

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 1, 2021

CASE: 2020-00355N

Citation: Middlesex Vacant Land Condominium Corporation No. 605 v. Cui, 2021 ONCAT 91

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

Member: Maureen Carter-Whitney, Member

The Applicant,

Middlesex Vacant Land Condominium Corporation No. 605
Represented by Kristi M. Sargeant-Kerr, Counsel

The Respondent,

Weixiu Cui
Represented by Barrington Lue Sang, Paralegal / Self-Represented

Hearing: Written Online Hearing – December 24, 2020 to September 10, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case relates to the enforcement of provisions of the declaration, by-laws or rules of a corporation that prohibit, restrict, or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.
- [2] The Applicant, Middlesex Vacant Land Condominium Corporation No. 605 (“MVLCC 605”) asserts that the Respondent, Weixui Cui, also known as Michelle Cui, who is a unit owner in MVLCC 605, is in breach of MVLCC 605’s governing documents. The Respondent, who purchased her unit in August 2019, lives there with her two large dogs; in October 2019, MVLCC 605 began to receive complaints about the behaviour of those dogs. MVLCC 605 alleges that the dogs bark excessively while in the Respondent’s unit, the Respondent is unable to keep the dogs under her complete control while on the common elements, and the Respondent does not properly clean up pet excrement on the common elements.
- [3] MVLCC 605 asks the Tribunal to: find that the Respondent is in breach of its governing documents; deem the Respondent’s two dogs to be a nuisance under its governing documents; order that they be removed permanently from the Respondent’s unit; and find that it is entitled to claim the costs of enforcing compliance with its governing documents against the Respondent. The Respondent disputes the Applicant’s position, denying the allegations regarding

her dogs and stating that she is not in breach of the governing documents.

- [4] For the reasons set out below, I find that the Respondent is in breach of section 4.10 of the Declaration of MVLCC 605 (“Declaration”) and MVLCC 605 Rules (“Rules”) E(1) and E(5). Under subparagraph 1.44(1)2 of the Act, she is ordered to remove her dogs permanently from the premises within 30 days of the date of this order. I further order the Respondent to pay costs to MVLCC 605 in the amount of \$8,273.56.

B. INTRODUCTION

- [5] On January 8, 2021, the Respondent contacted the Tribunal staff to request a two-week adjournment in this matter, stating that she did not understand the questions being asked of her due to personal reasons, and because she needed to find a lawyer and required help to log on to the Tribunal online dispute resolution (“CAT-ODR”) system. On January 11, after receiving submissions from the parties, I granted the Respondent’s request and adjourned the hearing until January 25. The hearing resumed on that date, but the Respondent did not participate in providing evidence or submissions according to the hearing schedule.
- [6] On March 18, 2021, the Respondent sent a message stating that, due to personal reasons, she did not log on to the CAT-ODR system until March 17, 2021. She then made a request to provide evidence in the hearing. The Respondent provided personal information in support of her request. I have made an order to protect the confidentiality of this personal information, pursuant to Rule 19.4 of the CAT’s Rules of Practice.
- [7] On April 19, 2021, after reviewing the documentation provided by the Respondent and hearing submissions from the parties, I allowed the Respondent another opportunity to participate in the hearing. In reaching my decision, I noted that Rule 44 of the Tribunal’s Rules of Practice allows the Tribunal to reopen a case if the case was closed after a party failed to appear or participate in all or part of a case. Rule 44 did not apply to this case because it had not yet closed. However, given that the Rules contemplate the potential for a reopening where a party has failed to participate, I found it would be unfair not to restart the case and allow the Respondent to participate in the circumstances.
- [8] On April 20, 2021, the Respondent stated that she intended to hire a representative. I directed her to provide that individual with access to the CAT-ODR system by Thursday, April 22 so that it would not delay the proceedings. On April 30, 2021, I received a notification through the CAT-ODR system that Barrington Lue Sang, a paralegal, had been named the Respondent’s representative. However, I then heard nothing further until May 13, 2021, when Mr. Lue Sang made a request to amend the witness statements that had previously been submitted by the Respondent to correspond to the Tribunal’s requirements. After receiving submissions from the parties, I granted that request on May 18, 2021, but noted that the Respondent had demonstrated an unacceptable pattern

of not respecting instructions and deadlines, and that no further requests for extensions of time by the Respondent would be granted, except in extraordinary circumstances.

- [9] Once represented, the Respondent continued to miss deadlines relating to providing cross-examination questions, objections to cross-examination questions, and closing submissions. The Respondent used the CAT-ODR system to upload documents other than those that were specifically requested during Document events. Documents uploaded by the Respondent that were not provided in accordance with the schedule were not admitted into evidence and were not marked as exhibits. The Respondent did not submit any cross-examination questions for the Applicant's witnesses during the prescribed timeframe, nor did she provide responses from her witnesses to the cross-examination questions posed by the Applicant according to the schedule.
- [10] After the deadline for closing submissions had passed, the Respondent stated that her legal representative had not provided submissions on her behalf as she expected and that she was no longer represented. As a result of these unexpected circumstances, I allowed the Respondent to provide late closing submissions and, consequently, allowed the Applicant to provide reply submissions. I note that the Respondent's closing submissions were mixed with evidence that was not properly before me and I have disregarded that evidence.

C. ISSUES & ANALYSIS

Issue 1: Is the Respondent in breach of MVLCC 605's governing documents?

- [11] The Applicant submits that the Respondent is in breach of MVLCC 605's Declaration and Rules relating to pets and animals, due to the behaviour of her dogs.
- [12] The Respondent submits that her dogs have not exhibited the behaviour alleged and that she is not in breach of the governing documents. She also submits that her dogs do not bark more than other dogs in the condominium complex and that she has been targeted for enforcement of the pet provisions for some reason other than her dogs' behaviour, stating that the Applicant has not taken action against other unit owners whose dogs bark. She submits that she has been targeted because she is Asian and her spoken English is not perfect.
- [13] The Applicant provided affirmed witness statements from multiple residents of MVLCC 605, which provided evidence that:
- the Respondent has allowed her Shepherd dogs to run off-leash on the common elements;
 - she has lost control of the dogs and had to chase them when they ran away from her;
 - the dogs have charged towards other dogs on more than one occasion;

- the dogs have been kept in the Respondent's garage (attached to her unit) where they bark and howl loudly, excessively and continuously for extended periods of time, for several hours at a time and for as long as 12 hours on occasion;
- the barking has caused disturbance to the Respondent's neighbours, which is described by one neighbour as offensive and which negatively affects another neighbour's ability to sleep, work, have solitude, and spend time with friends in his home; and
- complaints have been received about the Respondent not cleaning up after her dogs when they defecate on the common elements.

[14] The Respondent disputed the Applicant's evidence and provided evidence that her dogs do not bark excessively, that she has not lost control of her dogs or let them off leash to run loose, and that she always carries bags and cleans up after her dogs when they defecate. The Respondent acknowledged that the dogs weigh 170 lbs and 100 lbs respectively, but described them as calm, gentle, and playful with smaller dogs. She disagreed with the allegations that her dogs are disturbing others, noting that other dogs in the condominium bark occasionally and that it is natural for dogs to bark. The Respondent also provided evidence from several other residents of MVLCC 605 stating that they have not heard the dogs barking or had other problems with them, that they have seen the Respondent walking the dogs on a leash, and that she carries bags and picks up after her dogs when they defecate. The Respondent provided evidence from her cleaner that they have never heard the dogs barking while waiting outside the home, nor seen them in the garage. She provided further evidence from a friend who visited the Respondent on one occasion, did not hear her dogs barking while waiting for the Respondent to arrive, and found the dogs to be friendly despite being nervous because of their size.

[15] Having assessed all of the evidence, I have given greater weight to the evidence of the Applicant's witnesses, whose evidence was more detailed than that of the Respondent's witnesses, addressed specific incidents involving the Respondent's dogs, and provided specific dates and times in relation to the incidents. For example, one witness provided detailed records of the dates and times during which he had been disturbed by the dogs' barking over a two-month time frame. In contrast, most of the Respondent's witnesses gave brief, general statements about the dogs that were lacking in detail, sometimes stating only that they had no issues with the dogs.

[16] Having weighed the evidence, I find that evidence of the Applicant's witnesses was credible, reliable, and consistent. I find it to be more persuasive overall than the evidence tendered by the Respondent. While it may be the case that some of the Respondent's neighbours do not have concerns about her dogs, I find that the evidence of the Applicant's witnesses establishes that the Respondent has at times not controlled her dogs while walking them on the common elements, has

allowed them off leash, and has at times not cleaned up after them when they defecated. I also find that the Applicant's evidence establishes that the dogs have barked excessively for extended periods, causing disturbance to other residents of the condominium. I find that there is no evidence to support the Respondent's allegation that she has been targeted based on either her ethnicity or her proficiency in English.

[17] I now turn to consider whether the Respondent is in breach of the Applicant's governing documents, noting that Ontario Regulation 179/17 (O. Reg. 179/17) to the *Condominium Act, 1998* ("Act"), at subparagraph 1(1)(d)(i), gives the Tribunal jurisdiction over disputes with respect to provisions of the declaration, by-laws or rules of a condominium corporation that prohibit, restrict, or otherwise govern pets or other animals in a unit, the common elements, or assets of the corporation.

[18] The Applicant referred to a number of provisions in the Declaration and Rules to establish that the Respondent had breached them. Some of these provisions generally address a prohibition on activities on the common elements that are likely to cause injury or damage, or unreasonably interfere with the use and enjoyment by other owners of their respective units or the condominium property, and do not govern pets specifically. I find that the governing document provisions that pertain to this case are section 4.10 of MVLCC 605's Declaration, and Rules E(1), E(2) and E(5), which specifically govern pets.

[19] Those provisions state as follows:

Declaration, Section 4.10 Animals

No animals, livestock, fowl, reptile, domestic or exotic pets shall be kept in any Unit or allowed on any part of the common elements except as provided for in this rule. No more than two domestic cats may be kept in any Unit without written consent of the Board. No pit-bull terrier or any other species of dog or any specific animal, which in the opinion of the Board is vicious or is disturbing other owners may be kept in the Unit or in any part of the common areas. Any dog brought onto the common areas, other than the portion of the common area that the owner exclusive use of, shall be kept on a leash & the owner shall forthwith remove any feces dropped by such animal on the common area. No animal shall be permitted to run at large on either the common elements or the Units.

Rule E. Pets/Animals

E(1) Whenever present on the exterior areas of any Unit or on the common elements, an animal or pet shall be attended by a Unit Owner or occupant and shall be restrained or on a leash. Any excreta of any animal deposited on the Common Elements or the exterior area of any Unit shall be immediately removed and disposed of by the person having control of that animal.

E(2) No animal, which is deemed by the Board or the property manager, in their absolute discretion, to be a nuisance shall be kept by any owner in any Unit.

Such shall, within two (2) weeks of receipt of a written notice from the Board requesting the removal of such animal, permanently remove such animal from the Unit.

E(5) No animal will be allowed to engage in any conduct that may unreasonably disturb, annoy or threaten the safety of another Owner, his guests, or another pet. Permission to keep and maintain a pet in a Dwelling may be revoked by the Corporation if the pet becomes unreasonably noisy, menacing or obnoxious to other Owners or their guests or interferes with the quiet enjoyment of any other Owner. In the event a problem occurs under this provision, the Owner shall be given written notice from the Corporation to correct the problem immediately, failing which, the Owner shall be given a further written notice from the Board ordering the permanent removal of the pet from the Development within fourteen (14) days of such notice. All expenses incurred by the Corporation in the process of enforcement of this provision including any legal or collection charges is recoverable from the Owner in the same manner as other common expense assessments.

[20] I note that the Respondent does not challenge the reasonableness of the relevant provisions of the Rules.

[21] Based on my findings about the behaviour of the Respondents and her dogs, I find that she has breached the MVLCC 605 governing document provisions relating to pets. Specifically, I find that the Respondent has breached:

- section 4.10 of the Declaration because she has allowed her dogs to disturb other owners while they have been in her unit and while in the common areas, allowed her dogs to run at large without being kept on a leash in the common areas, and not removed their feces;
- Rule E(1) because she has not kept her dogs on a leash and not removed their feces from the common elements; and
- Rule E(5) because she has allowed her dogs to bark excessively for extended periods of time, permitted her dogs to threaten the safety of other pets in the common elements, and allowed her dogs to be unreasonably noisy.

Issue 2: Should the Tribunal order that the Respondent's dogs be permanently removed from her unit, pursuant to subparagraph 1.44(1)2 of the Act and MVLCC 605's governing documents?

[22] The Applicant submits that it took appropriate steps to enforce the pet provisions of its governing documents and that the Respondent's dogs should be permanently removed from her unit.

[23] The Respondent submits that it is unfair and excessive to require that she remove her dogs. She further submits that Victoria Phillips, the senior condominium

manager for MVLCC 605, advised her nine days before the CAT application was filed that the matter regarding her dogs was closed. I note that the Applicant submits that no such communication occurred and that there is no evidence before me to establish that it did. The Respondent states that she has already moved the dogs out of her unit. Again, there is no evidence before me establishing that this has occurred.

- [24] Rule E(2) gives the Board or manager discretion to deem an animal to be a nuisance and require an owner to permanently remove that animal from their unit, with two weeks' written notice. Rule E(5) also provides that, where a problem with an animal occurs, the owner shall be given written notice to correct the problem immediately and, if the problem is not corrected, the Board shall give the owner further written notice to order the permanent removal of the pet within fourteen days.
- [25] Ms. Phillips provided evidence of the steps that the Applicant took to enforce the pet provisions of its governing documents. She stated that notice letters were sent to the Respondent regarding her dogs' behaviour and her non-compliance with the pet and other provisions on October 31, 2019 and January 16, 2020, but the Applicant continued to receive complaints during this time. MVLCC 605's board required that a legal letter be sent. This letter from the Applicant's counsel, dated March 3, 2020, stated that the board required that the barking of the dogs be significantly reduced or, if that was not possible, that the dogs be removed from the unit on or before March 17, 2020; the letter also required that all pet excrement be picked up immediately on the common elements. Ms. Phillips stated that the dogs' behaviour in breach of the governing documents continued following the March 2020 letter. The Respondent's pattern of non-compliance continued. On August 21, 2020, counsel sent a further letter, requiring that the Respondent permanently remove the dogs from her unit by September 4, 2020. This letter noted that the Applicant continued to try and resolve this matter between March and August 2020, making several unsuccessful attempts to discuss these issues with the Respondent. In response to the August 2020 letter, the Respondent denied that she had broken any of the pet-related provisions of the governing documents. Therefore, the Applicant made an application to the Tribunal.
- [26] Subsection 17(3) of the Act provides that a condominium corporation has a duty to take all reasonable steps to ensure that the owners and occupiers of the units comply with the Act, the condominium's declaration, and its by-laws and rules. In *Muskoka Condominium Corporation No. 39 v. Kreuzweiser*,¹ Justice Wood held, that the court should show great deference when asked by a condominium corporation to enforce its governing documents, and that it is not for the court to substitute its view of what is reasonable for that of the board; if the board has acted reasonably and not capriciously it is important that the court support the

¹ [2010] O.J. No. 1720, 2010 ONSC 2463, (Ont. S.C.J.) para. 9.

board's decision.

[27] In *York Condominium Corporation No. 26 v. Ramadani* (“*Ramadani*”),² Justice Strathy stated “that unless the corporation takes reasonable steps to enforce its rules, in a reasonable manner, chaos will result. Owners and occupiers are entitled to expect that others will observe the rules and that if they fail to do so, the corporation will take measures to enforce the rules.” In *Ramadani*, Justice Strathy found that it was reasonable to require that an owner’s dog be permanently removed from their unit because its behaviour violated the condominium’s rules and the owner had not taken action to address that behaviour. Justice Strathy noted, at paragraph 65, that:

removing a dog from a family is a serious matter. People become understandably attached to their pets. However, people living in a condominium are required to conduct themselves in a manner that is considerate of the interests of their fellow owners and neighbours. That is part of the bargain one makes on becoming a unit owner. The respondent has indicated that she is not prepared to honour that bargain. The result, unfortunately, is that she will have to find another home for her dog.

[28] As this Tribunal recently stated in another case relating to pet provisions in governing documents, *Peel Condominium Corporation No. 96 v. Psofimis* (“*Psofimis*”),³ these cases affirm that

it is the nature of condominium living that, in return for the advantages gained through common ownership of certain elements, some degree of control over what can and cannot be done is relinquished; and, that both enforcement of the rules and compliance with the rules are equally important to ensuring orderly condominium communities.

[29] I find that the Rules allow the Applicant to take action to have the Respondent’s dogs permanently removed from her unit, and that the Applicant has followed the process set out in the Rules to do so. I have been provided with no evidence or submissions that the pet provisions in the Applicant’s governing documents are not reasonable. Having reviewed those provisions, I find that they are reasonable and are owed deference.

[30] As the Court recognized in *Ramadani*, it is a serious matter to require that the Respondent’s dogs be removed but it is also a serious matter when condominium residents do not conduct themselves in a way that is considerate of their neighbours and other owners. In order to ensure protection of the interests of other condominium owners and residents, a condominium corporation must be able to enforce compliance with its governing documents.

[31] Subparagraph 1.44(1)2 of the Act provides that the CAT may make an order

² 2011 ONSC 6726, para. 42

³ 2021 ONCAT 48, para. 22

prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action. Under this subparagraph, I therefore order the Respondent to remove her dogs from her MVLCC 605 unit within 30 days of the date of this order.

Issue 3: Is MVLCC 605 is entitled to the costs of enforcing compliance with its governing documents against the Respondent?

- [32] The Applicant requests that the Respondent be ordered to pay MVLCC 605 their full costs of enforcing compliance in this matter in the amount of \$21,765.62. The Applicant submits that subparagraph 1.44(1)4 of the Act gives the Tribunal authority to make such a costs order based on the indemnification provisions in MVLCC 605's governing documents because of the Respondent's conduct. The Applicant further submits that MVLCC 605 was forced to escalate this matter to the CAT due to the Respondent's refusal to comply with the governing documents and to attend mediation, and that an award of \$21,765.62 is reasonable based on the Respondent's longstanding non-compliant conduct.
- [33] The Applicant submitted that, of the total \$21,765.62 in costs requested, \$3,776.21 were associated with seeking compliance or enforcement from February 10, 2020 to October 12, 2020 prior to filing of the CAT application ("pre-CAT costs"), and \$17,989.41 of which were incurred by participating in the CAT case after it commenced ("CAT costs"). The Applicant did not provide a detailed breakdown of how these costs were incurred, beyond indicating the amounts for legal fees, disbursements, and HST.
- [34] The Respondent submits that the Applicant's legal action against her was unnecessary and that MVLCC 605 should be responsible for its own costs.
- [35] I have considered the Applicant's submission that its legal costs should be awarded under the governing documents' indemnification provisions. Subparagraph 1(1)(d)(iv) of O. Reg. 179/17 gives the CAT jurisdiction to hear disputes about "provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding the dispute described in this clause."
- [36] In addition to Rule E(5), which is set out in full above, the following provision of MVLCC 605's By-law 5 applies:

By-law 5, Section 12.2(b)

The violation of any provisions of the Act, the Declaration, the By-laws, and/or the rules adopted by the Board of directors, shall give the Board the right, in addition to any other rights set forth in these By-laws:

- (b) to enjoin, abate or remedy by appropriate legal proceedings either in law or in equity, the continuance of any such breach, including without limiting the generality of the foregoing, an application for an order for compliance by

implementing such proceedings as provided for in Part IX of the Act. All cost and expenses incurred by the Corporation (either directly or indirectly) in resolving such legal proceedings and/or having such breach fully rectified shall be recoverable from such Owner in the same manner (and upon the same terms) as unpaid common expenses.

[37] Having reviewed the indemnification provisions in MVLCC 605's governing documents, I note that section 12.2(b) of By-law 5 states that, where provisions of its governing documents are violated, the Board has the right to undertake appropriate legal proceedings to remedy the breach, including an order for compliance pursuant to Part IX of the Act. It further states that the cost and expenses incurred by MVLCC 605 in resolving such legal proceedings and having the breach fully rectified shall be recoverable from the owner in the same manner and on the same terms as unpaid common expenses. Also, Rule E(5), which specifically addresses pets as discussed above, states that all expenses incurred by MVLCC 605 in enforcing that provision, including any legal charges, is recoverable from the owner in the same manner as other common expense assessments. Based on the wording of these provisions, I find that the Respondent's breach of the pet provisions falls within the scope of the Applicant's indemnification provisions.

[38] In the August 21, 2020 letter to the Respondent, the Applicant's counsel advised that, if the Respondent did not remove her dogs from the unit by September 4, 2020, the Applicant would apply to the Ontario Superior Court of Justice for a compliance order under section 134 of the Act, the full cost of which would be charged back to the Respondent's unit as additional common expenses. This letter went on to state:

In the event that you do not agree with the above legal position and refuse to remove your dogs from the Unit as required on or before September 4, 2020, pursuant to Sections 132 and 134 of the Act, the Corporation is prepared to attend a mediation to try and resolve this before incurring the significant time and expense involved in a court proceeding. Due to the serious nature of this matter, kindly advise the writer immediately if this is the case.

[39] Subsection 134(1) of the Act provides that a corporation (among other entities) may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of the Act or the declaration, by-laws, or rules of the corporation. As set out in *Amlani v. York Condominium Corporation No. 473* ("*Amlani*"),⁴ a condominium corporation cannot add compliance or enforcement costs, which fall under section 134 of the Act, to the common expenses for a unit owner without a court order under subsection 134(5) of the Act. However, under subsection 134(2.4), this section does not apply to any matter in dispute for which a person may apply for resolution the Tribunal. On October 1, 2020, paragraph 1(1)(d) of O. Reg. 179/17 came into force, expanding the Tribunal's jurisdiction to

⁴ 2020 ONSC 194

include pet and indemnification provisions. The Applicant filed an application with the CAT on October 13, 2020.

- [40] Regarding the pre-CAT costs, I note that the Respondent continued to breach the pet provisions of MVLCC 605's governing documents despite multiple notices and other communication from the Applicant, and refused to participate in mediation prior to the Applicant initiating a CAT application. Given the Respondent's pattern of behaviour prior to the commencement of the CAT proceeding, I find it is fair to award the pre-CAT costs to the Applicant, in the amount of \$3,776.21. I further find it reasonable for the Respondent to be required to pay this amount pursuant to the Applicant's indemnification provisions. In reaching this conclusion, I have considered that the Applicant made numerous efforts to provide notice to the Respondent and invite her to respond over a period of several months, giving her a substantial amount of time to respond and address her dogs' behaviour before moving on to additional steps to achieve compliance. I also note that the Applicant offered to engage in mediation with the Respondent, prior to initiating the application before the CAT, in an attempt to use a lower cost dispute resolution method.
- [41] I now turn to the question of whether any of the Applicant's legal costs relating to its CAT proceeding should be awarded. As set out above, for issues that fall within the CAT's jurisdiction, condominium corporations may instead file applications with the CAT to enforce their indemnification provisions. The Applicant has come to the Tribunal seeking authorization to pursue its enforcement costs, consistent with the ruling of the court in *Amlani*. However, unlike the courts, the Tribunal's powers to award costs are set out in the Act and the CAT's Rules of Practice. Subparagraph 1.44(1)4 of the Act provides that the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding, Rule 46 of the Rules of Practice states that the CAT will not order a User to pay another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so. In addressing the Applicant's request for its CAT legal costs, I find that the Tribunal's power to enforce the Applicant's indemnification provisions is subject to the CAT's costs rules.
- [42] The Applicant cited the recent *Psofimis* decision, in which the Tribunal awarded costs to a condominium corporation, including legal fees that were incurred with respect to the CAT proceeding. In deciding to do so, the Tribunal noted that the respondent in that matter failed to comply with the condominium's rules, his conduct was willful and defiant, the condominium corporation was statutorily mandated to enforce the rules and, if these costs were not recovered, they would remain the responsibility of all the unit owners.⁵ The Tribunal in *Psofimis* noted the general principle in *Chan v. Toronto Standard Condominium Corporation No. 1834*,⁶ that it is not fair that other owners be required to pay for another unit

⁵ 2021 ONCAT 48, paras. 40-41

⁶ 2011 ONSC 108

owner's unwarranted conduct. This is an important principle to keep in mind in considering the Applicant's costs request.

- [43] The Respondent did not participate in the CAT hearing initially, despite having been granted an adjournment early in the proceeding. However, as discussed above, I accepted the Respondent's explanation for not participating, based on her personal circumstances, and allowed her another opportunity to do so. This required the Applicant to provide additional witness statements and closing submissions in response to the Respondent's late evidence and submissions. Although I provided specific directions on how to proceed, the Respondent continued to cause delays by missing deadlines and not following instructions, even after she retained a legal representative.
- [44] In considering whether the Applicant should be awarded its CAT costs, I have balanced the Respondent's personal circumstances, which required the hearing to be extended, against the additional costs incurred by the Applicant due to the delays and the need for it to duplicate efforts in the proceeding. I find the amount of the CAT costs to be reasonable, given the additional work required of the Applicant's counsel. I have determined that it is fair and reasonable to award the Applicant a portion of its CAT-related costs because, although a certain extent of the delay caused by the Respondent was outside of her control due to her personal situation, some of the delay was caused because she (and at times, her representative) did not follow my directions. However, I have taken into consideration the fact that the Respondent did not initially participate in the CAT proceeding for genuine personal reasons, she appeared to struggle with the CAT process, and she had issues with her representative.
- [45] On balance, I find, under Rule 46.1, that there are exceptional reasons in this case such that it is fair to order the Respondent to pay one quarter of the Applicant's CAT costs of \$17,989.41, to minimize the burden borne by other unit owners.
- [46] Therefore, I award pre-CAT costs in the amount of \$3,776.21 under the Applicant's indemnification provisions, and CAT costs in the amount of \$4,497.35 under Rule 46, for a total of \$8,273.56 in costs.

ORDER

[47] The Tribunal orders that:

1. The Respondent will, within 30 days of the date of this Order, remove her dogs from her MVLCC 605 unit.
 2. The Respondent will pay \$8,273.56 in costs to MVLCC 605 within 30 days of this Order.
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Maureen Carter-Whitney
Member, Condominium Authority Tribunal

Released on: October 1, 2021