

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 15, 2024

CASE: 2023-00720N

Citation: York Condominium Corporation No. 138 v. Hmanshu, 2024 ONCAT 104

Order under Rule 43.1 of the Condominium Authority Tribunal's Rules of Practice.

Member: Nicole Aylwin, Member

The Applicant,

York Condominium Corporation No. 138

Represented by Varun Vashisht, Counsel

The Respondent,

Himanshu Hmanshu

Self-Represented

DISMISSAL ORDER

- [1] The Applicant, York Condominium Corporation No. 138 ("YCC 138") filed an application with the Condominium Authority Tribunal (the "Tribunal") to address issues of unreasonable noise that it alleges is coming from the unit of the Respondent, Mr. Hmanshu. The case proceeded to Stage 3 - Tribunal Decision in May 2024.
- [2] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision, if it determines that the proper parties have not been named.
- [3] During the proceeding, Mr. Hmanshu made the Tribunal and YCC 138 aware that he was not the only unit owner on title and that he shared possession of the unit with another unit owner. According to Mr. Hmanshu he is in possession of the unit three days a week, while the other unit owner is in possession of the unit the other four days a week. Mr. Hmanshu raised a concern that the other unit owner had not been named as a party and was unaware of the hearing and had not been provided the opportunity to participate.
- [4] After some discussion with the parties, it was confirmed that there are indeed two owners listed on the title. And, although YCC 138 did properly deliver the Notice of

Case to the address of service, the second unit owner does not have access to the mail and has limited contact with Mr. Hmanshu. Thus, it is likely that the second owner does not know about the case and has not received instructions on how to join the case.

- [5] Under s. 1.39 of the *Condominium Act, 1998*, all persons directly affected by the proceeding must have an adequate opportunity to know the issues and to be heard on matters in the proceeding.
- [6] Upon confirmation that there was another unit owner listed on title, I informed the parties that while we could proceed with the hearing with the current configuration of parties, the Tribunal would be limited in the orders that it could make, i.e. it could not make any orders against a party that had not had the opportunity to hear the case and participate.
- [7] Alternatively, the parties were informed that an alternative option would be for me to dismiss this case without prejudice and for YCC 138 to refile the case, naming and serving the proper parties (i.e. both owners). Provided both unit owners then joined the case, the case would proceed directly to Stage 2 – Mediation. The Tribunal fees for refiling the case would be waived.
- [8] The parties agreed that the best way to proceed was to have this case dismissed and a new case filed with all the correct parties named in the application.
- [9] Accordingly, I am ordering this case dismissed without prejudice, as all affected parties have not had the opportunity to know the issues and be heard on matters in the proceeding.
- [10] I am also ordering that if YCC 138 would like to file a new case, it should name both unit owners, as listed on title, as respondents.
- [11] Additionally, given the unique circumstances of this case, to ensure that both unit owners are properly notified of the new case, YCC 138 may deliver the Notice of Case to the current Respondent, Mr. Hmanshu, by mail; however, YCC 138 should serve the Notice of Case to the second unit owner by hand delivering the Notice of Case to the unit on a day in which that unit owner has possession of the unit. YCC 138 has been made aware of the dates and times when each unit owner has possession.
- [12] Finally, if YCC 138 chooses to file a new case, the filing fees will be waived, and they are directed to send an email to the Tribunal Staff to co-ordinate with them on the technical details of filing the new case in the ODR system.

ORDER

[13] The Tribunal orders that:

1. This case is closed in Stage 3 - Tribunal Decision under Rule 43.1 of the CAT's Rules of Practice.
2. If YCC 138 chooses to file a new case, it should name both unit owners, as listed on title, as respondents.
3. If YCC 138 chooses to file a new case, it may deliver the Notice of Case to the current Respondent, Mr. Hmanshu, by mail; however, it must serve the Notice of Case to the second unit owner by hand delivering the Notice of Case to the unit during the days in which that unit owner has possession of the unit.
4. If YCC 138 chooses to file a new case, the filing fees will be waived. YCC 138 should contact the Tribunal Staff via email to co-ordinate with them on the technical details of filing the new case in the ODR system.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: July 15, 2024