

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 4, 2024

CASE: 2024-00077N

Citation: Toronto Standard Condominium Corporation No. 2944 v. Pavelic et al., 2024 ONCAT 74

Order under Rule 47 of the Tribunal's Rules of Practice

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

Self-Represented

MOTION ORDER

- [1] Miranda Pavelic has requested that this case be re-opened. Ms. Pavelic is a resident in a unit in Toronto Standard Condominium Corporation No. 2944 (TSCC 2944). Her father, Mislav Pavelic, is the owner of the unit.
- [2] TSCC 2944 filed the Application alleging that Ms. Pavelic was causing unreasonable noise that was disruptive to other residents and that Mr. Pavelic had not done anything to address the problem.
- [3] Mr. Pavelic did not join the case at all. Ms. Pavelic did join but did not address the issues in dispute.
- [4] The Tribunal issued Toronto Standard Condominium Corporation No. 2944 v. Pavelic et al., 2024 ONCAT 61 (the "Decision") on April 26, 2024. The decision found 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 *Condominium Act, 1998* (the "Act") and the condominium's governing documents. I also found that, as the owner of the unit, Mr. Pavelic has failed to address these

issues or engage in any process that might find solutions.

[5] I made the following orders:

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.

[6] Ms. Pavelic has now requested that the case be re-opened.

Jurisdiction

[7] TSCC 2944 submits that the Tribunal does not have the jurisdiction to re-open the case.

[8] The Tribunal's authority to reopen a case comes from section 21.2 (1) of the Statutory Powers Procedures Act (SPPA) which provides:

21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.

[9] The Tribunal has made a rule in accordance with section 25.1 of the SPPA that allows it to reopen a case in particular circumstances. Rule 47 of the Tribunal's Rules of Practice states:

47.1 The CAT may reopen all or part of a Case if the Case was closed after a Party:

(a) failed to appear or participate in all or part of a Case; or,

(b) failed to respond to a request or communication from the CAT.

47.2 A Party has 15 days after the Case has closed to request that it be reopened. The Party must deliver their request to the other Parties and to the CAT. The Party's request must give details about:

(a) why the Party failed to appear or participate, or failed to respond; and

(b) why it is unfair for the Party if the Case is not reopened

[10] In this case, as noted, Mr. Pavelic did not join the case. Ms. Pavelic did join the case but did not fully participate. I find that these circumstances permit the Tribunal to determine if it is advisable to reopen the case.

The request to reopen the case

[11] In her request, Ms. Pavelic indicates that she did not understand the Tribunal's process and did not understand that the case was being adjudicated under the On-Line Dispute Resolution system. She says she was waiting to receive a notice that would tell her when the hearing would happen. She says that having not read the messages more carefully, the instructions to the parties were "perfect and crystal clear" but she either did not see them or did not read them properly at the time, perhaps because of "the onslaught of messages from the condominium and its counsel".

[12] Mr. Pavelic sent an email to the Tribunal in support of the request to re-open the case. It reads as follows:

In response, to why I did not participate. This is my first condominium purchase. I was not aware of the jurisdictional power of ODR. I am a full time dental surgeon and have limited time and technical ability to participate in this process. I was not aware of the seriousness of the complaints. The mall management and solicitor's did not communicate with me in person only through email, which I do not check regularly. I apologize that I was not more proactive. I'm sure with my participation, which I would prefer to be in person versus online, solutions could be found cooperatively.

[13] After considering Ms. Pavelic's request to reopen the case, I asked her to explain how and why the outcome of the decision would have been different if she had participated.

[14] She says that she agrees that she sometimes may make loud noise but says that this is because she is an actress and is required to sometimes use a loud voice to rehearse a part. She feels that TSCC 2944 should have handled the complaints about noise in a better way. She in particular takes exception to a video taken of

her without her consent by a neighbour and believes that the video was illegally taken. She feels that any issues could have been resolved through conversation.

[15] I note that the evidence provided by TSCC 2944 indicates that the loud noise that others complained of and witnessed was not limited to noise that could be related to an actor's rehearsal.

[16] The Decision found that Ms. Pavelic had 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. She was ordered to stop making unreasonable noise.

[17] In her submissions in support of the motion to reopen the case, Ms. Pavelic appears to agree that she may have been responsible for noise that could be unreasonable and disruptive to others. She suggests that there should have been a better process for addressing complaints. I note that the order that Ms. Pavelic stop making unreasonable noise does not preclude discussion between the parties, including Mr. Pavelic, the owner of the unit.

[18] The brief submission from Mr. Pavelic concerning the motion indicates that he was aware of the case but did not want to get involved because he does not like legal proceedings.

[19] As the owner of the unit, Mr. Pavelic is liable for the conduct of anyone living in the unit. For these reasons, the Decision found that he was responsible for the legal costs incurred by the condominium seeking compliance with the governing documents and the legislation.

Conclusion

[20] It is regrettable that Ms. Pavelic did not fully understand the Tribunal's process or the on-line dispute resolution system. It is also regrettable that Mr. Pavelic as the owner of the unit has not done more to address the complaints of unreasonable noise.

[21] However, noting that Ms. Pavelic does not dispute that she may have created unreasonable noise, and the reasons why Mr. Pavelic did not participate, I find it is not advisable to reopen the case.

ORDER

[22] The request to reopen the case is denied.

Brian Cook
Member, Condominium Authority Tribunal

Released on: June 4, 2024