CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 1, 2023
CASE: 2022-00509N
Citation: Kimel v. Toronto Standard Condominium Corporation No. 2026, 2023 ONCAT 186

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

Member: Michael Clifton, Vice-Chair

The Applicant,
Jordana Kimel
Represented by Shawn Pulver, Counsel

The Respondent,
Toronto Standard Condominium Corporation No. 2026
Represented by Carlos Branco, Agent

Hearing: Written Online Hearing – February 11, 2023 to November 4, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant resides in a unit of the Respondent condominium corporation that is located above the garage doors leading to the underground garage that serves the Respondent. The Applicant complains that the noise and vibration from the operation of the garage doors infiltrate her unit virtually every few minutes of every day, lasting about 15 seconds per occasion.

[2] The decibel level in the Applicant's unit caused by the operation of the garage doors has been measured by experts and is indicated to be at a level that the Respondent states is considered normal for the interior of a condominium unit based on references to information it has found online. The Respondent therefore takes the position that the noise and vibration are not unreasonable.

[3] The Applicant takes the position that the nature and the frequency – virtual constancy – of the noise and vibration exacerbate its impact causing it to rise to the level of a nuisance regardless of its specific decibel level.

[4] Despite taking the position that the noise and vibration are not unreasonable, the Respondent has made some modifications to the garage doors that were proposed to reduce the impact of their operation on the Applicant. In fact, time was given during these proceedings for some of that work to be done to see whether it would resolve the Applicant's concerns. According to the Applicant, her concerns are not resolved, and up to the time that this hearing ended the noise and vibration continued unabated and without reduction in their negative impacts on her work, sleep, and general enjoyment of her unit.

B. PRELIMINARY ISSUE: JURISDICTION

[5] The Tribunal's jurisdiction relating to alleged nuisances, annoyances, and disruptions, including noises and vibrations, is set out in Ontario Regulation 179/17 as follows:

> 1. (1) The prescribed disputes for the purposes of subsections 1.36 (1) and (2) of the Act are,
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> …
>
> (c.1) subject to subsection (3), a dispute with respect to subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General) and
>
> (d) subject to subsection (3), a dispute with respect to any of the following provisions of the declaration, by-laws, or rules of a corporation:
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> …
>
> (iii.1) Provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General).
>
> (iii.2) Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[6] The Applicant submitted that this case is about unreasonable noise and vibration that constitute a nuisance, annoyance, or disruption contrary to section 117 (2) of the *Condominium Act, 1998* (the "Act"). The Respondent agreed that the case comes under that section but disagreed that there was any qualifying noise or vibration. Both the Applicant and the Respondent believe that the remedy to the noise lies in some repair, modification, or replacement of the garage door mechanisms.

[7] In light of other Tribunal decisions in which the Tribunal decided it did not have jurisdiction to address issues relating to repairs of the common elements – namely, Brady v. Peel Condominium Corporation No. 947, 2023 ONCAT 8, ("Brady") and Di Domenico v. Halton Condominium Corporation No. 118, 2023 ONCAT 67, ("Di Domenico"), both of which have similarities to this case – I asked the parties to comment on the Tribunal's jurisdiction to hear this case and, specifically, whether it should be dismissed under Rules 19.1 (c) and 43.1 (g) of the Tribunal's Rules of Practice. (I note that Sievewright v. Toronto Standard Condominium Corporation No. 1793 et al., 2023 ONCAT 68, might also have been included in this list of relevant cases but was not decided at the time the request for submissions was made to the parties. Its omission does not impact the decision below.)

[8] Applicant's counsel argued that the present case is distinguishable from both Brady and Di Domenico, citing the following points:

- In both cases, there were no provisions of the condominium's governing documents that prohibited nuisances caused by or related to the common elements, whereas in the present case the Respondent's declaration contains the following provision at Section 3.1:

  > …save and except as expressly provided or contemplated in this Declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on, within any unit or upon any portion of the Common Elements that:
  >
  > …
  >
  > (c) will unreasonably interfere with the use and enjoyment by the other Owners of the Common Elements and/or their respective Units.

- In both Brady and Di Domenico, the noise was caused by an aspect of the plumbing systems, described by counsel as "core infrastructure of the buildings" requiring "expensive and costly" repairs, whereas in the present case the mechanisms at issue were "much more contained" and "could likely be addressed in a more time and cost-efficient manner".

- In Di Domenico, the Tribunal had insufficient evidence as to the actual cause of the noise and was therefore unable to conclude it was caused by an activity, as required to engage subsection 117 (2) of the Act. In this case, counsel argued the noise is caused by the recurring activity of other owners and residents of the building engaging the garage door's motor.

- In Brady, the noise was one to which numerous residents were subject,

whereas in this case the Applicant is the only resident subject to the noise and vibration, given that the garage door motor is affixed to the ceiling of the garage immediately beneath the floor of her unit.

[9] Applicant's counsel further argued that the Tribunal should interpret the legislation defining its jurisdiction "in an expansive way" and that a finding that this case does not fall within its jurisdiction would have the deleterious effect of leaving condominium homeowners with "no choice but to bring these matters before the Superior Court or have them addressed through an expensive arbitration process," which Applicant's counsel suggested would "run contrary to the purpose of the Tribunal" and "the interest of public policy". The Applicant suggested the case should be viewed as falling within the Tribunal's jurisdiction to address matters under subsection 117 (2) of the Act.

[10] For its part, the Respondent stated that, as it had not retained legal counsel in this case, it "can offer no compelling argument" relating to the question of the Tribunal's jurisdiction. The Respondent also suggested that a finding that the Tribunal lacked jurisdiction, at this stage, would be unfair to it given the time and money it had already spent on the case, stating "all we want is an end to the dispute and a decision that is fair and understandable to all parties."

[11] Upon review of the parties' respective submissions, I determined that the Tribunal does have jurisdiction to hear this case. For clarity, however, it is not in relation to subsection 117 (2) of the Act that I find jurisdiction, but under clause 1 (1) (d) (iii.2) of Ontario Regulation 179/17.

[12] In my view, it over-extends the intended scope of the term "activity" in subsection 117 (2) of the Act to refer to any regular use of the common elements by residents, placing emphasis on the word "regular" to indicate just the intended and ordinary use of the common elements in question. Where such regular use of the common elements results in unreasonable noise and vibration, or any other unreasonable effects upon the comfort, use, and enjoyment of the property by others, I conclude that the cause of the unreasonableness should not be attributed to the activity (nor its permission) but relates in some way to its context or the condition of the property in, on, or to which it is done. Conditions (as opposed to activities) that give rise to nuisances, annoyances, or disruptions, are not the subject matter of subsection 117 (2) of the Act.

[13] As a result, were it not for Applicant's counsel citing paragraph 3.1 (c) of the Respondent's declaration, I might have decided to dismiss this case. However, I agree with Applicant's counsel that the wording of that clause in the declaration is clear (I would not say, as he did, that it "could not be clearer," but it is sufficiently

clear) in prohibiting any condition that gives rise to an unreasonable interference with use and enjoyment of the property and that such interferences include what the Act refers to as nuisances, annoyances, and disruptions.

[14] It must be noted, however, that the Applicant did err in stating that there was no such provision considered in Brady. In fact, at paragraph 16 of that decision, it cites such a provision in the declaration of the condominium that was the respondent in that case. The Tribunal there decided as follows:

> A further question to consider is whether the issue is captured by s. 1(1)(d)(iii.2) of the O. Reg given s. 12(a) of the declaration which states that no condition shall be permitted to exist (and no activity carried on) in any unit which will unreasonably interfere with use or enjoyment (by other unit owners) of the common elements and/or other units. Its wording referencing a condition existing in a unit which interferes with the use or enjoyment of another unit also suggests a condition created within one unit affecting another. The evidence and submissions by both parties point to a possible structural issue, not an issue originating in one unit impacting others… There may be other provisions in the Act, which Ms. Brady, or other unit owners can pursue to effect these changes, but I find it is not through recourse to the Tribunal as this case is framed.

[15] Similar reasoning could apply in this case, but I find that, unlike what appears to have been the content and effect of the clause in Brady, the particular wording of section 3.1 in the Respondent's declaration has sufficient breadth to impose upon the Respondent, in so far as it acts on behalf of all unit owners in accordance with the Act, a duty not to allow a condition that unreasonably interferes with the use and enjoyment of the common elements or their units by any of the owners.

[16] I also find that clause 1 (1) (d) (iii.2) of Ontario Regulation 179/17 is more broad than subsection 117 (2) of the Act, in so far as, unlike that provision, it does not require that the nuisance, annoyance, or disruption in question must be caused by an activity; a provision in a condominium's declaration, by-laws, or rules that prohibits, restricts or otherwise governs a condition giving rise to a nuisance, annoyance, or disruption, may also fall within its scope.

[17] Therefore, I find that the facts of this case are sufficiently distinct from the facts in Brady and Di Domenico and that, by reliance on paragraph 3.1 (c) of the Respondent's declaration, the subject matter of this case is found to be within the Tribunal's jurisdiction.

C. ISSUES & ANALYSIS

[18] The principal issues in this case are:

1. whether the noise and vibration produced by the operation of the garage doors cause an unreasonable interference with the Applicant's enjoyment of her unit contrary to paragraph 3.1 (c) of the Respondent's declaration;

2. whether such unreasonable noise and vibration constitute a nuisance, annoyance, or disruption, as such terms are used in clause 1 (1) (d) (iii.2) of Ontario Regulation 179/17; and

3. if so, what remedies should follow.

[19] Upon review of the submissions of the parties, I conclude that the noise and vibration in question are unreasonable and do constitute at least an annoyance, if not a nuisance, impacting the Applicant's well-being and enjoyment of her property. As a result, I order that the Respondent must take steps to remedy the causes of such noise and vibrations. I also order the Respondent to reimburse the Applicant some of her legal costs and other expenses relating to this case.

[20] I note that the parties each provided evidence that was helpful in deciding this case, but not everything provided is necessary to be cited to explain the basis for my decision. Though I have reviewed all of their evidence and submissions, I reference only what is required for that purpose.

ISSUE NO. 1: Do the noise and vibration caused by the operation of the garage doors cause an unreasonable interference with the Applicant's enjoyment of her unit contrary to paragraph 3.1 (c) of the Respondent's declaration?

[21] The parties do not dispute that the Applicant experiences some noise and vibration in her unit from the operation of the garage doors. They disagree as to whether the noise and vibration are unreasonable. The mere fact that the Applicant is bothered by the noise and vibration does not necessitate a conclusion that they are unreasonable.

[22] Each party submitted into evidence a report prepared by qualified engineering consultants. The report by the consultants retained by the Respondent is referred to in this decision as the "Best Consultants Report". This term refers to the company name, not to a preference for this report over the other. The report by the company retained by the Applicant is referred to as the "Reliable Connections Report," also referencing the consulting company's name. The Applicant states that she obtained the Reliable Connections Report at her own expense because the Respondent had refused to share the results of the Best Consultants Report

with her until these proceedings. I note that the Best Consultants Report was prepared in September 2021. The Reliable Connections Reports was prepared the following December. The Applicant relies on both reports in support of her claims.

[23] I recognize that the purposes of the Best Consultants Report and the Reliable Connections Report differ somewhat. The former appears to have been obtained by the Respondent “to carry out a preliminary review of the ongoing noise” experienced by the Applicant, while the latter was obtained by the Applicant with a desire to obtain recommendations on how to reduce the noise and vibration, rather than merely to assess it. However, both contain reliable data that demonstrate the noise caused by the garage doors is beyond a level that is reasonably expected to be experienced within a residential unit. Both reports also set out possible remedies to the problem.

[24] The Best Consultants Report states that the garage door sound as heard within the Applicant’s unit is both “audible and discernable” and is “unmistakably that of the garage door in operation.” The report notes the same sounds were not audible outside of the unit, such as on its balcony. The Reliable Connections Report describes the noise of the garage door as an “electric motor whine” that is audible and substantially discernible above other ordinary background noise in the unit. It concludes the noise “can be disturbing to the occupants.” Together, the reports identified that during operation of the garage door, the sound levels in the unit were anywhere from four to nine times greater than when it was not in operation.

[25] In summary, both the Best Consultants Report and the Reliable Connections Report contain reliable data that demonstrates the noise caused by the garage doors is beyond a level that is reasonably expected to be experienced within a residential unit. Some noise from the operation of building systems is to be expected in any apartment-style property. However, typically such noises should not substantially and regularly exceed, or might simply constitute a part of, what the reports refer to as “background noise.” They should not be as discernible or frequent as the reports and other evidence of the parties describe.

[26] The reports demonstrate that the noise is highly repetitive throughout the day, affecting all times during which the Applicant might seek to find peace or quiet comfort at home. The Applicant notes that the garage door opens “on average approximately every few minutes” and states she “can hear it at all hours of the day.” In summary, she states, “the noise lasts probably 15 seconds every few minutes, and it happens 24 hours a day”.

[27] As noted above, the Reliable Connections Reports describes the noise heard within the unit as a “disturbing… electric motor whine.” The noise is undoubtedly

an intrusive and unpleasant experience unsuited to a residential setting where quiet enjoyment is expected, and the resulting effects cited by the Applicant on her quality of sleep and ability to work are not reasonable in this context.

[28] Both reports cite several possible remedies, including options ranging from replacement or restructuring of certain of the system's components to a complete replacement of the whole array with a system expected to produce substantially less noise and vibration (which the Best Consultants Report suggests is the "simplest and cheapest option"). The nature and range of their recommendations, which are set out later in this decision, suggest that rather than being, or simply being, defective in some way, the door opening system installed in the property might not have been a reasonable one for its location in the building in proximity to the residential units, or, perhaps, for a residential setting at all.

[29] Despite having access to the information in such reports, the Respondent's position that the noise created by the operation of the garage doors is not unreasonable was not based on either of them, but on its own investigation of general resources available online, referring specifically to the Toronto Municipal Code and a Government of Ontario website that contained a link to a guideline titled "Environmental Noise Guideline - Stationary and Transportation Sources - Approval and Planning (NPC-300)."

[30] The Respondent provided no analysis to support its application of these resources. It relied on what was a mere similarity between some references to tolerable decibel levels appearing in these sources and those identified in the test results found in the parties' respective reports to suggest that the noise levels in the Applicant's unit should be considered to be reasonable. I reviewed the Applicant's sources carefully. I conclude that neither of them appears to address either the kind or source of noise at issue in this case or otherwise supports the Respondent's position.

[31] The Respondent also sought to dismiss the Applicant's concerns on the basis that "no other unit has filed a complaint about noise and vibrations in their unit due to the Garage Door." However, based on the reports, this appears likely to be because the noise is especially, and perhaps only, audible within the Applicant's unit. As noted above, the Best Consultants Report stated the noise is not even audible on the Applicant's unit's balcony, though it is distinct and audible above other background noise within the living areas of the unit.

[32] Despite the Respondent's position in this case, it undertook some remedial work in response to the Applicant's complaints. The Respondent states that this work has cost it nearly thirty thousand dollars (though it provided no evidence that supports

this claim), yet also stated in this hearing that it was not done because the Respondent believed the Applicant's claims were reasonable, but simply "out of an abundance of good will." However, regardless of its stated good will, the evidence shows that the Respondent did only a small portion of what the reports recommend should be done, so it is not surprising that the Applicant reports that the noise and vibration experienced in the unit continue unabated.

[33] In closing submissions, the Respondent asserted that the Applicant should be required to tolerate the noise and vibrations regardless of their impact or intensity, alleging that they are conditions the Applicant knew about at the time she purchased her unit. The Respondent cited its declarant's disclosure statement (given to the first purchasers of units at and before the time the condominium was registered), which warned of noise relating to vehicles exiting and entering the garage, specifying the legal doctrine of caveat emptor (buyer beware) as a bar to the Applicant's claims. The Applicant was given an opportunity to respond to this new argument.

[34] The Applicant's counsel correctly answered that, not only was the Applicant not one of the original purchasers of her unit from the developer – and therefore not a recipient of the disclosure statement cited by the Respondent – the doctrine of caveat emptor does not apply in this case. This doctrine is of limited effect in real estate law and applies to issues between the buyer and seller of property. This does not characterize the relationship between condominium unit owner and condominium corporation. Unlike the seller of a unit, the relationship between unit owner and condominium has more of the character of a trust, as suggested in subsection 17 (1) of the Act, in which the condominium corporation is the caretaker of the unit owners' collective interests and obligations in regard to the management, operation, and control of the property. The doctrine of caveat emptor has no application in this context.

[35] Based on the totality of the evidence, I find that the Applicant has demonstrated on a balance of probabilities that the noise and vibration caused by the operation of the garage doors constitute an unreasonable interference with the Applicant's enjoyment of her unit contrary to paragraph 3.1 (c) of the Respondent's declaration.

ISSUE NO. 2: Do the noise and vibration caused by the operation of the garage doors therefore constitute a nuisance, annoyance, or disruption, as such terms are used in clause 1 (1) (d) (iii.2) of Ontario Regulation 179/17?

[36] Clause 1 (1) (d) (iii.2) of Ontario Regulation 179/17 requires that, in addition to being found an "unreasonable interference" that is prohibited under the

Respondent's declaration, the noise and vibration must also be found to be a nuisance, annoyance, or disruption in order to fall within the Tribunal's jurisdiction and authority to order a remedy.

[37] The Applicant's counsel stated the noise and vibration experienced by the Applicant constitute "a clear and obvious nuisance." The Respondent suggested that they are ordinary and ought to be tolerated by the Applicant.

[38] To qualify as a nuisance, the disturbance must not only interfere with the reasonable use and enjoyment of property but must also constitute a substantial and serious interference, which is determined by consideration of a range of factors including its nature, location, duration, frequency, and effects. In general, qualifying as a nuisance depends on a stringent set of criteria that are not met by every unreasonable disturbance. Qualifying as an annoyance or disruption, for the purposes of the Act, will depend on less strict criteria (and might not apply exclusively to interferences relating to the use and enjoyment of property), though they also would not necessarily be satisfied by complaints about merely occasional or trivial incidents.

[39] In this case, the evidence cited above with respect to the unpleasant "electric motor whine," clearly discernible as the opening and closing of the garage door, permeating the Applicant's unit at "disturbing" levels substantially exceeding ordinary background noises and occurring almost constantly, with resulting negative impacts on the Applicant's sleep and ability to work, all supports a conclusion that the noise and vibration do qualify as nuisances or, at least, annoyances.

[40] I conclude that the Respondent's suggestions that the noise levels experienced by the Applicant are ordinary and ought to be tolerable do not reflect the facts adduced from the evidence – including the Respondent's own evidence – in this case. I find that the noise and vibration experienced by and complained of by the Applicant are both unreasonable and constitute at least an annoyance if not a nuisance to which the Applicant ought not to be subjected.

ISSUE NO. 3: What remedies should follow?

Work to be Performed

[41] It can be challenging to determine the most appropriate order to make in a case like this one. Neither party has presented a single, measurable, concrete remedy that the other party can merely be ordered to do. Both the Best Consultants Report and the Reliable Connections Report recommend credible solutions to help reduce

or eliminate the noise and vibrations complained of, but are not in exact agreement.

[42] The solutions recommended by the Best Consultants Report are as follows:

- Retain a service contractor to review the door rollers and guides for excessive looseness; service and lubricate all mechanical and moving items; check the motor, sprockets, and chain for proper operation and tightness.

- Review the vibration isolators between the door operator and rails and the steel structure to determine whether they are suitable and effective and if not replace with a suitable system.

- Review the drop ceiling to determine whether the effective sound transmission class (S.T.C.) rating of the ceiling assembly can be improved (e.g., by addition of additional and/or better performing insulation materials) and ensure the existing ceiling assembly is properly isolated from the adjacent walls to ensure airborne sound vibrations are not translated into structure-borne vibrations.

- Stiffen the existing steel beams and columns attached to the concrete building structure to reduce transmission of vibrations and fully isolate the steel beams and columns from the remainder of the concrete building structure.

- Replace the garage door system (i.e., opener, door, tracks, etc.) with a newer quieter system (e.g., a newer system that does not use a conventional chain and sprocket arrangement).

The report then provides the suggestion: “It should be noted that replacement might ultimately be the simplest and cheapest option, as the only certain way to reduce the apparent noise in the unit above is to install a system that generates less airborne and structure-borne noise.”

[43] The Reliable Connections Report sets out the following recommendations:

- Inspect all resilient connections to make sure that the neoprene isolator is not short circuited by a bolt.

- Then reinstall the garage door opener by re-attaching the center rail that supports the motor and chain to the concrete wall through a resilient connection.

The report notes that “These measures will reduce the noise, but it is impossible to predict the amount of the reduction. Given the critical location of the equipment just below a residential unit, the reduction may be inadequate.” Therefore, the report suggested reattaching all door roller guides and counterweight rollers to the wall through resilient connections.

[44] The Respondent submitted that its work has consisted of installing “CRM Isolators” on the front jamb board (entrance door only), the door roller guides, and the shaft bearing plates of the counterweight rollers. However, the report of its contractor, dated October 25, 2023, and submitted to me along with the Respondent’s closing submissions, explains that isolators were not installed with respect to the “door guides” because “these are concreted in place, unable to be removed.” Based on this information, it is apparent that the Respondent’s completed work constitutes a portion of what is recommended by the Reliable Connections Report and might also correspond to one part of one of the recommendations in the Best Consultants Report.

[45] Further, the parties’ evidence and submissions show that the work performed so far has not succeeded in reducing the noise and vibration to a tolerable level, if at all. Both parties have expressed their uncertainty as to what should be done next. The Applicant would like to see all the work recommended by the reports completed, to see whether this resolves the issues. The Respondent seeks the Tribunal’s guidance. The Tribunal is not expert in engineering matters and cannot independently decide which of the proposed solutions is best.

[46] Upon review of the reports, the most compelling recommendation appears to be in the Best Consultants Report, where it states “Replace the garage door system (i.e., opener, door, tracks, etc.) with a newer quieter system (e.g., a newer system that does not use a conventional chain and sprocket arrangement),” and proposes that this “is the simplest and cheapest option,” and “the only certain way to reduce the apparent noise in the unit.” Given these clear statements, and the parties’ stated desire to have the Tribunal order a concrete resolution to their situation, I have decided that this is the solution that the Respondent should, and shall, be ordered to perform.

Costs & Compensation

[47] The Applicant has been successful in demonstrating that the noise and vibration experienced by her in her unit are unreasonable and a nuisance or annoyance prohibited under the Respondent’s declaration. The Applicant is therefore entitled to reimbursement of her Tribunal fees in the amount of $200 as costs pursuant to Rule 48.1 of the Tribunal’s Rules of Practice and paragraph 1.44 (1) 4 of the Act.

[48] The Applicant claims an additional amount of just over $9,500, representing legal fees incurred both before and during Tribunal proceedings and the costs of obtaining the Reliable Connections Report.

[49] The legal expenses claimed that would be classified as compensation rather than costs, being expenses not directly associated with these proceedings, constitute about $1,700 for an initial letter to the condominium board and subsequent negotiation with the Respondent's lawyer. I see no basis for awarding these expenses as they are part of the ordinary cost of engaging legal assistance to resolve a dispute and are fairly borne by the individual retaining counsel regardless of the outcome. However, I find it is fair that the Applicant be reimbursed for the costs of obtaining the Reliable Connections Report, which she states would not have been needed if the Best Consultants Report had been provided to her when it was made. I will award the Applicant $743.50 as compensation under paragraph 1.44 (1) 3 of the Act for the costs of the Reliable Connections Report.

[50] It is not usual for a party's total legal expenses to be awarded as costs at the Tribunal. Rule 48.2 of the Tribunal's Rules of Practice states,

> 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, or that caused a delay or additional expense.

[51] In determining whether costs incurred during proceedings should be awarded, Tribunal members consider such factors as those set out in the Tribunal's Practice Direction, "Approach to Ordering Costs," including:

- 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, including the party requesting costs;
- the potential impact an order for costs would have on the parties;
- whether the parties attempted to resolve the issues in dispute before the case was filed; and

- whether a Party has failed to follow or comply with a previous order or direction of the CAT.

[52] I am of the view that the conduct of the Respondent was sometimes problematic both before and during these proceedings. The Respondent admits it never took the Applicant's concerns seriously. The work it performed was minimal and was not any of the work either consultant suggested was most likely to succeed in resolving the issues. During the proceedings, the Respondent's submissions were often lacking in relevant and necessary detail, my instructions were not always followed, and in what it knew were to be the final submissions delivered in the hearing the Respondent introduced entirely new arguments, some of which required further submissions from the Applicant's counsel.

[53] On account of these factors, I conclude it is fair that the Respondent reimburse the Applicant a portion of her legal fees for these proceedings. However, given the amounts already, and yet to be (on account of my order below), spent by the Respondent, I do not think that a substantial amount is appropriate. Therefore, I will order that the Respondent pay the Applicant an additional $2,331.26 under paragraph 1.44 (1) 4 of the Act, being approximately one-third of her legal costs associated with these proceedings.

[54] The Respondent stated more than once in its submissions that it does not seek costs from the Applicant, and I award it none.

D. ORDER

[55] For the reasons set out above, the Tribunal orders that:

1. The Respondent shall replace the garage door system (i.e., opener, door, tracks, etc.) with a newer, quieter system (e.g., a newer system that does not use a conventional chain and sprocket arrangement), as recommended in the report provided to the Respondent by Best Consultants Martin Gerskup Architect Inc., dated September 16, 2021, and shall have this work completed by no later than 90 days after the issuance of this order, subject to weather conditions and other reasonable delays;

2. The Respondent shall pay the Applicant compensation in the amount of $743.50 pursuant to paragraph 1.44 (1) 3 of the Act; and

3. The Respondent shall pay the Applicant $2,531.26 as costs pursuant to Rule 48.1 of the Tribunal Rules of Practice and paragraph 1.44 (1) 4 of the Act.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: December 1, 2023