

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 20, 2019

CASE: 2019-00048R

Citation: Mariam Verjee v York Condominium Corporation No. 43, 2019 ONCAT 37

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

Member: Marc Bhalla, Member

The Applicant

Mariam Verjee

Self-Represented

The Respondent

York Condominium Corporation No. 43

Rachel Fielding, Counsel

Hearing: June 26 to September 5, 2019, Written online hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] The Applicant is a unit owner and former director of York Condominium Corporation No. 43 (“YCC 43”). The Applicant requested and received several records and documents from YCC 43. The Applicant is not satisfied with some of them. The Applicant submits that the Record of Owners and Mortgagees (the “Owners’ List”) provided by YCC 43 is inaccurate. The Applicant also claims the Respondent has not fully responded to their request for condominium management’s policy on unpaid common expenses. The Applicant seeks penalties in excess of \$1000 against the Respondent.
- [2] The Respondent submits that no penalty should apply against it. The Respondent suggests that it is the Applicant who should be reprimanded. It submits that the Applicant has made excessive record requests and has otherwise been a burden. The Respondent seeks costs from the Applicant.
- [3] Both parties had the chance to address the evidence and I have weighed it based upon relevance to the issues in dispute.
- [4] I commend both the Applicant and the Respondent’s representative. They actively participated in the hearing, met all participation guidelines and adhered to page and character limitations established.
- [5] I find that the Respondent’s delay in replying to the Applicant’s request for the Owners’ List to be an initial refusal to provide the record. The Respondent

eventually provided the record to the Applicant. The delay warrants a penalty of \$75 under s.1.44(6) of the *Condominium Act, 1998* (the “Act”).

B. ISSUES

- [6] The Condominium Authority Tribunal (the “Tribunal”) identified three main issues to be decided, as follows:

Issue 1: Is the Owners’ List provided to the Applicant by the Respondent accurate?

Issue 2: Has the Respondent properly responded to the Applicant's request related to condominium management's policy on common expense arrears/liens?

Issue 3: Is a penalty or cost award warranted?

C. ANALYSIS

Is the Owners’ List provided to the Applicant by the Respondent accurate?

- [7] The Applicant claims the Owners’ List is outdated. The Applicant submits that the Owners’ List references owners who have passed away or moved away and makes an erroneous reference to ownership of Unit 111, a suite that it not a unit but part of YCC 43’s common elements. The Applicant suggests that the Respondent’s condominium manager knowingly provided an inaccurate Owners’ List.
- [8] The Respondent submits that it is not the responsibility of YCC 43 to warrant that the Owners’ List is 100% accurate. Its legal obligation under the *Condominium Act, 1998* (the “Act”) is to maintain and update a record of owner information provided to the condominium corporation.
- [9] Section 46.1(3)(a) of the Act confirms that it is the responsibility of the unit owner to give notice of their ownership to the condominium corporation. In *Susan Ruuska v Brant Condominium Corporation No. 35*, 2019 ONCAT 28 (CanLII), the Tribunal confirmed that unit owners are responsible for providing condominium corporations with their service address.
- [10] Section 46.1(4) of the Act requires that a condominium corporation update its records with the name and address for service of owners as soon as reasonably possible or as otherwise set out in the condominium’s by-laws.
- [11] I accept the Respondent’s submissions that it has an obligation to attempt to keep the Owners’ List “as accurate as possible” and that owners do not always immediately update YCC 43 with their information.

- [12] I note that circumstances the Applicant has cited do not necessarily indicate that an ownership change has taken place.
- [13] Except the listing of Unit 111, no evidence before me indicates that the Respondent was aware of any inaccuracies in the Owners' List or otherwise failed to maintain this record as required.
- [14] The listing of Unit 111 appears to be an innocent error which is easily corrected. There is no evidence to support any prejudice to the Applicant due to this error. Upon receiving the Owners' List, it appears the Applicant brought information to the Respondent's attention which prompted updates of the record. This is not evidence of wrongdoing on the part of the Respondent; it shows the Respondent's receptiveness to the Applicant's insights and it attempting to keep the Owners' List accurate.
- [15] The Applicant stated that: "the extensive experience and knowledge gained from serving on the board for 15 years would make me more aware of issues and concerns than most owners." Clearly, the Applicant's prior role on the Board of Directors has offered them insights into the use of Unit 111 and other matters at YCC 43.
- [16] The use of Unit 111 is beyond the focus of this case and is irrelevant to this proceeding.

Has the Respondent fully responded to the Applicant's request related to condominium management's policy on common expense arrears/liens?

- [17] On January 11, 2019, the Applicant requested "Management's Policy on Liens and Arrears" as referenced in the October 18, 2018 Board Meeting minutes of YCC 43 (the "Minutes").
- [18] On January 11, 2019, the Respondent provided the Applicant with the "Official Lien Policy of YCC 43", dated May 17, 2016.
- [19] The Respondent submits that Management's Policy on Liens and Arrears as referenced in the Minutes is an informal policy and that the Official Lien Policy of YCC 43 is the only official policy of the Respondent, and thus the only document available to the Applicant.
- [20] At issue for the Applicant is a perceived contradiction between Management's Policy on Liens and Arrears and the Official Lien Policy of YCC 43 about when steps will be taken to recover unpaid common expenses and involve legal counsel in so doing. The Respondent submits that the two policies do not conflict. Interpretation of the policies is beyond the scope of this case or the Tribunal's current jurisdiction.

[21] The issue before me is not whether a condominium policy on unpaid common expenses is a record. The issue is whether the Respondent fully responded to the Applicant's request. It did. The Respondent provided the Official Lien Policy of YCC 43 the day that the Applicant requested the policy on liens and arrears. As this was not "Management's Policy on Liens and Arrears" (as referenced in the Minutes), the Applicant took issue. The Respondent then clarified this.

Is a penalty or cost award warranted?

[22] The Tribunal has considered when a penalty may be warranted in prior decisions.

[23] In *Shaheed Mohamed v York Condominium Corporation No. 414*, 2018 ONCAT 3 (CanLII) ("Mohamed"), the Tribunal stated:

"[T]his Tribunal is committed to operating in a way that focuses on its users, resolves disputes in a way that is fair and convenient, and promotes healthy condominium communities. The penalty should at least be imposed by the Tribunal for reasons that represent those commitments."

[24] In *Sunil Kainth v York Condominium Corporation No. 506*, 2019 ONCAT 31 (CanLII), the Tribunal acknowledged that:

"[A] penalty may be awarded to encourage condominium corporations to fulfill their legal responsibilities under the Act diligently."

[25] The Respondent quickly replied to the Applicant's request for the policy on liens and arrears and took further steps to clarify when the Applicant raised concerns. No penalty is warranted in that regard.

[26] The Applicant requested the Owners' List on October 19, 2018. In December 2018, the Applicant followed up with the Respondent, as they did not receive a response.

[27] Section 13.3(6) of Ontario Regulation 48/01 provides that a condominium corporation shall respond to the requester of a record within 30 days. The Applicant was entitled to a response within 30 days of making their request for the Owners' List and did not receive one. The Respondent does not deny this.

[28] The Respondent had privacy concerns about sharing the record with the Applicant. It consulted with the regional manager of its condominium management service provider and then with legal counsel before providing the Owners' List.

[29] The Respondent submits that the Applicant suffered no prejudice or damages as a result of the delay. The Respondent further claims that it did not deny the request of the Applicant, "they simply took time to assure themselves that they were not in breach of any privacy concerns".

- [30] The Respondent's failure to respond to the Applicant within the required 30 days is an initial refusal without reasonable excuse of the Applicant's request for the Owners' List and warrants a penalty.
- [31] In *Mohamed*, the respondent refused to provide the applicant with a Record of Owners and Mortgagees. The Tribunal ordered that the record be provided. A penalty of \$1000 was awarded.
- [32] In each of *Terence Arrowsmith v Peel Condominium Corporation No. 94*, 2018 ONCAT 10 (CanLII), *Browne v Peel Condominium Corporation No. 94*, 2019 ONCAT 1 (CanLII), and *Sohail Benjamin v Peel Standard Condominium Corporation No. 1008*, 2019 ONCAT 10 (CanLII) ("Benjamin"), the Tribunal awarded a \$500 penalty against a condominium corporation for refusing to provide records. In each case, the Tribunal was required to order the provision of records that an applicant was entitled to.
- [33] In this case, the Respondent provided the record on its own, during Stage 2 - Mediation. This is relevant to my assessment of the appropriate amount to award. It contributes significantly to the reduction of the penalty that is appropriate and represents behaviour that should be encouraged.
- [34] In *Kai Sin Yeung v Metropolitan Toronto Condominium Corporation No. 1136*, 2019 ONCAT 11 (CanLII) ("Yeung"), the Tribunal awarded an applicant \$200 as a result of a condominium corporation's delayed response to a record request and stated:
- "The fact is that a timeline prescribed by law to reply to a Request for Records was not met. To allow this to take place without consequence risks taking the intention behind such a timeline for granted and encouraging others to ignore this deadline. Condominium corporations should be encouraged to meet their legal obligation to reply to a Request for Records within 30 days."
- [35] A similar sentiment applies in this case. While I have been asked to take the Applicant's actions into account – and such contributes to the reduction of the amount of penalty that is appropriate to award as compared to *Yeung* - it remains that the prescribed 30 day timeline to respond passed without a response and this merits consequence.
- [36] There is no clear impact on the Applicant resulting from the delayed response - beyond their engagement of the Tribunal.
- [37] The parties disagree on if the Applicant would have brought this case forward had the request for the Owners' List been responded to within the required 30 days.
- [38] The Respondent alleges that the Applicant started submitting excessive record requests and other numerous communications upon leaving YCC 43's Board of Directors in June 2018.

- [39] The Respondent's claims of numerous communications and record requests are corroborated by its condominium manager, Momir Petkovic, who testified as a witness in the hearing.
- [40] The Applicant suggests that the Respondent is exaggerating the volume of their communications. Yet, the Applicant acknowledges making an average of two record requests a month to the Respondent between August 2018 and August 2019, including eight requests in January 2019 alone.
- [41] While nothing at law stops a unit owner from making frequent record requests, the time required to address such an ongoing volume of record requests from a single owner is disruptive.
- [42] In *Benjamin*, the Tribunal confirmed that an owner's disruptive behaviour does not disqualify them from entitlement to records. What distinguishes this case from *Benjamin* is that the Respondent is not using the Applicant's behaviour to attempt to disqualify the Applicant from receiving the Owners' List. The Respondent is suggesting that the excessive volume of requests by the Applicant is a hindrance that justifies delay.
- [43] The large volume of record requests made by the Applicant could reasonably "backlog" the Respondent and delay it addressing certain requests. In light of the Respondent's provision of the Owners' List at Stage 2 - Mediation and the actions of the Applicant contributing to the delayed response, I find that a nominal penalty is appropriate in this case.
- [44] I encourage the parties to work together to address the Applicant's concerns with the Respondent's records in a more conciliatory, efficient and cost-effective manner in the future. Particularly as the Applicant's knowledge of the history of YCC 43 gained from their extended time serving on the Board of Directors could be helpful and the Applicant expressed an interest in obtaining further records.
- [45] The Applicant requested guidance on what is reasonable regarding record requests. This is difficult to provide as each case is unique. It would not seem unreasonable for one request to be made at a time - offering a condominium the chance to reply before making additional requests. More frequent requests could be justified in certain situations.
- [46] In light of the participation of both parties in this case and the spirit of the Tribunal's Rules of Practice surrounding cost recovery, I award no costs to either party. Each shall bear their own costs of this proceeding.

ORDER

- [47] The Tribunal orders that:

1. From s.1.44(1)(6) of the Act, the Respondent is to pay a penalty to the Applicant in the amount of \$75.
2. In the event that the full amount is not provided to the Applicant within 30 days of this Order, the Applicant is entitled to set-off all remaining amounts due against the common expenses attributable to the Applicant's unit(s) under s.1.45(3) of the Act.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: September 20, 2019