

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 11, 2024

CASE: 2024-00437N

Citation: Krepel v. York Region Standard Condominium Corporation No. 1253, 2024 ONCAT 155

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

Member: Ian Darling, Chair

The Applicant,

Josh Krepel

Self-Represented

The Respondent,

York Region Standard Condominium Corporation No. 1253

Represented by Tony Bui, Counsel

Submission Dates: June 14, 2024 to September 10, 2024

MOTION ORDER

- [1] This Motion Order deals with a request for the CAT to order the Respondent to stop a mediation and arbitration process commenced under section 132 (4)¹ of the *Condominium Act, 1998* (the “Act”). It also considers a countermotion by the Respondent to dismiss the case.
- [2] The case relates to a dispute regarding indemnification. The Applicant seeks an order from the Tribunal to remove costs assigned against his unit following incidents where the Applicant is alleged to have violated the Respondent’s Anti-Harassment Rule (dated October 2020).
- [3] The Respondent, through its counsel sought to bring the Applicant into compliance with the Act and its Rules. It has issued compliance letters. It has proposed mediation and arbitration (following the process under section 132 (4) of the Act).

¹ Mediation and arbitration under section 132 (4) of the Act deals with disputes between corporations and owners. This section establishes a process to deal with the many disputes that do not fall within the CAT’s jurisdiction. Section 132 (4.1) states that the process does not apply to disputes where the CAT has jurisdiction.

The corporation also sought to charge back expenses related to its efforts to ensure compliance with the Act and the condominium Rules.

- [4] On July 5, 2024, the Respondent sent a letter to the Applicant proposing arbitration. It indicated that the subject matter of the arbitration related to alleged violations of the corporation's Anti-Harassment Rule.
- [5] The July 5, 2024 letter refers to harassing behaviour by the Applicant. The letter identifies the following issues in dispute:
 - 1. That the Owner has previously violated the Corporation's Harassment Rule by carrying on a course of vexatious conduct and, despite being warned and despite making promises to desist, has and will likely continue to carry on such conduct, which includes:
 - (a) Making spurious complaints to public authorities, including the municipality and local elected officials (over pool operational issues);
 - (b) Making defamatory statements about the Corporation's administrator and manager to local officials and bodies such as Association of Condominium Managers of Ontario;
 - (c) Making spurious complaints to the Condominium Management Regulatory Authority of Ontario ("CMRAO") regarding conduct of annual general meetings and regarding pool or other operational issues, for which the CMRAO has no jurisdiction or authority over;
 - (d) Impersonating officials of the CMRAO in vexatious letters to the Corporation;
 - (e) Circulating anonymous emails to the Corporation's ownership that contain false, defamatory and inflammatory allegations; and
 - (f) Sending snarky, harassing, vexatious emails to management that are also discourteous and disrespectful;
- [6] When the Applicant filed the Application, the Applicant provided compliance letters which describe the behaviour as violating sections 117 (1) and 117 (2) of the Act, as well as the condominium's Rules. The Anti-Harassment Rule was not included in correspondence. It was provided to the Tribunal in response to a request from the Tribunal during the motion process.
- [7] Finally, the Respondent referred to the indemnity provisions in the Respondent's governing documents that established the authority to charge the Applicant for the costs related to seeking compliance and to share any additional costs for the

mediation or arbitration under section 132 (4) of the Act.

- [8] The Applicant brought a preliminary motion requesting that the Tribunal issue an interim order to stop the mediation/arbitration.
- [9] In response to the motion, the Respondent requested that the Tribunal dismiss this case stating that the issues in dispute fall outside of the Tribunal's jurisdiction.
- [10] The Tribunal requested submissions from both parties. I have reviewed the submissions, but this order will only refer to the points relevant to my decision.

Issue 1: Should the CAT dismiss the case?

- [11] The Respondent sought to dismiss the case because the CAT has no legal authority to decide the case. The Tribunal's jurisdiction is outlined in Ontario Regulation 179/17. It states (in part) that the CAT can decide disputes related to:

(c.1) ... a dispute with respect to subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General) and

(d) ... a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:

...

(iii.1) Provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General).

(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.

(iv) Provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a dispute described in this clause.

- [12] The Applicant's position is that the indemnification dispute flows from the Respondent seeking to enforce its Anti-Harassment Rule, which creates provisions that restrict, prohibit or otherwise govern an activity that causes a nuisance to other owners.
- [13] The July 5, 2024 letter states that the Applicant is responsible to indemnify the Respondent for costs incurred in attempting to address compliance with its Anti-Harassment Rule. The focus of this letter and proposed arbitration are to

resolve a dispute related to rule compliance.

- [14] Prior compliance letters also refer to behaviours violating section 117 (2) of the Act, the Rules, and the Anti-Harassment Rule. Section 117 (2) relates to activities that create a nuisance, annoyance or disruption.
- [15] Those letters also refer to section 117 (1) of the Act. This section of the Act refers to dangerous activities or conditions. The July 5, 2024 letter does not explicitly identify the behaviour as violating this section of the Act.
- [16] The case is currently in Stage 1 – Negotiation. I have not received any evidence from the parties. This order does not determine if the Applicant has violated the Act, or provisions of the governing documents that restrict, prohibit or otherwise govern nuisance activities. Further, it does not determine if charges are valid or reasonable.
- [17] The issue for me to decide is whether the case should be dismissed as being outside the CAT's jurisdiction before hearing any evidence on the matter. In determining whether to allow the case to proceed, I have adopted a broad interpretation of the Tribunal's jurisdiction. After reading the submissions, the Respondent's letters to the Applicant, the Anti-Harassment Rule and governing documents, I have determined that it appears that the Tribunal has jurisdiction to hear and decide this application. The July 5, 2024 letter refers to violations of the Anti-Harassment Rule. The rule defines the harassment as activities that unreasonably interfere with other owners.
- [18] I recognize that the nature, severity and impact of the harassment may also be relevant if the case proceeds to Stages 2 or 3 but I do not have any evidence before me to suggest that the behaviour in question is beyond the Tribunal's jurisdiction.
- [19] The Respondent is seeking indemnification for costs incurred in ensuring compliance with an activity that is defined as a nuisance (unreasonable interference), and is prohibited, restricted or otherwise governed by a provision in its governing documents. These fall within the Tribunal's jurisdiction.
- [20] The Respondent also sought to dismiss the case due to allegations that the Applicant had misled the Tribunal and submitted a vexatious application. I understand that there is a complex and contentious relationship between the parties – but the Respondent failed to satisfy the Tribunal that this application was filed for an improper purpose.

Issue 2: Should the CAT issue a preliminary order?

[21] The Applicant requested that the CAT order the Respondent to cease its mediation and arbitration process because the activity that is the cause of the enforcement notice is within the CAT's jurisdiction. The Respondent objected, stating that the CAT lacked the authority to issue orders related to a separate dispute resolution process.

[22] I agree with the Respondent. The CAT does not have jurisdiction to make orders related to other dispute resolution processes outside of the CAT. The CAT has the authority to make orders related to its own processes. If the parties follow the mediation and arbitration process under the Act, the mediator or arbitrator will control that process.

[23] The Applicant's motion is denied.

ORDER

[24] The Tribunal orders the motions dismissed.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: October 11, 2024