

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 17, 2020

CASE: 2019-00099R

Citation: Maxime Pedneault v Carleton Condominium Corporation No. 227, 2020 ONCAT 8

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

Member: Susan Sapin, Member

The Applicant

Maxime Pedneault

Self-represented

The Respondent

Carleton Condominium Corporation No. 227

Represented by Lucie Dorais

Hearing: July 3, 2019, to December 10, 2019, written on-line hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] Maxime Pedneault is a unit owner in Carleton Condominium Corporation No. 227 (“CCC 227,” or “the condominium”). On March 13, 2019, he submitted a request for several core records, using the mandatory Request for Records form. On April 25, 2019 the Board replied using the Board’s Response to Request for Records Form, also mandatory, and by April 30 had provided all of the records except for the record of notices relating to leases of units under s. 83(3) of the Condominium Act, 1998 (the “Act”) and a list of owners and mortgagees that included addresses for service under s. 46.1. The board did not provide these two documents because they were under the impression that the information they contained was private and confidential and so could not be disclosed to the applicant.
- [2] On May 14, 2019 Mr. Pedneault submitted a second Request for Records form for additional core records, the periodic information certificates (“PIC’s”) for the previous twelve months. This request was only partially fulfilled by the board.
- [3] As Mr. Pedneault did not get all the records he asked for, and did not get them in a timely manner, he initiated dispute resolution proceedings at the Condominium

Authority Tribunal. CCC 227 did not participate in Stage 1 (negotiation) and so the matter proceeded directly to a Stage 3 hearing on July 3, 2019. CCC 227 did not join the hearing until September, despite being notified of the hearing by the Tribunal and by Mr. Pedneault.

B. ISSUES & ANALYSIS

[4] The parties have agreed that the issues to be decided are:

1. Under the Act, is Mr. Pedneault entitled to notices regarding the leases of units that the condominium corporation is required to keep under s. 83?
2. Should the list of owners and mortgagees that a condominium corporation is required to keep under s. 46.1 of the Act include the addresses for service?
3. Is Mr. Pedneault entitled to Periodic Information Certificates from the 12 months before his May 14, 2019 request?
4. If the answer to 1, 2 and/or 3 above is yes, does the respondent have a reasonable excuse for not providing the records?
5. If not, is Mr. Pedneault entitled to an Order that the respondent pay a penalty of up to \$5,000 under s. 1.44(1) 6 of the Act because it refused to permit the applicant to examine or obtain copies of the records listed above without a reasonable excuse?
6. Is either party entitled to costs under the Act or the Tribunal's Rules of Practice? The applicant claims costs of \$150.

C. RESULT

[5] For the reasons set out below, I find the applicant is entitled to all the records he has requested, and is entitled to an Order that the respondent pay a penalty of \$500 because it refused to provide the records without a reasonable excuse. He is also entitled to the costs of \$150 that he has claimed.

Issues 1, 2 and 3 – The notices of leases, the list of owners and mortgagees and the periodic information certificates.

[6] It is well established in the jurisprudence that a key principle underlying the Act is that the records of a condominium corporation should be an “open book” freely accessible to all owners, subject to certain specific exceptions that are set out in the Act. As Mr. Pedneault pointed out, this is an important principle of condominium governance. To that end, the Act and Ontario Regulation 48/01 contain provisions setting out directions as to what records must be kept and

detailed procedures about how unit owners may access them and how condominium corporations must provide them. To encourage due diligence by corporations, those that refuse to provide records that owners are entitled to may be required to pay a penalty of up to \$5,000 directly to an owner if they refuse to provide the records without a reasonable excuse.

- [7] Subsection 55(1) states that corporations shall keep adequate records and lists several types of records that must be kept. Item 6 of that list specifies that “the records required under ss. 46.1 (3) and 83 (3)” are among those a corporation must keep. These are, respectively, the list of owners and mortgagees and their addresses for service, and a record of the mandatory notices a corporation receives from owners when they lease their units.

The Notices of Lease Under ss. 83(3)

- [8] Section 83 (1)(a) requires a unit owner to notify the corporation within ten days of leasing their unit. Section 83 (3) requires the corporation to keep a record of the notices that it receives. It does not mention the leases themselves as a record nor the names of lessees. I conclude therefore that under ss. 83 (3), Mr. Pedneault is entitled to a list of the units from which MCC 227 has received notices under s. 83 (1), and the corporation must provide him with those.

The List of Owners and Mortgagees

- [9] Subsection 55(3) provides that “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 in accordance with the regulations.” Those records include the owner’s list, together with the owners’ and mortgagees’ addresses, and any lease notices. Although ss. 55(4)(c) states that the right to examine records does not include records relating to specific units or owners, that statement is qualified by ss. 55(5)(c), which states that the prohibition in ss. 55(4)(c) does not prevent owners from examining or obtaining “copies of the record that s. 46.1 requires the corporation to maintain,” – that record is the list of owner’s and mortgagees with addresses for service.
- [10] However, in *Wu v. Carleton Condominium Corporation*, 2016 30525 (ON SCSM) (CanLII) and *Margaret Samuel v Metropolitan Toronto Condominium Corporation No. 979* and *Metropolitan Toronto Condominium Corporation No. 989*, 2019 ONCAT 9 (CanLII), the court and this Tribunal have held that owners are not entitled to examine or receive copies of the email addresses of other unit owners.

[11] I find therefore that Mr. Pedneault is entitled to a copy of the list of owners and mortgagees under s. 46.1 that includes their addresses for service.

The Periodic Information Certificates

[12] Regarding Mr. Pedneault's second May 14, 2019 request for the PICs for the condominium's previous fiscal year (February 1, 2018 to January 31, 2019), CCC 227 does not dispute that he is entitled to these core records. It immediately provided the 2018 first quarter PIC (dated May 31, 2018) and provided the 2019 first quarter PIC dated April 30, 2019 during the Stage 3 proceeding.

[13] However, the disclosure is incomplete in three ways: one, the first quarter 2018 PIC is missing mandatory information such as director's disclosures, insurance forms and compliance orders required by ss. 26.3 and 76(1) of the Act. Two, the third quarter PIC for 2018 was never created and so could not be produced. And three, the board's response form did not contain the information required by ss. 13.3 (7) of Regulation 48/01, which includes, among other things, a description of the record and whether it is a core record, a statement of whether the board will allow the requestor to examine the record, and if the request is refused, the reason for the refusal as well as which provision of s. 55 of the Act upon which the board has based its refusal.

[14] The important issue here for all three of these deficiencies is transparency. The PICs are important documents because they contain information about the financial and legal health of the condominium corporation, information fundamental to condominium ownership and which the law requires corporations to make available to owners when asked to do so. To the extent these documents are missing or incomplete, it would appear CCC 227 has not kept "adequate" records.

[15] From the numerous e-mails exchanges submitted as evidence involving Mr. Pedneault, board members and CCC 227's property manager, Val-Roca Management, it appears that board members were not aware of the board's responsibility to maintain certain records and to provide them to a unit owner on request, and that the board relied on the property manager for these functions. It also appears that the board did not understand that it, and not the property manager, is ultimately responsible, and liable, for the corporation's obligations under the Act – the property manager is merely the agent acting on behalf of the corporation. When Mr. Pedneault submitted his Requests for Records, he did so appropriately, by emailing them to CCC 227's address for service listed with the

Condominium Authority of Ontario's Public Registry, which was the e-mail address for Val-Roca Management. The fact that there were misunderstandings and/or miscommunications between Val-Roca and board members does not absolve CCC 227 from its responsibilities under the Act.

- [16] Mr. Pedneault has asked the Tribunal to order CCC 227 to produce the list of owners and mortgagees with addresses for service; notices of lease under s. 83(3) of the Act; a complete first quarter PIC for 2018; the missing third quarter PIC for 2018; and the first PIC of 2019.
- [17] The first PIC for 2019 was uploaded as a document in the Stage 3 proceeding and so has been provided to Mr. Pedneault.
- [18] As for the missing 2018 third quarter PIC, I do not have the authority to order a condominium corporation to produce a record that was never created, nor do I have the authority to order the corporation to create the record.
- [19] The missing components of the 2018 first quarter PIC should be provided if they exist, and, if they do not exist, an explanation should be provided.

The applicant is entitled to an Order that the respondent pay a penalty of \$500 under s. 1.44(1) 6 of the Act

- [20] The applicant has requested the maximum penalty of \$5000 because CCC 227 refused to produce the records without reasonable excuse, and because it did not participate in the Tribunal's dispute resolution process until well into the Stage 3 proceeding.
- [21] Under s.1.44(1) 6 of the Act, the Tribunal may order a condominium corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under s.55(3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection."
- [22] There is no authority to order a penalty under this section for failing to participate in Stage 3 hearing phase or for joining late.
- [23] The purpose of the penalty is to impress upon condominium corporations the seriousness of their obligations to comply with the provisions of the Act and to provide unit owners with a remedy when those obligations are not met. The

maximum penalty is reserved for wilful misconduct or behaviour that is highhanded, intransigent or egregious. In this case, I find there are mitigating factors and the maximum penalty is not justified.

- [24] With respect to the late or non-provision of documents, I accept the respondent's explanation that the manager employed by Val-Roca died suddenly in a car accident on April 15th, 2019, within the 30 days CCC 227 had to respond to the records request, which delayed production of some of the records, and her duties were taken over by a second person. At that point, communication and the working relationship between the board of CCC 227 and Val-Roca deteriorated, with many tasks left undone. On August 16th Val-Roca advised the board they were closing permanently and on October 3rd sent an e-mail stating, "Let there be no misunderstanding . . . Val-Roca is no longer managing your property."
- [25] The respondent feels that Val-Roca was grossly negligent in not advising the board of its obligations under the Act, in not responding promptly to the applicant's requests for records and multiple reminders to participate in the CAT dispute resolution stages, in not keeping the board informed about the CAT case the applicant had initiated, and in not participating in the proceedings on behalf of the board. The board feels it is as much a victim of its property manager's neglect as is the applicant.
- [26] This is true to a certain extent, but it does not excuse everything. I am mindful that owners elected to the boards of condominiums are volunteers with varying levels of expertise; however, directors are required to undertake training and are expected to be aware of their responsibilities under the Act. Ignorance of the law is no excuse. The board is also responsible for overseeing their property managers. In this case, the board ought to have known what were and were not core records, that the list of owners and mortgagees had to include their addresses for service, if given, and that unit owners are entitled to the notices about leased units as provided for in ss. 83(3) of the Act. They did not know this and failed to provide the records, which I find amounts to refusal without reasonable excuse. Although the board readily provided some of the records requested, I nevertheless find a penalty of \$500 for this issue is reasonable in the circumstances.

Mr. Pedneault is entitled to his costs claimed of \$150

- [27] Under ss. 1.44 (1) 4 of the Act and Rules 45.1 and 45.2 of the Tribunal's Rules of Practice, the Tribunal may order a party to pay another party any reasonable expenses related to the use of the Tribunal including any fees paid to the Tribunal.

[28] The applicant has been successful in this proceeding and has asked for the costs he incurred to initiate dispute resolution proceedings at the Tribunal, i.e. the \$25 fee to file an application for dispute resolution with the Tribunal, and the \$125 fee to move the case to Stage 3, for a total of \$150. CCC 227 shall pay this cost to the applicant.

ORDER

The Tribunal Orders that:

1. CCC 227 shall provide to Maxime Pedneault the following records within 30 days of this Order:
 - a. A copy of the list of unit owners and mortgagees with their addresses for service as required under s. 46.1 (3) of the Condominium Act.
 - b. The notices of leases as required under ss. 83 (3) of the Act.
 - c. Copies of the documents missing from the first quarter PIC for fiscal 2018, including director's disclosures, insurance forms and compliance orders required by ss. 26.3 and 76(1) of the Act, if those documents exist, and, if they do not, written confirmation that they do not exist.
2. CCC 227 shall pay to Maxime Pedneault a penalty of \$500 and his costs of \$150 within 30 days of this Order.
3. In the event that the penalty or costs are not provided to the Applicant within 30 days of this Order, the Applicant will be entitled to set-off this amount against the common expenses attributable to the Applicant's unit(s) in accordance with Section 1.45(3) of the Act.
4. In order to ensure that the Applicant does not have to pay any portion of the penalty and cost awards, the Applicant shall also be given a credit toward the common expenses attributable to the Applicant's unit in the amount equivalent to the Applicant's proportionate share of the penalty and costs awarded.

Susan Sapin,
Member, Condominium Authority Tribunal

Released On: March 17, 2020