

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** January 2, 2025

**CASE:** 2023-00482N

**Citation:** Toronto Standard Condominium Corporation No. 2010 v. Johnson, 2025 ONCAT 1

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

**Member:** Roger Bilodeau, Member

**The Applicant,**

Toronto Standard Condominium Corporation No. 2010

Represented by Bharat Kapoor and Angad Singh, Counsel

**The Respondent,**

Andrew Johnson

Self-Represented

**Submission Dates:** September 19, 2024 to December 10, 2024

### **MOTION ORDER**

#### **A. INTRODUCTION**

- [1] This CAT case 2023-00482N closed when the Tribunal issued its decision in this matter on February 14, 2024. Prior to that, the Respondent, Andrew Johnson ("Mr. Johnson") joined the case on October 16, 2023 but did not participate in Stages 1, 2 or 3. At all times during the case, Mr. Johnson received the automated messages sent by the CAT-ODR platform to advise of a party's inactivity and that, failing his participation, the Tribunal would decide the matter in his absence. Mr. Johnson also received the automated messages sent by the CAT-ODR platform when a case moves to a different stage. In addition to the automated messages, there were multiple warnings and follow-ups from the Tribunal at all stages of the case.
- [2] On September 19, 2024, the CAT received a motion from Mr. Johnson to reopen the case based on the fact that he was on medical leave at all relevant times due to emotional and mental distress.

#### **B. BACKGROUND**

- [3] Mr. Johnson stated in his motion that he called the CAT staff and that he left a voicemail on October 18, 2023. Since the CAT had no record of any such voicemail, I therefore requested Mr. Johnson to supply evidence of his phone records in support of his position. Those records, along with those of the CAT, show that there was one call from a masked phone number to the CAT on October 18, 2023.
- [4] Following the above, a member of the CAT staff called Mr. Johnson and also sent him an email on October 30, 2023, advising him that there were messages from the Mediator assigned to Stage 2 – Mediation requiring his attention and response, as well as advising of the consequences of not participating.
- [5] Mr. Johnson's phone records, as well as the CAT records, show that he called the CAT three times on October 30, 2023. As was the case on October 18, 2023, his calls were all made from a masked phone number. On the first call, he did not leave a voicemail message. On the second call, he left a voicemail message indicating that there were issues with his voicemail system. On his third call, he left a voicemail indicating that he was on medical leave and requesting a call back. Due to an oversight by the CAT staff, there was no call back. Following those calls, Mr. Johnson still continued to receive automated messages from the CAT-ODR platform, as well as reminders from the Tribunal, including when this case moved to Stage 3 – Tribunal Decision on November 13, 2023.
- [6] In deciding whether to reopen this case, I indicated to the parties that I would be guided by the factors which I should consider on a request by Mr. Johnson to reopen this case in which he failed to participate, thereby resulting in a decision against him by default. The parties were therefore asked to provide submissions on the following factors:
1. In view of the fact that this case was closed on February 14, 2024, and the motion to reopen was filed by the Respondent on September 19, 2024, whether this is a proper case for the Tribunal to allow a late request to reopen a case, in light of the CAT's Rules of Practice, in particular Rules 2, 4 and 47;
  2. Whether the motion was brought promptly after the Respondent learned of the default judgment;
  3. Whether the Respondent has a plausible excuse or explanation for not having participated in the case;

4. Whether the Respondent has an arguable defence on the merits of the case (without elaborating on the actual merits of the case);
5. The potential prejudice to the Respondent should the motion to reopen the case be dismissed, and the potential prejudice to the Applicant should the motion be allowed; and
6. The effect of any order which the Tribunal might make on the overall integrity of the administration of justice.

- [7] In his submissions in support of the motion to reopen the case, Mr. Johnson emphasized that he had not been in a position to take any steps in this matter until filing his motion on September 19, 2024, due to his medical condition and notes from his doctor that prohibited him from being involved in any matters or situations that would cause him emotional or physical stress.
- [8] For its part, the Applicant, Toronto Standard Condominium Corporation No. 2010 (“TSCC 2010”) opposes the motion to reopen the case. It argues that considerable time has elapsed since this Tribunal’s decision on February 14, 2024, and that notwithstanding his medical condition, Mr. Johnson could have taken steps before now in regard to this matter. In its view, the delay is both excessive and unjustified. TSCC 2010 accordingly submits that reopening the case after such a delay would undermine the procedural integrity of the Tribunal and create a precedent for frivolous motions to reopen long-closed cases.
- [9] TSCC 2010 further submits that none of the medical notes filed by Mr. Johnson explicitly advised him against participating in this case or justify his failure to notify the Tribunal of his circumstances during the proceedings. It also adds that despite multiple communications from the CAT regarding the status of the case, Mr. Johnson did not attempt to engage or seek accommodations at any time.
- [10] In considering the above factors which are set out in the case of *Intact Insurance Company v. Kisel*, 2015 ONCA 205 (CanLII), at paragraph 14, I also reminded the parties that these factors are not rigid rules and that the Tribunal must decide whether, in the particular circumstances of this case, it is just to relieve Mr. Johnson from the consequences of a decision rendered by default, in the absence of his participation. For the purposes of arriving at my decision, I have considered all relevant evidence and submissions filed by the parties.

**C. DECISION**

[11] I have assessed all submissions in this matter and in light of all factors which are applicable to this type of motion, I am not persuaded to reopen this case.

**D. ANALYSIS**

[12] As mentioned above, I acknowledge that Mr. Johnson left two voicemails to the CAT on October 30, 2023, and that due to an oversight, CAT staff did not call him back. I also recognize that he may have attempted to call on October 18, 2023, and that he may have attempted to leave a voicemail, notwithstanding the absence of any such voicemail in the CAT system. In addition, I fully appreciate that Mr. Johnson has been experiencing a medical condition since at least October 2023 which continues to this day to some degree or other.

[13] In my view, none of the medical notes which Mr. Johnson filed in evidence is sufficient to justify his failure (i) to engage with the CAT, (ii) to seek accommodations, or at minimum (iii) to notify the CAT of his circumstances before September 19, 2024, including when the decision was rendered on February 14, 2024. I note in particular the medical note dated June 25, 2024 which states, among other things, that he can only attend to one issue at a time, that he should do so in writing, that he should not be spending more than four hours a week on any given matter and that any deadline for material in writing should be at least two weeks in duration. In my view, all of these conditions could have been met for any type of engagement or contact with the CAT at any point in time.

[14] I also wish to point out that his various medical notes (five in total) were not all filed at the same time and that they were issued at various points in time between October 13, 2023, and December 5, 2024. For example, it was only during the course of making his submissions in late November 2024 that he supplied the medical note dated April 11, 2024. I then specifically asked him on November 27, 2024 to advise if there were any other medical notes since October 13, 2023, and he replied in the negative. Nevertheless, he filed a medical note on December 6, 2024, which is dated December 5, 2024, after the deadline to do so and no doubt as a partial reply to the Applicant's submissions opposing his motion to reopen.

[15] In addition to having been filed without the Tribunal's direction, the medical note of December 5, 2024, is noteworthy in that it purports to be a clarification of the medical note issued on April 11, 2024, to the effect that the physician is writing in December 2024 that he had advised Mr. Johnson in April 2024 against pursuing any matters connected to his condominium corporation because of other ongoing matters. The note of December 5, 2024, is also noteworthy because it is the only

note which specifically refers to matters or issues connected to the condominium corporation. In my view, the medical note of December 5, 2024, is striking in that such a medical note should logically have been filed on or about September 19, 2024 when Mr. Johnson filed his motion to reopen. It is also striking in that, in spite of having been issued on December 5, 2024, Mr. Johnson nevertheless filed his motion to reopen well in advance of that note (i.e. on September 19, 2024). The upshot of these medical notes is that they undermine Mr. Johnson's position that he could not have done anything to at least make the CAT or the Applicant aware of his circumstances before September 19, 2024.

- [16] In sum, I agree with TSCC 2010 that Mr. Johnson's lack of any follow-up after his call to the CAT on October 30, 2023, as well as his inaction during the proceedings, render his excuse for non-participating as insufficient. Given the situation as a whole and in the circumstances of this case, Mr. Johnson should have made additional efforts to communicate with the CAT, directly with the Applicant and/or directly with the Applicant's legal counsel, which he did not. Such an extended lack of follow-up demonstrates a clear lack of diligence on his part and undermines the credibility of his claim of having acted promptly. In addition, filing this motion over seven months after the decision was issued is entirely inconsistent with the requirement to act expeditiously in such matters and reinforces TSCC 2010's position that the Respondent's delay is unjustified and unreasonable.
- [17] In regard to a possible defense on the merits, Mr. Johnson has raised allegations of discrimination and harassment which, while serious, are irrelevant to the substantive issue of whether he violated the Applicant's Rules and other governing documents which prohibit smoking in the units and in the common elements.
- [18] Given that the administration of justice involves balancing interests and factors, such as set out above, I appreciate Mr. Johnson's position that the Tribunal's decision in this matter has caused him financial hardship, as well as emotional and mental stress. I must also balance those factors with the need for and the importance of finality in legal or similar proceedings, especially in a case such as this one where the request to reopen the case has been brought over seven months since the decision was issued and over ten months since Mr. Johnson's last contact with or attempt to contact the CAT.
- [19] Before concluding, I wish to point out that in most circumstances, a motion of this type would have been dealt with more quickly than is now the case. This is mainly due to the time required, which I allowed, for Mr. Johnson to file his evidence,

including the time it took for him to obtain copies of his phone records during the relevant time period. In addition, Mr. Johnson's initial submissions included many segments related to the merits of the actual case and, as a result, I gave him additional time to file revised submissions which were focused solely on the motion to reopen. Finally, Mr. Johnson was unwell during part of the time allotted to file his revised submission and, at his request, I allowed him extra time on that basis. Given the seriousness of the matter at hand, I believe that both parties were granted every opportunity to state their respective case, all of which contributed to extending the hearing of the motion over a longer period.

[20] Based on all of the above and in the exercise of my discretion in the circumstances of this case, I therefore decline to reopen this case.

**E. ORDER**

[21] The motion is dismissed.

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Roger Bilodeau  
Member, Condominium Authority Tribunal

Released on: January 2, 2025