

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 18, 2024

CASE: 2024-00400N

Citation: Mishibinijima v. Simcoe Condominium Corporation No. 60 et al., 2024 ONCAT 144

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Keegan Ferreira, Vice-Chair

The Applicant,

Steve Mishibinijima

Self-Represented

The Respondents,

Simcoe Condominium Corporation No. 60

Represented by Sonja Hodis, Counsel

Christine Sapsford

Self-Represented

Submission Dates: August 16, 2024 to August 26, 2024

MOTION ORDER

- [1] Steve Mishibinijima, (the "Applicant") filed a case with the Condominium Authority Tribunal (CAT) to resolve noise issues which they assert are the result of damage and/or a lack of repair to the common elements. The case proceeded to Stage 1 - Negotiation on August 13, 2024.
- [2] Under Rule 19.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 1 - Negotiation if the CAT determines that that it has no legal power to hear or decide the dispute.
- [3] Simcoe Condominium Corporation No. 60 ("SCC60") brought a motion to dismiss the case shortly after this case proceeded to Stage 1 – Negotiation.
- [4] SCC60 moved to dismiss the case on three grounds:
 - 1. The Applicant should not be permitted to re-litigate an issue that was already

raised in previous CAT case No. 2023-00142N and which was resolved by consent order on the agreement of the parties

2. The Tribunal does not have the jurisdiction to deal with maintenance and repair issues under s. 89 and s. 90 of the *Condominium Act, 1998* (the “Act”)
 3. SCC60 submits that it would be unfair to require it to incur additional costs beyond those it already incurred in 2023-00142N and in this case to date.
- [5] In response to SCC60’s motion, the Tribunal invited and received submissions from both the Applicant and from Christine Sapsford, who is a respondent to this case and the owner of the unit above the Applicant’s.
- [6] For the reasons below, I dismiss SCC60’s motion and allow the case to proceed. In making this ruling, I note that this case is currently in Stage 1 – Negotiation and that the Tribunal has not heard evidence and arguments from the parties. I am not deciding whether there is actually a noise nuisance, as the Applicant alleges. That question would be decided by the Member assigned to conduct the hearing in Stage 3 – Tribunal Decision, should the case proceed to that stage.
- [7] With respect to the first ground raised by SCC60, I have reviewed the consent order agreed to by the parties in CAT case No. 2023-00142N¹. In that consent order, the parties agreed that SCC60 would retain an engineer from Aspire Engineering to complete an investigation in relation to the noise complaints, and that SCC60 would pay the costs related thereto. The Applicant and the Intervenor agreed to provide access to their units for the purpose of the investigation, and all parties agreed to cooperate with the investigation and provide relevant information and records in their possession.
- [8] The fact that the parties agreed to resolve the previous case on those terms does not preclude the Applicant from bringing this case now. The consent order issued on October 19, 2023, served as a resolution to the noise issues the Applicant was experiencing up until that date; it does not bar the Applicant from subsequently raising noise nuisance issues that have occurred since that date.
- [9] With respect to the second ground raised by SCC60 regarding jurisdiction, it is correct that the Tribunal does not have jurisdiction to deal with disputes with respect to section 89 and 90. The Tribunal’s jurisdiction is set out under Ontario Regulation 179/17. The Tribunal’s jurisdiction includes disputes “with respect to

¹ *Mishibinijima v. Simcoe Condominium Corporation No. 60 et al.*, 2023 ONCAT 151

subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01.”

[10] Subsection 117 (2) of the Act states that

(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

[11] For a dispute with respect to this section to fall within the Tribunal’s jurisdiction, then, the Applicant must allege, at a minimum, that a **person** is carrying on or permitting an **activity**, and that said activity results in the creation or continuation of a **nuisance**.

[12] Having reviewed the Problem Description provided by the Applicant when he filed this case, I find that the Applicant is making just such an allegation. He alleges that when Christine Sapsford (a **person**) walks around their unit (an **activity**) it results in unreasonable noise in his unit (**nuisance**).

[13] While it is clear from the application and the submission materials that the Applicant believes the condition of the subfloor contributes substantially to this noise and that he has requested a repair, I find that does not necessarily remove this dispute from the Tribunal’s jurisdiction. An Applicant requesting a repair as a remedy does not automatically remove a case from the Tribunal’s jurisdiction.²

[14] The Act prohibits persons from engaging in activities that result in nuisances. There is no requirement that the activity be exclusively responsible for the nuisance or that there be no other contributing factors. Furthermore, the Act does not prohibit only activities that are themselves unreasonable or contrary to the normal intended use of the unit or common elements, but rather any and all activities that result in nuisances.

[15] I find the issues in this case to be very similar to those addressed in another CAT decision: *Bridglall v. York Condominium Corporation No. 202*, 2022 ONCAT 132. In that case, as in this, the applicant alleged that the owners of the unit above hers were engaging in activities that resulted in noise nuisances within her unit. In that case, the Tribunal found that the applicant was experiencing noise nuisances

² *Reany v. Waterloo Standard Condominium Corporation No. 670*, 2023 ONCAT 121, at para. 14.

resulting from the activities in the unit above, even though the noises in the unit above were at a “normal volume to be expected from a family of four children” and that the owners above “have taken reasonable steps to minimize the noise.” The Tribunal went on to note:

[43] Under subsection 1.44(1) of the Act, the Tribunal may make a variety of orders at the conclusion of a hearing, including, in subparagraph 1.44 (1) 1, “An order directing one or more parties to a proceeding to comply with anything for which a person may make an application to the Tribunal”. Under subparagraph 1.44(1) 7, the Tribunal may issue, “An order directing whatever other relief the Tribunal considers fair in the circumstances”.

If this case proceeds to Stage 3 – Tribunal Decision, the Tribunal will decide the case and any appropriate remedies based on the unique facts and arguments presented by the parties.

[16] With respect to the final ground raised by the SCC60 regarding costs, while I am sympathetic to the financial impact that these cases have on the corporation’s owners, the Applicant should not be precluded from bringing a case to resolve the alleged nuisance because litigating the dispute will result in additional costs.

[17] The Applicant and SCC60 parties requested costs related to this motion. Under Rule 48.2 of the Tribunal’s Rules of Practice, the Tribunal may order a party to reimburse another party for legal or other costs directly related to a User’s behaviour if that behaviour was unreasonable, for an improper purpose, or caused an unreasonable delay. I do not find that either party has engaged in such behaviour and decline to make an order for costs.

ORDER

[18] The Tribunal orders that:

1. SCC60’s motion is dismissed and the case can proceed.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: September 18, 2024