

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** February 23, 2024

**CASE:** 2024-00036N

**Citation:** Samuel v. Metropolitan Toronto Condominium Corporation No. 979, 2024 ONCAT 26

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

**Member:** Michael H. Clifton, Vice-Chair

**The Applicant,**  
Margaret Samuel  
Self-Represented

**The Respondent,**  
Metropolitan Toronto Condominium Corporation No. 979

**Submission Dates:** February 2, 2024 to February 21, 2024

### **DISMISSAL ORDER**

[1] The Applicant is the owner of two non-residential units of the Respondent condominium corporation. Since the Applicant is not a resident of a residential unit in the condominium, a by-law of the Respondent prohibits her from having access to the “Skylounge” amenity located on the rooftop of the condominium. The Applicant argues that this prohibition constitutes a nuisance, annoyance, or disruption that is not permitted by the Respondent’s declaration. Specifically, she states in her description of the case:

I am an “Owner” of MTCC 979. As an owner I am entitled to use the roof top sundeck/lounge (the 38th Floor Skylounge) pursuant to Article V (9) of the Declaration, subject to the Rules and Regulations. A By-law does not apply because it is not a Rule or Regulation. MTCC 979 is breaching Article V (9) by refusing to give me access to the 38th Floor Skylounge and is breaching Article V(1) by creating a condition (i.e. refusal to let me use the 38th Floor Skylounge) that unreasonably interferes with my use or enjoyment and that is a nuisance, annoyance and disruption. Article V (1) of the Declaration prohibits MTCC 979 from refusing to let me use the 38th Floor Skylounge. Under section 1 (1) (d) (iii.2) of O. Reg 179/17, CAT has jurisdiction to deal with Article V (1) because Article V (1) specifically restricts an activity (i.e. a

condition) that causes a nuisance, annoyance or disruption that unreasonably interferes with the use or enjoyment. This is a dispute about a nuisance, annoyance or disruption set out in the condo corporation's governing documents (i.e. Article V (1) of the Declaration).

The Applicant also provided a lengthier and more detailed outline of these arguments that is not quoted here but which was reviewed by the Tribunal.

- [2] The Applicant has previously been before the Tribunal with the same issue and substantially the same arguments. Case No. 2023-00688N was dismissed by the Tribunal on January 15, 2024, for lack of jurisdiction.
- [3] After receipt of the new case, the Tribunal issued a Notice of Intent to Dismiss on February 2, 2024, citing Rule 19.1 of the Tribunal's Rules of Practice, and requested a response from the Applicant to be provided within two weeks of that date.
- [4] The Notice of Intent to Dismiss set out the following considerations based upon the criteria in that Rule for early dismissal of an application:
1. **NO LEGAL POWER TO HEAR OR DECIDE:** The case falls outside of the Tribunal's jurisdiction defined in Ontario Regulation 179/17 (O. Reg. 179/17) since the case identifies no condition or activity that constitutes a nuisance, annoyance, or disruption. In this regard it is noted that,
    - i. a condominium by-law is not a "condition ... permitted to exist, [or] activity ... carried on in the common elements" (quoting Article V (1) of the Respondent's declaration),
    - ii. the prohibition in By-law No. 4 against non-occupants accessing the common elements is also not a "condition ... permitted to exist, [or] activity ... carried on in the common elements", and
    - iii. an individual's subjective feelings of annoyance, irritation, or inconvenience do not qualify as a nuisance, annoyance, or disruption at law. An individual subjective complaint must be considered in the light of the objective standard of the average reasonable person who is affected by the same condition or activity.
  2. **NO REASONABLE PROSPECT OF SUCCESS:** Based on the facts and arguments suggested in the Applicant's case description, the case appears to have no reasonable prospect of success both for the reason that the case discloses no condition or activity that constitutes a nuisance, annoyance, or disruption, and since, on its face, the impugned by-law is within the authority and discretion of the Respondent pursuant

to paragraph 56 (1) (k) of the *Condominium Act, 1998* (the “Act”), and Article V (1) of the Respondent’s declaration.

3. **MINOR ISSUE:** The case as described by the Applicant identifies a minimal restriction upon her that, on its face, does not infringe on any established right that cannot be justifiably restricted. The lack of opportunity for a non-resident unit owner to enjoy occasional access to a luxury amenity is by all measures an inconvenience of a de minimis nature and it would be unfair to put the Respondent to the cost and burden of engaging in the Tribunal’s dispute resolution process.
4. **IMPROPER PURPOSE:** For the two following reasons the case appears to be brought by the Applicant for an improper purpose and may constitute an abuse of process:
  - i. The Applicant has available to her democratic processes in the Act, that are intended to allow unit owners to challenge rules or by-laws of their condominium. The Tribunal ought not to be used by unit owners to circumvent the just and democratic processes instituted in the Act for the consideration and resolution of such issues.
  - ii. The Applicant already presented essentially the same claims and arguments before this Tribunal in Case No. 2023-00688N, which was dismissed. There is no substantive difference between the circumstances described and the arguments made by the Applicant in that case and those in her present application. It was improper for the Applicant to submit the identical case to the Tribunal following that dismissal.

[5] Although the Applicant was given up to two weeks from the date of the Notice of Intent to Dismiss to consider these issues and respond, twenty days (nearly three weeks) have passed as of the date this order is made, and the Applicant provided no response and requested no extension of time to do so. Accordingly, for the reasons set out in the Notice of Intent to Dismiss, the case is dismissed.

## **ORDER**

[6] The Tribunal orders this case dismissed.

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Michael H. Clifton  
Vice-Chair, Condominium Authority Tribunal

Released on: February 23, 2024