CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 13, 2018
CASE: 2018-00272R
Citation: Michael Lahrkamp v. Metropolitan Toronto Condominium Corporation No. 932, 2018 ONCAT 12

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

Adjudicator: Ian Darling, Chair

The Applicant Self-represented
Michael Lahrkamp

The Respondent Jonathan Fine, Counsel
Metro Toronto Condominium Corporation No. 932 Fatima Viera, Counsel

Written submissions received: September 7-21, 2018.

REASONS FOR DECISION AND ORDER

A. INTRODUCTION

[1] Michael Lahrkamp (the "Applicant") filed a case with the Condominium Authority Tribunal ("the Tribunal") seeking an order from the Tribunal requiring the Respondent to provide condominium records following a "Request for Records" sent to Metro Toronto Condominium Corporation No. 932 (the "Respondent") on May 24, 2018.

[2] The Applicant was designated a "vexatious litigant" by Justice Koehnen in *Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp*, 2018 ONSC 286. Considering the vexatious litigant designation, the Users were asked to address the impact, if any, of the designation and any other issues that may affect the power of the Tribunal to consider the Applicant's case.

[3] In view of the Users' submissions, I find that the case is vexatious because it is an attempt to continue a dispute already determined by the courts and is brought for an improper purpose.

B. ANALYSIS

[4] The Applicant's Request for Records seeks four categories of records:

   i. The list of Owners and Mortgagees;

ii. The most recently approved financial statements;
iii. Minutes of board meetings held within the preceding 12 months; and
iv. Ballots used in the Annual General Meeting elections on May 23, 2018.

[5] In its “Response to Request for Records” dated June 22, 2018 the Respondent partially granted the request: it provided the Minutes and copies of the ballots. The Respondent indicated that the financial statements were previously provided as part of a request for records submitted in April 2018. The Respondent refused to provide the list of owners.

[6] The response to records provided the following reasons for refusing to provide the list of owners: “You are a vexatious litigant. Your request is not related to your interest as an owner. Section 55(4) of the *Condominium Act, 1998*: records relating to actual or contemplated litigation.”

[7] The Applicant has been designated as a vexatious litigant under section 140 (1) of the *Courts of Justice Act* by the Ontario Superior Court of Justice. Section 1.41 of the *Condominium Act, 1998* (the “Act”) states that:

> The Tribunal may refuse to allow a person to make an application or may dismiss an application without holding a hearing if the Tribunal is of the opinion that the subject matter of the application is frivolous or vexatious or that the application has not been initiated in good faith or discloses no reasonable cause of action. 2015, c. 28, Sched. 1, s. 6.

[8] The Tribunal Rules of Practice (Rule 18.1) allow it to dismiss a case before it goes through the Tribunal’s processes if, for example, it is determined to be frivolous or vexatious, or for an improper purpose.

[9] The Tribunal considered the impact of a vexatious litigant designation in *Manorama Sennek v. Carleton Condominium Corporation No. 116,* 2018 ONCAT 4, and found that “it would require very clear wording in either the Court Order or the legislation to bar a person from access to the Tribunal.” The Tribunal further stated that it must also consider if the case itself should be allowed to proceed by assessing the application against the provisions outlined in s. 1.41 of the Act.

[10] The vexatious litigant designation and the types of records requested in the court proceedings are integral to this Tribunal’s assessment of whether this case should proceed.

[11] As noted above, in *Lahrkamp (2018)*, Justice Koehnen issued an order under s. 140 of the *Courts of Justice Act* prohibiting the Applicant from “commencing any proceeding in any court against the Corporation, its present, future or former directors, or its property manager, except by leave of a judge of the Superior Court of Justice.” Both Users acknowledged this order.

[12] The Respondent asserts that in evaluating the purposes of this case, the Tribunal should “consider that all of the categories of records requested…have previously been requested and litigated over a period of 12 years.” They further provided a list of the requests, and multiple court actions which culminated in the Applicant being deemed a vexatious litigant.

[13] The Applicant states that the case is legitimate due to the form of condominium governance; that condominium records can be considered living documents; and, the specific documents had not been previously requested.

[14] The Applicant asserts that: “A condominium corporation is akin to a fourth or fifth level of Government…If owners are to surrender control to a Board, the democratic analogy affords them access to records without the right of direct participation…” He submits that open access to records is the only way condominium owners can effectively monitor the actions of the elected Board of Directors. The Applicant regards the Request for Records as a process to ensure accountability, and therefore a legitimate extension of his rights as an owner.

[15] As stated above, the Applicant justified repeated requests because condominium records are living documents, which evolve as information changes. The Applicant states that “as records content changes over the years, the only aspect that remains the same in a record is the name of the record.” One of the records requested was the list of owners. This record has been requested multiple times since 2008. I accept the submission that the contents of the record may change over time.

[16] However, it is not possible to isolate this request from the history of litigation between the parties. The Tribunal provides a new forum for parties to resolve disputes, but the request cannot be assessed without considering previous requests, the litigation history, and J. Koehnen’s finding that the pattern of litigation was vexatious.

[17] The Applicant also contends that that the records requested were not part of previous requests and are therefore unique requests. In this request, the Applicant seeks information regarding a recent hallway renovation and board elections. The Applicant asserts that the new renovation is the reason for his request – thereby distinguishing it from previous requests for financial statements. The Applicant also asserts that previous requests related to elections were for proxies, and this request is for election ballots.

[18] The Respondent provided copies of ballots. While the instrument of election differs – ballots versus proxies – the intent of the request remains consistent. The applicant stated that the intent of reviewing the election ballots is to ascertain if there is election fraud. The issue of reviewing election instruments to identify fraud was decided in *Lahrkamp v Metropolitan Toronto Condominium Corporation No. 932,* 2017 CanLII 74184 (ON SCSM). Changing the form of the record from proxies to

ballots does not differentiate this from previous requests. This is clearly consistent with the pattern of requesting election instruments in 2012, 2013, 2014 and 2015.

[19] The Applicant states that the current request is justified due to inaccuracies in previous records. The cost of the current hallway renovation project is cited as the reason for the request for financial statements, and that there are “a number of frauds that are undetectable by an auditor.” I note that this rationale was discussed in the decision of Prattis J in *Lahrkamp v Metropolitan Toronto Condominium Corporation No. 932*, 2017 CanLII 74184 (ON SCSM) at paragraph 59:

> The plaintiff has made it clear that he wishes to go behind the audited financial statements. His stated purpose: he is not satisfied with the statutory requirement of audited financial statements. Yet, on the evidence in this case I cannot ascertain any apparent or discernable reason for this position. The plaintiff presented no evidence of any impropriety or wrongdoing by the defendant in relation to any of the financial records of the corporation.

[20] The hallway renovation appears to provide an access point to initiate a new records request, even though the intent and purpose of the request is consistent with previous requests.

[21] The case before the Tribunal is for new copies of records previously requested, but which may contain new information. The Applicant has framed this request to make it appear to be a new request.

[22] Even if I were to accept that all the records requested are unique, and were not the subject of previous requests, this case is clearly part of a pattern of requests and litigation that led to the Applicant’s designation as a vexatious litigant. Justice Koehnen was satisfied that Mr. Lahrkamp had persistently and without reasonable grounds instituted vexatious proceedings or conducted a proceeding in a court in a vexatious manner. I conclude that the case filed with the Tribunal fits within an already established pattern of vexatious conduct.

[23] Although the vexatious litigant order does not apply to this Tribunal, I can and do find that the case is vexatious because it is an attempt to continue a dispute already determined by the Courts and is brought for an improper purpose. Therefore, I conclude that this case meets the criteria for dismissing a case without holding a hearing as outlined in s. 1.41 of the Act and Rule 18.1 of the Rules of Practice.

[24] The Respondent raised other issues which may affect the power of the Tribunal to consider the Applicant’s case. Given that I have determined that this case should be dismissed for the reasons set out above, I will not address the other issues raised by the Respondent.

CONCLUSION

[25] The Tribunal concludes that the case has been determined to be vexatious and should be dismissed without holding a hearing according to s.1.41 of the *Condominium Act*, *1998*.

ORDER

[26] The Tribunal orders that the case be dismissed.

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Ian Darling
Chair, Condominium Authority Tribunal

RELEASED ON: November 13, 2018