

CONDOMINIUM AUTHORITY TRIBUNAL

CASE: 2020-00022SA

DATE: May 5, 2020

Citation: Kai Sin Yeung v. Metro Toronto Condominium Corporation No. 1136, 2020 ONCAT 13

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Keegan Ferreira, Vice-chair

The Applicant

Kai Sin Yeung

Self-Represented

The Respondent

Metro Toronto Condominium Corporation no. 1136

Tony Bui, Counsel

Hearing: February 3, 2020 to March 13, 2020, Written on-line hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] The Applicant is a unit owner of the Respondent, Metro Toronto Condominium Corporation No. 1136 ("MTCC 1136"). The Applicant and Respondent were involved in a prior Condominium Authority Tribunal ("CAT") case, which was resolved at the outset of Stage 2 - Mediation when the parties entered into a Settlement Agreement on September 30, 2019.
- [2] The Applicant argued that MTCC 1136 has failed to comply with the Settlement Agreement and is seeking an order from the CAT requiring compliance.
- [3] I find that the Respondent has complied with the Settlement Agreement and make no further order.

B. ISSUES AND ANALYSIS

- [4] There are two issues to be determined in the hearing:

(1) Did the Respondent comply with the Settlement Agreement?

(2) If not, what order (if any) should the CAT make to remedy the contravention?

[5] The Settlement Agreement entered into by the parties on September 30, 2019, includes the following terms:

- *I demand the MTCC 1136 to provide me the requested record within 7 days and pay me the Tribunal Fee. I also request the Tribunal to award a penalty to MTCC 1136.*

Preliminary Issue

[6] At the beginning of the hearing, Mr. Bui brought a motion to dismiss the case, arguing that it was vexatious and was brought for an improper purpose. Mr Bui submitted that MTCC 1136 complied with the Settlement Agreement and that filing this case was part of a pattern of behavior by the Applicant to aggravate MTCC 1136.

[7] Mr. Bui also submits that the Applicant meets many of the characteristics of a vexatious litigant outlined in *Lang Michener et al v. Fabian et al* (1987) [1987 CanLII 172 \(ON SC\)](#), 59 O.R. (2nd) 353, such as:

- bringing of one or more actions to determine an issue which has already been determined;
- bringing a proceeding for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights; and,
- rolling forward grounds and issues into subsequent actions.

In making this argument, Mr. Bui noted that the parties had been involved in prior CAT cases (which are closed), and that they were currently involved in another active CAT case, which was at that time in Stage 2 – Mediation, all of which dealt with fundamentally the same issue (i.e., the corporation's gas contract).

[8] The Applicant denies that this case was filed for an improper purpose. The Applicant explained that when he had filed his previous case to obtain a copy of the records, he was also seeking an order for a penalty against MTCC 1136 under s.1.44 (6) of the Act for refusing to provide the requested records without a

reasonable excuse. The Applicant submitted that MTCC 1136 knew this was his intention as he had sent the Respondent an email to that effect while the case was still open and in Stage 1 - Negotiation.

[9] MTCC 1136 did not respond to the Applicant's settlement offer while the case was in Stage 1 – Negotiation. However, shortly after the Applicant moved the case to Stage 2 – Mediation, MTCC 1136 accepted the Applicant's settlement offer. Consequently, the Settlement Agreement was issued, and that case was closed.

[10] The Applicant argues that by accepting the settlement offer, MTCC 1136 was agreeing to three things:

1. To provide the requested records;
2. To reimburse the Applicant for his CAT fees; and,
3. To have the CAT issue an order for a penalty under s.1.44 (6) of the Act for refusing to provide the requested records without a reasonable excuse.

After the Settlement Agreement was issued in the prior CAT case, MTCC 1136 refused to pay the Applicant a penalty. The Applicant believed that MTCC 1136 had agreed to pay a penalty by accepting his settlement offer, and so the Applicant filed this case seeking an order requiring compliance with the Settlement Agreement.

[11] MTCC 1136 submits that despite accepting the Applicant's settlement offer, they did not agree to have a penalty imposed by the CAT, or to otherwise pay a penalty.

[12] Having read the submissions of both parties, it is clear that each of the parties understood the Settlement Agreement to mean different things. The Applicant's belief was that by accepting his settlement offer, the corporation was agreeing to have the CAT order them pay a penalty. It is clear from MTCC 1136's submissions that was not what was understood or intended. Nevertheless, MTCC 1136 accepted the settlement offer as drafted by the Applicant, without seeking clarification in advance.

[13] As a Settlement Agreement is an agreement between the parties, it is incumbent on both parties to ensure that the Settlement Agreement resolves the issues in dispute, and to ensure that it is clear and does not contain ambiguities.

[14] For these reasons, I denied the Respondent's motion to dismiss this case or to find the Applicant to be vexatious.

Did the Respondent comply with the Settlement Agreement?

[15] The CAT can order that a penalty be paid under paragraph 6 of subsection 1.44 (1) of the Act if the CAT determines that a condominium corporation has, without reasonable excuse, refused to permit a requestor to examine or obtain copies of its records as required. The CAT has ordered a penalty in other cases at the conclusion of the proceedings in Stage 3 – Tribunal Decision, after having heard the evidence and arguments of the Users. The CAT does not otherwise issue such orders.

[16] As noted above, a Settlement Agreement is an agreement between the Applicant and the Respondent. Accordingly, it can only include things that the Applicant and the Respondent are willing and able to agree to. No party can require the CAT (or any other non-party) to do something simply by including it in a Settlement Agreement.

[17] The Settlement Agreement at issue in this case contains three elements:

1. An agreement to provide the records;
2. An agreement for MTCC 1136 to reimburse the Applicant's filing fees (which totalled \$75, consisting of the \$25 filing fee and the \$50 Stage 2 – Mediation fee); and,
3. The statement: "*I also request the Tribunal to award a penalty to MTCC 1136.*"

[18] Based on the uncontested evidence of both parties, I conclude that the first two elements of the Agreement have been satisfied. The documents have been provided and the filing fees have been available for pickup for some time, although the Applicant has not yet picked them up.

[19] With respect to the third element, the Applicant's position is that MTCC 1136 agreed to have an order for a penalty issued against it by the CAT. As noted above, MTCC 1136 disputes this interpretation.

[20] The disagreement between the parties in this regard appears genuine, and I find that that the meaning of the third element of the Settlement Agreement is ambiguous.

[21] Accordingly, having satisfied the first two elements of the Settlement Agreement by providing the records and reimbursing the Applicant's filing fees, I find that MTCC 1136 has not contravened the Settlement Agreement.

ORDER

The Tribunal orders that:

1. The Respondent has complied with the Settlement Agreement and CAT case No. 2020-00022SA is closed.

DATE: May 5, 2020

Keegan Ferreira,
Vice-Chair, Condominium Authority Tribunal