CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 24, 2020
CASE: 2019-00239R
Citation: Cho v. Toronto Standard Condominium Corporation No. 1644, 2020 ONCAT 42

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

Member: Rosemary Muzzi, Member

The Applicant
Patsy Cho
Self-Represented

The Respondent
Toronto Standard Condominium Corporation No. 1644
Represented by Eduardo Lam

Hearing: Written On-Line Hearing – May 5, 2020 to September 21, 2020

REASONS FOR DECISION

A. INTRODUCTION

[1] The applicant, a unit owner in a condominium corporation operating as a shopping centre, submitted a request for records to the condominium corporation in September 2019. Her purposes in requesting these records included, understanding the corporation's administration of By-law No. 5, which was having an impact on her business, and more generally a concern with alleged operating irregularities.

[2] The applicant requested 14 records, seven of which were not provided. She filed an application with the Condominium Authority Tribunal (the Tribunal) in November 2019.

[3] I restrict these reasons for decision to these records issues.

B. ISSUES

[4] The issues to be decided are:

1. Entitlement to records

    - Record of Notices of Leases under section 83 of the *Condominium Act, 1998* (the "Act")
    - List of units exempted from By-law No. 5
    - List of/number of units issued a lien notice pursuant to By-law No. 5
    - List of units owned by each of corporation's directors
    - Certificates issued to corporation's directors upon completion of the CAO Director Training Program

2. Were the Minutes of meetings provided to the applicant properly redacted?

3. What is a reasonable fee to produce the condominium manager and security provider contracts (where there is no dispute over entitlement)?

4. Is a penalty pursuant to section 1.44 (1) 6 of the Act warranted against the corporation?

C. ANALYSIS

Issue 1. Entitlement to records

Is the applicant entitled to the Record of Notices of Leases?

[5] The Record of Notices of Leases is a core record that a condominium corporation is required to maintain. Section 83 (1) (a) of the Act provides that an owner of a unit who leases a unit shall notify the corporation that the unit is leased and s.83 (3) states that the corporation shall maintain a record of the notices that it receives under this section.

[6] The corporation initially responded to the request by telling the applicant that no such record existed and that in any event she could not examine this record as it was not a core record. The corporation then informed the applicant that it had received only one notice of a leased unit.

[7] During the hearing, the corporation did not dispute that it is obligated to provide this record to the applicant. The corporation's witness, one of its current directors, testified that a record of the notices of leases did not exist, but that the corporation was now prepared to review the owners' records to produce such a record.

[8] Given that the corporation is required by the Act to retain a record of the notices that it receives, the applicant is entitled to access to that record.

[9] Therefore, I find that the corporation must provide a record of the notices of leases that it has received under section 83 (1).

By-law No. 5

[10] Several of the records that are the subject of this decision relate to the corporation's By-law No. 5. Those records include:

i. a list of the units that had been exempted from the application of By-law No. 5;

ii. the number of and/or a list of all units issued a lien notice because of the application of By-Law No. 5; and

iii. the Minutes of the board meetings.

[11] The corporation's By-law No. 5[1] requires units to be continuously used, occupied, operating and open. The By-law provides for the payment of a daily administration fee where units are not open in accordance with its requirements. The By-law allows for exceptions to its requirements for "units that have received prior written approval from the board of directors which approval is in the board of directors' reasonable discretion".

[12] While not obligated to disclose her purpose, the applicant testified that she has been subject to additional fees because of the application of the By-law and wanted to understand how the corporation's board came to these decisions. In particular, the applicant submitted that she wanted clarity on how the board of directors applied its "reasonable discretion" in approving exemptions from the By-law.

Is the applicant entitled to a list of the units exempted from By-law No. 5?

[13] Initially, the corporation denied the request for a list of the units exempted from By-law No. 5 based on section 55 (4) (c) of the Act, that such record relates to specific units and owners. In the hearing, the corporation's witness also testified that no

[1] Exhibit R20

such record exists because no units had been exempted from the operation of By-law No. 5 from June 2015 to September 13, 2019.[2]

[14] The evidence before me indicates that there is no such record and there is no requirement in the Act that a corporation retain this type of record. I find therefore that the applicant is not entitled to this record.

Is the applicant entitled to a list of/number of units issued a lien notice pursuant to By-law No. 5?

[15] The applicant requested the number of and/or a list of all units issued a lien notice because of the application of By-Law No. 5. The corporation refused to produce a list of all units issued a lien notice, again citing section 55 (4) (c) of the Act that such record relates to specific units and owners. I find that there is no evidence to show that the corporation improperly denied this request on this basis.

[16] Therefore, I find that the applicant is not entitled to this record.

[17] Despite the fact that “information” is not the proper subject of a records request and the corporation is not obligated by the Act to provide such information as a response to a records request, the corporation informed the applicant that eight condominium liens had been registered, Given the alternate wording in their request, the applicant’s request has been satisfied.

Is the applicant entitled to a list of the units owned by each of the corporation’s directors?

[18] The corporation did not provide such list to the applicant arguing that,

a) no provision of the Act requires that a corporation retain a list of units owned by directors

b) section 11.6 (1) of Ontario Regulation 48/01 (the Regulation) states that a potential director must only state whether they are an owner or occupier of a unit

c) section 40 of the Act does not require a director to disclose if they own a unit and/or the specific number of units owned

[2] Exhibit R25, paragraph 16

d) the applicant has a record of the owners and mortgagees of the corporation from which she can discern how many units are owned by the corporation's current directors.

[19] I am satisfied that the Act does not require the corporation to maintain such a record. I reiterate that within the context of a request for records, the Act does not require a corporation to provide information. The evidence before me was that the applicant already possesses other records that would allow her to confirm the information she seeks.

[20] I find therefore that the applicant is not entitled to this record.

Is the applicant entitled to Certificates of completion of the CAO Director Training Program issued to the directors of the corporation?

[21] A person elected or appointed to the board of a condominium corporation is required to complete prescribed training courses. Section 11.8 (3) of the Regulation requires a director to forward to the corporation evidence of completion of the director training within 15 days after receiving that evidence.

[22] The applicant requested the certificates of completion of the training course for each of the corporation's directors. The corporation initially simply advised the applicant that all the directors had completed the director training program. During the hearing, the corporation delivered to the applicant copies of the directors' certificates that it retained.

[23] The applicant is not satisfied with this disclosure. She argued that there was a lack of transparency and required disclosure of the legal name of one of the corporation's directors. It seems that on one certificate, the first name listed on the certificate does not conform to the first name of the director to whom the certificate ostensibly applies. The applicant submits that the corporation should be required to provide evidence in the form of a candidate form disclosing alternate names, an affidavit from the director, or government issued ID that confirms the alternate or nickname for this director.

[24] The corporation's witness testified that the corporation is satisfied that each of its directors completed the training and provided their certificates of completion to the corporation. These same certificates were delivered to the applicant.

[25] Based on this evidence I find that the corporation has received certificates from each of its directors and has provided these to the applicant. The Act does not require that the corporation fix the name of the director on the one certificate.

[26] I find that the corporation has satisfied the applicant's request for these records.

Issue 2. Were the Minutes of meetings provided to the applicant properly redacted?

[27] The corporation provided the Minutes of all meetings requested but with significant redactions.

[28] The applicant had two issues with respect to the Minutes she received. First, she submitted that the Minutes had not been redacted properly and in accordance with the Act. Second, she argued that the Minutes of the meetings were inadequate because they failed to disclose the business of the corporation pertaining to By-law No. 5 and could be considered a refusal without reasonable excuse on the part of the corporation.

[29] With respect to the applicant's first submission, I find that the corporation properly applied sections 55 (4) (b) and (c) of the Act to redact information from the Minutes.

[30] In the hearing, the corporation's witness provided a detailed explanation for the redactions.[3] I find that this evidence shows that, in all cases, the redacted portions of the Minutes referred to specific units or owners, not the applicant, or actual litigation or contemplated litigation. Based on this evidence, I find that the corporation's redactions of the Minutes were appropriate and done in accordance with the Act.

[31] The applicant's second argument was that the Minutes were inadequate because they failed to disclose the business of the corporation pertaining to By-law No. 5. and therefore, should be considered a refusal without reasonable excuse. Because the applicant had been subject to additional fees with the application of By-law No. 5, she wanted to understand how the corporation's board came to these decisions and she expected to see those decisions contained in the Minutes.

[32] According to section 55 (1) 2. of the Act, a corporation must keep adequate records including a minute book containing the minutes of owners' meetings and the minutes of board meetings.[4] The meaning of *adequate* was considered in *McKay v. Waterloo North Condominium Corp No 23*, 1992 CanLII 7501 (ON SC)

---

[3] Exhibit R25, paragraph 26

[4] Section 55 (1) 2.

where the Court stated that the records of the corporation must be adequate to permit it to fulfill its duties and obligations under the Act.

[33] Of the Minutes the corporation provided, only those of September 26, 2018 mention By-law No. 5.[5] The corporation's witness testified that none of the discussions reflected in the Minutes pertained to the applicant's unit. By-law No. 5 was only discussed in relation to one unit, not the applicant's, where an owner was given a verbal warning about the by-law.

[34] The corporation's witness also testified that decisions pertaining to By-law No. 5 have been made but are not contained in the Minutes. At paragraph 25 of his written testimony the witness states: "because the board holds regular meetings only about 4 or 5 times a year (additional meetings will be held on urgent matters) and these types of requests for temporary closure require a quick turnaround time, the board delegated the task of reviewing these unit owners' to one of the directors who is on site. As such, decisions about the requests are not usually discussed at board meetings and will not be in the Minutes." The witness did not identify a record where the delegated decisions about By-law No. 5 might be retained or recorded.

[35] In final closing submissions, in response to the applicant's assertion that the corporation failed to properly conduct business by omitting By-law No. 5 matters from the Minutes, counsel for the corporation states at paragraph 9: "However that does not mean there is no record of Bylaw 5 requests because there are records. [The applicant] simply requested the wrong records being the Minutes".

[36] I find on the evidence from the corporation's witness that the board decides owners' requests with respect to By-law No. 5 and does not record those decisions in the Minutes.

[37] It is a well-established key principle in law that the affairs and dealings of the condominium corporation and its board of directors are to be an "open book" to the owners. In the case of McKay, the Court stated:

> In the interest of administrative efficiency an elected board of directors is authorized to make decisions on behalf of the collectively organized as a condominium corporation, on condition that the affairs and the dealings of the corporation and its board of directors are an open book to the members of the corporation, the unit owners.

[5] Exhibit R25, paragraph 26 (attached chart)

[38] The Tribunal has also found that the minutes of board meetings have a special place and purpose in helping to ensure that open book principle.[6] Moreover, section 17 (3) of the Act specifies that one of a corporation's key duties is to take all reasonable steps to ensure that the owners comply with the Act, the declaration, the by-laws and the rules.

[39] Applying these principles to this case, I find the omission from the meeting minutes of the board's decisions pertaining to By-law No. 5 renders the Minutes inadequate. In some circumstances, this finding of inadequacy might lead to a conclusion that the corporation refused the record without reasonable excuse. In this case, I do not make this finding because it appears that the board's decisions on By-law No. 5 are contained in another, unnamed record. I do not make any findings about that unnamed record as it is not the subject matter of the applicant's request.

[40] However, given that it is now clear on the record and to the corporation that the applicant seeks a record that deals specifically with the board's administration of By-law No. 5, I encourage the corporation to make such record available to the applicant, in accordance with the Act, to avoid the expense and effort of further applications to the Tribunal and in the spirit of helping to foster a healthy condominium community.

Issue 3. What is a reasonable fee to provide copies of the condominium manager and security provider contracts?

[41] The corporation did not dispute that the applicant is entitled to copies of the condominium manager and security provider contracts. The corporation requested that the applicant pay a fee of $88 to cover the cost of .2 hours of labour at the rate of $400 per hour.

[42] The applicant submits that the fee is unreasonable. She argues that the corporation unreasonably engaged its lawyer, at a rate of $400 per hour, to review these records when no specialized knowledge was required to locate, scan and deliver them electronically.

[43] The corporation's evidence was that it reasonably engaged its lawyer to help review these records prior to release because the applicant had raised many issues in filing her records request including (1) making far-reaching allegations,

---

[6] *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33

and (2) there were significant legal matters confronting the corporation some of which were lawsuits brought by owners.

[44] Whether or not it is reasonable for a corporation to charge an applicant for such formal review is based on a consideration of relevant circumstances and the type of likely content in the record sought. The question to ask is: does the record in question really require the level of expertise of legal counsel to adequately discharge the duties of the board in relation to that record request?[7]

[45] I find there is insufficient evidence to indicate that a formal legal review of these contracts was necessary in the circumstances of this records request. The corporation's evidence is simply that these contracts were reviewed by the corporation's lawyer as he was already reviewing some of the other records requested given the corporation's concerns around other legal matters confronting the corporation. There is no evidence before me that the applicant was involved in those legal matters.

[46] Moreover, the fee appears excessive in the context of the other evidence before me related to the legal review of other records. The evidence shows that the corporation had initially charged a fee to the applicant for the review and redaction of the Minutes. This fee was ultimately waived. The corporation justified the review of the Minutes as an effort to ensure that the necessary sections were properly redacted and applied a labour cost for that review of $24 per hour.[8] The Minutes were significantly redacted. There was no evidence that there was a need to redact information from these requested contracts.

[47] In these circumstances, I see no reason why the same hourly wage of $24 cannot be applied to a review of the contracts. Using the corporation's formula - 12 minutes of work at $24 per hour amounts to $4.80. Upon the applicant's payment of the fee of $4.80, the corporation will provide these contracts in electronic form to the applicant.

---

[7] See *Gendreau v TSCC No. 1438*, 2020 ONCAT 18, where the Tribunal determined that there is no requirement to submit every record requested to formal review for redaction in order for a condominium board to fulfill its general duty under the Act and the Regulation to protect certain categories of record or information from being disclosed in response to a request for records under subsection 55(3) of the Act.

[8] Exhibit R2

Issue 4. Should a penalty be ordered against the corporation because it has without reasonable excuse refused to permit the applicant to examine or obtain records to which she was entitled?

[48] Section 1.44 (1) 6. of the Act states that the Tribunal can make an order directing a corporation to pay a penalty to the person entitled to records if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain those records. The amount of the penalty is in the discretion of the Tribunal up to a maximum of $5000.

[49] The applicant submits that the corporation should be penalized the maximum amount for frustrating her efforts to access the requested records that either did not exist or were not adequate and transparent to meet the standard of care required by the Act. She also argues that the corporation improperly applied section 55 (4) of the Act and improperly redacted the Minutes.

[50] The corporation submits that no penalty should be ordered because the corporation complied with the Act when it made its decision about the records request and it sought to narrow the issues by providing additional documents during the proceedings.

[51] To assess the penalty, I must first examine whether there was clear entitlement to the records requested and denied, and then whether there was any reasonable excuse given for why the requested records were not provided.[9]

[52] The applicant was denied but is entitled to

a) the record of the notices of leases, and

b) the Certificates of Director Training (which the corporation provided after the hearing began).

[53] I find on the evidence that there is no reasonable excuse for the corporation's failure to give the applicant the two records it denied. If a current record of notices of leases can be compiled now with information that the corporation already possessed, I see no reason why the corporation could not have provided this record when requested. Similarly, I find that there is no reasonable excuse for the corporation's failure to provide the certificates when requested. However, the fact

[9] *Arrowsmith v Peel Condominium Corporation No. 94*, 2018 ONCAT 10; *Mohamed v. York Condominium Corporation No. 414*, 2018 ONCAT 3

that the corporation delivered the certificates during the hearing process moderated the imposition of a higher penalty.

[54] I find that a penalty of $500 is appropriate in these circumstances and in keeping with the Tribunal's approach to these types of refusals.

Costs

[55] I also find that the applicant is entitled to recover the costs she incurred in filing her application to the Tribunal.

[56] The award of costs is in the Tribunal's discretion under section 1.44 (1) 4 of the Act. Rule 32.1 of the Tribunal's Rules of Practice (effective July 1, 2018) states that the Tribunal may order the payment of any reasonable expenses related to the use of the Tribunal, including any fees paid to the Tribunal. In this case, the applicant was required to apply to the Tribunal to receive records to which she was entitled and therefore I award her $200 to cover the fees she paid to participate in the Tribunal's process.

D. ORDER

[57] The Tribunal orders that:

1. The corporation shall provide the applicant with the Record of the Notices of Leases within 30 days of the date of this decision.

2. Within 30 days of the applicant paying the corporation $4.80, the corporation shall provide the applicant copies of the condominium manager and security provider contracts in electronic form.

3. The corporation shall pay a penalty of $500 to the applicant within 30 days of the date of this decision.

4. The corporation shall pay costs of $200 to the applicant within 30 days of the date of this decision.

5. To ensure the applicant does not pay any portion of the costs or penalty awards, the applicant shall be given a credit towards the common expenses attributable to their unit in the amount equivalent to their unit's proportionate share of the above costs and penalty.

_____

Rosemary Muzzi

Member, Condominium Authority Tribunal

Released on: November 24, 2020