CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 22, 2024
CASE: 2024-00147SA
Citation: Sievewright v. Toronto Standard Condominium Corporation No 1793 et al., 2024 ONCAT 68

Order under section 1.47 of the *Condominium Act, 1998.*

Member: Dawn Wickett, Member

The Applicant,
Karen Sievewright
Self-Represented

The Respondents,
Toronto Standard Condominium Corporation No. 1808
Represented by Bree Pierce, Counsel

Toronto Standard Condominium Corporation No. 1793
Represented by Bree Pierce, Counsel

Hearing: Written Online Hearing – March 21, 2024 to April 29, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner of the Respondent, Toronto Standard Condominium Corporation No. 1793, which shares facilities with the Respondent, Toronto Standard Condominium Corporation No. 1808. Both condominium corporations were represented by Ms. Pierce and relied on the same evidence. In this decision, both condominium corporations will be referred to collectively as "the Respondent".

[2] In a previous case before the Tribunal (2022-00683N) the parties agreed to a settlement in Stage 3. The settlement agreement (the "SA") was issued on August 4, 2023. The Applicant alleges that the Respondent has breached terms 4, 10, 11 and 18 of the SA. Those terms are as follows:

> 4. The Parties further acknowledge that in addition to the NPC-300 guidelines with respect to noise, the generator is required to meet the requirements for standby power systems set out in Ontario Regulation 524/98 ("O. Reg. 524/98") under the *Environmental Protection Act, 1990* ("EPA").

10. The Respondents commit to implementing the Remedial Action expeditiously subject to any delays which are outside of their control. The Applicant acknowledges that the timelines set out in this agreement are subject to change should there be such uncontrollable delays. Should such delays occur, the Respondents shall advise the Applicant in writing, both by e-mail and by delivery of a hard copy, of the reason for the delay and shall provide a revised project schedule.

11. The project schedule referred to in paragraphs 7 and 10 of this agreement shall set out milestone dates for the Remedial Action, including, as applicable, the estimated or, when available, the firm dates for receipt of bids or proposals, contract award, commencement and completion of modifications and/or construction, testing, and the provision of confirmation of compliance. The parties acknowledge that the Remedial Action has the potential to impact the Applicant's use and enjoyment of her unit. Therefore, the schedule shall highlight date(s) when (a) work will or is expected to take place at the current location of the exhaust stack outside the Applicant's unit or to otherwise create a period of sustained noise, and (b) the date(s) when access to the Applicant's unit will or is expected to be required. When milestone dates are amended, the Respondents shall provide an updated project schedule to the Applicant.

18. This Settlement Agreement is confidential, meaning the Parties are not allowed to share it with others, or tell others about the details of the settlement without the permission of the other Parties. The Parties may share a copy of any document they received if required by law, such as to a government organization or a court.

[3] The Applicant seeks an order requiring the Respondent to comply with the above noted terms of the SA. The Applicant also seeks an order requiring the Respondent to reimburse the fee she paid to file this application. The Respondent seeks an order for the legal costs it incurred to participate in this proceeding.

[4] For the reasons that follow, I find I am unable to make an order for enforcement against the Respondents for allegedly breaching terms 4, 10 and 11 of the SA because the order required to resolve the issues in dispute would need to be made under sections of the *Condominium Act, 1998* (the "Act") that are beyond the scope of the Tribunal's jurisdiction. Further, I do not find the Respondent breached term 18 of the SA, and I decline to make an order for costs.

B. ISSUES AND ANALYSIS

Alleged Breach of terms 4, 10 and 11 of the Settlement Agreement

[5] The SA states that during the previous Tribunal proceeding, the parties entered into an agreement to settle the dispute without a hearing after they received professional testing and expert reports outlining the issues and remediation work required to resolve the noise and odours emitting from the exhaust stack.

[6] Terms included in the SA stipulate that the Respondent would complete remedial action to resolve the Applicant's verified concerns that the exhaust stack emitted unreasonable noise and odours, contrary to the Ontario Regulation 524/98 ("O. Reg. 524/98") under the *Environmental Protection Act, 1990* and the NPC-300 guidelines used by the Ministry of the Environment, Conservation and Parks ("MECP").

[7] The Applicant alleges the Respondent breached the terms 4, 10 and 11 of the settlement agreement because:

a) It caused delays to the repair schedule and incorrectly ascribed to MECP.

b) It attempted to negotiate the technical requirements related to MECP regulations and the EPA.

c) Lack of compliance with project updates.

[8] The issue in dispute is about a condition that exists on the condominium property which requires remediation for noise and odour emissions. The issues do not stem from an activity being carried out by a person or an activity that is prohibited by the Respondent's governing documents. It is important to make a distinction as to the cause of the noise and odour because it impacts whether the Tribunal has jurisdiction to make an order.

[9] The Tribunal's jurisdiction to make an order in relation to concerns about noise and odour flows from section 117 (2) of the Act. Section 117 (2) of the Act reads as follows:

> (2) No person shall carry on an activity or permit an activity [*emphasis added]* 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; or
>
> (b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation

[10] Given the noise and odour causing nuisance for the Applicant stems from a condition, rather than an activity being carried out by a person that is contrary to the Act, and/or the Respondent's governing document, I find the Tribunal does not have jurisdiction to make an order in this matter.

[11] In a previous case between the parties, (Sievewright v. Toronto Standard Condominium Corporation No. 1793 et al.) the Tribunal found it did not have jurisdiction to make an order regarding the Applicant's concerns about noise emanating from the parking garage because of a broken grate. In the previous matter, much like in this one, the Tribunal found that the broken grate was not an activity being carried out by a person contrary to section 117(2) of the Act, and/or

provisions set out in the Respondent's governing documents. Of note, the Applicant did try to have the garage grate issue included as part of this application and hearing. However, at the onset of the hearing, I found that the garage grate could not form part of this application or hearing as the issue was previously adjudicated by the Tribunal, and it did not form part of the SA subject to this dispute.

[12] On its face, this application appeared straightforward and within the Tribunal's jurisdiction, as it was based on an alleged breach of the parties' SA. However, upon reviewing all the evidence presented during the hearing, it became clear the Tribunal lacked jurisdiction to make an order. While the Tribunal has previously found in a different case that it had the jurisdiction to order compliance with settlement agreement terms that fall outside the scope of the Tribunal's jurisdiction, the facts differ from the matter before me.

[13] In *Cohen v. York Condominium Corporation No. 205*, 2023 ONCAT 179 ("Cohen"), the allegations of breach of the settlement agreement related to records, and actions the corporation agreed to take to resolve the issue in dispute. In Cohen, the applicant sought an order requiring the corporation comply with the terms of the settlement agreement by providing her with records she was not legally entitled to under the Act. While the applicant in Cohen was not legally entitled to the records the corporation agreed to provide, the substance of the application was one within the scope of the Tribunal's jurisdiction, and therefore lent a way for an order within the Tribunal's jurisdiction.

[14] In this matter, the substance of the underlying application for the SA, and subsequently this application for alleged breach, do not fall within the Tribunal's scope of jurisdiction and therefore it has no power to make an order of enforcement or compliance.

[15] It is part of the Tribunal's process, where appropriate, to assist parties in resolving issues by mediating terms for a settlement agreement, even though the issues in dispute are not within the scope of its jurisdiction. The downside of helping parties resolve issues that are beyond the scope of the Tribunal's jurisdiction is that when a breach of a settlement agreement occurs, the Tribunal may not be able to issue an order for enforcement and/or compliance. This does not mean that the Applicant may not have remedies available to her if the Respondent in fact breached the terms of the SA, it simply means that the possible remedies do not lie with this Tribunal.

Alleged Breach of term 18 of the Settlement Agreement

[16] The Applicant alleges the Respondents breached the confidentiality term of the SA by failing to "follow the agreed communications methodology or show care with respect to the private nature of the Settlement Agreement on a number of occasions". The Applicant takes issue with how the Respondents delivered her copies of the update letters notifying her of the remediation work/schedule.

[17] The Respondent delivered the letters by placing them in an envelope addressed to "the residents" or the unit number. The envelopes were left outside the Applicant's door or stuck to the unit door.

[18] The Respondent takes the position that they did not breach term 18 of the SA because of its delivery method. The Respondent submits that the SA does not include a term specifically indicating the method of delivery required to provide the Applicant with the updates.

[19] In review of the SA, I find the Respondent did not breach term 18, or any other term because of the way it addressed and delivered the update letters to the Applicant. There is no term in the SA setting out the requirements for how the Respondent is to deliver the update letters to the Applicant.

Costs

[20] The Applicant seeks an order requiring the Respondent to reimburse her the fee ($125) she paid to file this application.

[21] The Tribunal's Rule 48.1 states:

> 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.

[22] The Applicant was not successful in this matter. As such, I find no basis to make an order for the Respondent to reimburse her the cost she incurred to file this application.

[23] The Respondent seeks an order requiring the Applicant to reimburse it for the legal costs (undisclosed amount) it incurred to participate in this proceeding.

[24] The Tribunal's Rule 48.2, provides:

> 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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[25] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" (the "Practice Direction"), states that a determination of costs, including indemnification, shall consider,

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

(ii) the conduct of all parties and representatives requesting costs;

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

(iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[26] While there is no doubt that the relationship between the two parties is acrimonious at best, the Respondent provided no evidence or arguments to support its request for costs. As such, I do not find that an order for costs against the Applicant is appropriate.

C. CONCLUSION

[27] The order of enforcement the Applicant seeks for the Respondent's alleged breach of the SA falls beyond the scope of the Tribunal's jurisdiction. As such, the application is dismissed.

[28] These parties have been before the Tribunal before. It is fair to say that the relationship between them is acrimonious at best. Going forward, I encourage the parties to find a way to do better to foster a more positive relationship while co-existing within the condominium complex.

D. ORDER

[29] The Tribunal Orders that:

1. The application is dismissed without costs.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: May 22, 2024