

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 24, 2021

CASE: 2020-00420R

Citation: North York Medicare Centre v. Toronto Standard Condominium Corporation No. 2519, 2021 ONCAT 111

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

Member: Jennifer Webster, Member

The Applicant,

North York Medicare Centre

Represented by Zou Fan Lam, Agent

The Respondent,

Toronto Standard Condominium Corporation No. 2519

Represented by David Barkin, Agent

Hearing: Written Online Hearing – October 13, 2021 to November 15, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, North York Medicare Centre (NYMC) is the owner of a unit of Toronto Standard Condominium Corporation No. 2519 (TSCC2519), the Respondent.
- [2] On September 24, 2020, NYMC submitted a Request for Records using the prescribed form to TSCC2519 to obtain electronic copies of the following records:
- i. The general ledger from May 1, 2019 to September 24, 2020;
 - ii. The Aged Receivables report – current as of September 23, 2020;
 - iii. The Minutes of the Special Owners Meeting of August 19, 2020;
 - iv. All instruments appointing a proxy form or ballots for the August 19, 2020 owners meeting;

- v. All records showing why each invalidated proxy form or ballot was judged to be invalid; how many owners were prevented from voting because they were in arrears and how far in arrears each such owner was (with names redacted);
- vi. Management agreement between TSCC2519 and Canlight Management Inc. as of September 23, 2020;
- vii. Retainer agreement between Agro Zaffiro LLP and TSCC2519 as of September 23, 2020;
- viii. All Agro Zaffiro LLP invoices, paid and / or outstanding for legal services rendered to TSCC2519 from May 1, 2016 to September 23, 2020;
- ix. Retainer agreement between Miller Thomson LLP and TSCC2519 as of August 27, 2020;
- x. All Miller Thomson LLP invoices paid and / or outstanding for legal services rendered to TSCC2519 from May 1, 2016 to September 23, 2020;
- xi. Retainer agreement between Deacon, Spears, Fedson + Montizambert and TSCC2519 as of August 27, 2020;
- xii. All invoices from Deacon, Spears, Fedson + Montizambert (DSFM), paid and / or outstanding for legal services rendered to TSCC2519 from May 1, 2016 to September 23, 2020; and
- xiii. All court documents filed by DSFM on behalf of TSCC2519 including statements of claim, amended statements of claim, statements of defence, cross-claims and defence responses to cross-claims from May 1, 2016 to September 23, 2020.

[3] TSCC2519 replied to the Request for Records on October 23, 2020. In its response, TSCC2519 stated that it would provide some of the records, and, in addition, included the fees for printing, photocopying and labour for additional records. It also identified the records that it could not provide and set out the reasons for that position.

[4] NYMC filed a CAT case in relation to TSCC2519's response on December 16, 2020. The parties participated in Stage 2 - Mediation, and they resolved most of the issues related to the Records Request. In particular, TSCC2519 provided all the requested records in Stage 2 - Mediation that did not require any costs to produce. TSCC2519 also provided records in response to NYMC's request for

records showing why proxies and ballots were deemed invalid in relation to the owners meeting of August 19, 2020. NYMC did not accept the provided records as fully responsive to its request. TSCC2519 advised that further records could be provided at a fee of \$30 for one hour of labour related to redacting the records.

- [5] NYMC asked that this dispute be moved to Stage 3 -Tribunal Decision. It claims that TSCC2519 is requesting unreasonable fees to provide records and it asks the Tribunal to reduce the fees accordingly. NYMC also seeks a penalty and its costs. TSCC2519 claims its costs related to this case.
- [6] The issues to be decided in this case may be summarized as:
1. What fees may TSCC2519 claim in relation to providing access to records?
 2. Should TSCC2519 be required to pay a penalty under s.1.44(1)6 of the Act for refusing to provide requested records without a reasonable excuse, and if so, in what amount?
 3. Should the CAT award costs?

B. ISSUES & ANALYSIS

What fees may TSCC2519 claim in relation to providing access to records?

- [7] In its response to NYMC's records request, TSCC2519 claimed fees to redact records. It stated that redactions were necessary to remove references to specific units or owners and to protect solicitor-client and litigation privilege. TSCC2519 estimated the number of hours of labour required in relation to each record and provided a cost estimate based on an hourly labour rate of \$30. It also provided a cost estimate for printing and photocopying at a rate of \$0.20 per page. The total fees for labour, printing and photocopying for the records were \$918.60. Further labour fees of \$90 for three hours of labour were added at Stage 2 - Mediation. These fees reflected one hour of labour for the supplemental records related to invalidated proxies and two hours of labour for the redaction of invoices from DSFM.
- [8] NYMC agrees that TSCC2519 is allowed to charge fees in relation to the redaction of the records, and it does not dispute that redaction is required. In addition, NYMC does not dispute the rates that TSCC2519 proposes for the labour, printing and photocopying. It argues, however, that TSCC2519 has inflated the number of hours required for this task and that, therefore, the fees are not a reimbursement but a profit for TSCC2519. NYMC calculates that TSCC2519 is charging for labour based on an estimate of two minutes of work for each page that requires review

and redaction. It submits that the time should be 30 seconds per page and that no printing fee should be claimed because the records are kept electronically and can be redacted in their electronic format.

- [9] NYMC also states that a redacted version of the general ledger from May to October 2019 was previously provided to another unit owner of TSCC2519. It identifies that there were 202 pages in this redacted version and it argues that the costs claimed by TSCC2519 for redacting the general ledger requested in this case should be reduced accordingly.
- [10] TSCC2519 argues that the time estimate for the redaction of the records is reasonable based on its view that two minutes per page is the required time for review and redaction. TSCC2519 had included printing and photocopying in the fees when it responded to the Applicant's request. It explains that these fees were included because, at the time of its response, it was only able to redact paper copies of records. TSCC2519 states that it now has software that allows it to securely redact documents electronically. Because TSCC2519 is now able to redact electronically, it no longer claims printing or photocopying costs. As a consequence, TSCC2519 has revised its cost estimate for review and redaction of the records to a total amount of \$557.
- [11] TSCC2519 has not provided its calculations for the revised cost amount of \$557. However, it did identify in its response that the number of pages for the requested records were: 547 pages for the general ledger; 73 pages for the instruments appointing a proxy; 31 pages for the Agro Zaffiro invoices; and 42 pages for the Miller Thomson invoices. There is no evidence about the number of pages for the supplemental record relating to invalidated invoices or for the DSFM invoices. The total number of pages, without these two additional records, is 693.
- [12] I find that that TSCC2519's proposed fee of \$557 is reasonable. As noted above, NYMC's dispute is about the number of hours that TSCC2519 has estimated as required and not about the proposed hourly rate of \$30. TSCC2519 estimates that the work of review and redaction will require two minutes per page of record. I find that two minutes of work per page is a reasonable estimate to ensure that the redaction is completed in a manner that preserves solicitor-client and litigation privilege and protects the unit owner information.
- [13] I calculate that the total estimate of \$557 reflects a review and redaction of approximately 557 pages, using two minutes of work per page and an hourly rate of \$30. The number of pages was 693 pages before the addition of the two other records at Stage 2 - Mediation. NYMC argued that redaction had already been completed for 202 pages of the general ledger. Even if I accept that TSCC2519 is

not required to review and redact these pages, I conclude that an estimate of 557 pages of records is reasonable for the calculation of costs based on the number of pages identified in the response and the addition of two other records.

[14] I find that TSCC2519 has proposed a reasonable fee for review and redaction, using an hourly rate of \$30 and an estimated time of 2 minutes per page. Therefore, I order that NYMC pay the amount of \$557 to TSCC2519 for redaction of the following requested records:

- The general ledger from May 1, 2019 to September 24, 2020;
- All instruments appointed a proxy or ballots for the August 19, 2020 owners meeting;
- All records showing why each invalidated proxy form or ballot was judged to be invalid; and
- Invoices from Agro Zaffiro LLP, Miller Thomson LLP and DSFM from May 1, 2016 to September 23, 2020.

[15] I also order TSCC2519 to provide the redacted records to NYMC in electronic format within 30 days of the date it receives payment of \$557 from NYMC. If TSCC2519's actual labour costs are less than \$557, it shall reimburse the difference to NYMC, as per s.13.8(1)(d) of Ontario Regulation 48/01 (the Regulation).

Should TSCC2519 be required to pay a penalty under s.1.44(1)6 of the Act for refusing to provide requested records without a reasonable excuse, and if so, in what amount?

[16] NYMC asks the Tribunal to order TSCC2519 to pay a penalty of \$2000. It argues that TSCC2519 refused to provide records without a reasonable excuse. In particular, NYMC identifies that TSCC2519 refused to provide the filed court documents and the retainer agreements without a reasonable excuse. I do not agree.

[17] The Tribunal's authority to order a penalty is set out in s.1.44(1)6 of the Act, which states that the Tribunal may order a penalty if it considers that the condominium corporation has without reasonable excuse refused to permit the person to examine or obtain copies of records under s.55(3) of the Act.

[18] TSCC2519 provided a timely response to the Request for Records and advised that NYMC could not examine the filed court documents and invoices because

they related to actual or contemplated litigation. It also identified that it did not have the retainer agreements for Agro Zaffiro LLP or for DSFM. Although TSCC2519 initially refused to provide these records, at Stage 2 - Mediation, it provided all requested records except for those records that required review and redaction and for which it was, therefore, claiming labour fees. I do not find that TSCC2519 refused to provide records or that it refused without reasonable excuse. Therefore, I do not order a penalty.

Should the CAT award costs?

- [19] NYMC seeks costs of \$200, which are the total filing fees it paid to the Tribunal. NYMC was only successful in reducing the costs claimed by TSCC2519 for the records because TSCC2519 decided to obtain and use software for electronic redaction of records. The reduction in TSCC2519's estimation of costs was not, therefore, related to NYMC's pursuit of this case. NYMC was also not successful with respect to its claim for a penalty. I find that NYMC is not entitled to costs because it was not successful in any of its claims.
- [20] TSCC2519 also seeks costs in the amount of \$1500 to compensate for management time and legal fees incurred to respond to NYMC in this matter. It argues that it had always offered the records but was unable to reach a reasonable resolution with NYMC about the costs for redaction.
- [21] The Tribunal has the discretion to award costs under s.1.44(1)4 of the Act. Rules 45 and 46 of the CAT's Rules of Practice provide some guidelines for the award of costs and legal fees. According to Rule 45.1, the Tribunal may order costs where the costs were directly related to a User's participation or unreasonable behaviour. Rule 46 sets out that legal fees are not generally ordered, unless there are exceptional reasons. The evidence does not establish that TSCC2519 has incurred costs due to unreasonable behaviour on the part of NYMC. The parties may have been unable to resolve the issue of costs for redaction but there is no evidence before me to justify an award of costs related to NYMC's behaviour in trying to resolve this issue. In addition, I can find no exceptional reasons to award legal fees to TSCC2519 and it has provided no submissions to support its request for legal fees. I award no costs to TSCC2519.

C. ORDER

- [22] The Tribunal Orders that:

1. NYMC shall pay to the TSCC2519 a fee of \$557 for redaction of the following records:

- a. The general ledger from May 1, 2019 to September 24, 2020;
 - b. All instruments appointed a proxy or ballots for the August 19, 2020 owners meeting;
 - c. All records showing why each invalidated proxy form or ballot was judged to be invalid; and
 - d. Invoices from Agro Zaffiro LLP, Miller Thomson LLP and DSFM from May 1, 2016 to September 23, 2020.
2. TSCC2519 shall provide the redacted records, as described in paragraph 1 above, to NYMC in electronic format within 30 days of its receipt of the fee of \$557 from NYMC.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: November 24, 2021