

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 8, 2021

CASE: 2020-00414R, 2020-00420R, 2021-00028R, 2021-00060R

Citation: Ahmadi General Trading Inc. et al. v. Toronto Standard Condominium Corporation No. 2519, 2021 ONCAT 27

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Ian Darling, Chair

The Applicants,

Ahmadi General Trading Inc.

Represented by Arash Ahmadi, Agent

North York Medicare Centre

Represented by Zou Fan Lam, Agent

Emerald PG Holdings Ltd.

Represented by Fatih Eroltu, Agent

2630276 Ontario Inc.

Represented by Li Li, Agent

The Respondent,

Toronto Standard Condominium Corporation No. 2519

Represented by David Barkin, Agent

Written Submissions: February 5, 2021 - March 17, 2021

MOTION ORDER

[1] In February 2021, the Tribunal received two motions from Toronto Standard Condominium Corporation No. 2519 (TSCC2519). The motions requested the Tribunal dismiss or merge four cases, and rule that the applications or conduct of the parties were vexatious. This motion order gives reasons why the Tribunal decided that the cases should not be dismissed and makes orders to ensure an efficient process for the cases to proceed. It decides that the applications are not vexatious. It also rules that in two of the cases the Applicants' purported representative Cameron Thompson has violated the Tribunal Rules, and orders the representative be changed.

BACKGROUND

[2] I have reviewed and considered the parties' detailed submissions. This Motion Order does not recite or refer to every argument. My analysis focuses on what is relevant to the issues to be decided. These cases are fairly straight-forward record requests; however, the allegations of misconduct are complex. I will first provide some general information about the cases.

[3] This motion order involves four separate CAT cases:

1. 2020-00414R - Ahmadi General Trading Inc. (AGTI) & Toronto Standard Condominium Corporation No. 2519
2. 2020-00420R - North York Medicare Centre (NYMC) & Toronto Standard Condominium Corporation No. 2519
3. 2021-00028R - Emerald PG Holdings Ltd. (Emerald) & Toronto Standard Condominium Corporation No. 2519
4. 2021-00060R - 2630276 Ontario Inc. (2630276 Ontario) & Toronto Standard Condominium Corporation No. 2519

[4] The table below shows the dates of the Record Requests, and when the cases moved through each stage of the CAT process.

Request/Case Status	2020-00414R	2020-00420R	2021-00028R	2021-00060R
Date of Record Request Form	September 24, 2020	September 24, 2020	December 16, 2020	January 6, 2021
CAT Case Filed	December 16, 2020	December 16, 2020	January 20, 2021	February 10, 2021
Case Accepted	January 4, 2021	December 29, 2020	January 20, 2021	February 19, 2021
Stage 1 start	January 6, 2021	December 20, 2020	January 22, 2021	February 19, 2021
Stage 2 start	January 20, 2021	January 20, 2021	January 21, 2020	N/A.

[5] The Applications for AGTI and NYMC were submitted by Cameron Thompson as an agent for each party. Mr. Thompson previously acted as a representative in Emerald PG Holdings Ltd. v Toronto Standard Condominium Corporation No. 2519, 2020

ONCAT 24 and Emerald PG Holdings Ltd. v Metro Toronto Condominium Corporation No. 2519, 2019 ONCAT 5.

- [6] When the Applications from AGTI and NYMC were received, the Tribunal contacted Mr. Thompson to advise him that he could not act as the agent in these cases because he was in violation of Rule 8.1 of the CAT Rules, which reads:
- 8.1 A Party may be represented by:
- (a) a lawyer or paralegal licensed by the Law Society of Ontario; or
 - (b) a person who is exempt from the Law Society's licensing requirements. This includes a friend or family member who is helping without receiving any fee; or a person who is a licensed condominium manager.
- [7] Mr. Thompson disagreed with the Tribunal, stating that he could act as a representative since the Applicants AGTI and NYMC had authorized him to do so. The Tribunal clarified that the question was not whether a party had authorized him to act on their behalf; the question was whether he was permitted to act as a representative under the Tribunal Rules, and whether he was providing legal services under the *Law Society Act* and the Law Society's by-laws.
- [8] The CAT instructed the Applicants that, if they wished to continue the cases, they would need to change their representative. After that instruction, Mr. Thompson was removed as the Applicants' representative. The cases were accepted on that basis, and they proceeded through negotiation into mediation.
- [9] On January 20, 2021, a third case (2021-00028R) involving TSCC2519 was received, this time from Emerald. In this case, Mr. Fatih Eroltu was listed as the representative. The CAT did not identify any problem with the representation in this case.
- [10] On February 10, 2021, Case 2021-00060R was submitted by 2630276 Ontario. The CAT approved the Application on February 19, 2021.
- [11] The Respondent filed two motions relating to all four CAT cases. On February 5, 2021, the Respondent submitted the first motion regarding 2020-00414R, 2020-00420R, and 2021-00028R ("Motion 1"). The first motion made six requests. On February 26, 2021, the Respondent submitted a second motion ("Motion 2") regarding case 2021-00060R. Collectively, the motions requested the CAT issue an order:

1. Declaring that the Applicant in Case No. 2021-00028R, Emerald PG Holdings Ltd. has breached an order of the CAT in Case 2019-00317R;
2. Declaring that Emerald and the Applicants, North York Medicare Centre in Case Nos. 2020-00420R and Ahmadi General Trading Inc in 2020-00414R have abused the CAT process;
3. Declaring, pursuant to Rule 4.5 of the CAT Rules of Practice that Emerald is a vexatious litigant, and requiring Emerald to seek leave of the CAT prior to bringing any further records requests or Applications before the CAT;
4. Dismissing the Applications pursuant to CAT Rule 17;
5. Declaring that the agents of Emerald, Cameron Thomson, and Fatih Eroltu, shall not act as agents or directly or indirectly participate in bringing any further records requests or Applications to the CAT on behalf of Emerald, or any other unit owners of TSCC 2519 without leave;
6. If the cases are not dismissed, either:
 - a. Joining the three Applications to be heard together; or,
 - b. Requiring all mediations, and/or interlocutory proceedings and the hearing of the Applications to be heard at the same time; and
7. That the Tribunal also dismiss, or merge with the other cases, case 2021-00060R.

[12] The CAT requested submissions on Motion 1 from Emerald, AGTI and NYMC, and assigned a deadline for March 5, 2020 for their submissions. The CAT gave 2630276 Ontario a chance to respond to Motion 2 and received the response on March 17, 2021.

[13] In deciding the questions raised by these motions, I have altered the order of the requests, and how the issues are framed differs slightly from the initial request, but this decision addresses all the questions raised in the motions.

Issue 1: Is the Applicant in Case No. 2021-00028R, Emerald, in breach of an order of the CAT in Case No. 2019-00317R?

[14] The Respondent requested the CAT find that Emerald is in breach of the order in Emerald PG Holdings Ltd. v Toronto Standard Condominium Corporation No. 2519, 2020 ONCAT 24 because they did not pay the fee ordered by the CAT for redaction and photocopying of the records.

[15] The relevant section of the Order states:

The Applicant shall pay to the Respondent a fee of \$1920 for redaction and photocopying of the general ledger. If the actual cost is less than this amount, the Respondent shall pay the Applicant the difference, as per s. 13.8(1)(d) of the Regulation. Further, if the actual cost is more than \$1920, the Applicant shall pay the amount of difference to a maximum of \$192, as per s. 13.8 (2) of the Regulation. Payment shall be made prior to delivery of the minutes, and the minutes shall be made available within 30 days of this decision.

[16] The Respondent submitted that they prepared the records, but Emerald did not pick them up. Emerald confirmed that they did not pay for the records, nor did they pick them up because the order was to pay the Respondent, but the invoice was to pay the condominium management services provider.

[17] The Tribunal does not enforce its own orders. Parties can apply for enforcement of CAT orders through Small Claims Court or the Superior Court of Justice. This part of the motion is denied.

[18] While I note that the motion is denied, a plain reading of Emerald PG Holdings Ltd. v Toronto Standard Condominium Corporation No. 2519, 2020 ONCAT 24 provides the Parties with the necessary information to resolve this impasse. The parties should be able to resolve this on their own without requiring enforcement action.

Issue 2: Have Emerald and the Applicants, North York Medicare Centre (NYMC) in Case No. 2020-00420R and Ahmadi General Trading Inc. (AGTI) in 2020-00414R, abused the CAT process, and should the CAT dismiss the cases under Rule 17?

[19] The Respondent asserted that the Applicants have collectively abused the CAT process because the applications are authored by the representative for Emerald. It is clear that Cameron Thompson submitted the cases on behalf of AGTI and NYMC. Mr. Thompson is an employee of Emerald and has acted as its representative. There are similarities between the AGTI and NYMC applications. They requested the same records, at the same time, and the dispute relates to the cost the corporation can charge to produce the records. AGTI and NYMC both acknowledge that they sought Mr. Thompson's assistance in submitting their respective applications, and for communicating with the Tribunal.

[20] The Respondent has asserted that the cases were filed with the intent to cause distress for the board and management of TSCC2519. They have described instances outside of the CAT process where they allege that the principals and employees of Emerald have caused them distress.

[21] Rule 17 states that the CAT can dismiss a Case at any time in certain situations, including:

(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);

(d) Where the Applicant(s) has filed documents with the CAT that the Applicant(s) knew or ought to have known contain false or misleading information;

(e) Where the CAT has found that the Applicant has abandoned their Case because the Applicant no longer wants to continue or is no longer actively involved in the Case; or

(f) Where the Respondent has not joined the Case and the Applicant has either not delivered all of the Notices as required, or where the Applicant has delivered all of the required notices but has not moved the case forward to Stage 3 – Tribunal Decision.

[22] There is no dispute that there are similarities between the Applications submitted by AGTI and NYMC. The Applicants had a legitimate basis to request the records, stating that the request was to understand the financial situation of the corporation. The records request and response forms show that TSCC2519 treated the requests as genuine. In these cases, there is a real dispute over the amount charged to produce the records. I cannot conclude that any of the reasons for early dismissal under Rule 17 apply.

[23] In reviewing the Application from Emerald, I conclude that the record request is different than the other two Applications. It was submitted several months after AGTI and NYMC's requests and different records were requested. Additionally, the issues in dispute are different. In Emerald's case, TSCC2519 refused to provide the records after the payment dispute following the previous CAT case. I cannot conclude that this case meets the standard for early dismissal.

[24] The request to dismiss the cases is not granted.

Issue 3: Should the Tribunal also dismiss, or merge with the other cases, case 2021-00060R (2630276 Ontario)?

[25] TSCC2519's second motion asked to dismiss or merge case 2021-00060R. I conclude that the request is not granted. The records request in this case is four months later than the requests from NYMC and AGTI. While there is some overlap in the requested records, I conclude that the record request is different due to the elapsed time between requests. I also conclude that TSCC2519 has not proven that the request or CAT case is improper. TSCC2519 has asserted that it should be dismissed for the same reasons as AGTI and NYMC. I conclude in this case that there is a legitimate dispute over the requested records as some were refused, and there is a dispute over the cost of producing the records. The request to dismiss the case is not granted.

Issue 4: Should the cases be merged?

[26] TSCC2519 requested, "that if the cases were not dismissed, the CAT consider (a) joining the Applications to be heard together; (b) requiring all mediations, and/or interlocutory proceedings and the hearing of the Applications to be heard at the same time." It also requested that 2630276 Ontario be merged with these cases if it was not dismissed.

[27] AGTI and NYMC requested the same records, and the only issue in dispute is the amount TSCC2519 can charge for their production. All parties agree that the cases could be merged, or in the alternative that only one of the two cases should proceed. Since there is no objection to allowing one case to proceed, AGTI and NYMC are directed to consult with each other to determine which case should proceed. They are further required to notify the Tribunal within 14 days of this order being released which case should proceed.

[28] Emerald must remain separate because the requested records are different. The request was also made at a later date, and TSCC2519 refused to provide the requested records. Its issues are distinct from the other cases.

[29] In the case of 2630276 Ontario, the parties did not object to the case being merged. However, the records requests were several months later than AGTI and NYMC, and the case description also shows that the issues in dispute are different than the other three. Since the issues and records differ, it would not improve efficiency to join this case with the others. Therefore, this case will not be merged.

Issue 5: Should the CAT declare Emerald a vexatious litigant, requiring Emerald to seek leave of the CAT prior to bringing any further records requests or Applications before the CAT?

[30] 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 et 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.

[31] The submissions show that there is significant animus between Emerald, the directors of TSCC2519 and the condominium manager. After reviewing the parties' submissions, I conclude that the vexatious litigant criteria do not apply to this case. Emerald's case is a new dispute, and I cannot conclude that it is obvious that it will be unsuccessful. Emerald has a right as an owner to request records, and there is a real dispute over access to the requested records since TSCC2519 refused to provide the requested records. On this basis, it would not be appropriate to determine that this application is vexatious.

[32] It is clear that the Respondent believes that the Applications by NYMC, AGTI and 2630276 Ontario Inc. are proxy cases, submitted by Emerald for an improper purpose. However, after reviewing the information before me, I cannot conclude that they are brought for purposes other than asserting entitlements to records as owners under the Condominium Act. The motion is denied.

Issue 6: Should the Tribunal order that the agents of Emerald, Cameron Thomson and Fatih Eroltu, shall not act as agents or directly or indirectly participate in bringing any further records requests or Applications to the CAT on behalf of Emerald or any other unit owners of TSCC2519 without leave?

[33] The Applications for NYMC and AGTI were submitted by Cameron Thompson. The Applications had similar language and structure. Cameron Thompson wrote the documents submitted when the cases were filed, as demonstrated by the document file properties. This degree of coordination and collaboration is not a question of simply discussing cases where there is a similar interest in the outcome; each Application is the product of a single author making submissions on

the parties' behalf. Mr. Thompson indicated that he was acting as a representative in his capacity as a "friend" of the corporate entities that had filed the cases.

- [34] In response to this motion, NYMC and AGTI submitted letters authorizing Mr. Thompson to act as a "communications liaison" with the CAT. The parties propose that Mr. Thompson participate in the case by helping to interpret, craft arguments and make submissions to the Tribunal on their behalf. It is not clear how any of these activities differentiate a "communications liaison" from a representative. Further, there is no provision for a "communications liaison" in the Tribunal Rules. While I understand the desire to have someone help with the Tribunal process, Mr. Thompson cannot do so. He is not a "friend" of the corporations; he has a direct interest in the outcome of both cases, as a result of his involvement with Emerald. Mr. Thompson is attempting to act as a representative in making arguments and interpreting the Act, for multiple parties at the same time.
- [35] The Tribunal has additional concerns with Mr. Thompson's conduct in relation to these cases. When the Applications for NYMC and AGTI were filed, The Tribunal told Mr. Thompson that he is not allowed to act as a representative because it would violate the CAT Rules. The Tribunal instructed Mr. Thompson to remove himself from both cases. As a result, the representative names and contact information in the CAT-ODR platform were updated, but it appears very evident that Mr. Thompson is still involved in the same basic capacity as a representative, though attempting to disguise this involvement. It is clear from the messages sent on the CAT-ODR platform while the cases were in progress that Mr. Thompson was writing and responding to messages that purported to be from the parties. The email addresses for the parties' CAT cases are different than their public business email addresses. When the Tribunal asked the person sending emails from these addresses to identify themselves, they refused, preferring to debate the nature of personhood. The unusual subject matter, complexity and unique sentence structure of these emails are very reflective of Mr. Thompson's style of communications with the Tribunal. All these factors cause the CAT to conclude that Mr. Thompson was very likely still acting in these cases.
- [36] Although Mr. Thompson refused to identify himself as the author of emails from the parties when requested by Tribunal staff, the Tribunal has concluded that Mr. Thompson is monitoring those email (Gmail) addresses that appear to have been created for the sole purpose of receiving emails related to these CAT cases. It is clear that even after being told he could not act in the cases, he wrote the Applicants' responses to the Respondent's motions. The proposed authorization for Mr. Thompson to act as a "communications liaison" demonstrates that Mr. Thompson has no intention of removing himself from the cases.

- [37] The CAT was designed and operates in a way where the parties do not require representation. It frequently hears cases with self-represented parties who may be less familiar with legal processes. Parties have a right to representation, but this can be limited. Under Rule 4.2, the CAT may make orders or give directions to prevent abuse of its processes. Under Rule 8.5, the CAT may disqualify a representative that is not licensed by the Law Society of Ontario from appearing before it if the representative's appearance would lead to an abuse of process.
- [38] The facts outlined in this decision establish that Mr. Thompson has not followed the Tribunal's instructions. These actions raise a concern about abuse of the tribunal process. It is therefore appropriate for his involvement in CAT cases to be limited. The Tribunal has concluded that Mr. Thompson's efforts to act as a "friend" for three commercial entities is not consistent with CAT Rule 8.5. Therefore, the Tribunal orders that Mr. Thompson is disqualified from acting as a representative. He will not be permitted to act as a representative in any active CAT case or bring any Applications to the CAT on behalf of any other unit owners of TSCC2519.
- [39] Although not listed as a representative in Emerald's current case, I note that Mr. Thompson has represented Emerald previously. I have considered whether Mr. Thompson's representation of Emerald should be limited. I am concerned that Mr. Thompson's conduct has demonstrated blatant disregard for the rules and authority of the Tribunal. However, he has a valid connection to Emerald which may support him acting as its agent. I am prepared to allow him to represent it in the future with the clear expectation that he will follow the direction and orders of the Tribunal throughout.
- [40] If it comes to the Tribunal's attention that Mr. Thompson is continuing to be involved with other cases in violation of this order, the Tribunal will, on its own motion, and to ensure the integrity of its process, restrict Mr. Thompson from acting as a representative for Emerald.
- [41] Above, I discussed that the email addresses for AGTI and NYMC are different than their public business email addresses. The email addresses appear to have been created to allow Mr. Thompson to monitor communication from the Tribunal. Since, I cannot be certain that the parties are actually receiving case-related communication from the Tribunal, I order that the parties change their email addresses from the addresses Mr. Thompson used when the cases were created.
- [42] The Respondent has not demonstrated that Mr. Eroltu has abused the CAT process, so the motion to further prohibit Fatih Eroltu from acting in CAT cases is denied. Mr. Eroltu has not proposed to act as an agent or Representative for any other parties. Therefore, I make no order with respect to Mr. Eroltu.

[43] I understand the desire NYMC and AGTI have expressed to have someone help with communications during the CAT process. This order does not prevent them from having someone help with communication. It cannot, however, be Mr. Thompson.

CONCLUSION

[44] In making this decision and the order that follows, I have considered the requests from MTCC2519 and attempted to balance the legitimate interests of the applicant unit owners to access records and to have their disputes adjudicated at the Tribunal against the need to ensure that the CAT process is not misused. These cases are clearly interrelated, and part of a larger conflict within TSCC2519. Despite valid concerns relating to their representation, the Respondent has not demonstrated that the cases were filed in bad faith. The orders in this decision attempt to address inappropriate behaviour while providing an opportunity to resolve the cases. I am satisfied that a reasonable resolution can be achieved in these cases, as previous decisions within this same corporation have established entitlements to records and reasonable fees for their production.

ORDER

[45] The Tribunal orders that:

1. Within 14 days of this decision, North York Medicare Centre and Ahmadi General Trading Inc. must notify the Tribunal which case, as between 2020-00414R and 2020-00420R, they nominate to proceed.
2. Cameron Thompson is disqualified from acting as a representative before the CAT in cases 2020-00414R and 2020-00420R. He will only be permitted to act as a representative for Emerald PG Holdings Ltd. Mr. Thompson is disqualified from bringing any new Applications to the CAT on behalf of any other unit owners of TSCC2519.
3. Within 14 days of this decision, North York Medicare Centre, and Ahmadi General Trading Inc. must update the email addresses associated with their cases to email addresses to which Cameron Thompson shall not have access.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: April 8, 2021