

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 20, 2019

CASE: 2018-00272R

CITATION: Michael Lahrkamp v. Metropolitan Toronto Condominium Corporation No. 932, 2019 ONCAT 4

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

Adjudicator: Ian Darling, Chair

The Applicant

Michael Lahrkamp

Self-represented

The Respondent

Metro Toronto Condominium Corporation No. 932

Jonathan Fine, Counsel

Fatima Viera, Counsel

Written submissions received: December 5-19, 2018.

REASONS FOR DECISION AND ORDER ON COSTS

A. INTRODUCTION

- [1] Michael Lahrkamp (the “Applicant”) filed a case with the Condominium Authority Tribunal (the “CAT”) seeking an order requiring Metropolitan Toronto Condominium Corporation No. 932 (the “Respondent”) to provide records. Prior to any hearing on the substance of the Applicant’s case, the CAT requested and received submissions on the issue of whether it should allow the case to proceed considering the Applicant’s designation as a vexatious litigant by Justice Koehnen in Metropolitan Toronto Condominium Corporation No. 932 v. Lahrkamp, 2018 ONSC 286.
- [2] After considering the Users’ submissions, I found that the case was vexatious and dismissed the case without holding a hearing pursuant to s.1.41 of the Condominium Act, 1998. The Respondent then requested costs against the Applicant in the amount of \$12,807.50. The CAT requested submissions from the Users on the issue of costs.
- [3] As noted above, although costs were addressed by the Users in their initial submissions, the CAT allowed further submissions on this topic after release of its decision but limited the Users’ second submission to five pages.

- [4] After considering the Users' submissions, I order costs in the amount of \$2,500.00 to be paid by the Applicant to the Respondent.

B. ANALYSIS

- [5] The Respondent requests costs, citing Rules 32 and 33 of the CAT Rules of Practice, excerpted below for reference:

32.1 The CAT may order a User to pay to another User or to the CAT any reasonable expenses or other costs related to the use of the CAT, including:

- a) any fees paid to the CAT by the other User;
- b) the other User's expenses or other costs that were directly related to this other User's participation in the Case; and
- c) the other User's or the CAT's expenses or other costs that were directly related to a User's behaviour during the Case that was unreasonable or for an improper purpose, or that caused an unreasonable delay.

33.1 The CAT will not order one User to pay to another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons.

- [6] Both Users referred to the decision of *Mara Bossio v. Metro Toronto Condominium Corporation 965*, 2018 ONCAT 6, where the Member, in discussing the recovery of legal fees under the CAT Rules, wrote in paragraph 48:

To find 'exceptional reasons', I would need evidence that the Applicant had been grossly unreasonable, or had taken positions that unduly complicated or had acted in bad faith or with malice, or took some other step beyond being unsuccessful and unreasonable.

- [7] The Respondent submits that CAT's decision not to allow the case to proceed demonstrates that the Applicant's conduct in bringing the application was grossly unreasonable. The Respondent refers to the Oxford Encyclopedic English Dictionary definition of "unreasonable": "*Forming an exception*; Unusual; not typical (exceptional circumstances); Unusually good; outstanding." [Emphasis added by Respondent.]

- [8] The question to be decided by me now is whether costs should be ordered against the Applicant for bringing the case to the CAT given that the Applicant's application was vexatious.

- [9] The Respondent's submissions included references to their prior litigation history with the Applicant. I find that these references were not relevant to the assessment of whether costs should be awarded in this case.
- [10] The CAT's early review process was initiated because of the applicant's vexatious litigant designation. It is noteworthy that the early review process resulted in the avoidance of costs that may otherwise have been incurred by the Users because the case did not proceed to a full hearing.
- [11] With respect to the early review process, I note that the Applicant's submissions were submitted on time and directly addressed the questions raised by the CAT.
- [12] During the early review process, the Applicant submitted that the vexatious litigant designation against a party does not prevent them from making a Request for Records under the Act nor does it prohibit them from filing an application with the CAT.
- [13] In *Manorama Sennek v. Carleton Condominium Corporation No. 116*, 2018 ONCAT 4, the CAT found that the vexatious litigant designation does not necessarily bar a person from access to the CAT. It is therefore not a foregone conclusion that an applicant's case would not be permitted to proceed by the CAT.
- [14] However, the Applicant's case in this instance was not permitted to proceed because it was found to fit within the Applicant's already established pattern of vexatious conduct, which I consider to be an "exceptional reason" for the purposes of Rule 33.1. Further, it was an attempt to continue a dispute already determined by the courts and was brought before the CAT for an improper purpose.
- [15] The filing of the Applicant's case directly resulted in the Respondent incurring costs related to their participation in the early review process. Accordingly, I find that an award of costs is appropriate.
- [16] Weighing these factors, I must next assess the appropriate amount of costs.
- [17] The costs which are the subject of this order are the costs related to the Respondent's participation in the early review process, which the Respondent indicated in their original submissions amounted to \$12,807.50. By the time of their second submission, the Respondent's costs had almost doubled. I will not consider the request for \$21,299.94, since there was no adequate explanation provided for this increase. Further, the CAT's invitation to the Users to make submissions on costs was not an invitation to increase those costs, and especially not by such a substantial amount.
- [18] Further, Rule 33.1 of the CAT's Rules of Practice states that legal fees are generally not recoverable. As noted in *Mara Bossio v Metro Toronto Condominium Corporation 965*, 2018 ONCAT 6, the CAT's approach to costs is different than the

court's, and an unsuccessful user before the CAT would not anticipate having to pay legal fees to the successful User.

- [19] In making my assessment, I have also considered the consumer protection intent of the Act, and the need to balance the rights of individual owners against the collective interests of the others in the condominium community.
- [20] The Respondent's first submission was 55 pages long, with 28 pages of argument addressing the questions posed by the CAT. It also included a 145-page book of Authorities. As noted above, the Respondent's first submission included a request for costs in the amount of \$12,807.50. This first submission did not provide any breakdown of the work performed or relevant hourly rate(s).
- [21] The Respondent's second submission was 43 pages long, with four pages of new material addressing the question of costs (see paragraph 7 above). As noted above, the Respondent's second submission included a request for costs in the amount of \$21,299.94. The second submission provided an outline of the hours worked and the relevant hourly rates, but did not provide any detail to enable the CAT to determine:
- what work had been performed;
 - whether that work related to the first or second set of submissions; or,
 - the basis for the drastic increase in costs between the first and second submissions.

For these reasons, I find that the Respondent's submissions are of limited assistance in determining the appropriate amount of costs.

- [22] The Respondent should not expect to be fully reimbursed for their legal fees. The Respondent proposed an alternative partial reimbursement rate of 66.7%. I am prepared to award the Respondent one-fifth of the costs amount cited in their original submissions, rounded for convenience to \$2,500.00. I believe this amount is sufficiently substantial to convey to the Applicant and other users that a vexatious application should not to be brought, while encouraging condominium corporations to be judicious in incurring legal fees.

C. CONCLUSION

- [23] For the reasons outlined above, I conclude that it would be appropriate to award \$2,500.00 in costs to the Respondent.

ORDER

- [24] The CAT orders that \$2,500 in costs be awarded in this case, payable within 60 days of this Order.

Ian Darling
Chair, Condominium Authority Tribunal

RELEASED ON: February 20, 2019