motion to dismiss the case under Rule 19.1 of the Tribunal Rules of Practice.
3. In the alternative, if the CAT does not dismiss the case, an adjournment of 90 days.

[2] The CAT gave the Applicant an opportunity to respond to the motion.

[3] This Motion Order explains my decisions related to the requests.

Confidentiality Order

[4] The Applicant consented to request for a confidentiality order.

[5] Both the Applicant and Respondent's submission contain personal and medical information about the Respondent.

[6] In *Sherman Estate v. Donovan* 2021 SCC 25, the Supreme Court of Canada established the standard for when courts and tribunals should issue confidentiality orders. Even though the Parties consent to the order, the Tribunal still needs to balance the requirement to maintain the "open courts principle." I have reviewed the material and have determined that the personal and medical information contained in the submissions meets the standard for a confidentiality order.

[7] The sensitive and personal information is throughout the submissions, I order that the submissions related to this motion order will be subject to the confidentiality order. The motion submissions should be treated as strictly confidential and removed from the public record in this matter. All parties in this case, including the Intervenor, must take all reasonable steps to preserve the integrity and purpose of this order.

[8] In order to ensure a fair and efficient process, I will also order the parties to ask permission from the Tribunal Member responsible for the case before sending any further medical information. The Members assigned to the case may issue specific instructions to the Parties in order to identify confidential information. For clarity this means: in the Application stage it is the CAT Chair, or if the case is in Stage 2 – Mediation, or Stage 3 – Tribunal Decision it will be the Tribunal Member assigned to the case.

[9] The CAT may issue additional confidentiality orders regarding the tribunal record as the case proceeds.

Motion to dismiss the case under Rule 19.1 of the Tribunal Rules of Practice

[10] The Applicant requested that the CAT dismiss the case under Rule 19 of the Tribunal Rules. Rule 19 establishes the following criteria to dismiss a case including:

- (a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns;
- (b) Where a case has no reasonable prospect of success;
- (c) Where a Case is about issues that the CAT has no legal power to hear or decide;
- (d) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications);
- (e) Where the Applicant(s) has filed documents with the CAT that the Applicant(s) knew or ought to have known contain false or misleading information;
- (f) Where the CAT has found that the Applicant has abandoned their Case because the Applicant no longer wants to continue or is no longer actively involved in the Case; or
- (g) Where the Respondent has not joined the Case and the Applicant has either not delivered all of the Notices as required, or where the Applicant has delivered all of the required notices but has not moved the Case forward to Stage 3 – Tribunal Decision.

[11] The Respondent cited aspects a – d. Aspects e - g are not relevant to this request.

[12] I deny the request to dismiss the case at this stage.

[13] This Application relates to a dispute with respect to rules that restrict, prohibit or otherwise govern parking and vehicles. It is not a minor issue. The CAT has jurisdiction to hear and decide the case.

[14] The Respondent pointed to ongoing legal disputes between the parties. The issues appear unrelated to the specific issues in this dispute. The existence of another legal dispute is not a sufficient reason to dismiss this Application. I am unable to find that the Applicant has submitted the Application with improper or vexatious intent.

[15] In reviewing the Application, and Respondent's motion, I am unable to find that there is no prospect of success in the Applicant's case. In order to decide the

issue, the Tribunal would need to hear evidence and submissions from each side.

[16] It would not be fair to either party to decide the outcome of the issues in dispute at this early stage. It is most fair to allow the case to proceed through the CAT process. This will allow the parties to attempt to resolve the issue informally before requiring a hearing and decision. If a hearing is required, it will allow both parties to fully present their perspectives before the CAT makes a decision.

[17] This part of the motion is denied.

Request for adjournment of 90 days

[18] The CAT uses the following test to determine if an adjournment is appropriate:

1. the reason for the adjournment and position of the parties;
2. the issues in the application;
3. any prejudice that may result from granting or denying the request;
4. the history of the proceeding including other adjournments or rescheduling;
5. the CAT's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter the conduct of the parties.

[19] The Applicant opposed this motion. They cited several other legal disputes, and complaints involving the Respondent as evidence that the Respondent is capable of maintaining multiple legal proceedings at the same time.

[20] In their response to the Motion, the Applicant has raised concerns with the Respondent's behaviour. The Respondent has expressed concern about the manner in which the Applicant has sought compliance with the rules. It is not necessary, or appropriate for me to determine if either party has behaved inappropriately. My task is to determine a fair process going forward.

[21] The Parties are at an impasse with respect to the parking dispute, and that it would be beneficial to bring this matter to a conclusion.

[22] I have determined that it would not be appropriate to delay the case 90 days from the date of the motion request, as it would be an unreasonable delay. I do however feel that it is fair to grant a 90-day adjournment from when the Respondent was notified of the dispute.

- [23] I make this determination because I find that the Respondent has demonstrated a need for a delay. I am satisfied that if the case were to proceed immediately, the Respondent would face a challenge in responding to the Application and may limit the Respondent's ability to fully participate in the case. The Respondent can use the time to prepare to participate in the CAT process.
- [24] Granting a limited adjournment will not have significant prejudice (or harm) to the Applicant. If I grant the request, it will be minimal prejudice (or harm) since the submission record shows that this issue has been ongoing for several years.
- [25] Based on the case history in the CAT-ODR system, I have determined that the Respondent was aware of the Application on, or around November 6, 2023. Therefore, I will grant an adjournment until February 4, 2024.
- [26] **The Respondent is instructed to join the case before February 4, 2024. The Respondent must join through the CAT-ODR system by following the Notices received. If the Respondent joins, the parties will have a chance to move through the three-stage process. If the Respondent does not join the case, the process will follow the "Process in Absence of Respondent" as outlined in Rule 28 of the CAT Rules. (Emphasis added)**
- [27] The parties are expected to be prepared to proceed with the case when the adjournment ends.

Method of Participation and Request for Accommodation

- [28] Although not considered in this Motion Order, the Respondent has requested a human-rights based accommodation. The Tribunal has proposed an accommodation plan. The Respondent has refused the proposed accommodations and has not provided information about the types of accommodations required. The Tribunal remains committed to providing any necessary accommodations to enable the Respondent to fully participate in the process but requires additional information to do so.
- [29] In the absence of an accommodation plan, the CAT process will take place on-line through the CAT-ODR system and will be conducted in writing. If the case proceeds to Mediation or Tribunal Decision, the CAT Members will be responsible for ensuring the Respondent has a fair opportunity to participate in the process. To address the Respondent's requests, the CAT Member assigned to the case will ensure the mediation and adjudication stages are conducted in writing.

ORDER

[30] The Tribunal orders that:

1. The submissions in response to the motion are confidential and are not to be released to the public; and
2. The case is adjourned until February 4, 2024.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: January 12, 2024