

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 18, 2026

CASE: 2025-00123N

Citation: Pilgrim v. Emberley, 2026 ONCAT 28

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

Member: Anne Gottlieb, Member

The Applicant,

Chaslene Pilgrim

Self-Represented

The Respondent,

Michael Emberley

Represented by Varun Vashisht, Counsel

The Intervenor

Metropolitan Toronto Condominium Corporation No. 1355

Represented by Nasrudin Mumin, Counsel

Hearing: Written Online Hearing – July 21, 2025 to January 28, 2026

Video Recorded Hearing –December 3, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] This dispute arises from allegations of noise between two units. The Applicant, Chaslene Pilgrim, states that there are “late night disturbances” from the unit above, which is owned by the Respondent, Michael Emberley. She maintains that the noise interferes with her quiet enjoyment which is contrary to the governing documents of the Intervenor, Metropolitan Toronto Condominium Corporation No. 1355 (“MTCC 1355”), and the Toronto Municipal Code Chapter 591, which restricts noise during nighttime hours.
- [2] Ms. Pilgrim seeks an order that Mr. Emberley cease the activity causing the nuisance which is a breach of condominium rules. She also seeks financial compensation in the amount of \$8,000 for sleep disruption and stress, impact on well-being, loss of employment and her time preparing this case. This sum

includes compensation of \$339 including HST for purported fees paid to a law firm for consultation and the amount she paid as filing fees to the Tribunal.

- [3] For the reasons set out below, I find that Ms. Pilgrim has not proven that there is an activity carried out by Mr. Emberley in the unit above that results in unreasonable noise that is a nuisance, annoyance or disruption that would breach the *Condominium Act, 1998* (the “Act”) or MTCC 1355’s governing documents. Ms. Pilgrim has not been successful before this Tribunal and therefore an award of her costs and filing fees are denied.
- [4] Mr. Emberley has asked for an order to compensate him for his legal costs in defending this case. For reasons outlined below, I award him \$3,500 to be paid by Ms. Pilgrim, pursuant to s. 1.44 (1) (4) of the Act. MTCC 1355 has also asked for an order of costs for the condominium corporation’s legal costs in this case. I award \$2,000 to MTCC 1355 pursuant to the Act.

B. BACKGROUND

- [5] MTCC 1355 is comprised of twenty-one units. Mr. Emberley has resided in his unit for twenty-three years. There is no evidence before me of complaints from other units regarding noise activity by Mr. Emberley that would be considered a nuisance or violation of the condominium’s rules.
- [6] Ms. Pilgrim moved into her unit in 2017 and sought to introduce evidence of noise commencing from 2017 onwards. Those earlier incidents were resolved between Ms. Pilgrim and Mr. Emberley with assistance from MTCC 1355.
- [7] As part of the resolution of the prior noise issues, the parties agreed to communicate directly (send text messages) if a new issue arose. There was no evidence of noise complaints for two years. Evidence submitted beyond a two-year time limitation from the time of filing of this case with the Tribunal was allowed for background context only.¹

C. ISSUES & ANALYSIS

- [8] The issues to be decided in this case are:

1. Is Mr. Emberley carrying on an activity in his unit that results in an

¹ Ms. Pilgrim cited the case of *Mishibinijima v. Simcoe Condominium Corporation No. 60 et al.*, 2023 ONCAT 139 (Motion Order of October 2, 2023) to support the proposition that ongoing instances of nuisance are treated as continuing wrongs. In the case before me, there is no evidence of any reported noise in intervening years.

unreasonable noise that is a nuisance in violation of the Act and MTCC 1355's rules?

2. What remedy, if any, or costs award is appropriate in this case?

- [9] Ms. Pilgrim testified that she experienced noise "like a running a vacuum cleaner over my head 10 hours a day". This she claims is persistent and prolonged and continues for hours. She testified that she is disturbed by noise from the unit above, owned by Mr. Emberley, particularly in the evening. She said that she has suffered from disrupted sleep, an inability to concentrate resulting in job loss, and chronic stress.
- [10] More than 40 exhibits were submitted by Ms. Pilgrim, of correspondence and emails to and from MTCC 1355 regarding complaints in prior years. There are also copies of text messages to Mr. Emberley, relating to complaints of noise within the last two years. These are angry texts full of profane language sent from Ms. Pilgrim to Mr. Emberley, alleging noise on August 11, 2024, and October 10, 2024. The former text was sent at 2:50 a.m. There is no independent verification of these incidents. There is no evidence of communication sent to MTCC 1355 regarding these alleged disturbances.
- [11] MTCC 1355 submitted into evidence, correspondence to Ms. Pilgrim in previous years, outlining the protocol and steps for reporting noise. The process includes contacting management contemporaneously, so that any alleged noise can be assessed and verified. This procedure is not denied by Ms. Pilgrim. In neither of the two alleged 2024 incidents was a board member contacted to verify the allegations. There were no recordings made of the sounds, that Ms. Pilgrim claims are continuous. There are no emails reporting incidents of noise sent to management by Ms. Pilgrim, as there were in years prior. Ms. Pilgrim did not keep a noise log. She filed an application with the Tribunal because she felt this was the option available to her. This was based on one suggestion made to her by MTCC 1355 in correspondence dated December 5, 2022 (the other suggestion being to make alterations to soundproof her unit).
- [12] Mr. Emberley testified that he had made several accommodations to address the prior noise complaints from Ms. Pilgrim and that there were no complaints of noise in over two years (prior to August 2024). He says he works with headphones on a computer and uses a mouse. The accommodations he made included installing floor mats; replacing furniture; using a quiet chair for computer work; and adjusting daily and work routines. His evidence was that these accommodations were implemented at his own cost, based on recommendations by MTCC 1355. He testified that he continues to maintain this quiet standard. He testified that he

stopped working at nights in his home office and hasn't done so since May 2022. I find his testimony credible.

- [13] Gabriel Hauser was called as a witness for the Respondent. Mr. Hauser was the neighbouring unit owner who previously shared the boundary wall with the Respondent's unit from 2014 until he moved out in November 2025. He said that he never experienced any unreasonable noise, nuisance, or disturbance originating from the Respondent's unit at any time, whether during the day or at night.
- [14] Christine Emberley, the Respondent's sister, testified about one specific occasion when she was visiting her brother. He had four friends over, and they were all enjoying food and were playing a board game. She states that the Ms. Pilgrim came to the door yelling that they were making too much noise. Ms. Emberley testifies that in that instance, there was no correlation to the activity in the unit and the complaint by Ms. Pilgrim that evening. She said it was 8 p.m. and that there was no loud noise from the unit, more than conversation and some background music.
- [15] Amanda Dwyer, a board member for MTCC 1355 since 2010, stated that she had previously told Ms. Pilgrim to contact her when alleged noise is occurring so that she can attend the unit to confirm the existence of noise. She stated that Ms. Pilgrim did not contact MTCC 1355 to make any report of the 2024 alleged incidents of noise. She testified that no recent noise has been verified by the corporation.
- [16] Subsection 117 (2) of the Act states as follows:
- 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 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 in a unit, the common elements or the assets, if any, of the corporation.
- [17] Rule 2 of the MTCC 1355 Rules ("Quiet Enjoyment Rules") establishes that:
- a) Owners and occupants shall not create or permit the creation or continuation of any noise or nuisance that disturbs the comfort or quiet enjoyment of others; and

b) No noise shall be transmitted from one unit to another, and if the Board determines that noise constitutes an annoyance or nuisance, the responsible owner must take steps to abate it to the Board's satisfaction.

- [18] In this case there is no corroborating evidence for the Tribunal to assess the nature or duration of the alleged noise. Although I recognize that independent verification by another person might be difficult in the middle of the night, Ms. Pilgrim did not keep a noise log and did not record any of the sounds she heard, as she was advised to do in correspondence from MTCC 1355 on March 13, 2018. She did not complain to management or the board. This contrasts with prior years where there were multiple communications regarding noise complaints to and from Ms. Pilgrim and MTCC 1355. In addition, I only have a text record relating to two incidents. That is not sufficient for a finding of nuisance.
- [19] Ms. Pilgrim referred me to several Tribunal decisions in support of her case. I have considered these. Generally, what can be inferred from Tribunal cases is that objective evidence, beyond solely subjective complaints, may be necessary for the Tribunal to find that the noise complained of is unreasonable and causes a nuisance. Even if I accept the evidence of the text messages from Ms. Pilgrim at face value, two incidents of noise do not constitute a nuisance.
- [20] Ms. Pilgrim testifies that she hears noise, but she has not demonstrated that the noise is emanating from Mr. Emberley's unit and she has not provided any evidence of duration or frequency of any noise. I have nothing before me to conclude that what Ms. Pilgrim hears is related to activity by Mr. Emberley or that he is violating MTCC 1355 Quiet Enjoyment Rules. I find that Ms. Pilgrim has not proved that Mr. Emberley has created an unreasonable noise that constitutes a nuisance per s. 117 (2) of the Act or MTCC 1355's governing documents.
- [21] I find that MTCC 1355 implemented a protocol for dealing with noise disturbances. That protocol provides steps to be initially taken by staff and/or the board. The protocol also provides steps when MTCC 1355 will escalate enforcement. Based on the testimony of Ms. Dwyer, and the lack of evidence of written noise complaints to MTCC 1355, I find that Ms. Pilgrim did not inform MTCC 1355 about the noise incidents in 2024.

What remedy, if any, or costs award is appropriate in this case?

- [22] I find that there is no unreasonable noise that constitutes a nuisance emanating from the unit of Mr. Emberley and I make no order for the remedies sought by Ms. Pilgrim. She has been unsuccessful and therefore I make no damages or cost award in her favour.

[23] Counsel for Mr. Emberley has submitted a bill of costs, as did counsel for MTCC 1355. The Tribunal's "Practice Direction: Approach to Ordering Costs" provides guidance regarding the awarding of costs. Among the factors to be considered are: whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; the indemnification provisions in a corporation's governing documents and whether the parties attempted to resolve the issues in dispute before the CAT case was filed.

[24] Subsection 1.44 (1) 4 of the Act, states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Subsection 1.44 (2) of the Act states that an order for costs "shall be determined in accordance with the rules of the Tribunal". The cost-related rules of the Tribunal's Rules of Practice are as follows:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose

[25] I find that an award of legal costs is warranted. There is no evidence before me of any efforts made by Ms. Pilgrim to resolve her more recent complaints directly with Mr. Emberley or make them known to MTCC 1355. I find that Ms. Pilgrim put Mr. Emberley to great expense to defend this application and the allegations against him. As noted above, Ms. Pilgrim provided no evidence to corroborate the allegations.

[26] The bill of costs submitted for Mr. Emberley's legal fees are \$17,620.66. In the context of the issues before me, this seems disproportionate. This is also a high amount in contrast to the bill of costs of \$8,437.15 submitted by counsel for MTCC 1355. I have reviewed the legal fees submitted by MTCC 1355 in this proceeding and I find them to be generally reasonable and proportionate to the complexity of this case. I will use them as a benchmark for assessing the costs to be awarded to both MTCC 1355 and Mr. Emberley.

[27] I must consider what is fair, reasonable and proportionate in the circumstances.

This is Ms. Pilgrim's first appearance before this Tribunal. She is a self-represented party. She participated fully in this hearing and did not delay the proceedings. She was respectful of the process. On the other hand, it is not appropriate in this case that other unit owners be required to contribute to the full amount of the legal costs incurred by MTCC 1355. It is also not appropriate to require Mr. Emberley to bear the full cost of defending against this application when there was little evidence to support the claims and Ms. Pilgrim was not successful.

[28] Given the legal fees in this case from both Mr. Emberley and MTCC 1355, I will award MTCC 1355 the sum of \$2,000 towards its legal fees. Since much of the burden of defending this case came from Mr. Emberley, I will award him \$3,500 in costs.

D. ORDER

[29] The Tribunal orders that:

1. This application is dismissed.
2. Pursuant to s. 1.44 (1) 4 of the Act, and within 60 days of the date of this decision, Ms. Pilgrim shall pay Mr. Emberley's costs in the amount of \$3,500.
3. Pursuant to s. 1.44 (1) 4 of the Act, and within 90 days of the date of this decision, Ms. Pilgrim shall pay MTCC 1355's costs in the amount of \$2,000.

Anne Gottlieb
Member, Condominium Authority Tribunal

Released on: February 18, 2026