

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 19, 2019

CASE: 2018-0411R

Citation: Tharani Holdings Inc. v Metropolitan Toronto Condominium Corporation No. 812, 2019 ONCAT 3

Order under section 1.44 of the Condominium Act, 1998

Adjudicator: Nicole Aylwin, Member

The Applicant

Tharani Holdings Inc.

Victor Yee, Counsel

The Respondent

Metropolitan Toronto Condominium Corporation No. 812

Hearing: January 10 to January 28, 2019

REASONS FOR DECISION

A. INTRODUCTION

[1] Tharani Holdings Inc (the “Applicant”) is the owner of Units 49, 50 and 51 of Level 1 of Metropolitan Toronto Condominium Corporation No. 812 (the “Respondent”), a commercial condominium. The Applicant requested two sets of records from the Respondent. The first set is a set of core records that includes:

- a. Condominium corporation rules;
- b. Record of owners and mortgagees;
- c. Record of notices relating to leases of units;
- d. Periodic information certificates from the past 12 months;
- e. Budget for the current fiscal year, including any amendments;
- f. Most recent approved financial statements;
- g. Most recent auditor’s report;

- h. Current plan for the future funding of the reserve fund; and,
- i. Minutes of the owners' meetings within the last 12 months.

The second set of records requested by the Applicant are the minutes of the owners' meetings held between November 1, 2011 and November 1, 2017, which are not considered to be core records.

- [2] Mr. Victor Yee, counsel for the Applicant, submitted a request for these records to the Respondent on October 30, 2018. This request was sent to the attention of Mr. Anil Jhamtani of Simsons Management Inc, who the Applicant believes is the condominium's management service provider. At the time of the completion of this hearing, the Respondent had not responded to the request for records.
- [3] The Respondent did not respond to the Notice of a case before the Tribunal and did not join the case. The Respondent did not participate in this online written hearing or any of the previous stages of this Tribunal proceeding (Stage 1 – Negotiation; Stage 2 – Mediation). It has provided no reasons for its lack of response to the records request nor articulated a position on any of these matters.
- [4] For the reasons set out below, I find that the Applicant is entitled to the records requested, and the Respondent must pay the penalty set out below for its failure to provide the requested records without reasonable excuse.

B. PRELIMINARY ISSUES

- [5] As a preliminary matter, Mr. Yee requested that the hearing be expedited due to the fact that the Respondent had, on December 31, 2018, called an Annual General Meeting ("AGM") to be held on January 17, 2019, seven days after the start of this proceeding. Mr. Yee submitted that some of the records requested through this Tribunal application, namely the record of owners and mortgagees, were needed for his client to adequately prepare for the AGM. Mr. Yee also advised that an application to prevent the AGM from occurring had been made to the Superior Court. Prior to the end of this hearing, Mr. Yee advised the Tribunal that the Superior Court had granted the request: the AGM was postponed until 90 days after the record of owners and mortgagees is produced. As a result, an expedited hearing and decision was not necessary.

C. ISSUES AND ANALYSIS

Issue 1 – Is the Applicant entitled to receive copies of the following core records:

- a. Condominium corporation rules;

- b. Record of owners and mortgagees;
- c. Record of notices relating to leases of units;
- d. Periodic information certificates from the past 12 months;
- e. Budget for the current fiscal year, including any amendments;
- f. Most recent approved financial statements;
- g. Most recent auditor's report;
- h. Current plan for the future funding of the reserve fund; and,
- i. Minutes of the owners' meetings within the last 12 months, which based on the date of the records request would be for the period between November 1, 2017 and October 31, 2018.

- [6] On October 30, 2018, the Applicant sent a letter by registered mail and electronic mail to the Respondent, care of Mr. Jhamtani, that outlined the Applicant's request for the aforementioned core records. Accompanying the letter was the completed Request for Records form mandated under subsection 13.3(3) of Ontario Regulation 48/01 (the "Regulation").
- [7] These records are all 'core records' as defined by s.1(1) of the Regulation. As such, the Applicant is entitled to receive copies of them under s. 55(3) of the Act.

Issue 2 – Is the Applicant entitled to receive copies of the minutes of owners' meetings held between November 1, 2011 - November 1, 2017

- [8] Included in the same records request was a request for electronic copies of the minutes of owner's meetings held between November 1, 2011 - November 1, 2017.
- [9] These records do not fall within the definition of 'core records' set out in the Regulation. However, they are records that a condominium corporation is expected to keep under s. 55(1) of the Act and following the "open book" principle often enunciated in the courts, should be available for owners to review. I conclude that the Applicant is entitled to receive these records.

Issue 3 – Should the Respondent be required to pay a penalty under section 1.44(6) of the Act for failure to provide the Applicant with the records requested without reasonable excuse.

- [10] The Applicant has asked that the Respondent pay a penalty under section 1.44(6) of the Act, which gives the Tribunal the jurisdiction to order a penalty to be paid to the Applicant if the Tribunal finds that the Respondent refused to provide the Applicant with the requested records without a reasonable excuse. Previous decisions of this Tribunal including *Terence Arrowsmith v Peel Condominium Corporation No. 94*, 2018 ONCAT 10, and *Shaheed Mohamed v. York Condominium Corporation No. 414*, 2018 ONCAT 3 have considered the factors that the Tribunal may consider in determining whether a penalty should be applied. These factors include, among others, whether or not there was clear entitlement to the records requested and whether there was any reasonable excuse given as to why the requested records were not provided.
- [11] As determined in these reasons there was a clear entitlement to the records under the Act.
- [12] There is no evidence before me indicating that the Respondent has a reasonable excuse for not providing the records requested. The evidence provided to me indicates that the Respondent was made aware on several different occasions of the Applicant's request for records. The Applicant provided emails sent to the Respondent's Property Manager, Mr. Jhamtani, that make direct reference to the records request. While Mr. Jhamtani appeared to respond to other queries in these emails, on behalf of the Respondent, there is no evidence before me to suggest that the request for records was ever acknowledged although it was clearly received by Mr. Jhamtani. Further, no evidence has been provided indicating that the Respondent has, at any point, offered a reasonable excuse for withholding the records.
- [13] Accordingly, I find that the Respondent has without reasonable excuse refused to permit the Applicant to examine or obtain copies of records they are entitled to under s.55(3) of the Act.
- [14] In deciding on the amount of the penalty to be imposed, it has been noted in both *Arrowsmith* and *Mohamed* that the intended purpose for imposing a penalty should be considered. While no specific purpose is outlined in the Act, previous decisions of the Tribunal have noted that the imposition of a penalty should encourage condominium corporations to take their legal responsibilities under the Act seriously and in such a way that respects the values of the Tribunal, namely providing fair, efficient and timely dispute resolution.
- [15] In determining the amount of the penalty, I have also considered that the Respondent did not participate in this hearing process despite being notified several times that this hearing was to take place. The failure of the Respondent to

participate in these proceedings, and its failure, before that, to respond to any of the inquiries related to the request for records that were sent by the Applicant's legal counsel, amplify the Respondent's refusal to provide the records and underline the lack of any reasonable excuse for so doing. Such conduct leads me to conclude that the Respondent willfully disregarded, or was willfully blind to, its legal requirements relating to the Applicant's request for records. In this circumstance, I find that a penalty of \$2000 against the Respondent is appropriate.

D. ORDER

[16] The Tribunal orders that the Respondent is to provide the Applicant with the following records within 30 days of this decision:

- a. Condominium corporation rules
- b. Record of owners and mortgagees
- c. Record of notices relating to leases of units
- d. Periodic information certificates from October 01, 2017 to October 31, 2018
- e. Budget for the current fiscal year, including any amendments
- f. Most recent approved financial statements
- g. Most recent auditor's report
- h. The current plan for the future funding of the reserve fund
- i. Minutes of the owners' meeting during the period of November 1, 2017 to October 31, 2018
- j. Minutes of the owners' meetings held between November 1, 2011 and October 31, 2017

These records will be provided in electronic format where available. Where electronic records are not available the records will be provided in paper copy.

These records will be provided without cost to the Applicant.

[17] The Tribunal orders that the Respondent pay a penalty in the amount of \$2000 to the Applicant within 30 days of this decision. In order to ensure that the Applicant does not have to pay any portion of this penalty, the Applicant will be given a credit

toward its common expenses in the amount equivalent to each of its units' proportionate shares of the penalty.

- [18] If the penalty is not paid within 30 days of this decision, the Applicant may deduct the amount of the penalty from any fees owing for its common expenses.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: February 19, 2019.