CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 22, 2020
CASE: 2020-00210R
Citation: Boodram v. Peel Standard Condominium Corporation No. 843, 2020 ONCAT 47

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Kavita Boodram
Self-Represented

The Respondent,
Peel Standard Condominium Corporation No. 843
Represented by Petr Zima

Hearing: Written Online Hearing – September 29, 2020 to December 10, 2020

REASONS FOR DECISION

A. OVERVIEW

[1] Kavita Boodram (the "Applicant") is the owner of a unit in Peel Standard Condominium Corporation No. 843 ("PSCC 843" or the "Respondent"). The Applicant submitted a Request for Records (the "Request") on May 25, 2020. The Applicant requested several core records including the condominium corporation declaration, by-laws, rules, the record of owners and mortgagees, and the record of notices relating to leases of units under s.83 of the *Condominium Act, 1998* (the "Act"). PSCC 843 sent its response on June 24, 2020 and indicated that these records would be provided. In addition to these core records, the Applicant requested a document, described as a core record: "how rules & bylaws are created and changed, including approval process and communication to owners". In its response, PSCC 843 stated that this document did not exist. At the outset of the hearing, the Applicant confirmed that this record was no longer an issue.

[2] The Applicant also requested several non-core records in her Request. Each of these records relate to an underlying dispute about use of visitor's parking spaces at the Respondent property. Specifically, the Applicant requested the following:

1. By-law, official documented rule and meeting minutes for when FS Residential and the board of directors deemed my visitor a resident with vehicle licence plate[number deleted];

2. By-law, official documented rule and meeting minutes for the ‘Blacklist’ of visitors’ vehicle licence plates that was provided to Security Advisor Group to ticket these vehicles regardless of valid permits;

3. By-law, official documented rule and meeting minutes to deny all visitors’ parking permits for my unit (number deleted) on 5/22/2020;

4. By-law, official documented rule and meeting minutes for the rule in Nathan’s email communication that NO parking permits will be given out by Concierge, email date 5/25/2020;

5. Parking permit visitors’ log.

[3] Regarding records 1-4 listed above, PSCC 843 responded that such documents did not exist. It did agree to provide the parking permit visitors’ log for a fee of $31.50. However, the Applicant has stated that she no longer requires this latter record as it was no longer relevant.

[4] In addition to the four records noted above, the Applicant seeks her costs of filing her case with the Tribunal and a penalty of $5000 pursuant to s. 1.44(1)6 of the Act and reimbursement of parking ticket fines in the amount of $180.

[5] What became very apparent in this case was that the crux of the dispute between these parties centers on PSCC 843’s enforcement of rules about visitor parking and the issuance of visitor parking permits and tickets. These are not issues that fall within the Tribunal’s jurisdiction as it relates to a records dispute. The Applicant has also raised the issue that the Respondent’s enforcement of its rules is interfering with her access to and enjoyment of the common elements of the property, this is an issue that does not fall within the parameters of a records dispute. I do note that the Tribunal’s jurisdiction has expanded to encompass certain disputes arising from governing documents; however, any such dispute was not within the Tribunal’s jurisdiction when the case was initially filed and are therefore not part of this current application.

[6] It also became apparent that the ongoing dispute about parking has resulted in an increasingly acrimonious relationship between the parties. That acrimony showed

itself through the evidence and submissions provided to me and through exchanges that reflected the parties' frustration with each other, and, at times, by the Respondent's representative, with a requirement that they be required to continue to participate in the Tribunal process.

[7] In this decision, I will not refer to all the evidence and each submission provided to me. I will address the evidence and submissions most relevant to my analysis and the issues to be decided.

B. RESULT

[8] For the reasons set out below, I order that the Respondent is to provide to the Applicant, without a fee, the board minutes for the period of May 2019-May 2020. The Respondent is also ordered to pay to the Applicant a penalty of $250 and costs of $200.

C. ISSUES & ANALYSIS

ISSUE 1: Is the Applicant entitled to the by-laws, official documented rule and meeting minutes relating to the specific matters enumerated

[9] The four records that remain in dispute are very similar. For each, the Applicant seeks the "By-law, official documented rule and meeting minutes". The variation is the particular focus:

1. When FS Residential (the condominium management provider) and the board of directors deemed the Applicant's visitor a resident;

2. Relating to the 'blacklist' of visitors' licence plates given to the Security Advisor Group to ticket vehicles of the Applicant's visitors;

3. Relating to the denial of all visitors' parking permits for the Applicant's unit; and,

4. Relating to the email sent by the condominium manager to the applicant that no parking permits will be given to the concierge.

[10] Based on the evidence before me, I find that the by-laws and rules have been provided. There is no evidence that there has been any change to these condominium documents, including the rules. I understand that the Applicant believes that there has been, or ought to have been, a change to the rules and

that any such change should be documented as a change pursuant to s. 58 of the Act. However, whether a change ought to have been documented pursuant to the statutory process for making changes to rules is not the subject of this hearing.

[11] What is left to decide is whether there are board meeting minutes which respond to each of the four requests. I note here that the Applicant did not include in her Request "'minutes of meetings held within the last 12 months"', a core record listed on the prescribed request for records form. The inclusion of that specific request may have clarified and/or simplified matters. Both the Applicant and Respondent stated in their closing submissions that the Applicant requested meeting minutes in August 2020 and was provided with meeting minutes from April to August 2020. However, the Applicant does not consider these as responsive to this Request.

[12] The evidence on the issue of whether there are meeting minutes relating to the matters noted above can be characterized as confusing. The Applicant gave testimony as did Petr Zima, a board member and the Respondent's agent in this hearing. The Respondent first stated that both Petr Zima and Nathan Browne, the condominium manager, would testify and in fact they purported to file a joint statement of evidence. When I advised that two individual statements of testimony were required, the statement was re-submitted as a statement from Petr Zima only. The Applicant expressed some concern about the Respondent's approach to the evidence; however, it is open to a party to re-assess which witnesses it wishes to provide evidence.

[13] The Applicant referred me to several documents which she asserts indicate that there must be meeting minutes which record the board's intentions and instruction to others, whether the condominium manager, the parking security company or the concierge, regarding visitors' vehicles. For example, there was an exchange of emails in May 2020 between Nathan Browne and the Applicant. On May 12th, the Applicant stated that she had spoken with Nathan's assistant who told her that her visitor's vehicle was included on a 'black list' that was provided to the parking company and that this was verified by the parking company. Nathan responded that he "understood the residents of your unit have a history of parking violations in visitor parking over a long period of time…", and further that "security and parking control have a list of resident's vehicles who abuse visitor parking…" A subsequent email from Nathan on May 15 stated that 'I have been made aware of this situation having been going on for some time now and there is much information going back several years…"

[14] The Applicant submits that I should infer from these emails that records exist and

meeting minutes should have been recorded when such discussions occurred. The Applicant also points to two further emails which to support her position. The first is a July 14, 2020 email to the Applicant from Nathan Browne which referred to the parking issues as a longstanding issue communicated to him by the previous manager, all security staff and the board of directors. The second is an August 12, 2020 email to the Applicant from Petr Zima which stated that the board of directors had reviewed the parking issue and unanimously agreed that the vehicle in question is not a visitor and that the issue is longstanding and predates Nathan Browne, the current condominium manager.

[15] In answer to cross examination questions, Petr Zima stated that communications between the concierge, the condominium manager and the board regarding operations, such as parking, may occur daily. These would not be recorded in minutes. I accept this evidence: not every communication between a condominium manager or parking services and the board will be recorded in meeting minutes, nor is it reasonable to expect that every daily communication would be. Meeting minutes are generally understood to be notes recorded during a board meeting which highlight key issues discussed, business to be undertaken by the corporation, motions proposed and voted. Petr Zima also stated that there is no 'blacklist' of vehicles, though the vehicle in question had been 'tagged' many times over the years. On this last point, whether or not there is a record described by the Applicant as a 'blacklist' is not the issue before me. The record sought is meeting minutes related to a 'blacklist'.

[16] The Respondent has indicated that the parking issues were dealt with at a board meeting, subsequent to the Applicant's request, in June and July 2020, minutes for which did not exist at the time of the Request, but which have been provided to the Applicant.

[17] The confusion about the existence of minutes arises from Petr Zima's evidence, in response to a question by way of clarification from me that: "I would suggest that there may be minutes not only subsequent to but prior to May 25 that mention the parking issue." The Respondent has consistently stated that upon request from the Applicant minutes will be provided; however, it appears that neither party seems to have a definitive time period for when those minutes may have been created, hence the generality of the Applicant's request, and perhaps the vagueness of the response.

[18] In light of the evidence that minutes may exist which address the parking issues related to the Applicant, I will order that the minutes for the 12 months preceding

the Request (i.e., from May 2019 to May 2020) be provided to the Applicant. These would have been core records at the time of the Request and could have been specifically requested by the Applicant on the prescribed form, had she been more focussed in her request for minutes. And, based on the evidence and submissions of the Respondent, this is a request that would have been fulfilled. While it is true that the Applicant could submit a new request for the particular record (and at this time, some of those minutes would fall outside of the definition of a 'core' record) to do so at this stage is an inefficient reliance on 'form over substance' and would only serve to heighten the tensions between the parties.

[19] What is more problematic to address is whether there are minutes referring to the parking issue prior to May 2019. These would clearly have been a non-core record for which the Respondent is entitled to charge a fee in accordance with Ontario Regulation 48/01 (O. Reg. 48/01). Further, without searching a specific time period, the fee for labour to review many years of minutes may not be insignificant and the Applicant is required to know what the fee may be and whether, as a result, she wishes to pursue the request.

[20] Because of these variables – the time period for the requested minutes and the fee that may be charged– I will not order that minutes of meetings which may address the issues set out in paragraph [9] above, over an undefined period of time, be provided to the Applicant by the Respondent. It is, of course open to the Applicant to make a new request for records with greater specificity to which PSCC 843 can provide its response in the prescribed form.

ISSUE 2: Should the Applicant be awarded a penalty under s. 1.44(1)6 of the Act because the Respondent refused without reasonable excuse to permit the Applicant to examine or obtain copies of the records.

[21] As was clear from the Applicant's evidence and submissions, she clearly feels that she has been targeted by PSCC 843 regarding the parking issue. And she has been frustrated by PSCC 843's response throughout, exacerbated at times by a sense that PSCC 843 has been dismissive of her parking issue. At the same time, she has alleged that the Respondent has been unethical and unprofessional. Clearly there has been a breakdown in the relationship between owner and board. However, these are not factors on which to base an award of a penalty.

[22] I have found that the Respondent provided the by-laws and rules. The Respondent did not provide meeting minutes. The Applicant was at a disadvantage because she did not know if and when board meetings took place at which the parking

issues related to her may have been discussed. However, it was incumbent upon her to provide some specifics in her request and she could have specifically requested minutes for the last 12 months prior to the May 2020 Request, but did not do so.

[23] Did the Respondent perhaps intentionally frustrate the Applicant by their peremptory responses to her, both on the response form, in emails and during the course of the hearing? The documents suggest that the answer is yes. While it was not obliged to, it was open to the Respondent to clarify with the Applicant exactly what she was seeking when she referred to minutes, or for what period. It chose not to do so. The evidence shows that it may not be accurate that no minutes prior to May 2020 exist that would reflect discussions related to the Applicant's parking issues, yet the Respondent simply stated on the Response form: "such documents do not exist".

[24] I find on the evidence before me, that this constitutes a refusal to provide the record without a reasonable excuse.

[25] The Applicant seeks a penalty of $5000, the maximum permitted, and referred me to the decision in Mehta v. Peel Condominium Corporation 389[1] in which the Tribunal awarded a penalty in that amount. In that case, none of the records requested were provided. Regarding the minutes requested, the Tribunal stated that the nonexistence of minutes arising from a clear failure to hold meetings (either board meetings or annual general meetings) cannot constitute a reasonable excuse for not providing the records. There are some key differences between these two cases. Here, the Respondent did provide most of the records requested and there is no evidence the board meetings have not been held as required by the Act. When specific meeting minutes were requested, the parties have stated that they have been provided. I cannot conclude that the Respondent is not mindful of its obligations under the Act.

[26] However, one of the purposes of a penalty is to deter future similar action by a condominium corporation. Perhaps reflecting their frustration with the Applicant, PSCC 843 did not show an effort to display the effort required of condominium corporations to work with owners. Balancing the various factors in this case, I award a penalty of $250.

ISSUE 3: Is the Applicant entitled to costs?

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[1] 2020 ONCAT 9 (CANLII)

[27] Section 1.44(1)4 of the Act gives the Tribunal discretion to order costs. As a general rule, an unsuccessful party will be required to pay the costs of the other party unless the Tribunal orders otherwise.[2] Costs are not awarded because a party has been negligent as submitted by the Applicant.

[28] I have found that all but the minutes were provided to the Applicant. I have also found that the Request lacked specificity. However, it was not until this Stage 3 hearing that the Respondent indicated that there may be meeting minutes prior to May 25, 2020. I therefore award to the Applicant her costs of filing her case with the Tribunal in the amount of $200.

[29] The Applicant requested reimbursement of the parking ticket fines of $180. Not only can I not determine whether those fines were warranted in the particular circumstances, more significantly, the Tribunal does not have the authority to make an order for the reimbursement of parking fines within the context of a records case.

ORDER

[30] The Tribunal orders that:

1. Within 30 days of the decision, the Respondent will provide to the Applicant the board meeting minutes for the period of May 2019 – March 2020 (the months of April and May 2020 have been already provided to the Applicant).

2. Within 30 days of the date of this decision, the Respondent shall pay a penalty of $250 to the Applicant.

3. Within 30 days of the date of this decision, the Respondent shall pay costs of $200 to the Applicant.

4. To ensure that the Applicant does not pay any portion of the penalty or costs awarded, the Applicant shall be given a credit towards the common expenses attributable to her unit equivalent to the proportionate share of the above penalty and costs.

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[2] CAT Rules of Practice - Rule 45.2

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: December 22, 2020