

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 22, 2024

CASE: 2024-00073N

Citation: Whitney v. Halton Condominium Corporation No. 48, 2024 ONCAT 129

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Jennifer Webster, Member

The Applicant,

Tom Whitney

Self-Represented

The Respondent,

Halton Condominium Corporation No. 48

Represented by Jonathan Wright, Counsel

DISMISSAL ORDER

- [1] The Applicant, Tom Whitney, filed an application with the Condominium Authority Tribunal (“CAT”). The case proceeded to Stage 2 – Mediation on May 21, 2024.
- [2] Under Rule 34.3 of the CAT’s Rules of Practice, the CAT can close a case in Stage 2 – Mediation if the CAT determines that that it has no legal power to hear or decide upon the dispute.
- [3] The Applicant is a unit owner in the Respondent, Halton Condominium Corporation No. 48 (“HCC 48”). He filed this application in response to a letter he received from HCC 48’s Counsel on or about January 13, 2023 (the “letter”).
- [4] The subject matter of the letter was an email the Applicant had sent to a friend on November 17, 2022. The friend is also a unit owner in HCC 48. The email included a hyperlink to an article from the Toronto Star newspaper with the headline “Team of Toronto Cops Conspired to Lie Under Oath Judge Finds”. The date of the article was May 6, 2021. The Applicant wrote to the other owner as follows about the article: “Check out this article. Read it all the way to the end!”
- [5] In the compliance letter, HCC 48’s Counsel described the Applicant’s conduct as follows:

We are advised by our client that you were recently observed to have circulated an email to various residents at the Corporation containing inappropriate and derogatory statements considered to be defamatory to the President of the Corporation's Board of Directors. The notice also publicises details regarding the employment of this Director, which information was previously kept private and confidential for reasons which should be obvious to you. We understand that this information was widely circulated throughout the Corporation and has caused disruption to the Corporation's community.

Be advised that the circulation of such inappropriate notice and misinformation contained therein hinders the ability of the Corporation's Board and other agents to carry out their respective duties regarding the administration and management of the affairs of the Corporation and serves no purpose but to promote fear mongering and sensationalize operational issues among other residents.

- [6] HCC 48 directed the Applicant to cease and desist from the conduct, and further required that he publicly retract and apologize for the email. HCC 48 demanded that the retraction and apology be made within fourteen days of the date of the compliance letter. HCC 48 also required the Applicant to indemnify it for its legal costs of \$800 incurred in the preparation of the letter.
- [7] On January 25, 2023, the Applicant responded to the letter by email to HCC 48's Counsel. In his response, the Applicant challenged HCC 48's characterization of the conduct and its claims for indemnification.
- [8] On April 13, 2023, HCC 48 sent a second letter to the Applicant. In the second letter, HCC 48 maintained its direction that the Applicant cease and desist his conduct of sharing the Toronto Star article and that he publicly retract and apologize for his communications.
- [9] The Applicant met with the HCC 48's board of directors on June 12, 2023 to discuss the issues raised in the two letters. The parties were unable to resolve the issues. On July 18, 2023, the Applicant received a pre-lien notice from HCC 48's condominium manager, advising that if he fails to provide full payment of the legal costs, HCC 48 will commence lien action against his unit.

[10] When the Applicant started this application, he identified the issues as relating to: provisions in the condominium corporation's governing documents; other types of nuisance, annoyance or disruption; indemnification or compensation; and compliance issues. The Applicant described the issues in his problem description as related to the letter and HCC 48's demand for indemnification.

[11] Despite their efforts, the parties were unable to reach a settlement of the application in Stage 2 – Mediation. The Tribunal may allow an application to move to Stage 3 – Tribunal Decision for a hearing on the merits if an application is not closed in Stage 2- Mediation. However, it appeared to me that the issues were outside the Tribunal's jurisdiction and that the application should not proceed to Stage 3 – Tribunal Decision.

[12] Therefore, I issued a Notice of Intent to Dismiss ("NOID") on August 2, 2024, and proposed to dismiss this application under Rule 19.1 of the CAT's Rules of Practice, which allows the CAT to dismiss a case where the Tribunal has no legal power to hear or decide the case.

[13] I proposed to dismiss the case for the following reasons:

1. The CAT's jurisdiction is established by Ontario Regulation 179/17 ("O. Reg 179/17"). It contains the specific wording of the CAT's jurisdiction. The CAT does not have the legal authority to decide issues that are outside its jurisdiction.
2. The issues in this application relate to HCC 48's letter of January 13, 2023 that claims indemnification related to the alleged circulation of an email.
3. As per Section 1 (1) (d) of O. Reg. 179/17, the CAT has jurisdiction to address disputes related to provisions of the "declaration, by-laws or rules of a corporation":
 - (iii.1) ... that prohibit, restrict or otherwise govern the activities described in section 117(2) of the Act or section 26 of Ontario Regulation 48/01 ...
 - (iii.2) ... 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.
4. Section 1 (1) (d) (iv) of O. Reg. 179/17 provides the CAT with the jurisdiction to address disputes related to "provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a

dispute described in this clause.” The reference to a dispute described in this clause means a dispute within the CAT’s jurisdiction as set out in Section 1 (1) (d) of O. Reg. 179/17.

5. Section 117 (2) of the *Condominium Act, 1998* (the “Act”) reads as follows:

117(2) 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; 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.

6. Section 26 of Ontario Regulation 48/01 (“O. Reg 48/01”) prescribes the following as a nuisance, annoyance or disruption for the purposes of Section 117 (2) of the Act: odour; smoke; vapour; light and vibration.
7. HCC 48 made no reference in its letter of January 31, 2023 that it was claiming indemnification related to a provision in its governing documents that prohibit any activity prohibited by Section 117 (2) of the Act or that prohibit any other nuisance, annoyance or disruption. HCC 48 was claiming indemnification under its general indemnification clause (Article XIV of the Corporation’s By-Law No. 6) without identifying that the Applicant had breached a provision in its governing documents related to a nuisance, annoyance or disruption. Therefore, the issues raised in this application appear to be outside the Tribunal’s jurisdiction, as set out in O. Reg. 179/17.

[14] I invited the parties to provide submissions as to why this application should or should not be dismissed.

The Parties’ Submissions

[15] The Applicant argues that the application is within the Tribunal’s jurisdiction because it concerns a rule that prohibits a nuisance. He identifies that the rule that applies is HCC 48’s Rule 10.3 which reads as follows:

10.3 NOISE / NUISANCE

Owners, tenants and guests shall not cause, permit or create any vibration, noise or Nuisance which, in the absolute discretion of the Board of Directors and / or the Manager, may disturb the comfort and quiet enjoyment of the units and common elements. Owners, tenants, and their guests shall comply with all Municipal noise By-laws.

Disturbing noisy household renovations shall not be permitted between 11:00 pm and 8:00 am, except in the event of an emergency and work is required to mitigate damage to the unit, other units and the common elements.

- [16] The Applicant submits that a nuisance is anything that is “annoying, unpleasant or obnoxious” and that amounts to a substantial and unreasonable interference. He claims that HCC 48 engaged in over-zealous compliance efforts towards him and that these efforts amounted to a nuisance within the meaning of HCC 48’s Rule 10.3. Consequently, he argues that the Tribunal has jurisdiction to decide the dispute because it is related to a nuisance contrary to HCC 48’s rules and to a claim for indemnification under the Act.
- [17] HCC 48 argues that the application does not involve a nuisance, annoyance or disruption. HCC 48 notes that the core issue involves the letter and its claim for indemnification and that the indemnification does not relate to a nuisance, annoyance or disruption either within the meaning of the Act or HCC 48’s rules. Therefore, HCC 48 submits that the Tribunal does not have jurisdiction with respect to the issues raised in the application.
- [18] The nuisance identified by the Applicant is not in the category of nuisance prescribed in the Act or the regulations. He is not complaining of a nuisance of noise, odour, smoke, vapour, light or vibration. Instead, the Applicant’s claim is based on an alleged nuisance from HCC 48 that caused him substantial and unreasonable interference. Although the Applicant submits that HCC 48’s conduct is a nuisance prohibited by Rule 10.3, it is clear that this rule prohibits nuisance conduct by owners, tenants, and guests, and does not address conduct by the condominium corporation. This application is not about nuisance, annoyance or disruption either within the meaning of the Act or the provisions in the HCC 48’s governing documents.
- [19] In its two letters, HCC 48 was not claiming indemnification related to provisions in its governing documents related to a nuisance, annoyance or disruption whether defined in the Act or in its rules. The indemnification claim was based on a general indemnification provision and related to the Applicant’s conduct of sending an email.

[20] I recognize that the Applicant is annoyed and frustrated by HCC 48's response to his email. He feels that HCC 48's response was heavy-handed and unreasonable, particularly with respect to its claim that his conduct was defamatory. However, as noted by the Tribunal at paragraph 4 in *Samuel v. Metropolitan Toronto Condominium Corporation No. 979*, 2024 ONCAT 26, "an individual's subjective feelings of annoyance, irritation or inconvenience do not qualify as a nuisance, annoyance or disruption at law."

[21] Based on the parties' submissions, I find the application should be dismissed for the reasons set out in the NOID. I find that the issues that make up this dispute are not within the jurisdiction of the CAT. Accordingly, I order that this case be dismissed.

ORDER

[22] The Tribunal orders that:

1. This case is closed in Stage 2 – Mediation under Rule 34.3 of the CAT's Rules of Practice.
2. Any documents and messages that have been shared for this Case in Stage 1 – Negotiation and / or Stage 2 – Mediation are private and confidential. That means that the Users cannot share, or tell anyone about, messages or documents they received from other Users during these stages without the permission of the other User.
3. The Users may share a copy of any document they received during the course of this case if required by law, such as to a government organization or a court.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: August 22, 2024