

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 16, 2020

CASE: 2019-00227R

Citation: Kallini v. Toronto Standard Condominium Corporation No. 1598, 2020 ONCAT 37

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

Member: Laurie Sanford, Member

The Applicant,
Dalia Kallini
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 1598
Represented by Natalia Polis, Counsel

Hearing: Written online hearing - March 15, 2020 to October 5, 2020

REASONS FOR DECISION

A. OVERVIEW

- [1] Ms. Dalia Kallini is a unit owner in Toronto Standard Condominium Corporation No. 1598 (“TSCC1598”). She has requested records from TSCC1598 that relate to the decision by TSCC1598 to replace plumbing piping (the “Kitec Replacement”) and to charge the unit owners for the cost of the Kitec Replacement.
- [2] TSCC1598 submits that it has provided Ms. Kallini with the records she has requested, including records requested during the course of this hearing. Ms. Kallini submits that the records remain missing. She uses the word “missing” in the sense that, in her opinion, had TSCC1598 followed the correct decision and communication process to undertake the Kitec Replacement, it would have created the records she is requesting. TSCC1598 responds that it has produced all the existing records that Ms. Kallini has requested together with other records which are relevant but which Ms. Kallini did not request. It further submits that any consideration of what process TSCC1598 ought to have followed in the Kitec Replacement is beyond the jurisdiction of this Tribunal in a records request.

- [3] For the reasons set out below, I find that TSCC1598 has produced the records that Ms. Kallini has requested. Concerning Ms. Kallini's request for the "missing" records, she is in substance requesting a consideration of whether TSCC1598 followed the correct process in deciding to undertake the Kitec Replacement and in communicating that decision to the condominium unit owners. I agree with TSCC1598 that such a consideration is currently beyond the jurisdiction of the Tribunal.
- [4] Both parties claimed their costs but, in the circumstances of this case, no order for costs will issue.
- [5] At the heart of this dispute are factual misunderstandings. Now that this process is concluded, I encourage the parties to meet and resolve their differences.

B. ISSUES & ANALYSIS

- [6] Section 55 of the *Condominium Act, 1998* (the "Act") obliges condominium corporations to keep "adequate" records. The Act and section 13 of Regulation 48/01 to the Act (the "Regulation") set out a broad entitlement to examine or obtain copies of those records.
- [7] Ms. Kallini originally brought this application to obtain engineering reports related to the Kitec Replacement. At the outset of this hearing, Ms. Kallini requested additional records. Despite the fact that Ms. Kallini had not made a formal records request for these additional records, TSCC1598 agreed to include them in this hearing. In sum, Ms. Kallini is requesting:
1. Engineering reports from March 1, 2017 to July 29, 2019 relating to the Kitec Replacement;
 2. The plumbing inspection referred to in the March 10, 2017 management note left on Ms. Kallini's doorstep;
 3. The report from TSCC1598 following the Annual General Meeting of October, 2018 containing the update on the Kitec inspection and the action required (which might be dated February, 2019), and
 4. The communication from TSCC1598 sent between April and June, 2019 to Ms. Kallini containing a notice or update that payment was now required by Ms. Kallini for the Kitec Replacement.

[8] There were several issues that arise from the records request made by Ms. Kallini, namely:

1. Has TSCC1598 produced the records that Ms. Kallini requested?
2. Are any of the requested records missing?
3. Does the Tribunal have the jurisdiction to consider if TSCC1598 followed the correct process in connection with the Kitec Replacement?
4. What costs and penalties, if any, should apply and how should they be calculated?

Issue 1: Has TSCC1598 produced the records that Ms. Kallini requested?

Engineering reports from March 1, 2017 to July 29, 2019 relating to the Kitec Replacement

[9] The witness for TSCC1598 testified that Kitec plumbing piping, which was plastic, was widely used in condominium construction between 1995 and 2007. The testimony was that Kitec plastic piping was found to be prone to failure and it became a “general understanding” that Kitec piping in condominiums should be replaced as soon as reasonably possible. At the beginning of 2017, after two unit owners in TSCC1598 reported flooding in their units, TSCC1598 retained an engineering firm, CCI Group (“CCI”), to determine if Kitec piping was being used in the building. In the spring of 2017 two of TSCC1598’s sister condominium corporations retained a different engineering firm, which will be referred to as the “TR Group”, to determine if Kitec piping was in their respective condominium buildings.

[10] According to TSCC1598’s witness testimony, CCI produced a report (the “CCI Report”) containing their finding that Kitec plastic piping was installed in the building. The CCI Report recommended that the Kitec piping be replaced as soon as reasonably possible. The CCI Report is dated March 27, 2017 and was provided to Ms. Kallini. The TSCC1598 witness testified that no other TSCC1598-commissioned engineering report exists.

[11] I have reviewed the CCI Report and I am satisfied that this is one of the engineering reports dated between March 1, 2017 and July 29, 2017 which Ms. Kallini requested. Whether there are missing engineering reports will be considered below.

The plumbing inspection referred to in the March 10, 2017 management note left on Ms. Kallini's doorstep

[12] The parties agree that the plumbing inspection referred to in the March 10, 2017 management note left on Ms. Kallini's doorstep referenced an engineering report prepared by the TR Group. The witness for TSCC1598 testified that this reference was in error and what was meant was the CCI Report, which has been provided. Ms. Kallini cites this reference as evidence that there is a TR Group report that was commissioned by TSCC1598 but not completed. Whether there are missing engineering reports will be considered below. What can be said now is that TSCC1598 has produced the CCI Report.

The report from TSCC1598 following the Annual General Meeting of October, 2018 containing the update on the Kitec inspection and the action required (which might be dated February, 2019)

[13] The TSCC1598 witness testified that on February 8, 2019, TSCC1598 sent Ms. Kallini an update on the Kitec Replacement, including information about which contractor TSCC1598 had chosen to do the work, the rough schedule for the work, and the expected costs of about \$4,700 per unit. This notice also advised that since condominium owners had been given ample time to "opt-out" of the replacement by doing the work themselves, that option was no longer available. The notice contained information about the consequences if Ms. Kallini refused to pay for the Kitec Replacement. These included the possibility of a lien being registered against the unit and, in extreme cases, the possibility of a power of sale being exercised. TSCC1598 submits that this February, 2019 notice is the one requested by Ms. Kallini and it was produced during the hearing. I find that this is the report that Ms. Kallini has requested. Whether there are other reports missing will be considered below.

The communication from TSCC1598 sent between April and June, 2019 to Ms. Kallini containing a notice or update that payment was now required by Ms. Kallini for the Kitec Replacement

[14] TSCC1598 produced: a notice dated April 11, 2019 of a meeting to be held to discuss the Kitec Replacement; an information circular dated April 12, 2019 containing information about the Kitec Replacement; a notice dated April 12, 2019 containing corrected information about the Kitec Replacement and email correspondence in June and July, 2019 between TSCC1598 and Ms. Kallini concerning the Kitec Replacement. TSCC1598 takes the position that no other

correspondence between TSCC1598 and Ms. Kallini exists for the period between April and June, 2019.

[15] Concerning the notice or update that payment is now required by Ms. Kallini for the Kitec Replacement, the TSCC1598 witness testified that included in the June and July, 2019 email correspondence was a Notice of Entry requesting entrance to Ms. Kallini's unit to perform the Kitec Replacement. It was this witness' testimony that the Kitec Replacement was not done on Ms. Kallini's unit because she denied the TSCC1598 contractors access to her home. TSCC1598 produced Ms. Kallini's Unit Statement as of August 14, 2020 showing no payment owing for the Kitec Replacement. I find that these reports have been provided to Ms. Kallini. Whether there are others that are missing will be considered below.

Issue 2 – Are any of the requested records missing?

Issue 3 - Does the Tribunal have the jurisdiction to consider if TSCC1598 followed the correct process in connection with the Kitec Replacement?

[16] Issues 2 and 3 are closely connected and will be considered together. TSCC1598 provided Ms. Killini with the above-noted records and a range of other documents including the Declaration and the General Operating By-Law No. 1 of TSCC1598, Minutes of an August 14, 2017 Townhall meeting to discuss the Kitec Replacement and an updated report on the Kitec Replacement, including a proposed schedule of events, dated March 15, 2018. TSCC1598 submits that it has now provided Ms. Kallini with all correspondence between TSCC1598 and Ms. Kallini, including general communications to all unit owners, concerning the Kitec Replacement.

[17] However, Ms. Killini submits that documents are missing. In her closing submissions, Ms. Killini stated:

1-According to the Condo. Act. 1998, implementing such a substantial change has bylaws requirements. The board claims that it is related to building safety. Therefore the relevant record was requested which was supposed to be the engineer report referred to in the March 10, 2017 letter. i.e this record is missing. After revising all other submitted records, it was confirmed that shortly after notifying owners of the ongoing inspection, the process was suddenly stopped by the board without any notice to owners. Therefore, a full accurate and professional engineer report never existed. The property manager mentioned during a board meeting that the board along with the property manager relied on the experience shared by one or more of the board members who got their Kitec already replaced i.e opted out. Most probably, those are the two units' report from 2016, by CCI.

2-According to the Condo. Act., in case of substantial change, owners have to participate both in the group decision making level through voting and in the individual unit owner level through giving owners the clear choice to opt in or opt out. In this case, owners were never given the choice neither to vote nor to opt out. i.e This record is missing.

3-In provision of the above, the record dated February 8, 2019 was not issued in accordance to the Condo. bylaws and appeared to be pre-maturely issued. The record that should have preceded this letter is missing.

4-Moreover, no relevant statements (Between April 11 and June 19, 2019) were sent to owners to allow the Condo. owner the choice to accept or dispute in a timely manner. This record is missing.

Therefore, the missing records along with some vague and/or confusing contents of some existing records, resulted in a cascade of extremely stressful events to many owners including myself, including being here now.

[18] It is clear that when Ms. Killini refers to “missing” records she means that records that might have been created had TSCC1598 followed a different process to decide and implement the Kitec Replacement are not in existence and therefore are “missing”. This appears to be an attempt to use the record production provisions of section 55 of the Act to invite an investigation into the decision and communication process used by TSCC1598 for the Kitec Replacement. However, I must decline this invitation: the Tribunal does not currently have the jurisdiction to consider the processes used by TSCC1598 to decide, implement and communicate with the unit owners about the Kitec Replacement.

[19] Ms. Killini also submitted that the CCI Report was not the only engineering report commissioned by TSCC1598. In her testimony, she pointed to the fact that TSCC1598 referred to the TR Group in a notice about the Kitec Replacement and the fact that this notice pre-dated the written CCI Report. It was also her understanding that it was the TR Group which attended the first town hall about the Kitec Replacement. Her submission was that it was possible that the TR Group had been commissioned but not permitted to complete its report.

[20] The TSCC1598 witness testified that the reference to the TR Group in the notice about the Kitec Replacement was in error. TSCC1598 produced proposals made by the TR Group to its sister condominium corporations. However, the TSCC1598 witness testified that TSCC1598 only commissioned CCI to do the engineering. The testimony was that no other engineering company was commissioned by

TSCC1598. I find this testimony credible. It is consistent with the fulsome disclosure provided by TSCC1598. The disclosed documents went well beyond what Ms. Kallini requested. As well, there was no apparent reason to conceal that fact that TSCC1598 had retained a second engineering company to determine whether or not Kitec piping was being used in the building if in fact TSCC1598 had done so. TR Group is listed as in attendance at the first town hall meeting about the Kitec Replacement but this townhall was a joint one held by TSCC1598 and its two sister condominium corporations. The other two condominium corporations did retain TR Group for their work so the fact that the engineering firm was at a joint meeting is not persuasive evidence that TSCC1598 had retained them.

- [21] Concerning the other records requested by Ms. Kallini, I find that TSCC1598 has produced all the records Ms. Kallini has requested, as detailed above, and has gone beyond the requests to disclose all the communications between it and the unit owners concerning the Kitec Replacement.
- [22] As is so often the case in records requests, the underlying dispute between the parties has little to do with the records themselves. In this case, Ms. Kallini is questioning the decision and communication process used. It appears from her testimony and submissions that the heart of her concern is her belief that she is facing an approximate \$4,700 charge for work she did not authorise and does not believe has been done. She fears that she will have a lien posted against her unit for this amount and might even lose her home over this. The concern stems primarily from the February 8, 2019 Notice that references the amount to be paid and does talk about the possibility of a lien and the exercise of a power of sale if the amount is not paid.
- [23] TSCC1598 agrees that the Kitec Replacement has not been performed in Ms. Kallini's unit. The August, 2020 Unit Statement for Ms. Kallini's unit does not show any charge for the Kitec Replacement.
- [24] There has been a factual misunderstanding between the parties. While they both agree that the Kitec Replacement has not been done in Ms. Kallini's unit, Ms. Kallini believes she has been charged for it and faces power of sale proceedings if she does not pay. There is no evidence that TSCC1598 has charged Ms. Kallini for the Kitec Replacement. It is to be hoped that now that this hearing is complete, the parties can meet and resolve any remaining differences. Two unit owners have experienced piping leaks from the Kitec piping and the CCI Report recommends rapid replacement of the piping. This suggests that it might be in Ms. Kallini's best interest to have the Kitec Replacement done before the piping fails.

Issue 4 - What costs and penalties, if any, should apply and how should they be calculated?

[25] Subsection 1.44(1) 6 of the Act authorises the Tribunal to impose a penalty if a condominium corporation refuses to provide access to records to which a unit owner is entitled “without reasonable excuse”. In this case, TSCC1598 has disclosed not only the record that Ms. Kallini originally requested but also records she requested at the outset of the hearing and records that became relevant as the hearing progressed. There are no grounds for imposing a penalty in this case.

[26] Concerning costs, TSCC1598 has requested legal costs in this matter, in part on the grounds that Ms. Kallini pursued this matter for an improper purpose after the requested records had been provided to her. Rule 31.1 of the Condominium Authority Tribunal Rules of Practice (effective January 1, 2020) reads;

The Tribunal will not order one User to pay another User any fees charged by that User’s lawyer or paralegal, unless there are exceptional reasons to do this.

[27] Ms. Kallini did continue her pursuit of records even after all the ones she had requested had been provided. However, my conclusion from the evidence and her submissions is that Ms. Kallini was principally motivated by a genuine fear of losing her home for nonpayment of charges she had not incurred. While this fear was not well-founded, it was nonetheless real. In the circumstances, I find that no exceptional reason for granting costs exists and accordingly, no order for costs will issue.

C. CONCLUSION

[28] Ms. Kallini has obtained all the records she has requested and, accordingly the Tribunal makes no order for the production of further records.

[29] The Tribunal makes no order for costs.

[30] This concludes the matter.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: October 16, 2020