

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 25, 2024

CASE: 2024-00091N

Citation: Dambremont v. Cochrane Condominium Corporation No. 7, 2024 ONCAT 90

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

Member: Dawn Wickett, Member

The Applicant,

Josée Dambremont

Represented by Nicky Gagnon, Counsel

The Respondent,

Cochrane Condominium Corporation No. 7

Represented by Graeme Macpherson, Counsel

Hearing: Written Online Hearing – May 7, 2024 to June 14, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a unit owner in the Respondent, Cochrane Condominium Corporation No. 7 (“CCC 7”). CCC 7 is a small condominium complex consisting of thirty residential units.
- [2] The Applicant filed this application alleging harassment by other unit owners and members of CCC 7’s board of directors.
- [3] At the onset of this hearing, I raised a preliminary issue as to the Tribunal’s jurisdiction to hear this application as it is based on allegations of harassment. Both parties were afforded the opportunity to provide submissions and they did.

B. PRELIMINARY ISSUE

- [4] The Applicant submitted that the Tribunal does have the jurisdiction to hear this application because provisions relating to harassment are contained in CCC 7’s governing documents. Specifically, CCC 7’s Rules 6 and 7 state:

No one shall injure, harass, threaten, annoy, or initiate any defamatory,

threatening, hateful or discriminatory statement or action, or participate in any illegal activity or harmful conduct toward any Owner, Resident, Board member, agent, employee of the Corporation, or contractor retained by the Corporation. Harassment consists of any verbal or written statement, action, or behaviour which is intimidating, threatening, violent or which causes physical or psychological harm, fear, humiliation or embarrassment, objectively determined on a reasonable basis, including any statement, action or behaviour which a person knows or reasonably ought to know would be unwelcomed and offensive, including, without limitation, any verbal abuse, insulting comment, joke, gesture, conduct or touching or which would constitute workplace harassment or sexual harassment as set out in the Human Rights Code.

No one on the property shall act in a manner that is unmanageable, rude, disruptive, aggressive, abusive or anti-social in nature.

- [5] The Applicant contends that harassment is an “other prescribed nuisance, annoyance or disruption” as prescribed under section 117 (2) (b) of the *Condominium Act, 1998* (the “Act”). Section 117 (2) (b) reads:

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,

(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

- [6] The Respondent conceded that its rules prohibit harassment, which essentially placed this application in the jurisdiction of the Tribunal under section 1 (1) (d) (iii.2) of Ontario Regulation 179/17 (“O. Reg 179/17”) which reads:

1. (1) The prescribed disputes for the purposes of subsections 1.36 (1) and (2) of the Act are,

...

(d) (iii.2) Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

- [7] However, despite the above, the Respondent submitted that the Applicant’s allegations do not meet the threshold of harassment as the alleged incidents are “isolated interactions that were all brought on by the Applicant’s own actions. The Applicant has not made complaints or reports about these incidents to the Corporation. There is no pattern of interference established. There is no frequency

or duration established”. As such, the Respondent submitted that the application does not constitute nuisance, and therefore it does not fall within the scope of the Tribunal’s jurisdiction. In the alternative, the Respondent submitted that the allegations of harassment fall under section 117(1) of the Act because the Applicant alleges that the incidents made her feel unsafe and have caused her emotional harm. The Tribunal does not have jurisdiction to hear matters that fall under section 117(1) of the Act. Section 117 (1) of the Act reads:

No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

- [8] Having considered the submissions of both parties, I found that the Tribunal has jurisdiction to hear the application as the nuisance, annoyance or disruption issue (alleged harassment) raised by the Applicant forms part of CCC 7’s governing documents. Section 1 (1) (d) (iii.2) of the O. Reg 179/17 provides that nuisances, annoyances or disruptions contained in a corporation’s governing documents are within the Tribunal’s jurisdiction. I further found that at this preliminary stage, the Respondent’s evidence was insufficient to demonstrate that the allegations contained in this application fall under section 117(1) of the Act, or that the allegations did not constitute harassment as set out or defined in CCC 7’s governing documents. As such, the hearing proceeded as scheduled.

C. OUTCOME

- [9] After the preliminary issue was addressed, the merits hearing continued and completed with both parties submitting their evidence.
- [10] Upon reviewing the evidence as a whole, I have determined that the Tribunal lacks the authority to make determinations in this case as it falls beyond the scope to its jurisdiction.
- [11] I find that the substance of this application is subject to the provisions of section 117 (1) of the Act.
- [12] O. Reg 179/17 sets out the scope of the Tribunal’s jurisdiction and does not include issues under section 117 (1) of the Act. Section 1 (3) of the O. Reg 179/17 states:

Clauses (1) (c.1) and (d) do not apply to a dispute that is also with respect to subsection 117 (1) of the Act, an agreement described in clause 98 (1) (b) of

the Act or an agreement described in subsection 24.6 (3) of Ontario Regulation 48/01 (General) made under the Act.

D. ISSUES & ANALYSIS

[13] The Applicant alleges that since March 2022, she has been subjected to incidents of harassment and aggressive behaviour by other unit owners and members of CCC 7's board of directors. The Applicant is seeking the following orders:

- Compensation in the amount of \$10,000 for emotional distress
- Application filing fee (\$200)
- Legal costs and disbursements (\$4,580)

[14] CCC 7 denies the allegations made by the Applicant. Its position is that the incidents as described by the Applicant do not amount to harassment, and that this application is another example of her "litigiousness and aggression against the Corporation". This is not the first time the parties have been involved in litigation. The Respondent requests that this application be dismissed with costs for legal fees (\$12,000) payable by the Applicant to CCC 7.

[15] In her evidence, the Applicant alleges that the incidents of harassment by other unit owner and two members of CCC 7's board of directors has caused her emotional distress. The Applicant submitted medical records in support of her position. It is the Applicant's position that the medical records demonstrates that as a result of the alleged harassment, she suffers from "increased stress, anxiety and difficulty sleeping requiring her to take medication".

[16] The Applicant further submitted that the alleged harassment by two of CCC 7's board members made her "fearful" which led to her calling the police for assistance. A copy of the police report was submitted in support of the Applicant's allegations.

[17] I asked the Applicant if it is her position that the impact of the alleged harassment has had consequences on her physical or psychological health or safety. The Applicant responded "yes".

[18] The Applicant's evidence clearly establishes that in her view, the allegations of alleged harassment has caused her emotional and psychological injuries (anxiety, fear, sleep issues, emotional distress). Activities that may cause illness or injury to someone in or on the condominium property or assets, is an issue under section 117(1) of the Act.

[19] Having reviewed the totality of all the evidence, I find that this application is not within the scope of the Tribunal's jurisdiction because it falls under the provisions of section 117(1) of the Act. In making this finding, I considered the Applicant's evidence confirming that it is her position that the alleged harassment has caused her emotional and psychological injuries. O. Reg 179/17 sets out the Tribunal's jurisdiction which specifically prohibits the Tribunal from dealing with disputes with respect to section 117 (1) of the Act.

[20] As I have found that the issues in dispute are not within the scope of the Tribunal's jurisdiction, this application is dismissed.

E. COSTS

[21] Rule 48.1 of the Tribunal's Rules of Practice states that if a matter is not resolved by Settlement Agreement or Consent Order and the adjudicator makes a final decision, the unsuccessful party will be required to pay the successful party's Tribunal fees unless the adjudicator decides otherwise. In this matter, the Applicant was not successful. Having found no reason to deviate from the Tribunal's rules, I decline to make an order for the Respondent to reimburse the Applicant for the cost of filing this application.

[22] The Applicant and the Respondent both seek to be reimbursed for the cost of legal fees incurred to participate in the Tribunal proceedings.

[23] 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.

[24] 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.

[25] In this matter, I find that both parties conducted themselves appropriately. No conduct or behaviour of either party gave rise to me considering a costs award. Further, while the Respondent submitted that this application was brought for an improper purpose, I do not agree. A party is entitled to file an application with the Tribunal if they believe they have an issue that cannot be resolved outside of the Tribunal process. Further, in this matter, the Applicant believed the Tribunal had the authority to hear this case. That belief was mistaken, but that does not mean that she brought the case for an improper purpose. For these reasons, I am denying both parties' request for an order requiring the opposing party to reimburse their costs for legal fees.

F. ORDER

[26] The Tribunal Orders that:

1. The application is dismissed without costs.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: June 25, 2024