

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 26, 2024

CASE: 2024-00077N

Citation: Toronto Standard Condominium Corporation No. 2944 v. Pavelic et al., 2024 ONCAT 61

Order under section 1.44 of the *Condominium Act, 1998*.

Member: Brian Cook, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2944

Represented by Anthony Spadafora, Counsel

The Respondents,

Miranda Pavelic

Self-Represented

Mislav Pavelic

Not participating

Hearing: Written Online Hearing – March 7, 2024 to April 8, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Mislav Pavelic is the owner of a unit in Toronto Standard Condominium Corporation No. 2944 (TSCC 2944). His daughter, Miranda Pavelic, lives in the unit.

[2] TSCC 2944 alleges that Ms. Pavelic creates unreasonable noise that is a nuisance, annoyance, or disruption to other residents. It seeks an order directing Ms. Pavelic to stop making unreasonable noise and directing Mr. Pavelic to ensure that Ms. Pavelic comply with section 117 (2) of the *Condominium Act, 1998* (the “Act”) and the condominium’s governing documents which prohibit the creation of unreasonable noise. The Applicant also seeks recovery of its legal costs.

[3] Section 117(2)(a) of the Act reads as follows:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation

[4] Section 6 of the TSCC 2944 Rules includes the following provision:

Owners, [and] tenants... shall not create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners, their families, tenants, invitees, licensees, guests, visitors, servants and persons having business with them.

[5] For the reasons that follow, I find that the Respondents have not complied with these provisions.

B. NOTICE

[6] Ms. Pavelic joined the case in the Tribunal's online dispute resolution system. Mr. Pavelic did not join. The Applicant has provided copies of the notices that were sent to the Respondents. Ms. Pavelic submitted that she received only the first notice, but it appears that this was sufficient to allow her to join the case. There is no explanation for why Mr. Pavelic did not join the case. According to the Applicant, Mr. Pavelic has also ignored the communications from TSCC 2944 before the application was filed asking him to take appropriate action.

[7] While Ms. Pavelic joined the case and uploaded some documents, these relate to concerns about plumbing related issues. She acknowledged that she received a communication from the condominium manager about noise complaints. The communication indicated that there would be more notices before legal action was taken and she says that she did not receive those notices.

[8] On April 3, 2024, I posted a message in the online dispute resolution system that reads in part:

This is an important message for Miranda Pavelic:

This case will be decided on the basis of the evidence and submissions provided by the parties.

The issue in this case is whether you are creating or allowing unreasonable noise. The condominium has provided evidence in support of its allegation that you are creating or allowing unreasonable noise. You have provided some documents, but they do not address the noise issue.

If you would like to provide any further information about the noise issue, you must let me know by responding to this message by 5:00 on Monday April 8, 2024.

The condominium has provided evidence showing that Mislav Pavelic has received notice of this hearing, but he has not joined the case.

The condominium is seeking an order directing you to stop making unreasonable noise. They are also seeking over \$12,000 in costs, relating to attempts to resolve this issue before the application was filed and to the costs of filing the application. As the owner of the unit, Mislav Pavelic could be ordered to pay the condominium's legal costs. If you or Mr. Pavelic would like to make any comments on this issue, you must let me know by responding to this message by 5:00 on Monday April 8, 2024.

[9] On April 11, 2024, Ms. Pavelic posted a message in the tribunal's online dispute resolution system. She states that she has always been available to resolve any dispute and that this Application and its associated costs was not necessary. She states again that she understood that legal action would only commence if further warnings were necessary.

[10] No communication was received from Mr. Pavelic.

[11] I find that the Respondents had notice of the hearing in this case. Ms. Pavelic joined the case but did not provide any evidence or information relevant to the noise issue. I accept the evidence of the Applicant that Mr. Pavelic received written notices of the hearing and find that he decided to not participate.

[12] When a Respondent decides to not participate in a hearing they give up their right to challenge the evidence of the Applicant. Evidence that is credible and not challenged will generally be accepted as true.

C. EVIDENCE

[13] The Applicant's evidence is set out in a statement from the current president of the board of directors. According to the statement, in the period from August 2022 to November 2023, there were at least 12 complaints about noise coming from the unit in which Ms. Pavelic lives. After the first complaint in August 2022 the next complaint was in June 2023 but after that, there were complaints on nine

occasions up to November 2023. In November 2023, the police were called to help deal with the situation. The complaints indicate that loud screaming was coming from the unit as well as noise apparently from heavy objects being thrown. Many of the complaints relate to noise late at night.

- [14] According to the statement, after the application was filed, there have been further complaints of unreasonable noise coming from the unit. The statement indicates that there have been communications with Ms. Pavelic in which she acknowledged making noise which she attributed to stress. She denied having a disability. Communications to Mr. Pavelic, including communications from TSCC 2944's counsel, have all been ignored.

D. CONCLUSIONS

- [15] I accept the evidence provided by the Applicant which is credible and not challenged by the Respondents. I accept that Ms. Pavelic has created unreasonable noise that is disruptive to other residents of the condominium in contravention of section 117(2)(a) of the Act and the condominium's governing documents. I also find that, as the owner of the unit, Mr. Pavelic has failed to address these issues or engage in any process that might find solutions.

- [16] Ms. Pavelic is ordered to stop making unreasonable noise and Mr. Pavelic is ordered to ensure that Ms. Pavelic stop making unreasonable noise.

E. COSTS

- [17] The Applicant seeks \$12,648 in legal costs and disbursements including HST. Counsel has provided a breakdown of activities, the hours spent, and the hourly rate for the people doing the work. The costs relate to different stages of the dispute. The first stage was the attempts by TSCC 2944 to enforce the condominium's rules about noise. The second stage started when this application was filed.

- [18] Section 1.44(1) of the Act provides that the Tribunal may make any of the following orders respecting costs:

3. An order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.

4. An order directing a party to the proceeding to pay the costs of another party to the proceeding.

5. An order directing a party to the proceeding to pay the costs of the Tribunal.

[19] Section 10(a) of the TSCC 2944 declaration includes the following provision:

[A]ny losses, costs or damages incurred by the Corporation by reason of a breach of any Rules and by-laws of the Corporation in force from time to time by any Owner, or by members of his family and/or their respective tenants, invitees or licensees, shall be borne and paid for by such Owner, and may be recovered by the Corporation against such Owner in the same manner as common expenses.

[20] The Tribunal's Rules of Practice includes the following rules regarding costs:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[21] The Tribunal also has a Practice Direction that addresses costs for participating in a hearing, which identifies the following considerations:

(a) Whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

(b) Whether the Case was filed in bad faith or for an improper purpose;

(c) The conduct of all parties and representatives, including the party requesting costs;

(d) The potential impact an order for costs would have on the parties;

(e) Whether the parties attempted to resolve the issues in dispute before the CAT Case was filed;

(f) Whether a Party has failed to follow or comply with a previous order or direction of the CAT;

Compliance costs

- [22] The Applicant claims entitlement to \$4,257 plus HST, for a total of \$4,810, representing legal costs in relation to attempts to have the Respondents comply with their obligations before the application was filed. Counsel for the Applicant indicates that the compliance efforts included reviewing documents, legal research, communication with the client, and drafting compliance letters. Counsel notes that junior counsel did most of the work, and the work is billed accordingly. I find that these costs are reasonable.
- [23] Mr. Pavelic is the owner of the unit and the person who is responsible for the conduct of anyone living in the unit. According to the Applicant, Mr. Pavelic is a senior health care professional and can be assumed to have the capacity to engage with TSCC 2944 to address the complaints and concerns if he chose to do so. He appears to have completely refused to engage with TSCC 2944 or its representatives. He also decided to not participate in this proceeding. He was aware, or ought to have been aware, that an order for costs was being sought. By deciding to not participate, the Respondents gave up their right to challenge the Applicant's right to costs or to challenge the amounts claimed.
- [24] I conclude that section 10(a) of the TSCC 2944 declaration, quoted above, applies to these costs. It provides that costs incurred by the condominium corporation by reason of a breach of the rules and by-laws is payable by the owner.
- [25] Under section 1.44(1) of the Act, I direct Mr. Pavelic to pay TSCC 2944 \$4,810 to compensate the corporation's costs related to seeking compliance. This is to be paid within 30 days. If it is not paid by that date, TSCC 2944 may add the amount to the common expenses payable.

Hearing costs

- [26] The Applicant seeks compensation for legal costs and disbursements in the amount of \$6,752 for the time from when the Application was filed, to the present.
- [27] As stated in Rule 48.2, noted above, the CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. Exceptions to this general rule can be made, particularly when a party's behaviour is unreasonable, improper or results in delay or additional expense. I find that the circumstances of this case are not so exceptional as to warrant an order for costs incurred in relation to the hearing.
- [28] Rule 48.1 provides that the unsuccessful party to a hearing will generally be required to pay the tribunal fees, which in this case were \$150. Mr. Pavelic is ordered to pay TSCC 2944 \$150 within 30 days. If payment is not made, it may be

added to the common expenses payable.

F. ORDER

[29] The Tribunal Orders that:

1. Ms. Pavelic shall stop making or allowing unreasonable noise that results in a nuisance annoyance or disruption for other residents of the condominium.
2. Mr. Pavelic shall ensure that Ms. Pavelic complies with section 117(2)(a) of the Act and the governing documents respecting noise.
3. Mr. Pavelic shall make the following payments within 30 days of the date of this decision:
 - a. Under Rule 48.1 of the Tribunal's Rules of Practice, the Tribunal filing fees in the amount of \$150.
 - b. Under section 1.44(1) 3 of the Act \$4,810 representing costs incurred before the application was filed.

Brian Cook
Member, Condominium Authority Tribunal

Released on: April 26, 2024