

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 8, 2020

CASE: 2019-00148R

Citation: Ralph Tait v. Waterloo Standard Condominium Corporation No. 553, 2020 ONCAT 1

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

Member: Anne Gottlieb, Member

The Applicant

Ralph Tait

Self-Represented

The Respondent

Waterloo Standard Condominium Corporation No. 553

Kevin Moule, Agent

Hearing: October 10 - November 18, 2019, Written on-line hearing

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] Mr. Tait, (the “Applicant”) and his wife own a townhouse that is part of Waterloo Standard Condominium Corporation No. 553 (“the Respondent” or “WSCC#553”). Title to the townhouse is in the name of a corporation. The Applicant served as Treasurer of the Board of Directors of WSCC#553 from Dec 20, 2017 to January 21, 2019.
- [2] In November 2018, while the Applicant was Treasurer of WSCC#553 he initiated a Waiver by Requester for Records (the “Waiver”), with a list of documents to be provided to him. This Waiver was signed by the directors of the board of WSCC#553. No records were provided pursuant to this Waiver. On June 12, 2019, the Applicant made a Request for Records (the “Request”) pursuant to s.55 of the Condominium Act, 1998 (the “Act”).
- [3] The Applicant seeks, among other things, an order for production of the records. The Applicant also seeks an order for matters pertaining to the management of the

corporation that are beyond the current jurisdiction of the Condominium Authority Tribunal (the “Tribunal” or the “CAT”).

- [4] The Applicant does not wish that any penalty be awarded against the Respondent. He does not wish any costs or any reimbursement of filing fees for this hearing before the Tribunal.
- [5] For the reasons outlined below, I find that the Applicant should receive an electronic copy of all the records contained in the Waiver, unredacted, and at no cost to him. I further find that the Applicant is entitled to electronic copies of the approved financial statements for 2018 and the most recent approved budget of WSCC#553 (with any amendments). These are to be provided at no cost to the Applicant.

B. BACKGROUND

- [6] On November 8, 2018, while serving as Treasurer of WSCC#553, a Waiver by Requester of Records was signed by the Applicant. Two other directors signed the Waiver on November 11, 2018. The 3 signatures comprised those of the President, Secretary and Treasurer of the Board of WSCC#553, at that time. The Waiver was sent by courier to the management offices of Millcreek Management Inc., (“Millcreek”), the condominium management company for WSCC#553. According to the document, any fees for the delivery of the records were waived. The Waiver was for electronic copies of the following records:

- General ledger and trial balance from January 31, 2014 – January 31, 2018 (trial balance and ledger for each of the 5 fiscal years)
- List of all owners and their addresses
- Unaudited financial statements for the year ending January 31, 2018
- Monthly financial statements for December 31, 2017, February 28, 2018 and March 31, 2018
- Minutes of each AGM since the declaration and description were registered on January 31, 2013
- A copy of the contract defining the relationship between WSCC#553 and Millcreek Management Inc.
- Copies of all signed contracts relating to landscaping and snow removal since January 31, 2018

- Copies of all quotations submitted for landscaping and snow removal since January 31, 2018
 - Copies of all invoices approved and paid for by WSCC#553 for repairs and maintenance (non-contract) since January 31, 2018
 - Copies of insurance invoices approved and paid for during fiscal year ending January 31, 2018 and during the current year (January 31, 2019)
 - Copies of quotes from insurance companies since January 31, 2013
 - Periodic Information Certificate that was due June 30, 2018
- [7] It is apparent from the Applicant's testimony that no records were provided by the condominium manager in response to the Waiver.
- [8] On May 27, 2019 the Applicant sent an email to Kevin Moule of Millcreek, the condominium manager for WSCC#553, attaching the November 2018 Waiver that had been previously sent by courier to Millcreek. The email stipulated a new deadline of June 4, 2019 for the receipt of those records. The documents were not provided to the Applicant.
- [9] On June 12, 2019 the Applicant sent the June 2019 Request to Millcreek. The Request was for copies of the following records:
- Periodic Information Certificates (PICs) for the last 12 months
 - Budget for the corporation's current fiscal year – and any amendments
 - Most recent approved financials
 - Most recent auditor's report
 - A copy of the management contract between Millcreek Management and WSCC#553
- [10] An email response was sent from the Customer Service Department of Millcreek on July 11, 2019. The email did not contain the form known as the Board Response to Request for Record. The email stated that the 2018 financials would be ready before the AGM of August 12, 2019 (the Annual General Meeting). The email attached the following documents listed as:
- 1st quarter 2018 [Periodic Information Certificate]

- 3rd quarter 2018 [Periodic Information Certificate]
- 1st quarter 2019 [Periodic Information Certificate]
- Budget notes 2019
- Financial Statements 2017

[11] The Applicant brought this matter to the Tribunal in July 2019. The Stage 2 Summary and Order indicated that the Respondent did not participate in Stage 2 Mediation. In the Stage 3 hearing the condominium manager for WSCC#553 posted a single message. He asked for instructions and indicated that it was the first time he was using the CAT ODR system (the Tribunal's on-line system). I provided him with instructions. There was no further participation by him, or by anyone on behalf of WSCC#553. I posted messages on the CAT ODR system requesting his participation. The clerk also sent Notices to him, requiring his participation on behalf of the Respondent.

[12] I extended timelines and scheduled events to allow the condominium manager to participate on behalf of WSCC#553. He did not do so. He did not provide any explanation for not participating. I am satisfied that WSCC#553 had notice of this proceeding and had access to the case.

C. PRELIMINARY ISSUES

[13] This hearing concerns entitlement and access to records pursuant to the Act. It is apparent from the Applicant's testimony that he has unanswered questions about specific transactions and accounting procedures and ledger entries. The Applicant is concerned that accounting is not timely and asks for an order that the financial reporting for the Respondent be done according to the Act and specifically, 20 days after month end. This is an order that is beyond the current jurisdiction of this Tribunal.

[14] The Applicant has raised concerns about the past adequacy of insurance coverage and the quotations for insurance, and the bidding/quotation process for the landscaping contract. He has raised concerns about the way invoices were approved and paid. He has questions about the charging and payment of management fees. He also noted that Reserve Fund studies were not completed in accordance with the Act. This Tribunal does not have jurisdiction over these matters. A governing authority exists to oversee the practice of condominium management.

[15] The Applicant wants a copy of the condominium manager's license and information regarding Kevin Moule's other management services responsibilities. These items were not listed in the Waiver or the Request, and I will not consider them now.

[16] In his materials before me, the Applicant asked for signed agreements between Libro Bank and WSCC#553. He also asked for invoices of transfers to Intact Insurance from February, March and April 2016. These items were not listed in the Request and I will not consider them now.

D. ISSUES

[17] The issues in this case are as follows:

1. Is the Applicant entitled to receive copies of the documents identified in the Waiver by Requester for Records of November 2018?
2. Is the Applicant entitled to receive copies of the records identified in the Request for Records of June 2019?
3. Has the Respondent failed to provide records to the Applicant pursuant to the Request for Records of June 2019?

E. EVIDENCE AND LEGAL ANALYSIS

Is the Applicant entitled to receive copies of the documents identified in the Waiver of Requester for Records of Nov 2018?

[18] A Waiver is an agreement signed between the requester and a condominium corporation. Pursuant to s.13.9 of Ontario Regulation 48/01 (the "Regulation"), the signature of authorized officers of a corporation, makes it possible for the requester to examine or obtain records.

13.9 (1) If a person makes a request for records and the requester provides a written statement to the corporation that the requester and the authorized officers of the corporation have signed and that clearly acknowledges that the corporation will allow the requester to examine or obtain a copy of the record ...

(1) (b) the corporation shall comply with its requirements set out in the written statement ...

(5) A corporation that contravenes clause (1) (b) shall be deemed to have failed to comply with subsection 55(3) of the Act ...

[19] By signing the Waiver in November 2018, the board of WSCC#553, agreed to allow the release and delivery of the records listed, to the Applicant. The Waiver was signed by the authorized officers of the corporation. The Applicant testified to his desire to fulfil his fiduciary obligations as Treasurer, which was his position on the board of WSCC#553 at the time of the Waiver.

[20] The Applicant stated that no records were provided in response to the Waiver. I find this statement credible. There is also evidence of the May 27, 2019 email sent by the Applicant with a new deadline set for receiving the records listed in the Waiver. It appears that it was solely due to the inaction of the condominium management, that these records were not provided. The fact that the records were not provided brings this matter within the realm of subsection 55(3) of the Act. I have considered the consumer protection elements of the legislation and the fact that in this case it was the acting Treasurer and board of WSCC#553 who deemed the Waiver a way to access records, that ordinarily a board and particularly a Treasurer should be able to access. I therefore order that all the records set out in the Waiver be provided to the Applicant.

Is the Applicant entitled to receive copies of the records identified in the Request for Records of June 2019?

[21] The Respondent provided the Applicant with PICs for the first quarter and the third quarter of 2018 and the first quarter of 2019. The Applicant also received an auditor's report from 2017 and the approved financial statements from 2017. The budget for the corporation's current fiscal year with any amendments, and the most recent approved financials are core records as defined in s.1(1) of the Regulation. There is a clear entitlement to these records under s.55(3) of the Act and the Applicant is entitled to receive a copy.

[22] The last record listed in the Request is a copy of the management contract between WSCC#553 and the management company. This document was previously listed in the Waiver. I have already determined that by virtue of the Waiver, the Applicant is entitled to a copy.

Has the Respondent failed to provide records to the Applicant pursuant to the Request for Records of June 2019?

[23] The Applicant indicates that the records provided pursuant to the Request are insufficient. For example, he received the PICs for the first quarter and third quarter of 2018 and for the first quarter of 2019 but there were no quarterly financial statements available to cross reference the information. This relates back to the Applicant's comment that financial reporting has not been done in

accordance with the Act and in a timely manner. There was an indication in the email from the condominium management on July 11, 2019 that the 2018 financials would be available in August 2019, prior to the AGM. There is no evidence before me that the approved 2018 financials were provided to the Applicant. I order that the approved financial statements for 2018 be provided to the Applicant.

- [24] With respect to the request for the budget for the current financial year, the Applicant states that the record provided to him contains a single line of revenue and expenses and that there are no 'year to date' numbers and no numbers from prior years and no reserve fund numbers. There was no evidence that the budget was approved by WSCC#553. I order that the most recent approved budget of WSCC#553 and any amendments be provided to the Applicant.

F. ORDER

[25] The Tribunal orders that:

1. The Respondent shall provide the Applicant with the following unredacted records within 30 days of this decision:

Documents from the Waiver of Request for Records November 2018:

- a. General ledger and trial balance from Jan 31, 2014 – Jan 31, 2018 (trial balance and ledger for each of the 5 fiscal years)
- b. List of all owners and their addresses
- c. Unaudited financial statements for the year ending Jan 31, 2018
- d. Monthly financial statements for Dec 31, 2017, Feb 28, 2018 and March 31, 2018
- e. Minutes of each AGM since the declaration and description were registered on Jan 31, 2013
- f. A copy of the contract defining the relationship between WSCC#553 and Millcreek Management Inc.
- g. Copies of all signed contracts relating to landscaping and snow removal since Jan 31, 2018
- h. Copies of all quotations submitted for landscaping and snow removal since Jan 31, 2018

- i. Copies of all invoices approved and paid for by WSCC#553 for repairs and maintenance (non-contract) since Jan 31, 2018
- j. Copies of insurance invoices approved and paid for during fiscal year ending Jan 31, 2018 and during the current year (Jan 31, 2019)
- k. Copies of quotes from insurance companies since Jan 31, 2013
- l. Periodic Information Certificate that was due June 30, 2018

Documents from the Request for Records June 2019:

- Approved financial statements for 2018
 - Most recent approved budget of WSCC#553 (and any amendments)
- 2. These records shall be provided to the Applicant in electronic format, where available. If not available electronically, the records may be provided in paper copy. There will be no cost to the Applicant for the records.
 - 3. There is no order for costs and no penalty is awarded.

Anne Gottlieb
Member, Condominium Authority Tribunal

Released on: January 8, 2020