

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 21, 2025

CASE: 2024-00527N

Citation: Dhuruvasangary v. Toronto Standard Condominium Corporation No. 1532,
2025 ONCAT 60

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

Member: Nicole Aylwin, Member

The Applicant,

Thanuja Dhuruvasangary
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1532
Represented by Lazar Ilic, Counsel

MOTION ORDER

[1] The Respondent, Toronto Standard Condominium Corporation No. 1532, has asked that the Tribunal dismiss the application of the Applicant, Thanuja Dhuruvasangary, under Rule 19.1 (d) of the Tribunal's Rules of Practice. Rule 19.1 (d) allows the Condominium Authority Tribunal ("CAT") to dismiss an application where an applicant is using the CAT for an improper purpose. The Respondent submits that the Applicant has filed an identical claim at the Human Rights Tribunal of Ontario ("HRTO") and that the duplicate filing of this application represents an abuse of process.

[2] For the reasons set out below, I dismiss the Respondent's motion.

A. BACKGROUND

[3] The Applicant's application was accepted by the CAT in November 2024. In her application, she identified the issues to be addressed as ones related to the enforcement of the Respondent's parking provisions. In particular, she alleged that the Respondent was failing to enforce several of its parking provisions, resulting in safety and accessibility concerns.

[4] In August 2024, prior to filing this CAT application, the Applicant commenced an

application before the HRTO. In that application, she seeks various relief and makes allegations of harassment and discrimination in relation to the Respondent's alleged failure to properly enforce its parking rules. The Applicant asserts that the failure of the Respondent to enforce its parking rules makes it difficult for her mother, who uses a wheelchair, to access the sidewalks in front of the condominium. She also asserts more generally that the Respondent's failure to enforce its parking rules negatively impacts safety and creates hazards by hindering the access of emergency vehicles and impeding snow removal.

[5] On March 19, 2025, a mediation took place in the HRTO matter. The mediation did not result in resolution of the parties' dispute. To date, none of the requests for various procedural matters raised by the parties have been adjudicated, and no decision has been rendered by the HRTO regarding any of the substantive issues before it.

[6] At the outset of this CAT proceeding, in addition to issues related to the enforcement of the Respondent's parking provisions, the Applicant raised several other claims she wanted the CAT to address. These included allegations that the Respondent has failed to comply with enforcing the *Accessibility for Ontarians with Disabilities Act* ("AODA"), claims that actions of the Respondent as they relate to the parking provisions caused safety issues and led to a breach of s. 117 (1) of the *Condominium Act, 1998* (the "Act"), and issues related to insurance liability, discrimination and harassment, among others. I informed the Applicant of the Tribunal's jurisdiction as set out in the Act under Ontario Regulation 179/17 ("O. Reg. 179/17"), and explained that in this case, the issues that I could decide to relate only to provisions of the declaration, by-laws, or rules of the corporation that prohibit, restrict, or otherwise govern parking and vehicles and those set out in the initial application. I explained that based on the Applicant's original application and the jurisdiction of the Tribunal, the issues that were to be decided in this case were:

1. Has the Respondent failed to enforce the provisions of its governing documents regarding parking?
2. If so, what is the appropriate remedy?
3. Should any costs be awarded?

B. ANALYSIS

[7] The Respondent argues that this application should be dismissed as the Applicant has made identical claims and identical requests for relief at the HRTO. It relies on

Cashin Mortgages Inc. (Verico Cashin Mortgages) v. 2511311 Ontario Ltd. (Mortgages Alliance – Main Street Mortgages), 2024 ONCA 103 (“Cashin”) and submits that this application meets the test for abuse of process, since allowing the application to proceed would lead to multiple proceedings with potentially inconsistent results and subject the Respondent to having to defend both proceedings simultaneously.

- [8] The Applicant argues that the application to this Tribunal does not duplicate the claims made to the HRTO. She asserts that while some of the factual background is overlapping, the issues are different. She claims the HRTO issues involve discrimination, harassment, and disability accommodation, while this Tribunal application addresses whether the Respondent has failed to enforce its parking provisions.
- [9] In determining whether to dismiss this application, I have reviewed all of the cases and submissions provided to me; however, I only refer to those that are relevant to deciding this motion. In making my decision, I have considered several factors including:
1. The parties in the proceeding.
 2. The timing of the respective proceedings including the stages each proceeding is at and the likely completion of the proceedings if allowed to proceed.
 3. The subject matter – do the issues in the proceedings overlap?
 4. Is the CAT proceeding vexatious or abusive? Would a dismissal prejudice one of the parties?

Parties in the proceeding

- [10] The parties named in the HRTO application are various members of the Respondent’s board and its management, the Respondent itself is not named as a party.
- [11] The Applicant asserts that the parties named in the two applications are different and thus the cases should proceed separately.
- [12] The Respondent asserts that the Applicant has named the wrong parties in the HRTO application as the individuals named have no direct relationship to the Applicant and would not be governed, as individuals, by the Human Rights Code other than through their roles as agents of the Respondent. The Respondent

submits that despite the applications naming different parties, it is the Applicant's intention, and has been at all material times, to pursue the Respondent before the HRTO.

- [13] It is not my role to determine the appropriate parties to the HRTO application, only to assess how and if the fact that the parties differ ought to weigh for or against a dismissal in this case.
- [14] Given the facts in this case, that the parties differ is not reason alone to allow the Tribunal application to proceed. However, even if the parties named were identical, this is also not reason enough alone to persuade me to dismiss the motion. If anything, the dispute over party configuration in the HRTO matter suggests, as discussed below, that there are still early procedural matters to be determined in the HRTO application.

The timing of the proceedings

- [15] As noted above, the filing of the HRTO application does pre-date this application and the HRTO case has progressed through a mediation, which did not resolve the dispute. However, also as noted, no procedural matters have yet been determined by the HRTO, and no decisions have been made regarding the substantive issues. It is a matter of speculation as to when the HRTO case will proceed in any meaningful way. This matter has already progressed to the Stage 3 – Tribunal Decision phase and is ready to proceed. Given that the hearing and the release of the CAT decision is likely to be complete in about three months, the timeline of having the key issue of whether the Respondent has failed to enforce its parking and vehicle provisions weighs against a dismissal on the grounds of timing.

Do the issues in the proceedings overlap?

- [16] The issues in the two proceedings do not completely overlap. It is evident that while the issue of enforcement of the Respondent's parking provisions is included in the HRTO application, the range of issues to be considered in that case is significantly wider in scope. Those issues include claims of harassment and discrimination, issues of safety and matters related to insurance liability, and damages, distinct from damages that CAT can provide. On the other hand, the CAT is especially suited to render an effective determination regarding the question of the enforcement of parking provisions, which I have identified as the central issue in dispute in this case and over which s. 1.42 (1) of the Act states that the CAT has an exclusive jurisdiction. The fact that the issues do not completely overlap, and that the enforcement of parking provisions is fully within the

jurisdiction of the Tribunal weighs against a dismissal.

Is the Tribunal proceeding vexatious or abusive? Would the dismissal prejudice one of the parties?

- [17] The Respondent submits that the mere filing of this case by the Applicant without a clear explanation as to why a second proceeding was commenced and/or needs to exist is evidence of abusive of process. The Respondent argues that the Applicant has repeatedly made requests to the HRTO that cite the same portion of the declaration and rules cited in this CAT application and has failed to provide an explanation for why she has pursued an application with the CAT without amending her HRTO application. It takes the position that allowing both applications to proceed will force it to defend two identical applications simultaneously.
- [18] In her response to the Respondent's motion, the Applicant does provide some explanation for the two applications. She argues that she has legitimate reasons to seek relief from both the CAT and the HRTO as each offers remedies the other cannot and that the issues do not fully overlap. She submits that the CAT application addresses the enforcement of governing documents, while the HRTO application address issues of whether the Respondent engaged in discrimination or harassment in relation to its enforcement (or non-enforcement) of its parking provisions.
- [19] As noted in *Cashin*, the party who has made the motion for a stay or dismissal based on abuse of process, must demonstrate that the continuation of the action would cause it substantial prejudice or injustice (beyond inconvenience and expense) because it would be oppressive or vexatious, or would otherwise be an abuse of the process. I don't find in this instance that the Respondent has met this high threshold. The mere filing of a Tribunal case to seek enforcement of the Respondent's governing documents after the filing of the HRTO case is not in and of itself vexatious, and as has already been noted, each forum offers different relief and while the factual background for the two claims may overlap with some commonality of issues, there is not a complete overlap.

[20] I am also not convinced that the Respondent will suffer any prejudice if the case proceeds. The key issue in this case is whether the Respondent has failed to enforce the provisions in its governing documents related to parking and vehicles. A dismissal of this case would allow the parties' dispute and uncertainty, as it pertains to whether there has been proper enforcement, to continue without resolution until the HRTO case is completed, which is likely to be significantly later than the completion of the proceeding in this Tribunal. This is not to the benefit of either party. To the contrary, both may suffer prejudice by allowing an avoidable delay in resolution of this question which, as noted, the Tribunal is exclusively authorized and ideally suited to answer.

[21] When balancing all the factors, I dismiss the Respondent's motion to dismiss this case.

C. ORDER

[22] The motion to dismiss is denied.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: April 21, 2025