CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 17, 2020
CASE: 2020-00359R & 2020-00351R
Citation: Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 45

Order under section 1.41 of the *Condominium Act, 1998.*

Member: Ian Darling, Chair

The Applicant,
Kai Sin Yeung
Self-Represented

The Respondent,
Metropolitan Toronto Condominium Corporation No. 1136
Represented by Tony Bui, Counsel

Hearing: Written Submissions – November 10, 2020 to November 27, 2020.

DISMISSAL ORDER

A. INTRODUCTION

[1] Most of the previously released decisions of this Tribunal relate to Applicants' entitlement to records. This order is different. This is about the Tribunal's powers to close cases, and deal with vexatious applications. It dismisses two applications to the Tribunal, and decides if the Tribunal should impose restrictions on the Applicant following vexatious applications.

[2] Kai Sin Yeung ("the Applicant") is an owner in Metropolitan Toronto Condominium Corporation No 1136 ("the Respondent"). In late October 2020, the Applicant submitted two records-related applications to the Tribunal. The Tribunal allowed one to proceed, and stated that it would make a determination as to whether the other should be dismissed. The Respondent replied to the Tribunal, seeking to dismiss both cases, and for the Tribunal to impose restrictions on any future applications.

[3] The following three issues will be addressed in this decision:

1. Should Case 2020-00359R be dismissed under Rule 17 of the Tribunal Rules of Practice?

2. Should Case 2020-00351R be dismissed under Rule 17 of the Tribunal Rules of Practice?

3. Are these applications vexatious, and if so, should the Tribunal require the Applicant to obtain permission from the Tribunal before filing any new applications?

B. ISSUES & ANALYSIS

[4] The Tribunal's Rules of Practice set out the powers to dismiss cases, designate applications as vexatious, and limit access to the Tribunal. I will provide a brief overview of the relevant rules (17 and 4.5) before turning to an analysis of the issues. The power to dismiss cases comes from Rule 17, which states that the Tribunal can dismiss a Case in certain situations, including (but not limited to):

> (a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns;
>
> (b) Where a Case is about issues that the CAT has no legal power to hear or decide;
>
> (c) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications); …

[5] Further, under Rule 4.5, if the Tribunal:

> finds that a Party has filed a vexatious Application or has participated in a vexatious manner, the CAT can find that Party to be a vexatious litigant and dismiss the proceeding as an abuse of the process. The CAT may also require that a Party found to be vexatious to obtain permission from the CAT to file any future Cases or continue to participate in an active Case.

Issue 1: Should Case 2020-00359R be dismissed under Rule 17 of the Tribunal Rules of Practice?

[6] The Applicant filed an application with the Tribunal on October 28, 2020. The case relates to the Applicant's request for minutes of one board meeting, and request for an order for the maximum $5000 penalty. After reviewing the application and the documents filed with it, the Tribunal gave notice (the "Notice") of its intent to dismiss the case under Rule 17.1 (a).

[7] The Tribunal gave the following grounds for an early dismissal:

- There was no dispute over access to records, because the Board had not yet held a meeting, or produced minutes. As a temporary solution, the Respondent had offered to provide emails and information to the Applicant to immediately answer their questions, and offered to provide minutes confirming the decisions once the meetings were held.

- The information in the application shows that the Respondent did not refuse the Applicant access to records. Therefore, there would be no

grounds for the $5000 penalty as requested by the Applicant, under section 55 (8) of the *Condominium Act, 1998* (the "Act").

[8] The parties were invited to respond to the Tribunal. Their submissions confirmed that when the case was submitted, the Respondent had not yet held the board meeting, the minutes of which were the subject of the records request. The parties confirmed that in the time since the application was submitted, the Respondent held a board meeting, and provided minutes confirming the business conducted at the meeting.

[9] Based on the submissions, it is clear that the Applicant has the records requested. There was no refusal to provide records, and therefore no basis for a penalty. Therefore I conclude that the issues are not 'so minor', but in fact there are no issues remaining to be decided. It is, in these circumstances, unfair to make the Respondent go through the Tribunal process. The case is dismissed under Rule 17.1 (a).

Issue 2: Should Case 2020-00351R be dismissed under Rule 17.1 of the Tribunal Rules of Practice?

[10] In Case 2020-00351R, the Applicant asserted that certain Periodic Information Certificates (PICs) were inaccurate. The Applicant asked the Tribunal to order the record corrected, and a $3000 penalty. The case proceeded to Stage 1 - Negotiation on November 10, 2020.

[11] In their submission for Case 2020-00359R the Respondent made a motion to dismiss Case 2020-00351R under Rule 17.1 (b). Under this rule, the Tribunal can dismiss a case if it determines that it has no legal power to hear or decide upon the dispute. The Tribunal invited submissions from both parties on the question of whether the case should be dismissed.

[12] The Respondent submitted that the issues in dispute, in this case, are the same as Yeung v. Metropolitan Toronto Condominium Corporation No. 1136 - 2020 ONCAT 28 (Yeung #1). That case concerned the same PICs. The Applicant sought a penalty due to alleged inaccuracies, and problems with when the PICs were provided. The case was dismissed for three reasons:

- The alleged errors in the records were minor;
- The Tribunal had no jurisdiction related to the timing of the provision of the PICs;
- The Tribunal had no authority to issue a penalty, under section 55 (8) of the Act in that case because there was no refusal to provide the record.

[13] The Applicant contends that this application is different because the previous case dealt with the timing of when the PICs should be issued under s.26.3 of the Act. After reviewing the application, I conclude that the alleged errors are the same as Yeung 1. The Applicant also submits that in the current application the alleged

errors mean that the Respondent is not keeping adequate records per s.55 (1) of the Act. They asserted that since this case is about the adequacy of the records, it is within the jurisdiction of the Tribunal to decide. The Applicant pointed to Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 33 (Yeung #2), where they were successful in their argument that the corporation's records were not sufficient, as proof that this case is within the Tribunal's jurisdiction.

[14] I accept that the Applicant has reframed the dispute as one that falls under s.55 of the Act. I find that the Tribunal can decide if a record is adequate. The request to dismiss under Rule 17.1(b) is unsuccessful.

[15] Notwithstanding the decision that Rule 17.1(b) does not apply, I have concerns with allowing the case to proceed. The Applicant alleged that the PICs are inadequate because there was a difference between budget projections in the PICs, and the final year-end actual financial statements. The Respondent confirmed that there were differences, but the differences could easily be explained, and were not errors. They asserted that the certificates contain projected financial information that was current when the certificates were issued. The Respondent indicated that it was therefore reasonable that there was a difference between financial projections and actual year-end statements.

[16] Although I accept that the case is within the Tribunal's jurisdiction, based on the submissions before me, I conclude that this is an Application with improper purpose under Rule 17.1 (c). It is apparent from the information provided that the Applicant is using the Tribunal to attempt to exert control over how the corporation is being managed. In Yeung #2 the member found that "the degree to which inaccuracies should be tolerated may depend on the type and purpose of the record in question." The alleged error in the PICs comes from the Applicant expecting a degree of accuracy that is not anticipated in the financial projections. Even if the Applicant were correct regarding the adequacy of the PICs, using the Tribunal to change management practices extends beyond its purpose to adjudicate records disputes.

[17] The Applicant is applying a strategy that was successful in Yeung #2 although here applied to a different type of record. They are identifying minor issues with the intent of exacting further penalties from the Respondent.

[18] If the case were to proceed, there could be no basis for the requested $3000 penalty since there is no refusal for records. This issue was decided in Yeung #1.

[19] The case is dismissed because the Applicant is using the Tribunal for an improper purpose.

Issue 3: Are these applications vexatious, and if so, should the Tribunal require the Applicant to obtain permission from the Tribunal before filing any new applications?

[20] The Respondent requested the Tribunal determine that these cases are part of a pattern of vexatious applications that abuse the Tribunal's process. The Respondent requested that the Tribunal use Rule 4.5 to require the Applicant to obtain permission from the Tribunal before filing any more applications. The Tribunal requested submissions from both parties on the question of whether Rule 4.5 should apply.

[21] In Manorama Sennek, v. Carleton Condominium Corporation No. 116, 2018 ONCAT 4, the Tribunal adopted the criteria established to identify vexatious conduct outlined in *Lang Michener et al v. Fabian e*t al (1987) 1987 CanLII 172 (ON SC), 59 O.R. (2nd) 353. These criteria are:

- bringing of one or more actions to determine an issue which has already been determined;
- 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;
- 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;
- rolling forward grounds and issues into subsequent actions; and,
- persistently taking unsuccessful appeals from judicial decisions.

[22] Since 2018, the Applicant has submitted eight applications to the Tribunal. The number of applications alone is not sufficient to consider them vexatious. There is a theme across these cases. They show a deep mistrust of the corporation, and question the accuracy of the records. I acknowledge the Applicant's frustration with how the directors govern the corporation. The Applicant has clear reasons for expecting an exacting standard in the keeping of corporate records. However, this series of cases have shown that legitimate requests to access records have been replaced by efforts to use Tribunal cases to direct how the corporation is run. These efforts move away from legitimately exercising rights as an owner to access records, toward improperly using the Tribunal to affect how the corporation is managed. If the Applicant wishes to change these decisions, they should use the democratic tools available to owners under the Act.

[23] In their submissions, the Respondent cited the multiple applications to the Tribunal as evidence of the vexatious intent. They characterized the applications as a search for minor or clerical issues as a gateway to threaten legal proceedings. They cited the attempt to re-frame the alleged inaccuracies with the PICs as a new case after the first PIC case was dismissed, as an example of rolling issues forward to new cases. They also stated that the repeated attempts to request a substantial penalty are examples of using the Tribunal for a purpose other than asserting a legitimate right to a record.

[24] The Respondent provided emails to indicate that the Applicant has threatened to submit additional applications about other categories of records. Those emails also

state that the Applicant would seek a substantial penalty for each additional application.

[25] The Applicant contends that the applications are legitimate efforts to ensure the accuracy and completeness of the condominium records. They indicated that the repeated requests for substantial penalties were made to ensure the Respondent treated the cases seriously. The Applicant stated that the new application regarding the PICs (case 2020-00351) is not relitigating decided issues because he altered the grounds for the case, and the previous case did not determine if the errors render the records inadequate.

[26] The Applicant also asserts that in Yeung #2, the Tribunal determined that the Applicant was not vexatious. The Applicant asserted that since in that case the member concluded "there is no justification for imposing (the vexatious) label on the Applicant at this time," it was proof that the current applications are not vexatious. The member in that case made their assessment based on information and submissions available at the time. I am not bound by that determination, and conclude that circumstances have changed; there is now justification to make this designation.

[27] A single instance may not be sufficient to trigger Rule 4.5, but this pattern of conduct is. The evidence before me is a pattern of conduct consistent with the criteria of vexatious applications:

- The Applicant has submitted several cases where it is obvious that an action cannot succeed. This is exemplified by multiple cases requesting a penalty where the Tribunal has no authority to impose a penalty.
- Applications that are brought for purposes other than the assertion of legitimate rights including recent applications that identify minor or clerical issues, for which the corporation may apply a legitimate amount of tolerance without rendering the records inadequate; and requests for substantial penalties that have no basis of success.
- Recent applications roll forward grounds and issues from prior cases, either by submitting applications for the same records with slightly altered grounds or by identifying minor errors in different records.
- The frequency of new applications has increased in 2020. The Tribunal has had eight cases between the same parties: one in 2018, two submitted in 2019, and six cases in 2020. I conclude that without limiting new applications, it is likely that this pattern will continue.

[28] The Respondent asked the Tribunal to require the Applicant to obtain permission to file any future application. In weighing the impact of this request, I am aware that such an order would limit the Applicant's right to access the Tribunal. It would also remove the opportunity to resolve disputes informally in the Tribunal's negotiation stage (Stage 1).

[29] Based on the information before me, I find that there has been a pattern of conduct

by the Applicant that creates a burden on the Tribunal, and unfairly requires the Respondent to participate in cases with little merit. I conclude that there is sufficient reason to believe that without intervention, this would continue. Therefore, I grant the Respondent's motion to require the Applicant to obtain permission from the Tribunal before filing any future applications.

[30] I caution the Respondent that reviewing the multiple cases and decisions rendered by the Tribunal suggest instances where the corporation may have been too casual with their record keeping. A decision on the question of whether current applications are vexatious does not absolve them of their ongoing responsibilities to maintain records, and to provide the Applicant and other owners with appropriate access.

C. ORDER

[31] The Tribunal orders that:

1. Case 2020-00359R is dismissed.

2. Case 2020-00351R is dismissed.

3. Pursuant to Tribunal Rule 4.5, the Applicant must obtain permission from the Tribunal before filing any new applications.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: December 17, 2020