

## DECISION AND ORDER

**Decision Issue Date** Monday, December 04, 2017

PROCEEDING COMMENCED UNDER subsection 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): RICARDO DA SILVA

Applicant: ESCALA DESIGNS INC

Counsel or Agent: Amber Stewart (Ricardo Da Silva)

Property Address/Description: 609 McRoberts Avenue

Committee of Adjustment Case File Number: 17 211522 WET 17 MV

TLAB Case File Number: 17 239899 S45 17 TLAB

**Hearing date:** Friday, February 02, 2018

**DECISION DELIVERED BY T. Yao**

### INTRODUCTION

This is a motion in writing by Ms. Stewart for adjournment of the hearing date of Feb 2, 2018 to a later date. It is to be considered on November 28, 2017.

### MATTERS IN ISSUE

Whether to grant the adjournment and if so, to what date.

## ANALYSIS, FINDINGS, REASONS

On October 4, 2017, the TLAB sent out its Notice of Hearing for Feb 2, 2018. Ms. Stewart, counsel for the owner, sent an email the very same day advising that she had a conflicting obligation at the OMB on Feb 2, 2018.

I wrote to Ms. Stewart to advise that while she had not given notice to Jean Milligan, a participant, and, strictly speaking it was not necessary to do so, that I was directing her to do so<sup>i</sup>. She replied that a statement in the affidavit in support was inadvertently incorrect and that she had in fact already served Ms. Milligan<sup>ii</sup>. Ms. Milligan does not object to rescheduling.

Ms. Stewart requested new deadlines. I request the Supervisor, Toronto Local Appeal Body to do by sending a new Notice of hearing.

## DECISION AND ORDER

The hearing will take place on Friday, March 2, 2018 at 9:00 a.m., at 40 Orchard View Blvd, Suite 211, Toronto, ON M4R 1B9.

X

*Ted Yao*

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Ted Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao

<sup>i</sup> Nov 1, 2017

To: Ms. A Stewart, counsel for Ricardo Da Silva

I am the TLAB member assigned to hear your written motion for case file number 17 239899 S45 17 TLAB, 609 McRoberts Ave.

The Notice of Motion was served and filed on October 24, 2017, returnable November 28, 2017. On Oct 23, 2017, Jean Milligan filed an intention to be a participant. Under the Rules, parties are entitled to receive a Notice of Motion, but participants are not, and you correctly did not serve Ms Milligan. You served the Notice of Motion and Affidavit on the owner/appellant (your client) and Councillor Palacio, notwithstanding that he has not filed an intention to be a party or participant.

Paragraph 5 of the affidavit in support of your motion states:

Following receipt of the Notice of Hearing dated Oct 4, 2017, Ms. Stewart sent an email to the TLAB to advise that she is not available on the scheduled date, and indicating that a formal motion will be filed. Ms. Stewart copied that email *to all recipients of the Notice of Hearing.* (my italics)

The October 4, 2017 email was copied to Escala Designs, Councillor Palacio and Trista James, but not to Jean Milligan or Barbara Watson, who are listed on the mailing list for the Notice of Hearing as “interested parties”. In order to correct paragraph 5, I am directing you to send your Notice of Motion, Affidavit of Shani Ben-Iztak and this letter to Jean Milligan and Barbara Watson. There is still time under the Rules for them to respond (if they so wish) and maintain the November 28 motion hearing day.

For the benefit of Ms Milligan and Ms Watson, this is a written motion for adjournment to which they may wish to respond in writing using Form 8, which they must do prior to November 21, 2017, if they choose to make a response to your motion. Practice Direction 2 says that, the TLAB shall supply alternative hearing dates (other than Feb 2, 2018), and “the parties shall indicate their availability for those dates, in the event that the motion may be granted”. This means that a staff member may consult Ms Milligan and Ms Watson as to availability after Feb 2, 2018. Practice Direction 2 and the Rules contemplate that only parties are consulted, but this procedure is being modified because of Paragraph 5 in Ms. Ben-Iztak’s affidavit. I should also advise Ms Milligan and Ms Watson that no appearance in person is necessary on November 28; everything will be based on written materials filed.

ii My apologies for the incorrect statement in Ms. Ben-Izhak’s Affidavit. I can advise that we sent the Notice of Motion to all recipients of the email with the Notice of Hearing, which was originally sent on October 4, 2017 (that is why we copied Councillor Palacio and Ms. James of the City of Toronto). However, I acknowledge that we neglected to cross-reference the Notice of Hearing Mailing List to ensure that there were no other recipients. That was my oversight, and I do apologize.

I will forward the materials to the additional parties, as directed by the TLAB, but I do have one additional question.

In addition to the requests made in the Notice of Motion, I would like to request that the TLAB, if the motion is granted and the date is rescheduled, set new dates for the exchange of materials. This request is being made because my client has not yet retained a planner, and we will not be able to meet the timelines directed in the original notice of hearing. I would appreciate directions on whether I can simply indicate this request in a covering email or letter accompanying the new materials, or whether I should serve an amended notice of motion.

Thank you in advance for your assistance.