

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 25, 2018

CASE: 2018-00025R

Citation: Joe Micieli v Toronto Standard Condominium Corporation no. 1753, 2018

ONCAT 5

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

Adjudicator: Patricia McQuaid, Member

The Applicant

Joe Micieli

Self-Represented

The Respondent

Toronto Standard Condominium Corporation No.1753

Gonzalo Aleman, Agent

935 Sheppard Ave. West

North York, Ontario M3H 2T7

Hearing: April 17 - May 29, 2018 Written online hearing

REASONS FOR DECISION

A. OVERVIEW

[1] Joe Micieli (the “Applicant”) is a unit owner of Toronto Standard Condominium Corporation No.1753 (“TSCC1753” or the “Respondent”). Mr. Micieli made a Request for Records to TSCC1753, dated December 4, 2017, under the *Condominium Act, 1998* (the “Act”). That request related to eight records. The Applicant and Respondent engaged in the Tribunal processes and at the end of the Tribunal’s Stage 2 - Mediation, three issues remained for determination in this Stage 3 - Tribunal Decision process. Those issues related to access to the following records.

1. Audited financial statements for TSCC1753 for fiscal years 2016-2017 and 2017-2018;
2. Bank drafts written and payable to general ledger, or bank statements, from September 1, 2015 to November 30, 2017; and

3. The signed contract between TSCC1753 and Lux Management Inc. ("Lux") and Lux's credentials.

Mr. Micieli clarified during the hearing that with respect to Lux's credentials (Lux being the Respondent's current property management company), he was seeking information regarding how long Lux had been providing management services, whether Lux was properly insured and whether its place of business was properly secured for retention of the Respondent's records and, finally, whether it carried WSIB coverage.

- [2] Neither the Applicant nor Respondent requested to have witnesses testify at this hearing. The hearing proceeded by written format.
- [3] Through the course of the written submissions, the Applicant confirmed, on May 16, 2018, that the third issue, the records relating to Lux, had been resolved. TSCC1753 had posted on its website, or made available for review, the contract between TSCC1753 and Lux, the applicable insurance policy and the property manager's licence.
- [4] Therefore, two issues remained. After considering the submissions from both users, I have determined that Mr. Micieli has the records he requested that the Respondent is obliged under the Act to provide, or will soon have access to those records based on the undertaking of the Respondent. As a result, an Order shall issue which reflects that undertaking. My reasons follow.

B. ISSUES & ANALYSIS

Issue 1: Audited financial statements for TSCC1753 for fiscal years 2016-2017 and 2017-2018

- [5] Entitlement to these records was not in dispute before me. Rather, the issue was the ability of the Respondent to provide the records at this time.
- [6] Mr. Aleman, who joined the Board of Directors of the Respondent (the "Board") which is a Board of three, in November 2017, advised that TSCC1753 had changed property management companies several times in recent years. Lux became their property management company in November 2017. Mr. Aleman advised that the Board became aware that some of the corporate documents required by the auditor to complete audited statements had not been transferred by the previous companies. As a result, only unaudited financial statements for 2016-2017 were available. The unaudited statements had been posted to the

Respondent's website in January 2018 and thus were available for review by all owners, including Mr. Micieli.

- [7] Mr. Aleman also stated that efforts were underway to determine exactly what additional documents were required to complete the audit for the 2016-2017 fiscal year. I accept Mr. Aleman's statements in this regard. The fact that the Respondent has provided the unaudited statements is an indication of the Board's intent for the kind of transparency that is implicit in the provisions of the Act relating to access to a condominium corporation's records. There is no evidence that the Respondent is refusing to provide a record that it has in its possession.
- [8] At the same time, I understand the Applicant's impatience that these audited statements are not yet available. He has questioned the Board's diligence in pursuing the issue of the missing corporate documents required by an auditor with the previous management companies as well as their dealings with the auditors. However, questions about a director's role or audit practices are not issues which I can determine in the context of a records dispute under s. 55 of the Act, which is the limit of the Tribunal's jurisdiction at this time.
- [9] I am satisfied that the Respondent is not unreasonably withholding the audited statements from the Applicant. Based on the information before me, it appears that meaningful efforts are being made by the Board to resolve the issues so that the audit can be completed. For example, the Respondent is trying to obtain an exact list from the auditor regarding the outstanding documents required so that they can confirm whether these are in fact in the corporation's possession. The Respondent cannot provide to Mr. Micieli what it does not, at this moment, have. However, it is not unreasonable to ask that the Respondent provide updates to Mr. Micieli, and all owners, regarding the status of the audit and timelines for its completion.
- [10] Regarding the request for the audited financial statements for 2017-2018, I note that the fiscal year end is February 28, 2018. Unaudited financial statements for 2017-2018 have been finalized and were to be posted to the Respondent's website by the end of May 2018. The Respondent's annual general meeting will take place before the end of August 2018, that is, within six months of the fiscal year end as required by s. 45(2) of the Act. Section 69(1) of the Act also requires that audited financial statements be provided to owners at the annual general meeting.
- [11] Therefore, there is no requirement that audited financial statements for 2017-2018 be provided to the Applicant prior to the August annual general meeting. The Respondent has indicated that the statements will be available on or before that date in compliance with its obligations under the Act. There is no issue at this time

that the Respondent has denied access to the 2017-2018 audited financial statements.

Issue 2: Bank drafts written and payable to general ledger or bank statements from September 1, 2015 to November 30, 2017

[12] On this issue, too, the Respondent has not challenged the Applicant's right to access these records. During the course of the hearing, Mr. Aleman stated that the 2015 bank statements, with copies of cheques (provided by their bank to the Respondent in paper format) were available to be picked up by the Applicant. Initially, the Respondent proposed to charge for copies; however, the Respondent decided to waive any request for payment. The 2016 and 2017 bank statements, with any copies of cheques written on the account, were also requested from the bank by the Respondent. Mr. Aleman stated that he expected these to be available for pick up by the Applicant by approximately mid June and confirmed that the Respondent would not be requesting any fee for the cost of copying these records.

[13] Given the Respondent's agreement to provide these records, I find that the Respondent has met, or will soon be meet, its obligations under s. 55 of the Act.

C. CONCLUSION

[14] Though this case had proceeded to Stage 3 - Tribunal Decision, the Applicant and Respondent continued to try to resolve the issues. I commend them for that.

[15] The Act has strengthened the "open books" principle regarding access to condominium corporation's records. TSCC1753 has not, at this hearing, disputed the Applicant's right to the requested records. In his closing statement, the Applicant has questioned why the Respondent did not take steps to rectify the situation regarding the audit of the 2016-2017 financial statements sooner. While there may be some validity to that question, inquiry into the manner in which the Respondent's Board of Director's handled this issue is beyond the scope of this hearing. I do note, however, that this is a small Board, and Mr. Aleman is new to it. The Board appears to be dealing with the fallout from changes to their property management companies. At this hearing, the Respondent has exhibited a genuine intent to rectify this particular situation and has acknowledged its obligations to provide access to records, including the audited financial statements for 2016-2017 upon their completion, to which Mr. Micieli and other unit owners are entitled.

[16] To conclude, I find that Mr. Micieli has received during this hearing, or the Respondent has promised to make available to him shortly hereafter all the

records which he requested and which the TSCC1753 is obliged to provide him in accordance with the Act.

D. ORDER

[17] Pursuant to the authority set out in section 1.44(1) of the Act, the Tribunal orders that:

1. Toronto Standard Condominium Corporation 1753, in accordance with the undertaking given at this hearing, shall notify the Applicant about the completion of the 2016-2017 audited financial statement as soon as these are available.
2. Toronto Standard Condominium Corporation No.1753, in accordance with the undertaking given at this hearing, shall provide the 2016 and 2017 (to November 30, 2017) bank statements, with copies of cheques written on the account, to the Applicant free of any charge for photocopying, by no later than June 30, 2018.

Patricia McQuaid
Member, Condominium Authority Tribunal

RELEASED ON: June 25, 2018