

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 20, 2019

CASE: 2018-00345R

Citation: Charlene Aquilina v Middlesex Standard Condominium Corporation No. 823, 2019 ONCAT 21

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

Member: Laurie Sanford, Member

The Applicant
Charlene Aquilina

Self-Represented

The Respondent
Middlesex Standard Condominium Corporation No. 823

John Goudy, Counsel

Hearing: March 4, 2019 to June 3, 2019

REASONS FOR DECISION

A. OVERVIEW

- [1] Ms. Charlene Aquilina is an owner of a condominium unit in Middlesex Standard Condominium Corporation No. 823 (“MSCC823”). She has applied to this Tribunal for an order directing MSCC823 to provide her with unredacted copies of certain records pertaining to the 2018 Annual General Meeting (the “AGM”) of MSCC823. MSCC823 agrees that Ms. Aquilina is entitled to records she requests but takes the position that it is required to redact information which might identify other condominium unit owners or their units. Ms. Aquilina asserts that the proposed redactions make the records useless to her. She also objects to the charge that MSCC823 proposes for the costs of making the redactions. She is requesting a penalty be paid to her by MSCC823 for their refusal to provide the records she seeks in an unredacted format. MSCC823 requests an award of costs.
- [2] For the reasons set out below, MSCC823 is directed to offer the requested records with the redactions necessary to protect the identities of other condominium unit owners. The costs that MSCC823 may charge for producing the redacted records are considered below. Ms. Aquilina is not obliged to pay the production costs for the records if she does not wish to receive them. There will be no award of costs or a penalty.

B. ISSUES & ANALYSIS

- [3] Ms. Aquilina requests unredacted copies of the AGM sign-in sheet and copies of the AGM ballots and proxies pertaining to the election of directors to the board of

MSCC823. She alleges that serious misconduct took place at the AGM and affected the voting which occurred. MSCC823 agrees that Ms. Aquilina is entitled to these records but maintains that it is required under the *Condominium Act, 1998* (the “Act”) to redact information that might identify other condominium unit owners or their units.

- [4] Ms. Aquilina argues that MSCC823 should not be able to use the proposed redactions to evade the consequences of the alleged irregularities at the AGM. Her position is that the redacted records are of no use to her. She also submits that MSCC823 is being hypocritical in proposing to redact identifying information from the records she requests since MSCC823 has in the past violated her privacy by disclosing information about her.
- [5] The problem with Ms. Aquilina’s position is that it assumes that either MSCC823 has the option to redact information from the records she requests or not, or that the Tribunal has the jurisdiction to direct MSCC823 to provide her with unredacted records. Neither of these assumptions is correct.
- [6] The various records that Ms. Aquilina requests are dealt with differently in the Act but the effect in this case is the same. The sign-in sheet is subject to the operation of Section 55 of the Act. The proxy forms and the ballots, while subject to Section 55, are more specifically dealt with in section 13 of Ontario Regulation O/48 of the Act (the “Regulation”).
- [7] The general entitlement to records is set out in subsection 55(3) of the Act. This subsection obligates a condominium corporation to provide condominium unit owners with copies of certain records. As noted above, MSCC823 agrees that the AGM sign-in sheet and the copies of the AGM ballots and proxy forms requested by Ms. Aquilina are among the records addressed in the Act.
- [8] The AGM sign-in sheet is subject to subparagraph 55(4)(c) of the Act, which exempts “records relating to specific units or owners” from the general entitlement that condominium owners have to records. The decision of this Tribunal in *Bryan Mellon v. Halton Condominium Corporation No. 70*, 2019 ONCAT 2 (CanLII) was not cited by MSCC823 but it is relevant to interpreting subparagraph 55(4)(c). The Tribunal reviewed the case law and concluded that a condominium corporation may provide records which contain the exempted reference to specific units or owners provided the condominium corporation redacts, “any information that would serve to identify the unit or unit owner, including, but not limited to, the unit owner’s name and unit number”.
- [9] The proxy forms and ballots that Ms. Aquilina has requested are specifically addressed in subparagraph 13.11 (2) 4 of the Regulation. This provision exempts from the general entitlement to records “Any portion of a ballot or proxy form that identifies specific units in a corporation or owners in a corporation, unless a by-law of the corporation provides otherwise.” MSCC823 introduced testimony stating that

MSCC823 does not have such a by-law. Ms. Aquilina challenged the credibility of the witness who provided this testimony but did not produce a by-law that permitted the disclosure of identifying information about condominium units or owners. Since such a by-law would be available to all owners, I accept as fact that there is no by-law that would permit MSCC823 to provide unredacted copies of the proxy forms or ballots.

- [10] Mr. Goudy, Counsel for MSCC823, referred to a decision of this Tribunal, *Janet Cangiano v Metro Toronto Condominium Corporation No. 962*, 2018 ONCAT 7 (CanLII). That case, like this one, concerned alleged irregularities at an annual general meeting and involved a request for the proxy forms. The Tribunal concluded that the proxy forms must be redacted to protect the privacy of the unit owners. The Tribunal noted, at paragraph 22, that there were other options open to the Applicant to obtain the information she wanted. One of those options appeared to involve obtaining the sign-in sheet. However, the Tribunal made no decision on the matter. For the reasons noted above, I conclude that in this case, Ms. Aquilina is not entitled to an unredacted version of the owner sign-in sheet.
- [11] The provisions of the Act and Regulation make it clear that MSCC823 does not have the discretion to provide unredacted records to Ms. Aquilina if those records would identify other unit owners or their units. The Tribunal does not have the jurisdiction to direct MSCC823 to provide records in contravention of the Act or Regulation.
- [12] For all the reasons above, I direct MSCC823 to provide Ms. Aquilina the records she requests with information which might identify specific units or unit owners redacted. This includes the unit and the name of the unit holder.
- [13] The next issue is what costs MSCC823 may claim for producing the redacted records. Subsection 13.3 (8) of the Regulation permits a condominium corporation to charge a reasonable fee for the production of records such as the ones that Ms. Aquilina is requesting. Mr. Goudy submits that MSCC823 estimates that costs of producing the records at \$0.15 per page for photocopying 81 pages, for a total photocopying cost of \$12.15. The labour for producing and redacting the copies would be three hours at \$30 per hour for a total labour cost of \$90. The total production cost is \$102.15.
- [14] Mr. Goudy cited the decision of this Tribunal in *Shaheed Mohamed v York Condominium Corporation No. 414*, 2018 ONCAT3 in support for the labour costs MSCC823 claims. In that case, the Tribunal considered what a reasonable hourly labour charge would be for non-professional work and concluded that a rate of approximately \$30 per hour was reasonable. I accept this reasoning. The Regulation sets a maximum of \$0.20 per page for photocopying, which is greater than the amount being claimed by MSCC823. The total amount claimed by MSCC823 is reasonable.

- [15] Ms. Aquilina requested that she not be charged any amount for records which would be of no use to her. She will have the option of paying the fee and obtaining the redacted records or not paying the fee and not receiving them.
- [16] Ms. Aquilina made no specific claim for costs. In this case, MSCC823 was always prepared to provide her with the records she requested, redacted in accordance with the Act and Regulation. Therefore, an award of costs to Ms. Aquilina is not appropriate in this case. MSCC823 claims costs in the amount of \$1,000 in partial reimbursement for the costs it incurred in this matter. MSCC823 provided no support for this number but suggested it would partially pay for the costs of the witness preparation and participation in the hearing. MSCC823 made no claim for legal costs, which it submitted were separate from the amount being claimed.
- [17] MSCC823 submitted that costs in this case were appropriate given the conduct of Ms. Aquilina during the hearing. It is true that Ms. Aquilina wrote statements that were abusive and unacceptable, particularly at the outset of this hearing. However, following a caution, her communications did moderate. Ms. Aquilina was within her rights to pursue this matter. Mr. Goudy noted that MSCC823 had provided Ms. Aquilina with a copy of the *Janet Cangiano* case for her reference before this proceeding began but Ms. Aquilina persisted in the application. However, a self-represented Applicant refusing to give up a right to a hearing after reading a single decision that was provided by opposing counsel is not grounds for a cost award. Given that Ms. Aquilina was pursuing a legal entitlement in applying to the Tribunal and given that the worst of her unacceptable communications moderated following a caution, no order for costs will issue in this case.
- [18] Ms. Aquilina requests a penalty to be paid by MSCC823 for a delay in providing her with the records she requested. MSCC823 was prepared to provide the records in a redacted format and its position concerning the redaction was the correct one. No penalty will be imposed on MSCC183.

C. ORDER

- [19] The Tribunal makes the following order:
- a) If Ms. Aquilina pays the amount of \$102.15 for the costs of production within 30 days of the date of this order then, within 14 days of the payment, MSCC823 shall prepare and provide to Ms. Aquilina the following records concerning the 2018 annual general meeting of MSCC283. The records shall each be redacted to remove information that may identify specific units or unit owners, other than Ms. Aquilina and her own unit:
 - i. a copy of the sign-in sheet;

- ii. a copy of the ballots pertaining to the election of directors to the board of MSCC823; and,
 - iii. a copy of the proxies pertaining to the election of directors to the board of MSCC823.
- b) No order will issue as to costs or a penalty.

Laurie Sanford
Member, Condominium Authority Tribunal

Released On: June 20, 2019