CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 15, 2021
CASE: 2021-00006R
Citation: Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 32

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Aqib Rahman
Self-Represented

The Respondent,
Peel Condominium Corporation No. 779
Represented by Victor Yee, Counsel

Hearing: Written Online Hearing – February 8, 2021 to March 17, 2021

REASONS FOR DECISION

A. OVERVIEW

[1] Aqib Rahman (the "Applicant") submitted a records request to Peel Condominium Corporation No. 779 ("PCC779") in October 2020. The records requested were the condominium declaration and rules, the Periodic information Certificates issued and the minutes of meetings held in the 12 months prior to the request. The records were provided to the Applicant, by email, on November 20, 2020.

[2] As stated in the Stage 2 Summary and Order, there were minor procedural issues with both the request and the response. However, whether the delivery of the records request and the response were in complete accordance with s. 13.3 of Regulation 48/01 is not an issue before me. Counsel for PCC779 at various times in the hearing described the Applicant's record request as a "purported" request, but regardless, PCC779 acted upon the request and provided the records.

[3] The issue before is not entitlement to the records; it is whether the records provided are "adequate" in accordance with the requirements of the *Condominium*

Act, 1998 (the "Act") and its regulations and if they are not, the Applicant requests that the Tribunal order PCC779 to amend or revise the records accordingly. In addition to the issue of adequacy, the Applicant is seeking a penalty under s. 1.44(1)6 of the Act and costs. PCC779 is also seeking costs in this matter.

B. RESULT

[4] For the reasons set out below, I find the records provided to be adequate and in accordance with the Act, and therefore no amendments or revisions are required. Further there is no order for a penalty or costs, to either party.

C. ISSUE & ANALYSIS

ISSUE: Are the records provided adequate, in accordance with the Act?

[5] In my analysis, I will address the requested records in the order in which they are listed on the Request for Records form.

1. The declaration

[6] In his statement, the Applicant noted that this is his first time living in a condominium and his first condominium unit purchase. It is clear from his evidence that he has carefully reviewed all of the documents provided by PCC779 and I commend him for his diligence. However, his dispute with the declaration is that it is outdated, and specifically, does not contain the mediation/arbitration policy that the Applicant states is required by the Act. He relies on s. 132 of the Act which states:

> **Mediation and arbitration**
> **132** (1) Every agreement mentioned in subsection (2) shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to,
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> (a) mediation by a person selected by the parties unless the parties have previously submitted the disagreement to mediation; and
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> (b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration under the *Arbitration Act, 1991*,
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> (i) 60 days after the parties submit the disagreement to mediation, if the parties have not selected a mediator under clause (a), or
>
> (ii) 30 days after the mediator selected under clause (a) delivers a notice stating that the mediation has failed. 1998, c. 19, s. 132 (1).
>
> (2) Subsection (1) applies to the following agreements:

1. An agreement between a declarant and a corporation.

2. An agreement between two or more corporations.

3. An agreement described in clause 98 (1) (b) between a corporation and an owner.

[7] The Applicant submits that I interpret the word “deemed” in s.132(1) to mean “shall” and therefore the declaration must be amended to contain the mediation/arbitration policies. The Applicant has cited various legal dictionary definitions of the word “deem”. One of those definitions, and the one most relevant to statutory interpretation is “to treat as if, to construe”.

[8] In fact though, the relevant section of the Act in respect of the Applicant’s issue regarding mediation/arbitration is s. 132(4) which states:

> Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively.

Section 132(4) is clear in its wording: the declaration is treated as containing mediation/arbitration provisions regardless of whether it is explicitly stated within it. Section 132 affords to the corporation or an owner recourse to mediation and/or arbitration. Because of this wording in s. 132(4), there is no obligation on a condominium corporation to amend its declaration to specifically include it.

[9] I find therefore that the declaration is an adequate record of the corporation.

2. The condominium corporation rules

[10] The Applicant alleges that the rules are “forged” in that they are not dated or signed and do not name the condominium to which they are applicable. Fred Maggiacomo, the condominium manager for PCC779 stated in his evidence that the rules which were provided to the Applicant are the only rules enacted by PCC779 since its creation in 2006. He stated that in his experience, rules are often not dated or signed, nor are they required to specify to which corporation they apply.

[11] Section 58 of the Act gives a condominium board the authority to make, amend or repeal rules and prescribes the process for doing so. Section 58 sets out the purposes of rules – to promote the safety, security or welfare of owners to prevent an unreasonable interference with the use and enjoyment of the units and the common elements or assets of the corporation. However, section 58 is silent as to

form, including whether they must name the condominium, be dated or signed.

[12] Though the Applicant is correct that the rules are lacking the details alleged, that does not mean they are “forged”. It may mean that when the rules were first enacted they were done so without attention to these details, which may demonstrate a casual approach at the time, and I cannot disagree that more diligence is preferable, however that does not mean they are not adequate. Further, the Applicant provided no evidence which would suggest that the rules were not enacted as required by the Act, which are the only formal requirements that are relevant in this instance. The rules, which have been in place for 15 years, provide a guide for behavior of owners and regulate the use of units and common elements, typical of what one expects to see in rules.

[13] The Applicant, in submissions, also stated that the rules were somehow deficient because they are not displayed in the lobby bulletin board. Whether or not that is the case does not impact their adequacy.

[14] I find therefore that the rules are an adequate record of the corporation.

3. Periodic Information certificates for the past 12 months

[15] Periodic Information Certificates (“PIC”) dated May 22 and November 16, 2020 were provided to the Applicant. The PIC is a prescribed form. In them, a condominium corporation is required to disclose whether there are outstanding legal actions relating to the corporation. In the November 16, 2020 PIC, the corporation has disclosed two legal actions, one of which is that initiated by the Applicant in the Superior Court of Justice on October 26, 2020. PCC779 has filed a defence and counterclaim in that action. One of the questions required to be answered in this section of the PIC is: “Total amount claimed by the corporation”. Rather than state a dollar amount, PCC779’s response on the form was “Do not know”.

[16] The Applicant stated at the hearing that the issue about the PIC is relatively minor. He asserts that this needs to be corrected and that the actual amount of the counterclaim be inserted. The pleadings in that action have been submitted with Mr. Maggiacomo’s evidence. PCC779 is seeking several forms of relief through its counterclaim, including damages up to $200,000, or “such lower amount” as PCC779 may advise the court.

[17] It may well be that the Applicant is perplexed by the counterclaim and may not fully understand the reason for the counterclaim, but the avenue by which to gain that knowledge is through the litigation in the court, not by means of the PIC. As stated

by the Tribunal in *Ravells* v. *Metropolitan Toronto Standard Condominium Corporation No.564*,[1] when assessing the adequacy of records, the issue is not whether an applicant finds the record sufficient for his purpose, but whether the respondent is keeping adequate records in accordance with s. 55(1) of the Act.

[18] The Applicant acknowledges this is a minor issue, and the Respondent submits that an exact amount is not stated because it cannot yet be known, but it is sufficient that it has identified that there is a claim. While it was open to it to state the $200,000 amount asserted, the fact that it did not do so, on these facts, does not render the PIC deficient in any material way. Reviewing the PIC in its entirety, I find that it is an adequate record in accordance with s. 55(1) of the Act.

4. Minutes of Meetings held within the last 12 months

[19] The Applicant submits that the minutes are not adequate as they do not include board votes, reasoning for decisions, and dates. He also asserts that there are missing subjects and "complete subjects particularly in the board meetings that have nothing to do with litigation." He states that it is "hard to tell the authenticity of the board minutes documentation since it specifically is formulated in a very irregular pattern." Here too there is a focus on his litigation with PCC779; that is, he wants to be provided with "revised minutes even with matters in respect to litigation disputes that relate solely to the applicant."

[20] In matters before the Tribunal we see a wide variety of minutes in terms of form and detail. Issues about the adequacy of minutes arise frequently. It is well settled law at this point that the purpose of minutes is to document a board's business transactions and to show how the corporation's affairs are controlled, managed and administered. There is an implied requirement that the minutes be accurate, but the Act does not impose a standard of perfection.[2] Minutes are not required to be a verbatim account of a meeting.

[21] I have reviewed the board minutes provided to the Applicant. While there is a slight variation in form, the minutes generally follow a pattern of stating the date of the meeting, who was present, listed topics, action items explained and discussion points summarized, in some instances in quite a fulsome way. The minutes reflect whether an item of business was approved. There is very little redaction and where there is redaction it is apparent from reading the minutes that it is a unit number. There is no discussion of litigation, but in any event that information is

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[1] 2020ONCAT44(CanLII)
[2] See the following cases: McKay v. Waterloo North Condominium Corporation No.323 1992 Can LII 781 (ONSC) and Yeung v. Metropolitan Toronto Condominium Corporation No.1136 2020ONCAT 33(CanLII)

excluded from disclosure by virtue of s. 55(4)(b) of the Act.

[22] Based on that review, I find the minutes to be adequate. The Applicant's concerns are largely to form, and somewhat ambiguous. For example, it is not clear what the "missing subjects" are. The minutes provided appear to adequately reflect how the board is managing the business of the corporation. The Applicant clearly has a rigorous eye to detail and I do not fault him for that; however, his standards do not accord with what the Act requires.

ISSUE: Should the Applicant be awarded a penalty under s. 1.44(1)6?

[23] The Applicant is seeking the "maximum costs" to be awarded to him; it is unclear whether this is intended as a request for penalty and/or costs. I will deal with costs below, but I will first address whether a penalty might also be applicable. Section 1.44(1)6 of the Act states that the Tribunal may award a penalty if the corporation has without reasonable excuse refused to permit the person to examine or obtain copies of the document. Here, the records were provided. That is not in dispute. That does not always preclude a penalty; for example, if there was a delay tantamount to a refusal, or likewise if the records were found to fail the test of adequacy. That is not the situation before me. Therefore, there is no basis on which to award a penalty.

ISSUE: Is the Applicant or the Respondent entitled to costs?

[24] I will first address whether the Applicant is entitled to his costs, which here are the costs of bringing this case to the Tribunal: $200. Section 1.44(1)4 of the Act gives the Tribunal discretion to order costs. And as a general rule, a successful party will be awarded costs in the amount of the fees paid to the Tribunal for the application. The issue before me was the adequacy of the records and on that issue, the Applicant was not successful. Further, I have found that the concerns raised about adequacy were either not well founded or minor, dealing with issues of form, and not in any way substantive. In the circumstances, I award no costs to the Applicant.

[25] The Respondent is seeking its legal costs and provided its counsel's Bill of Costs with its closing submissions. Legal fees, even calculated on a partial indemnity rate, are $2266.22. Counsel has devoted half of the closing submissions to the

request for costs. Counsel relies on Rule 46.1 of the Tribunal's Rules of Practice[3], asserting that there are exceptional reasons to order the Applicant to pay legal fees in this instance.

[26] I have carefully reviewed those submissions, together with the Bill of Costs, as well as the record of proceedings to which Counsel has referred at length. It is true that the Applicant was zealous in his advocacy on his own behalf. He did, as well, have some misunderstanding of the Act and condominium law generally, an area in which Respondent's counsel is well versed. However, it is not reasonable, for example, to conclude that his zealousness lengthened this hearing to any appreciable extent. The entirety of the hearing was approximately six weeks.

[27] Further, while the Applicant did allege fraudulent tactics and deceptive practice by the Respondent and its counsel, I did remind both parties that their personal comments directed to each other had to stop.[4] This case followed shortly after a previous case before the Tribunal involving the Applicant, Respondent and its counsel. As I indicated to the parties on March 4 [5], it was very apparent to me that there is a history between Mr. Rahman and Mr. Yee; however, as I reminded them, again, this was not the forum for their expressions of personal umbrage about each other and it was not to continue. In other words, it was clear to me that both participants in the hearing were contributing to its fractiousness. Even if much of this contentious dialogue was often initiated by the Applicant, as experienced counsel, Mr. Yee should well understand that not every such assertion by the opposing party requires a response or the resulting increase in legal fees that comes with responding to them.

[28] Counsel has cited several cases in support of his assertion that costs are warranted here. In *Kamyshan* v. *York Condominium Corporation No. 465* [6] the Tribunal did award costs under Rule 46.1. There, the Tribunal awarded costs in the context of its finding that the case had been filed for an improper purpose. No such issue arose here. Of note, the Tribunal did state in that decision that it is not appropriate to use costs award to penalize every type of improper behavior. A costs award is not intended to be used punitively.

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[3] 46.1 The CAT will not order a User to pay to another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so.

[4] Message to the parties: February 21, 2021
[5] Message to the parties: March 4, 2021
[6] 2020ONCAT46 (CanLII)

[29] Counsel submits that the exceptionality of a costs award is warranted where "the allegations of improper conduct are seriously prejudicial to the character or reputation of the victim", citing *Di Battista v. Wawensa Mutual Insurance Company* [7]. While unclear who the "victim" might be in the matter before me, a review of this case clearly reveals that the allegations that the court was addressing were of an entirely different scale than here in most aspects. In but one example, one of the parties was vigorously disseminating allegations of the other being an embezzler in both the Toronto Star and in television.

[30] I find that this is not a case in which costs are warranted pursuant to Rule 46.1.

[31] The animosity in this case appears to be a reflection of what transpired previously between the parties, and between the Applicant and the Respondent's counsel. The previous Tribunal decision and the ongoing litigation between the parties has quite negatively impacted their ability to communicate with each other in a productive way. I do note, though, that whatever the level of distrust and animosity, allegations of "fraudulent documents" and perjury were not warranted by the evidence presented in this case, and while they do not attract an award of costs here, they could in another situation.

D. ORDER

[32] For the reasons set out above, the application is dismissed. No penalty or costs are awarded.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: April 15, 2021

[7] 2005 CanLII41985 (ONSC)