

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 27, 2024

CASE: 2024-00221N

Citation: Toronto Standard Condominium Corporation No. 1498 v. Samimi, 2024 ONCAT 193

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

Member: Eleanor White, Member

The Applicant,

Toronto Standard Condominium Corporation No. 1498

Represented by Benjamin J. Rutherford, Counsel

The Respondent,

Mamak Samimi

Represented by Shahryar Mazaheri, Counsel

Hearing: Written Online Hearing June 2, 2024 – September 30, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 1498 ('TSCC 1498') has brought this application to the Condominium Authority Tribunal (the 'Tribunal') because it alleges that the Respondent, Mamak Samimi ('Ms. Samimi'), has created a nuisance and has acted in a manner that has breached certain rules of the corporation and also disrupts the comfort and quiet enjoyment of other residents in violation of the *Condominium Act, 1998* (the 'Act') and TSCC 1498's governing documents.
- [2] Ms. Samimi has been the registered owner of a unit in TSCC 1498 for at least 12 years. TSCC 1498 has brought the application against Ms. Samimi, firstly because of her alleged conduct towards the staff and management of TSCC 1498, which it alleges is in breach of its Rules A03 and A05, which deal with 'nuisance' and 'harassment' respectively. Secondly, the Applicant alleges that Ms. Samimi, who is

a dog owner, openly disregards the amended Rule O16 (entitled the 'Pet Rule'), that has changed the route of ingress and egress of residents when accompanied by their dogs, now disallowing the use of the main entrance on those occasions.

- [3] The Respondent agrees that she does not comply with the Pet Rule and stated her reasons for challenging it. Ms. Samimi also denies that her written or verbal communications with the staff and/or management of TSCC 1498 are harassing in nature but express her frustration with perceived deficiencies in service or responses to her requests. She also counters that she is being harassed by management and the board of TSCC 1498.
- [4] For the reasons set out below, I find that at least from the period of May 2022, until February 2024, the actions of Ms. Samimi, in her written and verbal communications, constitute 'harassment' in violation of Rule A05 (under heading 'Harassment' in the Rules). I acknowledge that Ms. Samimi justifies her actions as legitimate reactions to frustration, arising from challenging problems such as the lack of an adequate cooling system in hot weather and other referenced repair or maintenance issues; however, the language and implied threats, as well as the breadth of dissemination of her communications were indeed indiscreet, disturbing and inappropriate.
- [5] Although I find that the conduct of the Respondent constituted a violation of Rule A05, I do not find in the Applicant's submissions, sufficient applicable evidence of conduct that meets the definition of a 'nuisance, annoyance or disturbance' under section 117(2) of the Act.
- [6] With respect to the amended Pet Rule, the Rule change may well have been unpopular with some pet owners, however the Rule was duly enacted. Ms. Samimi has argued that she finds the new route of ingress and egress to be distressing, unfair and unpleasant for her. I was not offered any evidence of an application to the board for exemption from the new Pet Rule. I find her to be in non-compliance with the Rule.

B. JURISDICTION

- [7] This case is principally about harassment, for the most part directed towards Ms. Bianca Gikondi, the condominium manager, as well as other representatives of the corporation, predominantly through email communication from Ms. Samimi. The corporation is seeking remedies to curtail the activity of Ms. Samimi through this Tribunal, as efforts to resolve the problem through Stage 2 – Mediation and/or Stage 3 – Tribunal Decision, have been rebuffed by Ms. Samimi.

[8] The question of jurisdiction arose because of the Applicant's submission that Ms. Samimi's conduct not only violates specific Rules of the corporation, but also constitutes a 'nuisance, annoyance or disruption' under section 117(2) of the Act and/or under subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17.

[9] The parties were asked for their submissions on jurisdiction which the Applicant provided. The Respondent provided comments on this issue in her closing statement.

[10] Section 117(2) of the Act addresses prohibited activities which may result in a 'nuisance, annoyance or disruption':

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 unit, the common elements or the assets, if any, of the corporation.

[11] The other 'nuisances, annoyances or disruptions' in section 117(2)(b), are prescribed in section 26 of the Ontario Regulation 48/01 as 'smoke', 'vapour', 'odour', 'light' and 'vibration'.

[12] The prescribed nuisances do not include harassment, nor do the allegations made about Ms. Samimi's conduct relate to any of the enumerated issues set out in section 117(2).

[13] The Applicant also relies upon subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17 that broadens the scope of the Tribunal's jurisdiction to include disputes with respect to provisions of a condominium corporation's governing documents (Declaration, By-laws and Rules) 'that prohibit, restrict or otherwise govern *any other* nuisance, annoyance or disruption to an individual in a unit, the common elements...'

[14] The Applicant alleges that Ms. Samimi's verbal and written communications fall within the description of 'nuisance, annoyance or disruption'. Rule A03 which is under the heading in the corporation's Rules of 'Noise and Nuisance', and Rule

A05, under the heading of 'Harassment' read as follows.

A03

All occupants are expected to conduct themselves in a manner befitting responsible living. Occupants shall not create or permit the creation or continuance of any noise, nuisance, odour, hazard or disturbance, or interfere with the rights or enjoyment of another Occupant's use of the Corporation's premises or facilities, or use the common elements or any unit in a manner which, in the opinion of the Board, may, or does, disturb the comfort or quiet enjoyment of the units or common elements by other Occupants or the Corporation's Representatives.

A05

No Occupant shall injure, harass, threaten, annoy or initiate any defamatory, threatening, hateful or discriminatory statement or action or participate in any illegal or harmful conduct toward any Occupant or any of the Corporation's Representatives. Harassment shall consist of any oral 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 restriction, any verbal abuse, insulting comment, joke, gesture, conduct or touching or contrary to any of the grounds of workplace harassment or sexual harassment set out in the Ontario Human Rights Code.

- [15] It is clear that the specific issues in dispute in this case - the alleged harassment - may fall under the jurisdiction of this Tribunal only through subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17. As stated in the Tribunal's decision in *York Condominium Corporation 444 v. Ryan* 2023 ONCAT 81 ('Ryan') a nuisance, annoyance or disruption can include harassment where the evidence warrants such a finding. The case proceeds on that basis.

C. ISSUES & ANALYSIS

- [16] Although the Applicant alleges violations of Rules A03 and A05, the specific activity, consisting of a continuing pattern of harassment predominantly through emailed messages to the Representative(s) of the corporation, is most reasonably assessed on the basis of Rule A05. This Rule specifically disallows any activity that would 'harass, threaten, annoy or initiate any defamatory, threatening, hateful or discriminatory statement or action or participate in any illegal or harmful conduct toward any Occupant or any of the Corporation's Representatives'. It further

defines harassment as consisting of ‘... any oral or written statement, action or behaviour... 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...’.

[17] The language of TSCC 1498’s Rule A03 better befits the activities described in section 117(2) if the Act, involving the more commonly heard issues of ‘nuisance’ disputes. This case, as stated from the beginning, is about harassment, which may or may not be found to be a nuisance under section 1(1)(d)(iii.2) of Ontario Regulation 179/17.

[18] Therefore, the issues to be decided are as follows:

1. Has Ms. Samimi violated TSCC 1498’s Rule A05, and if so, does that behaviour constitute a ‘nuisance, annoyance or disruption’ as per subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17?
2. If the activities of Ms. Samimi have indeed violated TSCC 1498’s Rule A05, what remedy should be ordered?
3. Has Ms. Samimi breached Rule O16 and if so, what remedy should be ordered?
4. Should there be any award of costs?

Issue 1 - Has Ms. Samimi breached TSCC 1498’s A05? If so, does that behaviour constitute a ‘nuisance, annoyance or disruption’ as per subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17?

[19] The Applicant has provided submissions in a witness statement from Ms. Gikondi, including numerous documents, the majority of which are emails written by Ms. Samimi. The statement includes a report of a voicemail received from Ms. Samimi, as well as video evidence pertinent to the alleged activities of harassment. I have reviewed all the documents submitted by the parties but will only refer to those relevant to my decision.

[20] Ms. Gikondi is an employee of Maple Ridge Community Management (MRCM), which is the service provider for condominium management at TSCC 1498. On May 27, 2022, Ms. Samimi wrote to Ms. Gikondi, regarding ‘repair and maintenance’ issues including the garbage chute and the ‘fan coil’. She also met with two board directors, Michael Lopez and Donette Archer, regarding these

issues. In that week, Ms. Gikondi also states that she received a voicemail from Ms. Samimi.

[21] Ms. Gikondi found the content of the voicemail from Ms. Samimi upsetting, and in her witness statement, she recalled the following message: 'the worst property manager ever, should never come to the property and that everyone hated her'. Ms. Gikondi called the corporation's solicitor which resulted in the first of a series of legal letters sent to the Ms. Samimi.

[22] The solicitor's letter of June 8, 2022, advised Ms. Samimi of the pertinent sections of the Act (sections 117 and 119), as well as section 1(1)(a) of the Ontario Health and Safety Act, and the Rules of TSCC 1498 (both A03 and A05). The letter also advised her of Article 3.3 of the TSCC 1498's Declaration which states that:

(a) Without the consent in writing of the Board, no Owner shall have the right of access to those parts of the Common Elements used from time to time for the care, maintenance or operation of the Property or any part thereof as designated by the Board, from time to time. Thus, Ms. Samimi was advised that she is prohibited from entering the condominium manager's office at any time as per that provision.

[23] The solicitor's letter was followed on July 13, 2022, by a letter from the board of TSCC 1498. The letter clarifies the intent of the legal letter, denying that legal action has been initiated against her and clarifying the legal status of the board, as Ms. Samimi referred to the board as 'unelected'. The board asks Ms. Samimi to cease the spreading of misinformation to other occupants and to be more respectful in her discourse.

[24] By Friday, August 26, 2022, the HVAC system for the building failed. The occupants were advised that a rented 'chiller' had been arranged for delivery on August 29th. The response from Ms. Samimi was a source of heat on its own. The email is decorated with multiple colours and font styles and sizes, capitalized, expressing her concerns regarding the anticipation of an uncomfortable few days and ends with a statement that is both potentially insulting and unhelpful in nature – 'People who do not have the time or required care/passion to do this work, should not volunteer for this role, specially with our current poor management on site.'

[25] Ms. Samimi subsequently broadens her list of email recipients to include Ernest Brock, the Senior Property Manager of the neighbouring TSCC 1496, Yadisley Villegas, the Site Administrator for TSCC 1498 and 1496, the president of MRCM and the board of TSCC 1498. She finishes one email with the following: '...I have

gathered overwhelming evidence of Ms. Gikondi's daily failures at her job and I'm ready to go all the way and I MEAN IT WHEN I SAY, ALL THE WAY'.

- [26] Further documents provide additional examples of not only Ms. Samimi's frustration with maintenance issues but also her interaction with the corporation's Representatives.
- [27] The Respondent expanded her list of email recipients regarding her concerns with the Condominium Manager, justifying her involvement of Ms. Gikondi's bosses and co-managers in her communications as a possible means to an end, with the following comment: 'Therefore, copying your boss(es) is only the beginning'.
- [28] Meanwhile, the Applicant directed its solicitor to send another letter regarding an incident involving the breaking of a swinging half-door to the concierge desk. This incident included Ms. Samimi's entrance to the area behind the concierge desk in the front lobby with her dog, resulting in accidental damage to the door. Accompanying commentary regarding this issue, TSCC 1498 directed its solicitor to include a Notice of Mandatory Mediation to the Respondent.
- [29] The Notice of Mediation, pursuant to section 132 of the Act, garnered no response from Ms. Samimi. TSCC 1498 followed up with a Notice of Arbitration in a further letter from its solicitor, dated October 28, 2022, however the arbitration did not occur.
- [30] Another example of Ms. Samimi's conduct involves her interaction with Ms. Yadisley Villegas, the Site Administrator, who reported to Ms. Gikondi that she was confronted in her office by Ms. Samimi, with threats to her job if she did not deliver disparaging messages from Ms. Samimi to Ms. Gikondi.
- [31] As a result of this incident, another solicitor's letter, dated February 7, 2023, was sent to the Respondent, advising her that she must cease and desist her harassing conduct.
- [32] The Respondent contends that TSCC 1498's allegations are 'baseless, exaggerated, and that her actions have been misrepresented by the Applicant'. She states that her messages were either factual or expressed her personal opinions in a private context and were never intended to harm the recipient's reputation.

- [33] After reviewing the evidence and submissions, I find that the activity of Ms. Samimi, through her continued pattern of predominantly emailed communications to the management and board of the condominium, involves statements or actions that are harassing, threatening, or defamatory. The content of the individual emails from Ms. Samimi varies somewhat in tone, but collectively over a period of almost two years, can be characterized as a pattern of harassment.
- [34] Does the activity that violates Rule A05 also constitute a 'nuisance, annoyance or disruption'? I have already found that the prescribed nuisances under section 117(2) of the Act do not include harassment, as informed by section 26 of the Ontario Regulation 48/01. As noted, the only access to a finding that characterizes the Respondent's activities as a 'nuisance, annoyance or disruption' is through subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17, in that the dispute is with respect to the corporation's governing documents, (in this case, Rule A05), and that prohibits, restricts or otherwise governs any other nuisance, annoyance or disruption to an individual in a unit, the common elements or assets, if any, of the corporation.
- [35] The Tribunal's case law has considered the issue of nuisance predominantly under section 117 of the Act. Under the law, nuisance is defined generally as an activity that causes substantial interference, and its effect is unreasonable and incorporates a component of frequency and duration.
- [36] The Applicant has referred to *York Condominium Corporation No. 444 v. Ryan* 2023 ONCAT 81 as being similar to this case, and I agree. This set of circumstances in this case, however, do not involve 'noise' issues, as in Ryan, but consideration of the terms 'annoyance' and 'disruption' may be appropriate due to the nature and content of messaging used by the Respondent.
- [37] Annoyance is defined in the Canadian Oxford Dictionary as an activity causing 'slight anger or mental distress' or that can be seen to 'molest or harass repeatedly' which can appear to be similar to nuisance. Although, it does not require the interference with the use and enjoyment of property. An annoyance may not be as substantial as a nuisance but cannot be merely trivial. It should exceed a normal level of tolerance that may be expected by another person in the same context.
- [38] The finding of 'disruption' is also understood in the same dictionary as an activity that interferes with the normal flow of a system; an activity or state that brings disorder or disturbs the continuity of the same. The evidence of the Applicant

reveals the effect of the actions of Ms. Samimi on the Representatives of the corporation as one of disruption and annoyance.

- [39] I find that the pattern of continuing harassment through the emails sent by the Respondent, not only violates Rule A05 but also constitutes an 'annoyance' and a 'disruption' under subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17.

Issue 2 - As the conduct of Ms. Samimi has been found to violate TSCC 1498's Rule A05 and qualifies as an 'annoyance and a disruption' under subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17, what remedy should be ordered?

- [40] The Applicant has requested an Order requiring Ms. Samimi to comply with Rules A03 and A05 by 'ceasing the verbal and written abuse, including making derogatory, insulting, and/or threatening statements in emails and/or forms submitted to TSCC 1498, to which she has subjected TSCC 1498's manager, Bianca Gikondi, TSCC 1498's personnel and board member'.
- [41] Under subsection 1.44(1)2 of the Act, the Tribunal is empowered to order parties to take or refrain from taking 'a particular action'. Under this subsection, I will direct that Ms. Samimi bring herself into compliance with Rule A05.
- [42] The Respondent sees her actions and the content of her communications as 'factual' and that any breakdown in the relationship with the current manager, Ms. Gikondi, is 'due to Ms. Gikondi's conduct and lack of accountability'. The Respondent sees the forum of correspondence as private and therefore seemingly without constraints.
- [43] As the Respondent fails to recognize the disruptive nature of her many email communications to Ms. Gikondi, other staff and the members of the board of the condominium, I will order Ms. Samimi to cease and desist in all manners of communication, whether verbal or written of the kind that I have found to be an annoyance and a disruption under subsection 1(1)(d)(iii.2) of Ontario Regulation 179/17. The emailed and verbal abuse to which she has subjected Ms. Gikondi, other Representatives of the corporation and the members of the board must cease.

Issue 3 - Has Ms. Samimi breached Pet Rule O16?

- [44] By her own admission, Ms. Samimi has made it clear that she refuses to comply with the new Pet Rule O16, which states that all pets are prohibited from ingress and egress through the main front entrance of the building. If the Respondent is

accompanied by her dog, she must exit from the elevators in the elevator lobby and then proceed to through a hallway to the door leading to the Loading Dock.

- [45] This new Rule was enacted by the board of directors on or about July 24, 2023, in response to alleged complaints from owners or occupants who were either allergic to dogs, or uncomfortable with the number of animals that came through the main entranceway of the building. The Applicant submits that the concerns of the board were consistent with section 58(1)(a) of the Act, to promote the safety, security and welfare of the owners and section 58(1)(b) to prevent unreasonable interference with the use and enjoyment of the common areas.
- [46] Ms. Samimi has offered two reasons for her blatant disregard of the Rule and her continuing use of the front entrance with her dog. Firstly, she argues that the Rule unfairly disregards the interests of long-standing pet owners/occupants of the building who feel they have the right to use all the spaces of the common areas. Secondly, she finds the route is not only less pleasant than the front entrance but is also inconvenient if she wants to access her mail without having to first take her dog back up to her unit. She also finds the route stressful as it is quite narrow and contains numerous turns. I do not accept that these are valid excuses for not complying with the Rule.
- [47] The Respondent has offered no evidence of any valid reason for exemption from the new Rule. The Applicant requests an order to bring Ms. Samimi into compliance with the Rule. I will order that Ms. Samimi forthwith comply with the Pet Rule by ceasing to enter and exit the building with her pet through the main entrance and by entering and exiting the building with her pet via the ground floor from the elevator lobby to the loading dock.

Issue 4 - Should there be any award of costs?

- [48] TSCC 1498, relying on section 1.44(1)4 of the Act, asks that Ms. Samimi pay to TSCC 1498 its costs for this application.
- [49] The Applicant also submits, referencing the CAT Practice Direction: Approach to Ordering Costs Effective: January 1, 2022, that the Tribunal consider the conduct of the Respondent throughout these proceedings. It specifically refers to ongoing activity of harassment through her communications. TSCC 1498 also highlights the failure of the Applicant to participate in the Tribunal's processes up until Stage 3 – Tribunal Decision, her disregard of the lawyer's letters, as well as her lack of

response to the Notices of mandatory Mediation and Arbitration. The Applicant also refers to its Rules with respect to indemnification.

- [50] TSCC 1498 asks that Ms. Samimi pay to TSCC 1498 its costs in the amount of \$12,500, inclusive of disbursements and applicable tax, within thirty (30) days, and that these costs be added to the common expenses payable in respect of Samimi's unit.
- [51] Under Rule 48.1 of the Condominium Authority Tribunal's Rules of Practice, (the 'CAT Rules'), the unsuccessful party in a proceeding may be required to pay the successful party's CAT fees, thus I will order that the Respondent, Ms. Samimi will pay to TSCC 1498, the amount of \$200.
- [52] In the Respondent's affidavit, she states that TSCC 1498 has registered three condominium liens on her unit to secure legal fees related to this dispute. No further details are included.
- [53] The parties have not provided detailed information of costs or if any payments were made by the Respondent in respect of costs already. The Applicant has not differentiated between costs accrued throughout these disputes and those associated with Tribunal proceedings, nor has it provided information on any remittances or on taxes charged. Neither party has provided information regarding any liens registered during this dispute.
- [54] In reviewing the conduct of the Respondent, specifically her disregard for participation in this case until Stage 3 – Tribunal Decision, I am inclined to assign some responsibility of costs. In exercising my discretion on costs, I have determined that the amount will be minimal due to the lack of detail offered by the Applicant on this issue. I will order that Ms. Samimi pay TSCC 1498 an amount of \$1000 plus HST towards its costs for this proceeding. I will order payment within 30 days of the date of this Order.

D. ORDER

[55] The Tribunal Orders that:

1. Ms. Samimi will immediately bring herself into compliance with Rule A05, by ceasing the verbal and written abuse, including making derogatory, insulting, and/or intimidating or threatening statements in emails and/or other forms of

communication made to TSCC 1498, and to all Representatives of the corporation including its managers, personnel and board members.

2. Ms. Samimi will forthwith comply with Rule O16 by immediately ceasing to enter and exit the building when accompanied by her pet, through the main entrance; but instead, will follow the route outlined in the Rule.
3. Ms. Samimi will within 30 days of the date of this Order, pay to TSCC 1498 the following amounts:
 - a. \$200.00 for TSCC 1498's filing fees with the Tribunal
 - b. \$1000 plus HST for a portion of legal costs incurred by TSCC 1498 pursuant to section 1.44(1)4 of the Act for enforcing Ms. Samimi's compliance with the Act and with TSCC 1498's Rules.

Eleanor White

Member, Condominium Authority Tribunal

Released on: December 27, 2024