

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** April 3, 2024

**CASE:** 2023-00529N

**Citation:** Waterloo North Condominium Corporation No. 37 v. Baha et al., 2024 ONCAT 53

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

**Member:** Patricia McQuaid, Vice-Chair

**The Applicant,**

Waterloo North Condominium Corporation No. 37

Represented by Fiona Burnett, Counsel

**The Respondent,**

Antoaneta Baha

Self-represented

**The Intervenor,**

Joe Murphy

Self-represented

### **MOTION DECISION AND ORDER**

[1] The Respondent, a unit owner in Waterloo North Condominium Corporation No. 37 ("WNCC 37") has made a motion to stay this Condominium Authority Tribunal ("CAT") proceeding on the basis that she had commenced a Human Rights Tribunal of Ontario ("HRTO") application prior to this CAT application. The Applicant, WNCC 37, opposes the motion. The Intervenor, Joe Murphy, who resides with the Respondent in her unit, supports the Respondent's motion, though did not make separate submissions.

**A. BACKGROUND**

[2] WNCC 37 filed an application with the CAT, approved on October 17, 2023, in which it seeks the Respondent's compliance with its declaration and rules; in particular, its rules related to pets and noise. WNCC 37 alleges that there are two dogs in the unit contrary to its rules which permit only one pet, and, further, that the dogs bark excessively resulting in unreasonable noise which is nuisance. The Respondent does not dispute that there are two dogs in the unit but asserts that

they are service animals required for both her and Mr. Murphy and, therefore, they are entitled to an accommodation under the Human Rights Code.

- [3] The Respondent filed her case with the HRTO in August 2023. In that application, she seeks various relief including an accommodation relating to the number of dogs permitted in her unit, a request for accommodation to be allowed to install a washer/dryer in her unit, as well as damages for “wilful infliction of mental anguish”. WNCC 37 submits that it did not receive notice of the HRTO proceeding until November 8, 2023. A mediation has not yet been scheduled in the HRTO case.
- [4] Litigation between the parties does not end with the CAT and HRTO matters. In addition, WNCC 37 issued a notice of application on January 23, 2024 in the Superior Court of Justice (the “Superior Court”) seeking an order to enter and inspect the unit. The Respondent issued a notice of application, also in the Superior Court, on February 27, 2024 seeking a declaration that she is exempt from contributing to common expenses and that WNCC 37’s conduct has been oppressive. She is seeking damages for oppression and wilful infliction of mental suffering.
- [5] For the reasons set out below, I deny the request for a stay.

## **B. ANALYSIS**

- [6] Whether or not to grant a stay is a matter within the Tribunal’s discretion. Generally, a stay will only be granted in the clearest of cases. When exercising its discretion, the Tribunal considers several factors which may include<sup>1</sup>:
1. The timing of the respective proceedings including the stages each proceeding is at and the likely completion of the proceedings if allowed to proceed.
  2. The subject matter – do the issues in the proceedings overlap?
  3. Is the CAT proceeding vexatious or abusive?
  4. The procedural consequences to the parties of proceeding in one forum or the other.
  5. Would a stay or a denial of the stay unduly prejudice one of the parties?

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<sup>1</sup> *Halton Condominium Corporation No. 59 v. Howard*, 2009 CanLII 44710 (ON SC) as cited in *York Condominium Corporation No. 435 v. Karnis et al.*, 2022 ONCAT 86 (CanLII)

[7] As I consider these factors, though the background for the dispute provides some context, I am not analyzing the merits of the case. The Respondent has provided, through her submissions, some evidence about the issues; however, I have considered it only to the extent that it relates to the factors set out above.

### **The timing of the proceedings**

[8] As noted above, the filing of the HRTO application does pre-date the CAT matter. Based on the submissions, however, the HRTO case is not as advanced as this case which has proceeded through mediation and is now in the hearing stage. The HRTO mediation has not been scheduled and procedural matters have yet to be determined by it. It would be a matter of speculation as to when the HRTO matter will in fact proceed in any meaningful way. Given the typical trajectory of the Stage 3 – Tribunal Decision phase, the hearing and release of the CAT decision will likely be complete in about three months. The timeliness of having the key issue of whether two dogs are permitted in the unit decided for the parties weighs against a stay.

### **Do the issues in the proceedings overlap?**

[9] As the Respondent notes, the issues do not completely overlap. The request for accommodation to be allowed to install a washer/dryer in the unit is not part of the CAT case nor are the accusations of reprisal action and wilful infliction of mental anguish. However, the relief that WNCC 37 seeks in this case – compliance with the condominium’s rules related to the presence of the two dogs – is a matter solely within the CAT’s jurisdiction. And, to the extent that issues of disability and the requirement for an accommodation arise in the context of the dispute, the Tribunal has authority to apply the Ontario Human Rights Code (the “Code”) where issues of human rights properly arise in the case before it. The HRTO does not have exclusive jurisdiction over the interpretation of the Code.<sup>2</sup> Whether or not WNCC 37 may enforce compliance of the one-pet rule or is required to grant an accommodation to the Respondent and Intervenor can be fully addressed here. The significant overlap on this important issue for the Respondent and Intervenor – the requirement for the two dogs due to medically-related needs – weighs against granting a stay.

[10] I note that the Respondent, in her submissions, asserts that the nuisance issue related to allegations of excessive barking is somewhat intertwined with the dogs being service dogs. This nuisance issue falls squarely within the Tribunal’s exclusive jurisdiction, and again, to the extent that a Code issue arises, this can be

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<sup>2</sup> *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14 (CanLII)

addressed by the Tribunal.

### **Is the CAT proceeding vexatious or abusive?**

- [11] The Respondent submits that the claims before the CAT are based on false and misleading information. Whether or not that is the case requires an assessment of the evidence within the hearing context. I also cannot determine that there is little likelihood of success at this preliminary stage. The fact that WNCC 37 has brought a case to enforce compliance with its rules after the Respondent filed her case with the HRTO is not in itself vexatious. The fact that each of the parties has filed an application before the courts as well, seeking specific relief related in part to the issues in the CAT and HRTO proceedings, could equally suggest vexatious or abusive conduct, or, perhaps only, and unfortunately, a pattern of litigious conduct by both parties.
- [12] The Respondent also alleges an improper purpose on the part of WNCC 37 in that it is seeking to bar the Respondent from obtaining damages before the HRTO and has raised the possibility of issue estoppel being raised against them. While there is some commonality of issues, as the Respondent noted there is not a complete overlap. I note that the results of this proceeding may not preclude the Respondent's application for further and other relief sought from the HRTO under the Code. Section 45.1 of the Code states that the HRTO **may** (emphasis added) dismiss an application in whole or in part if it is of the opinion that another proceeding has appropriately dealt with the substance of the application. It is not a given that the HRTO will dismiss; it weighs matters of fairness.
- [13] I do not conclude that WNCC 37 has been vexatious or abusive in bringing this CAT case. Both parties have raised valid issues to be decided.

### **The procedural consequences to the parties of proceeding in one forum or the other**

- [14] To some extent, this factor is related to the issues set out in paragraph 12 – there may be little procedural consequence to the Respondent by having the CAT matter proceed. If this CAT case proceeds, the Tribunal can address both the applicability of the Code, which may require an accommodation, and the rules enforcement issue. If the CAT matter is stayed and the HRTO matter eventually proceeds and the HRTO were to find no Code violation, then WNCC 37 would have to proceed to enforce the rules. It may be that the CAT cannot address all of the issues raised by the Respondent in her HRTO case, but as noted previously by the CAT in other decisions, this is a consequence when tribunals have overlapping jurisdiction.

[15] This factor does not weigh in favour of granting the stay.

### **Prejudice to the parties**

[16] Both parties have raised the issue of prejudice. Again, the key issue for the Respondent and Intervenor is the presence of the two dogs; this is the issue which they assert has the greatest impact on their health. While they allege other discriminatory acts by WNCC 37, this key issue can, and will, be determined by the CAT. Therefore, I am not persuaded that they would suffer any appreciable prejudice if the stay is not granted. WNCC 37 may be prejudiced by a stay as they would be precluded from enforcing the rules related to the dogs when there may well be an expectation by other owners that they enforce the rules as they are required to do by the *Condominium Act, 1998*.<sup>3</sup>

[17] The Respondent submits that WNCC 37 has pursued “aggressive deadlines in all proceedings” which puts her under tremendous pressure and is detrimental to her health. The fact of there being multiple proceedings rests with both parties, and while I cannot surmise about deadlines in other matters (except to note that it is usually the tribunal or court which determines deadlines, not a party), I can clearly state that I will set deadlines in this matter, not one of the parties. And those deadlines will reflect fair and reasonable timelines.

[18] When balancing all of the factors, I dismiss the Respondent’s request for a stay of the CAT proceeding.

### **C. ORDER**

[19] The motion is dismissed. This case shall proceed.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

Released on: April 3, 2024

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<sup>3</sup> See Section 17(3).