

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 15, 2024

CASE: 2023-00688N

Citation: Samuel v. Metropolitan Toronto Condominium Corporation No. 979, 2024 ONCAT 11

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Ian Darling, Chair

The Applicant,

Margaret Samuel
Self-Represented

The Respondent,

Metropolitan Toronto Condominium Corporation No. 979

Submission Dates: December 14, 2023 to December 21, 2023

DISMISSAL ORDER

- [1] The Applicant owns two non-residential units (a parking unit and a locker) in Metropolitan Toronto Condominium Corporation No. 979 (“MTCC 979” The Respondent). The Applicant does not live in the condominium and is considered a non-residential owner. Article 19 of By-law 4 states that MTCC 979 has the right to restrict access to the common elements to residential owners. While the Applicant states that “to take the argument to the extreme, this... would prevent me from even accessing my property.” Information in the Application suggests that the dispute does not relate to accessing the parking unit or locker, but does relate to recreational facilities, including “the rooftop sundeck/lounge (the 38th Floor Skylounge)”.
- [2] After the Tribunal received the Application, it issued a Notice of Intent to Dismiss the Application because the dispute is outside of the Tribunal’s jurisdiction. The Applicant responded to the Notice. The Respondent did not make any submissions. This order explains why the Application is dismissed following Rule 19.1 of the CAT’s Rules of Practice, where the CAT can close a case if the CAT has no legal power to hear or decide upon the dispute.
- [3] The Tribunal’s jurisdiction is established in Ontario Regulation 179/17 (O. Reg

179/17). Section 117(2) of the *Condominium Act, 1998* (the “Act”) and section 26 of Ontario Regulation 48/01 (O. Reg 48/01) identify specific nuisances over which the Tribunal has jurisdiction. These include noise; odour; smoke; vapour; light; vibration. O. Reg 179/17 also gives the Tribunal jurisdiction to deal with other nuisances under certain circumstances. The Application generally falls under the tribunal’s jurisdiction to deal with these “other” activities that constitute a nuisance, annoyance or disruption.

[4] The Application is under section 1 (1) (d) (iii.2) of O. Reg 179/17 - which relates to “Provisions (of the declarations, by-laws or rules) that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.”

[5] This means that the corporation must have provisions in their governing documents that specifically restricts an activity that causes a nuisance, annoyance or disruption. The intent of the Regulation is to give the Tribunal jurisdiction over provisions in the governing documents that restrict, prohibit or otherwise govern activities which result in a nuisance, annoyance or disruption.

[6] The Applicant responded to the Notice of Intent to Dismiss the case. They asserted that:

“a) The disruption is the Condominium Corporation’s interfering with and preventing the Applicant from using the common elements, including the 38th Floor rooftop lounge and this disruption unreasonably interferes with the Applicant’s use or enjoyment of the common elements because pursuant to the Condominium Act and the Declaration, the Applicant is an owner and is entitled to use the common elements, including the 38th Floor rooftop lounge.

(c) The Declaration governs this matter specifically in Article V(1) of the Declaration stating as follows: "no condition shall be permitted to exist ... that will unreasonably interfere with the use or enjoyment, by other unit owners, of the common elements" Therefore, this provision of the governing documents restricts, prohibits and otherwise governs the alleged disruption and therefore this matter falls within the CAT’s legal jurisdiction.

(d) The Condominium Corporation is an owner.

(e) The condominium corporation’s refusal to let the Applicant use the common elements and the first sentence of Section 19.01 of By-Law 4 are unreasonable conditions contrary to Article V(1) of the Declaration, which is a governing document.”

[7] The Applicant is asserting that the existence (and application of) the bylaws disrupt

her access to the Skylounge. The Applicant identified provisions in the declaration and By-law 4 that limit her access to the Skylounge – however, these provisions do not restrict, prohibit or otherwise govern activities that create a nuisance, annoyance or disruption.

- [8] The Applicant identified provisions of the governing documents that relate to use of the common elements, but none of the identified provisions restrict, prohibit or otherwise govern the alleged nuisance, annoyance or disruption. Since the issues raised in this Application are outside of the CAT's jurisdiction, the case is dismissed.

ORDER

- [9] The Tribunal orders the case dismissed.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: January 15, 2024