

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 20, 2020

CASE: 2020-00188SA

CITATION: Chapman v. Toronto Standard Condominium Corporation No. 1611, 2020 ONCAT 40

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Maureen Carter-Whitney, Member

The Applicant,
Stephen Chapman
Self-represented

The Respondent,
Toronto Standard Condominium Corporation No. 1611
Represented by Arjun Babar

Hearing: Written hearing – July 28, 2020 to October 7, 2020

REASONS FOR DECISION

A. OVERVIEW

[1] Stephen Chapman (“the Applicant”) is a unit owner of Toronto Standard Condominium Corporation No. 1611 (“TSCC 1611” or “the Respondent”). He made a records request under s. 55 of the *Condominium Act, 1998* (“the Act”) for the TSCC 1611 board of directors (“board”) meeting minutes for 2019.

[2] Mr. Chapman and TSCC 1611 entered into a Settlement Agreement on January 29, 2020 after Stage 1 – Negotiation using the Condominium Authority Tribunal Online Dispute Resolution (“the CAT-ODR”) system.

[3] The Settlement Agreement reads as follows:

Toronto Standard Condominium Corporation No 1611 will deliver electronic copies of the board meetings for 2019 to Stephen Chapman at [his email address] before 1 March 2020 at no cost.

Toronto Standard Condominium Corporation No 1611 will deliver the accompanying statements for the requested records as required and set out in O Reg 48/01, s 13.8 (or

as set out in any amending Acts or Regulations as the case may be) to Stephen Chapman at [his mailing address] before 1 March 2020 at no cost.

Toronto Standard Condominium Corporation No 1611 will reply before 1 March 2020 to each and every e-mail sent on or before 15 January 2020 to [the Board of Directors' email address], and to which TSCC 1611 has not previously replied in a timely manner, with a candid explanation for their failure to reply earlier.

Toronto Standard Condominium Corporation No 1611 will pay \$25.00 by cheque to Stephen Chapman at [his mailing address] before 1 March 2020 to cover the cost of filing the application for records with the Condominium Authority Tribunal case 2020-00015R.

Toronto Standard Condominium Corporation No 1611 will pay \$100.00 by cheque to Stephen Chapman at [his mailing address] before 1 March 2020 as compensation, in part, for the inconvenience he has endured.

- [4] Mr. Chapman has made an application to the CAT under s. 1.47 of the Act, asserting that the Respondent has not complied with the Settlement Agreement.
- [5] For the reasons set out below, I find that TSCC 1611 did not comply fully with the Settlement Agreement. While Mr. Chapman has now received the requested records, some of those records were not delivered until more than six months after the March 1, 2020 deadline to which the parties agreed. I find that no penalty should be imposed, but I award costs of \$125.00.

B. ISSUES & ANALYSIS

- [6] There are two issues to be determined in the hearing:
- 1) Did TSCC 1611 comply with the Settlement Agreement?
 - 2) Should the Tribunal impose a penalty on the Respondent?

Did TSCC 1611 comply with the Settlement Agreement?

- [7] I find that TSCC 1611 did not comply fully with the terms of the Settlement Agreement because it did not comply with the timeframe for delivery of the records in electronic form.

- [8] Mr. Chapman acknowledged that \$125.00 was paid to him promptly as required by the Settlement Agreement and was not at issue in this hearing. The other items agreed to in the Settlement Agreement are addressed below.

Board meeting minutes

- [9] I find that TSCC 1611 did not comply with the timeframe for delivery of records in the Settlement Agreement because it did not provide the October and November 2019 minutes by March 1, 2020.
- [10] Mr. Chapman submitted that he received copies of minutes for six 2019 board meetings in accordance with the Settlement Agreement but, as of the beginning of the hearing, he had not received the minutes for the other 2019 meetings. He stated that the Respondent's condominium manager had indicated they were available online on the Maxcondo website used by the Respondent to post documents electronically, but he was unable to access them through the website and had not received them by email.
- [11] An email, dated January 20, 2020, from Arjun Babar, condominium manager for the Respondent, to Mr. Chapman, attached electronic copies of the minutes for the six board meetings that took place from January to August 2019 (as well as minutes from 2018). In this email, Mr. Babar indicated that the minutes for the October and November 2019 meetings had yet to be signed by the board but would be signed on January 27, 2020 and, once signed, Mr. Babar would "immediately email you the copy."
- [12] The Respondent submitted that, when the COVID-19 pandemic began, the minutes for October and November 2019 were pending for signature and the board did not sign the minutes immediately because they were unsure of how to proceed with daily tasks and were spending time on COVID-related tasks and policies. The Respondent further submitted that, as soon as the minutes were signed, they were uploaded onto the Maxcondo website instead of being sent directly to Mr. Chapman by email, so they would be available for all the owners to review. The Respondent stated that, until Mr. Chapman brought it to Mr. Babar's attention during the hearing, Mr. Babar did not know that Mr. Chapman had not been able to access these minutes and that he would be contacting Maxcondo to have this rectified.
- [13] During the hearing, Mr. Chapman confirmed that he had received the October and November 2019 minutes by email on September 25, 2020.

[14] The Respondent did not explain why the minutes were not simply emailed to Mr. Chapman in addition to being uploaded to the Maxcondo website. While the Respondent may not have been aware that Mr. Chapman had not received the October and November 2019 minutes, this problem would have been avoided if those minutes had been sent by email as the Settlement Agreement required. Because this was not done, Mr. Chapman sought compliance with the Settlement Agreement at the CAT and, ultimately, did not receive the minutes until more than six months after the date agreed to in the Settlement Agreement. I find that the Respondent did not comply fully with this requirement of the Settlement Agreement.

Accompanying statements

[15] I find that TSCC 1611 delivered the accompanying statements for the requested records, as required by s. 13.8 of O. Reg. 48/01, in compliance with the Settlement Agreement.

[16] Mr. Chapman submitted that the Respondent failed to do this.

[17] Section 13.8(1)(a) of O. Reg. 48/01 states that each copy of a record that a condominium corporation makes available under the records request process shall be accompanied by “a separate written document that is addressed to the requester and that clearly identifies the record that is being made available or delivered, as the case may be.”

[18] As set out above, Mr. Babar sent the January to August 2019 minutes to Mr. Chapman by email dated January 20, 2020. In this email, Mr. Babar stated: “Please find the attached minutes starting Jan 2018 to September 2019.”

[19] In *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45 (CanLII), at para. 59, the CAT found that an email satisfied the requirement in s. 13.8(1)(a) of O. Reg. 48/01 to be a separate written document that is addressed to the requester. I adopt this interpretation and find that an email may satisfy this requirement. The email accompanying the records clearly identified them, and this was all that was required by s. 13.8(1), given that there were no issues raised regarding redactions or costs.

[20] I find that the Respondent fulfilled this requirement of the Settlement Agreement by providing accompanying statements with the records.

Replies to emails

- [21] I find that TSCC 1611 responded to each email sent to the board's email address on or before January 15, 2020, in compliance with the Settlement Agreement.
- [22] Mr. Chapman submitted that the Respondent was required to reply by March 1, 2020 to each and every email sent to the Board by all of the condominium owners on or before January 15, 2020, not just to those emails that he sent. He acknowledged that he could not prove that the Respondent failed to reply to all those emails but submitted that the Respondent had not provided any evidence of having done so.
- [23] In an email to Mr. Chapman dated January 29, 2020, Mr. Babar went over a list of what was being provided, which included a commitment that all of Mr. Chapman's emails would be answered by March 1, 2020. This email reflects the Respondent's understanding that it was required by the Settlement Agreement to respond only to Mr. Chapman's emails.
- [24] The language of the Settlement Agreement states that the Respondent is to reply to "each and every" email sent on or before January 15, 2020 to the board's email address. This does not specifically limit the emails to those sent by Mr. Chapman; it also does not state specifically that a response to every email sent by any condominium owner is included in this provision. A possible interpretation of this provision could be that the board was required to reply to every email sent by anyone on or before January 15, 2020. Clearly, this would be an unreasonable interpretation of that provision.
- [25] I find that the meaning of this provision of the Settlement Agreement is ambiguous and the evidence and submissions indicate that the two parties understood it to mean different things. As stated by the CAT in *Kai Sin Yeung v. Metro Toronto Condominium Corporation No. 1136*, 2020 ONCAT 13 (CanLII), it is the responsibility of the parties to a Settlement Agreement to ensure that it resolves the issues in dispute and that it is clear and does not contain ambiguities.
- [26] It is unfortunate that this ambiguity meant that Mr. Chapman expected that compliance with the Settlement Agreement would take a different form. However, I am satisfied from the evidence before me that Mr. Babar's emails provided Mr. Chapman with an explanation as to why the Respondent had failed to reply, in a timely manner, to his emails dated on or before January 15, 2020. This fulfilled the

requirement of this term of the Settlement Agreement according to the Respondent's reasonable understanding of that provision.

Should the Tribunal impose a penalty on the Respondent?

[27] I find that no penalty should be imposed on the Respondent.

[28] Early in the proceeding, Mr. Chapman requested that the Respondent be "fined" as a punitive measure. Neither party made any closing submissions regarding a penalty.

[29] The CAT has the authority, under s. 1.44(1)6 of the Act, to order a condominium corporation to pay a penalty for refusing to provide access to a record without reasonable excuse. In this case, I find that the Respondent did not refuse to provide access to requested records. Although the Respondent failed to provide some of the records by the deadline in the Settlement Agreement, this does not merit the award of a penalty under s. 1.44(1)6. Therefore, I impose no penalty.

C. COSTS

[30] I find that Mr. Chapman should be reimbursed for the cost of filing this application at the CAT.

[31] Rule 45.1(a) of the CAT's Rules of Practice (effective September 21, 2020) states that the CAT may order a User to pay to another User or the CAT any reasonable expenses or other costs related to the use of the CAT, including any fees paid to the CAT by the other User.

[32] Mr. Chapman was put in the position of having to file this case to enforce the Settlement Agreement due to the delay in receiving some of the records. Therefore, I award costs of \$125.00.

ORDER

[33] The Tribunal orders that, pursuant to s.1.44(1)(4) of the Act, the Respondent is to pay the Applicant costs in the amount of \$125.00. In the event that the full amount is not provided to the Applicant within 30 days of this decision, the Applicant is entitled to set off all remaining amounts due against the common expenses attributable to the Applicant's unit(s) in accordance with s.1.45(3) of the Act.

Maureen Carter-Whitney
Member, Condominium Authority Tribunal

Released on: October 20, 2020