CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 12, 2021
CASE: 2020-00389R
Citation: Hawryliw v. Toronto Standard Condominium Corporation No. 2309, 2021 ONCAT 22

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

Member: Nicole Aylwin, Member

The Applicant,
Fred Hawryliw
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 2309
Represented by Tony Bui, Counsel

MOTION DECISION AND ORDER

A. INTRODUCTION

[1] On February 23, 2021, Toronto Standard Condominium Corporation No. 2309 ("TSCC 2309") brought a motion to reopen this case pursuant to Rule 44 of the Tribunal's Rules of Practice ("Rules"). TSCC 2309 did not participate in any stage of the Stage 3 - Tribunal Decision proceedings. In making this request, TSCC 2309 asserts that the Applicant, Mr. Hawryliw, did not properly deliver notice of the case to the Corporation. They further assert that Mr. Hawryliw sold his unit during the Tribunal proceedings, thus ending his entitlement to pursue the original Application and obtain the records he requested. Consequently, TSCC 2309 requests that the Order be vacated, and the case dismissed.

[2] The request to reopen this case follows the release of the Tribunal's decision on February 12, 2021 in which the Tribunal ordered that TSCC 2309 provide all the records requested by Mr. Hawryliw in his Records Requests of September 24, 2020 and September 30, 2020 and that TSCC 2309 pay a penalty of $500 and costs of $200 to Mr. Hawryliw.

[3] The Tribunal permitted Mr. Hawryliw to respond to the motion. Mr. Hawryliw opposes both the request to reopen the case and the request to dismiss. He

asserts that he did properly notify TSCC 2309 and although he sold his unit in January 2021, he was an owner at the time he made the records requests and thus he is entitled to the requested records.

[4] After carefully considering the parties' submissions, I grant TSCC 2309's request to reopen the case and find that Mr. Hawryliw's entitlement to the records he requested was terminated when he sold his unit as was his standing to pursue this Application. Consequently, the Tribunal's Order is vacated, and this case is dismissed.

B. ANALYSIS

[5] TSCC 2309 has asked that the Tribunal consider two issues:

1. Was TSCC 2309 properly served with the Notice of Case?

2. Should the Order of the Tribunal be vacated, and the case dismissed on the grounds that Mr. Hawryliw lost his standing to pursue the Application and his entitlement to records upon the sale of his unit on January 20, 2021?

[6] I will deal with the second issue first as it is the determinative issue in this case.

[7] I note that there is no dispute whether Mr. Hawryliw sold his unit during the proceedings. Both parties agree that Mr. Hawryliw sold his unit in January 2021, which was prior to the release of the Tribunal's decision on February 12, 2021.

[8] As is noted in the submissions of TSCC 2309, the Rules require parties to notify the Tribunal if they sell their unit during a proceeding.

[9] Specifically, Rule 13. 1 reads as follows:

> 13.1 If a Party sells their unit while their Case is still open (e.g., they have completed the sale and are no longer the owner of the unit), they must immediately notify the CAT.
>
> …
>
> In Stage 2 or Stage 3, Parties should notify the CAT Member assigned to the Case.

[10] The Rule makes clear that the responsibility to notify the Tribunal of any changes to the status of ownership lies with the party who has sold their unit. Thus, Mr. Hawryliw should have notified the CAT Member assigned to his case that he had sold his unit. Had he done so, the case may have proceeded differently.

[11] Regardless of whether TSCC 2309 was properly notified and despite TSCC 2309's non-participation, the failure to notify the Tribunal of the sale of the unit is grounds enough to reopen the case and I find that that it should be reopened.

[12] Having decided that there are grounds to reopen the case, the question is does the sale of Mr. Hawryliw's unit impact his entitlement to records under s. 55 (3) of the *Condominium Act, 1998* ("the Act")?

[13] Mr. Hawryliw argues that it should not impact his entitlement as he was an owner when he made the request for records and when the Stage 3 - Tribunal Decision proceedings began.

[14] As TSCC 2309 notes in its submissions, on several occasions[i], the Tribunal has considered if the sale of an applicant's unit during an active Tribunal case alters their entitlement to examine or obtain condominium records under s. 55 (3) of the Act, including very recently in *Baljak v. Halton Condominium Corporation No. 371*, 2021 ONCAT 2. In each case the Tribunal has been consistent in its findings that s. 55 (3) entitles owners to examine or obtain copies of condominium records and that this entitlement ceases upon the sale of the unit.

[15] I find this to be the case here as well.

[16] The Act in s. 55 (3) establishes that the person requesting the record must be an owner to examine or obtain records. Subsection 55 (3) of the Act reads:

> The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation …

[17] The entitlement to examine or obtain condominium records does not extend past when the ownership ends. Accordingly, I agree with TSCC 2309 that Mr. Hawryliw's entitlement to examine or obtain condominium records under s. 55 (3) of the Act ended on January 20, 2021 when he sold his unit, as did his standing to pursue the Application.

[18] Section 1.44 outlines what orders can be made by the Tribunal at the end of a proceeding. Relevant here is s. 1.44 (6) which allows the Tribunal to make an

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[i] *Nassios v. Grey Standard Condominium Corporation No. 46*, 2019 ONCAT 26 ("Nassios 1"); *Nassios v Grey Standard Condominium Corporation No. 46*, 2019 ONCAT 33 ("Nassios 2"); *Senchire v Metropolitan Toronto Condominium Corporation No.856*, 2019 ONCAT 32; *Varadi v Metro Toronto Condominium Corporation No. 614*, 2019 ONCAT 41; and *William Siudak v Wentworth Condominium Corporation No. 171*, 2019 ONCAT 43.

order,

> … directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55 (3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[19] As Mr. Hawryliw has no standing to pursue this Application and no entitlement to the records, I find that, in this case, the Tribunal cannot award a penalty to Mr. Hawryliw as he is not a "person entitled to examine or obtain copies" of the records. Thus, I will direct that the Tribunal's Order that TSCC 2309 pay a penalty to Mr. Hawryliw for refusing records without a reasonable excuse be vacated.

[20] Given that I have decided that Mr. Hawryliw has no standing to pursue the Application, the Order of costs awarded to him is also vacated.

[21] Having decided that Mr. Hawyrilw no longer has standing to pursue this Application, there is no need for me to decide whether the Notice of Case was properly served as the issue is now moot.

C. CONCLUSION

[22] While Mr. Hawryliw was an owner when he commenced his Application to the Tribunal and within his rights to do so, he lost his standing to pursue this Application and his entitlement to examine or obtain copies of condominium records when he sold his unit in January 2021. As a person no longer entitled examine or obtain copies of records, there is no basis, in this case, to apply a penalty for the refusal of records without a reasonable excuse or reason to award costs.

[23] As a result, I grant TSCC 2309's request that the Tribunal's Order be vacated and their motion to dismiss this Application.

D. ORDER

[24] The Order of the Tribunal made on February 12, 2021 in this Application is vacated.

[25] This case is dismissed.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: March 12, 2021