

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 7, 2020

CASE: 2020-00072R

Citation: Arthur Pullan v. Leeds Condominium Corporation No. 18, 2020 ONCAT 15

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

Member: Ian Darling, Chair

The Applicant

Arthur Pullan

Self-represented

The Respondent

Leeds Condominium Corporation No. 18

Gill Hodge, Agent

Hearing: Written Submissions: April 2 to April 24, 2020

MOTION ORDER

- [1] This is a motion brought by the Leeds Condominium Corporation No. 18 (the Respondent) to dismiss a case according to the Condominium Authority Tribunal's (the "CAT") early dismissal rule.
- [2] On March 27, 2020 the Applicant, Arthur Pullan, submitted an application to the CAT. The case proceeded to Negotiation and on April 2, 2020, the Respondent submitted a motion to dismiss the case. The Respondent asserted that:
- a. "The Applicant was using the CAT system as a vehicle for obtaining information other than core documents.
 - b. The Applicant had received all core records that were requested.
 - c. This was the fifth record request submitted by the Applicant."
- [3] Based on the Respondent's submissions, it appears that it is basing the request on Rule 17.1 (c) of the CAT Rules of Practice. The Rule allows the CAT to dismiss a Case at any time in certain situations, including:
- (c) *Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications)*

- [4] The criteria to identify a vexatious litigant, outlined in *Lang Michener et al v. Fabian et al* (1987) [1987 CanLII 172 \(ON SC\)](#), 59 O.R. (2nd) 353 are:
- a) bringing of one or more actions to determine an issue which has already been determined;
 - b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;
 - c) 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;
 - d) rolling forward grounds and issues into subsequent actions; and
 - e) persistently taking unsuccessful appeals from judicial decisions.
- [5] The Respondent states that this is the fifth record request from the Applicant, which demonstrates that the Applicant is acting in a frivolous and vexatious manner. The Applicant confirmed that there were five requests, but they were for different records. The previous requests were for core records. The Applicant indicated that this request for non-core records is based on information obtained through the previous requests.
- [6] This is the first case before the CAT between these parties, and entitlement to these records has not been previously determined. I find that it is not an abuse of the record request process to have submitted five requests since the requests were for different records than the subject of this case. Multiple requests may be inconvenient for the Respondent, but in this case it is not sufficient evidence to demonstrate an abuse of the CAT process.
- [7] The Respondent asserted that the Applicant was using the CAT “as a vehicle for obtaining information other than core documents.” The Respondent stated that they have provided all requested core records that were the subject of the previous requests, but do not believe that they need to provide the non-core records requested because they either do not exist, or the Applicant is not entitled to them. The Applicant asserts that the Respondent cited a previous CAT case to support refusing to provide the non-core Records. The Applicant indicated that case should not apply because there are differences between the types of records he requested, and those in the other case. From these submissions, I can conclude that the case is not just a request for information.
- [8] On its most basic level, there is a dispute over the Applicant’s entitlement to the records. In order to determine entitlement to the records, a CAT Member would

need to hear evidence and submissions on the issue from both parties. I cannot conclude at this point that there is no likelihood of success if this case were to proceed to Stage 3 – Tribunal Decision. Therefore, there is sufficient reason to allow the case to proceed through the Tribunal process.

- [9] The motion is dismissed. The case may proceed through the Tribunal process. The parties will have an opportunity to resolve the case on their own in Negotiation, or in Mediation prior to moving to Stage 3 – Tribunal Decision. I encourage both parties to engage in a serious effort to resolve the case in a mutually agreeable manner.

Member
Ian Darling, Chair, Condominium Authority Tribunal

Released on May 7, 2020.