



Citation: 6736238 CANADA INC. v. Registrar, Home Construction Regulatory Authority, ONLAT NHCLA 142079

Date: **2022-09-19**  
File Number: **14079/NHCLA**

Appeal from a notice of proposal dated August 17, 2020 made by the Registrar, Home Construction Regulatory Authority (formerly Tarion Warranty Corporation) proposing to apply a condition to the licence of the appellant under s. 40(3)(b) of the *New Home Construction Licensing Act*, S.O 2017, c. 33, Sched. 1

**Between:**

**6736238 Canada Inc. o/a Altona Custom Homes**

**Appellant**

and

**Registrar, Home Construction Regulatory Authority**

**Respondent**

**ORDER ON ABUSE OF PROCESS MOTION**

**Adjudicator:** D. Gregory Flude, Vice-Chair

**Appearances:**

For the Appellant: Pradeep Shand and Carly Waisglass, Counsel and  
Tiyam Shiribabadi, Student-at-Law

For the Respondent: Demetrios Yiokaris and Niki Manwani, Counsel and  
Scarlett Forest, Student-at-Law

Heard by Videoconference: September 9, 2022

## A. OVERVIEW

- [1] 6736238 Canada Inc. o/a Altona Custom Homes (the “Altona”) has appealed a Notice of Proposal (“NoP”) issued by the Home Construction Regulatory Authority (the “Registrar”) under the *New Home Construction Licensing Act, 2017* (the ‘Act’) to attach a condition to its licence. Altona now brings this motion to strike the NoP on the grounds that it is an abuse of process.
- [2] The condition requires an employee of Altona, Shean Sinnarajah, to successfully complete, to the satisfaction of the Registrar, the *Customer Service & New Home Licensing and Warranty* course, referred to as the *Customer Service & Tarion Requirements* course in the NoP. The NoP was issued on May 13, 2022. Altona advised the Registrar on or about May 17, 2022 that Mr. Sinnarajah had completed the course on May 13 with a mark of 88%. There is no issue that Mr. Sinnarajah’s achievement satisfies the Registrar’s condition. Altona takes the position that to continue with the NoP, given that the condition is satisfied, is an abuse of process.
- [3] Having considered the circumstances and timing of the NoP’s issuance along with the applicable legislative scheme, I am not satisfied that this proceeding constitutes an abuse of process. The history of the complaint investigation shows that the Registrar believed it had grounds to impose a condition as early as March 2022 and it so advised Altona. When Altona failed to respond to a request to consent to the condition, the Registrar issued the NoP.
- [4] Because of the limited nature of the issue before me, I have relied only on facts that appear to be generally uncontested or are well supported in the documentary record. The adjudicator who ultimately hears the appeal will have the benefit of *viva voce evidence* and, presumably, a more complete record than is available to me, so nothing herein purports to bind the hearing adjudicator to any specific factual finding.

## B. FACTS AND ANALYSIS

- [5] The background facts are set out in affidavits of Gawtam Tharmakumaran, sworn on July 19, 2022 filed by Altona and Affidavit of Rudin Haxhiu, sworn August 16, 2022 filed by the Registrar. The Haxhiu affidavit covers the period from the initiation of the complaint and investigation while the Tharmakumaran affidavit limits itself to more recent events. From the Haxhiu affidavit, it appears that Mr. Sinnarajah attended at a private residence on or about February 23, 2021 to address a complaint about kitchen cabinets. The homeowner was dissatisfied with the colour match of the cabinets and made his dissatisfaction known. Mr. Sinnarajah reacted in a very unprofessional manner, using profane language, and refused to leave the premises despite being asked to do so approximately 37 times. When he did finally leave, he took the cabinets with him. These cabinets were the property of the homeowners. The cabinets were not returned until August 27, 2021, over six months from when they were removed.

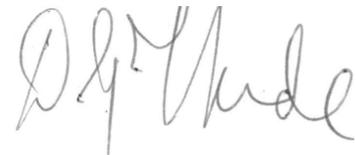
- [6] Over the summer of 2021 the Registrar communicated with Altona. Tarion Warranty Corporation was also involved. Several items, including the kitchen doors had moved beyond the mediation stage at Tarion and proceeded to the claim stage and I am uncertain from the record how they were finally resolved.
- [7] On March 22, 2022 the Registrar wrote to Altona. The letter had two purposes: it was a warning letter and it asked Altona to consent to a condition on its licence:
- Shean Sinnarajah, must at the expense of 6736238 Canada Inc. o/a Altona Custom Homes successfully complete, to the satisfaction of the Registrar, the Customer Service & Tarion Requirements course by April 18, 2022.
- [8] It appears that Mr. Sinnarajah enrolled in the *Customer Service & New Home Licensing and Warranty – Ontario* course on March 29, 2022. He did not advise the Registrar that he had done so until April 21, 2022, 3 days after the date for completion in the proposed condition. There is no evidence of any further communication between the parties until May 13, 2022 when the Registrar issued the NoP. As stated above, several days after the issuance of the NoP, on May 17, Altona advised that Mr. Sinnarajah had completed the course.
- [9] There is nothing in the record before me to indicate that Altona responded to the Registrar's March 22 request that it consent to the imposition of the condition on its licence. Thus, in the days leading up to May 13, 2022 the Registrar knew only that Mr. Sinnarajah had enrolled in the required course. It had no information about completion and no response from Altona about the condition. In such circumstances, the Registrar decided to carry out its statutory mandate and issue a notice of proposal.
- [10] The Registrar submitted that, regardless of the fact that the condition has now been satisfied, it is important as part of its public protection mandate that the public be made aware of post-sales service issues at Altona. The suitability of the condition is the issue for the hearing and I cannot find that it is an abuse of process for the Registrar to wish to proceed.
- [11] Once the NoP was issued, the Act mandated the next steps. The formalities set out in s. 43, the service of an NoP and an appeal to the Tribunal within 15 days have been satisfied. Section 43(8) requires the Tribunal to hold a hearing and either direct the Registrar to carry out the proposed action, or substitute its opinion for that of the Registrar. Section 43(9) further allows the Tribunal to impose any conditions it sees fit.
- [12] While I accept that the Tribunal may in certain circumstances stay a proceeding such as this as an abuse of process without holding a hearing on the merits, I am not satisfied that it would be appropriate to do so in this case. In my view it would not be an abuse of the Tribunal's process to continue with a hearing in which it will

be determined whether the proposed condition ought to be attached to the appellant's registration.

**C. ORDER:**

- [13] For the reasons set out above I dismiss Altona's motion for an order striking the Notice of Proposal as an abuse of process. The Tribunal will schedule a case conference to identify the next steps necessary to proceed to a hearing of the issues in dispute on a complete record

**LICENCE APPEAL TRIBUNAL**



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**D. Gregory Flude**

***Released: September 19, 2022***