

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 19, 2023

CASE: 2023-00120N

Citation: Toronto Standard Condominium Corporation No. 2082 et al. v. Momoh et al.,
2023 ONCAT 133

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

Member: Keegan Ferreira, Vice-Chair

The Applicants,

Toronto Standard Condominium Corporation No. 2082
Represented by Inderpreet Suri, Counsel

Blanchart Arun
Self-Represented

The Respondents,

Azeez Hamza Momoh
Self-Represented

Jevaughn Jackson
Self-Represented

Hearing: Written Online Hearing – June 5, 2023, to August 19, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2082 (TSCC 2082) and Blanchart Arun (collectively, “the Applicants”) bring this application for an order that Azeez Hamza Momoh, unit owner in TSCC 2082, and Jevaughn Jackson, tenant of Azeez Hamza Momoh’s unit, (collectively, “the Respondents”) bring themselves into compliance with the *Condominium Act, 1998* (the “Act”) and with TSCC 2082’s governing documents. The Applicants allege that Mr. Jackson is causing unreasonable noise nuisances in violation of the Act and governing documents, and that Mr. Momoh has failed to ensure compliance by his tenant as required.
- [2] For the reasons set out below, I find that the Respondents have violated both the Act and TSCC 2082’s governing documents.
- [3] There is no evidence that Mr. Momoh has taken any steps to bring Mr. Jackson

into compliance with the Act and governing documents. Consequently, I find that Mr. Momoh and Mr. Jackson are jointly and severally responsible for the noncompliance. Costs of attempting to enforce compliance and the costs of this application will be awarded jointly and severally against Mr. Momoh and Mr. Jackson.

B. NON-PARTICIPATION

[4] Neither Mr. Jackson nor Mr. Momoh participated meaningfully in this proceeding, despite the fact that they both joined the case through the CAT-ODR system, and both regularly received notifications and emails regarding the case at the email addresses they themselves provided. I gave both Respondents ample opportunity to participate and regularly reminded them of upcoming deadlines. Unfortunately, neither of the Respondents met any of the deadlines and did not participate at all aside from posting one message each. Accordingly, I am satisfied that they were both notified and had access to the case, and therefore the hearing was conducted without their further involvement.

C. ISSUES & ANALYSIS

[5] The issues to be decided in this case are summarized as follows:

1. Are the Respondents causing and / or permitting nuisances contrary to paragraphs 117(2) (a) and (b) of the Act or TSCC 2082's governing documents?
2. If so, what remedy is appropriate in this case?
3. Should costs be awarded and, if so, in what amount?

Issue 1 - Are the Respondents causing and / or permitting nuisances contrary to paragraphs 117(2) (a) and (b) of the Act or TSCC 2082's governing documents?

[6] The Applicants argue that Mr. Jackson and his guests have caused repeated noise nuisances that are seriously disturbing neighbouring residents, including Mr. Arun. The Applicants argue that he frequently hosts late night parties and gatherings, during which there is screaming, shouting, loud talking, loud music, slamming of toilet seats, doors, and other items in the unit. These activities typically occur early in the early morning hours.

[7] The Applicants provided 32 separate incident reports involving Mr. Jackson and his guests logged by building security between June 2022 and June 2023. All of these reports were written by the security guard on duty who received and investigated complaints from other residents. These reports are based on their firsthand experience. It is worth noting that while some of the complaints were made by Mr. Arun, many of them were made by other residents who were similarly impacted by Mr. Jackson's conduct. These reports are similar in many respects, including the nature of the complaints (i.e., noise issues, including shouting,

yelling, arguments, loud music, furniture moving, banging noises, and dog barking) and the timing (very frequently occurring between the hours of midnight and 6 a.m., when other residents are trying to sleep). In several instances, the reports indicate that Mr. Jackson acknowledged that he was causing unreasonable noise and that he would remedy his conduct, at least temporarily. Nevertheless, the same issues subsequently recurred, with unfortunate regularity. I will not detail each individual report but will summarize in brief a few representative examples.

- [8] On August 25, 2022, TSCC 2082's security guard on duty received a complaint about noise from the unit occupied by Mr. Jackson at 4:37 a.m. The security guard went to the unit and heard multiple individuals speaking loudly, as if they were arguing. The guard knocked on the door of the unit and Mr. Jackson told him that they were having an argument and that he was trying to get everyone to leave. The noise abated shortly thereafter. It is noteworthy that almost identical issues occurred only two weeks later when security had to attend the unit at 3:00 a.m. on September 9, and then again only a week later at 3:22 a.m. on September 16.
- [9] On June 16, 2023, two of Mr. Jackson's guests notified the security guard on duty that there was an unauthorized "trespasser" in the unit occupied by Mr. Jackson. When the security guard arrived on the floor, they heard shouting, screaming and the raised voices of several individuals arguing. Mr. Jackson advised the security guard that a woman inside the unit was there without his permission. During this interaction, Mr. Jackson pushed the woman. When she fell to the floor, he tried to pull her up, but she fell and hit her head on a table. Mr. Jackson and his guests then shoved the woman out into the hallway and began throwing her possessions into the corridor after her. The woman shouted loudly and repeatedly throughout the incident. The police were called and attended at 5:06 a.m., along with Toronto Fire and paramedics. The Applicants provided a copy of the video recording of this incident. This incident resulted in separate complaints from at least eight other residents on the floor but constitutes only one of the 34 incident reports.
- [10] Mr. Arun provided a witness statement in which he describes the impact Mr. Jackson's conduct has had on him. The nuisances caused by Mr. Jackson have severely affected his quiet enjoyment of his unit and negatively impacted his ability to sleep. On one occasion, Mr. Arun was forced to sleep in his vehicle to escape the noise. He has also considered moving and selling his unit.
- [11] Mr. Arun's description of these incidents is consistent with those described in TSCC 2082's incident reports. He has had to deal with unreasonably loud noises, including shouting, loud music, objects crashing or being dropped on the floor, furniture being moved, and doors and toilet seats being slammed, typically beginning early in the morning, and recurring intermittently for several hours. He has also felt it necessary to contact the City of Toronto Police and by-law services regarding these issues on at least two occasions. Mr. Arun also reports having made efforts to soundproof his own unit using weather stripping foam, and has also used earplugs, with limited success. Despite his and TSCC 2082's efforts, the noises continue to recur, and continue to disrupt his ability to enjoy his unit.

- [12] In response to these incidents, TSCC 2082 sent at least six separate letters to both Mr. Jackson and Mr. Momoh, on June 23, 2022, August 4, 2022, December 9, 2022, December 15, 2022, January 13, 2023, and February 27, 2023. In these letters, the corporation advised him that his behavior is in contravention of the Act and of the corporation's governing documents, warned him of the potential consequences of continuing to do so, and demands that he immediately bring himself into compliance.
- [13] Paragraph 117(2)(a) of the Act prohibits activity within a condominium unit or in the common elements if that activity results in "any unreasonable noise that is a nuisance.....". While the Act does not define the term "nuisance," previous Tribunal decisions, referring to well-established case law, have found that to support a claim of nuisance, the interference must be substantial and unreasonable. The frequency and duration of the interference are also relevant.
- [14] In this case, the uncontested evidence of the Applicants demonstrates that Mr. Jackson's conduct has resulted in a substantial interference with the ability of multiple residents to enjoy their unit. This conduct is not isolated, but has been consistent and repeated, even after dozens of attendances at the unit and after a half dozen letters from TSCC 2082. Based on the evidence before me, I therefore conclude that Mr. Jackson's conduct constitutes an unreasonable nuisance under paragraph 117(2) (a) of the Act, which cannot be allowed to continue.
- [15] The Applicants further argued that the Respondents are also in contravention of TSCC 2082's governing documents. The Applicants specifically identified the following relevant provisions:
1. Section 3.01 (b) of the corporation's declaration, which reads as follows: "Each owner shall comply and shall require all members of his family, residents, tenants, invitees and licensees to his Unit to comply with the Act, this Declaration, the by-laws and the rules."
 2. Section 3.01 (g) of the corporation's declaration, which prohibits nuisances generally, including the transfer of unreasonable noise from one unit to another, and requires the owner to take steps to address and eliminate any such nuisance.
 3. Rule A03, which prohibits the creation or continuance of any noise or other nuisance that interferes with the rights or enjoyment of another occupant, and specifically prohibits "shouting, screaming, horseplay, or other disturbance."
 4. Rule D01, which states that tenants, occupants, and guests are subject to, and required to comply with, the Act and the corporation's governing documents.

Mr. Jackson is in contravention of all of these provisions.

- [16] I find that Mr. Jackson has breached section 3.01 (g) of the declaration, as well as

Rules A03 and D01 by creating and permitting unreasonable noise nuisances.

[17] Turning to Mr. Momoh, the uncontested evidence of the Applicants demonstrates that Mr. Momoh was informed numerous times of Mr. Jackson's conduct beginning in June 2022, when TSCC 2082 sent its first letter. There is no evidence before me to suggest that Mr. Momoh has taken any action to require Mr. Jackson to comply with his obligations as an owner and landlord under the Act, including his obligations under subsection 119 (2), which requires that owners take "all reasonable steps" to ensure that "an occupier of the owner's unit and all invitees" are in compliance with both the Act and the governing documents. Accordingly, I find that Mr. Momoh is in violation of his obligation under subsection 119 (2) of the Act by failing to take any action to ensure compliance by his tenant, and he has likewise contravened section 3.01 (b) and 3.01 (g) of the corporation's declaration.

Issue 2 – What order is appropriate in the circumstances?

[18] The Applicants seek the following orders:

1. A declaration that Mr. Jackson is in breach of subsection 117 (2) of the Act, rules A03 and D01 of the condominium's rules and section 3.01 (g) of the condominium's declaration by creating and/or permitting repeated noise disturbances and nuisances which disturb the comfort or quiet enjoyment of other units and the common elements;
2. A declaration that Mr. Momoh is in breach of subsection 119 (2) of the Act, rule D02 of the Condominium's Rules and sections 3.01 (b) and 3.01 (g) of the Declaration by failing to ensure the compliance of his Tenant with the Act and the governing documents;
3. An order that Mr. Jackson immediately cease and desist from all conduct, both within the Unit and in or with respect to the common elements, which creates noise and other nuisances interfering with other unit owners' and residents' ordinary use and enjoyment of the condominium property contrary to the Act and to the governing documents;
4. An order that Mr. Jackson take reasonable steps to ensure that all guests/invitees of the Unit comply at all times with the Act and the governing documents;
5. An order directing the Mr. Momoh to comply with his obligations as a unit owner to take all reasonable steps to ensure that Mr. Jackson and every guest/invitee complies with the Act and the governing documents generally, and in particular, to ensure that Mr. Jackson and his invitees cease creating noise nuisances; and,
6. An order directing Mr. Momoh to pay all of the TSCC 2082's costs associated with bringing this proceeding on a full indemnity basis.

[19] In light of my findings above with respect to Issue 1, I grant the orders for compliance sought by the Applicants. I deal with the request for costs below.

Issue 3 – Should costs be awarded and, if so, in what amount?

[20] TSCC 2082 requests an order that the Respondents fully indemnify the corporation for its costs in this matter, which totalled \$25,570.98. They submit such an order would be appropriate because:

1. Despite knowing that Mr. Jackson was causing unreasonable nuisances, Mr. Momoh has taken no meaningful action to remedy his tenant's behavior, essentially forcing TSCC 2082 to file and pursue this application in accordance with its obligations under s. 17 (3) of the Act, which requires that condominium corporations take all reasonable steps to ensure that owners and occupiers of units comply with the Act and with the corporation's governing documents.
2. Mr. Jackson has failed to comply with the relevant provisions of the Act and the corporation's governing documents, despite being repeatedly advised that his conduct was creating a nuisance, contrary to both the Act and the governing documents on more than 30 separate occasions.
3. Section 2.02 of the condominium's declaration states that "...In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any By-laws or rules in force from time to time by any owner, or by members of his/her family and/or their respective tenants, invitees or licensees shall be borne and paid for by such owner and may be recovered by the Corporation against such owner in the same manner as common expenses."

[21] The Applicants compared this case to two other Tribunal cases - first, to *York Condominium Corporation No. 229 v Rockson*, 2022 ONCAT 46¹ ("Rockson"), in which the Tribunal ordered a unit owner respondent to reimburse the condominium corporation applicant a total of \$9,848.51 in costs after finding that Mr. Rockson had a lengthy history of failing to comply with the corporation's rules against noise. The Applicants submit that the current case is similar to Rockson in several respects, including:

1. In both cases, there was a lengthy period of persistent non-compliance – nearly two years in Rockson, and one year in this case.
2. Both cases involve a high number of incident reports - 94 in Rockson, and 32 in this case.

¹ <https://canlii.ca/t/jp491>

[22] The Applicants submit that the following statement from Justice Wood in *Muskoka Condominium Corporation No. 39 v Kreuzweiser, 2010 ONSC 2463*², which was cited by the Tribunal in *Rockson*, is equally applicable to this case:

The Corporation repeatedly warned the respondent of the cost consequences of enforcement proceedings. The respondent failed to respond to any communication from the corporation or to comply with its directions. Therefore, the costs are to a large extent the consequences of the respondent's own actions.

No part of these costs should be borne by the respondent's neighbours who are blameless in this matter. The Corporation's declaration provides that any owner is bound to indemnify the corporation for any loss occasioned by his or her action. For these reasons it is appropriate that the corporation's costs be on a full recovery basis.

[23] I concur with the Applicants. The Respondents in this case were likewise repeatedly warned of the consequences of their non-compliance. Furthermore, TSCC 2082's declaration also includes a provision requiring owners to indemnify the corporation for losses and damages caused by their actions. As in *Rockson*, I find that it would be unfair for the innocent unit owners in TSCC 2082 to have to bear the costs of this application.

[24] The Applicants also likened this case to *Toronto Standard Condominium Corporation No. 2804 v Micoli et al., 2023 ONCAT 21*³ ("Micoli"). In that case, the Tribunal ordered a tenant who was causing a variety of nuisances and who had a long history of non-compliance to immediately stop creating nuisances and to comply with the governing documents. The Tribunal also ordered the landlord to comply with his obligations as a unit owner and landlord, and to take steps to ensure compliance by his tenant. The Tribunal ordered a total of \$18,439.60 in costs against both the owner and their tenant, jointly and severally. The Applicants submit that the current case is similar to *Micoli* in several respects, including:

1. Both cases involved the conduct of a tenant who was regularly causing nuisances contrary to the Act and the corporation's governing documents.
2. In both cases, the Tribunal found that the owner of the unit had failed to take reasonable steps to ensure compliance by their tenant.

[25] The Applicants also cited the following excerpt from *Micoli*, arguing that it is equally applicable to this case:

While his almost complete non-participation in these proceedings did not directly complicate or prolong them, it is reasonable to consider that his lack of reasonable efforts to address his client's misconduct placed the entire burden of enforcement, including the costs of this case, on the shoulders of the Applicant – or, in other words, on the shoulders of all of the other owners in the condominium – and that it would be fair

² <https://canlii.ca/t/29fwf>

³ <https://canlii.ca/t/jn814>

and appropriate for him to bear a substantial portion of those costs.

[26] Again, I agree with the Applicants. TSCC 2082 has a legal obligation under s. 17 (3) of the Act to take all reasonable steps to ensure compliance with the Act and with the corporation's governing documents. They were, in essence, compelled to file this application to address the persistently unreasonable behavior of both respondents.

[27] The uncontested evidence in this case clearly demonstrates that both Respondents have violated both the Act and the governing documents. As in *Rockson and Chan*, it would be unfair for these costs to be borne by the other unit owners, doubly so as many of them have already had to suffer these nuisances for nearly a year.

[28] For all of the above reasons, I would be inclined to conclude that it is appropriate to order full indemnification of the Applicants' costs in this case. However, that being said, I must also consider the reasonableness of the Applicants' costs. Rule 48.2 of the CAT Rules states that:

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.

[29] The Tribunal has also issued a Practice Direction that identifies the factors that the Tribunal will consider in determining whether to order costs, and in what amount. Among the factors which may be considered in determining if costs are appropriate are whether a party's conduct was unreasonable, whether the parties attempted to resolve the issues in dispute before the case was filed, and any other relevant and appropriate factors.

[30] In determining an appropriate amount of costs, the Practice Direction states that the Tribunal will consider whether the costs incurred are appropriate and proportional, whether the costs are reasonable and reasonably incurred, including whether there was a legitimate need to incur the cost.

[31] The Applicants argue that their costs are reasonable because:

1. the work was allocated to a junior lawyer as much as possible.
2. the time spent was reasonable in light of the volume of supporting evidence produced in the application.
3. the costs spent were proportionate to the complexity of this case.

4. unnecessary time was spent trying to have the Respondents participate in the CAT proceeding which is not the fault of TSCC 2082 but should be paid by the owner.
- [32] The Applicants provided their bill of costs, which is clear and detailed. All of the costs set out are directly related to this proceeding. The bill of costs shows a pre-HST cost amount of \$22,358.50, with an additional \$2,906.61 in HST and a further \$305.88 in disbursements, for a total of \$25,570.98. This amount represents the costs for a total of 76.4 hours.
- [33] While I do note and agree that the bulk of the work was done by junior counsel at a lower hourly rate and acknowledge that there was a significant volume of evidence in this case, I do have some reservations about the total number of hours spent on some of the activities set out in the bill of costs. For example, section 3 of the document indicates that 15.6 hours were spent after the Respondent failed to join in response to the Tribunal's first Notice of Case, for a total cost of \$4,134. This included correspondence between counsel and TSCC 2082, and the work involved in downloading and delivering the second Notice of Case. While I certainly agree that having to download and deliver an additional notice is additional work that the Applicants were required to perform in light of the Respondents' failure to join the case, I find that it is not reasonable that the work under this heading should have taken the reported 15.6 hours.
- [34] In making my determination about the amount of costs, I am guided by the reasoning of the Superior Court, which recently wrote in *Waterloo Standard Condominium Corp. No. 399 v. Lee et. al.*, 2023 ONSC 4223⁴ that the "fixing of costs should reflect what the court views as a fair and reasonable amount to be paid, rather than any exact measure of the actual costs to the successful litigant."
- [35] Accordingly, I conclude that costs in the amount of \$15,000 would be appropriate and would fairly compensate TSCC 2082 for the work that the Applicants were required to perform on this case. I also award \$200 in reimbursement for the Applicants' Tribunal fees, for a total of \$15,200.
- [36] In making this ruling, I note again that TSCC 2082 was compelled to pursue this application in the face of persistent non-compliance with the Act and governing documents, and in recognition of the principle that innocent unit owners should not be forced to bear costs reasonably incurred in relation to another's unreasonable conduct.
- [37] With respect to the question of what proportion of these costs is to be borne by each Respondent, I note that section 2.02 of TSCC 2082's declaration indicates that:
- [38] In addition to the foregoing, any losses, costs or damages incurred by the

⁴ <https://canlii.ca/t/jz813>

Corporation by reason of a breach of any provision of this Declaration, or in any By-laws or rules in force from time to time by any owner, or by members of his/her family and/or their respective tenants, invitees or licensees shall be borne and paid for by such owner and may be recovered by the Corporation against such owner in the same manner as common expenses. In light of my findings above regarding Mr. Momoh's violations of the Act and the corporation's governing documents, I find it is appropriate to hold Mr. Momoh responsible to indemnify TSCC 2082 in accordance with the intent of this provision. However, given that the conduct at issue in this case was directly caused by Mr. Jackson, it would not be fair for Mr. Momoh to be solely responsible for these costs. I therefore order that both Respondents are jointly and severally required to reimburse TSCC 2082 for its costs in this matter.

A. ORDER

[39] Under section 1.44 of the Act, the Tribunal Orders that:

1. Mr. Jackson shall immediately bring himself into compliance and shall remain in compliance with the Act and with TSCC 2082's governing documents. This includes, but is not limited to, a requirement that he immediately cease creating unreasonably loud noises by having loud parties, playing loud music, and/or engaging in loud discussions or arguments. Mr Jackson shall also ensure that all of his guests comply with this provision of the order.
2. Mr. Momoh shall take reasonable steps to ensure Mr. Jackson's compliance and will comply with his obligations as an owner and landlord to require his tenant to comply with both the Act and TSCC 2082's governing documents.
3. Mr. Jackson and Mr. Momoh are jointly and severally liable to pay the amount of \$15,200 to TSCC 2082 within 30 days of the date of this order.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: September 19, 2023