

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** May 14, 2021

**CASE:** 2020-00434R

**Citation:** Nickason v. Wellington Standard Condominium Corporation No. 108, 2021 ONCAT 45

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

**Member:** Brian Cook, Member

**The Applicant,**  
Kyle Nickason  
Self-Represented

**The Respondent,**  
Wellington Standard Condominium Corporation No. 108  
Not Participating

**Hearing:** Written Online Hearing – March 11, 2021 – April 27, 2021

### **DECISION AND ORDER**

#### **A. Introduction**

[1] Kyle Nickason is the owner of a unit in a 76-unit townhouse condominium complex that consists of 11 blocks. On November 19, 2020, he made a Request for Records seeking various records related to a siding project. He received some of the records he requested but did not receive most of the requested records. Mr. Nickason then filed this application with the Tribunal.

#### **B. History of the Tribunal process**

[2] This case proceeded to Stage 2 in the Tribunal's process (mediation) on February 2, 2021. The Respondent condominium corporation initially participated with counsel, but counsel advised that he was no longer representing the Respondent as of February 22, 2021. Nothing further was heard from the Respondent and the matter proceeded to Stage 3 of the Tribunal's process (adjudication) on March 5, 2021.

[3] At my request, the Tribunal clerk contacted the Respondent on several occasions. I was advised that the clerk had contacted a member of the Respondent board of

directors, who advised that they would speak with the condominium manager, Voula Bellissimo, and Equity Builders, the condominium management provider. The latter advised that the manager has been sick and out of the office for some months. The clerk was advised that Ash Singh, a different employee of Equity Builders, and also a director would deal with the case. The clerk also spoke with Tarang Shah, and provided instructions about how to access the case using the online system. No representative for the respondent joined the case. On April 9, 2021 I issued the following direction in the online system:

The respondent has still not joined this case or filed any documents or submissions.

It is clear that the respondent is aware of the case and it has received notice of this from the tribunal and the applicant.

The applicant has filed documents and a witness statement.

This hearing will conclude on April 16 at 5:00. I will make a decision based on the documents that have been filed by that date.

- [4] The Applicant filed an email chain between himself and Mr. Singh. Starting on March 28, 2021, the Applicant and Mr. Singh discussed the fact that the case had been filed at the Tribunal and whether there might be a way to resolve the issues between themselves. The Applicant confirmed that he supported that approach. Mr. Singh advised that the condominium manager was on sick leave and that records that were more than six months old might be in storage. Mr. Singh asked what records were in dispute and the Applicant provided a detailed response.
- [5] Neither Mr. Singh nor anyone else from the Respondent has joined or participated in the case since the limited involvement during Stage 2.
- [6] I find that the Respondent is aware that a case has been filed and processed by the Tribunal but has chosen not to participate beyond its initial involvement in Stage 2. The Applicant advised that Mr. Singh is president of the Respondent's condominium management company and a long-time board member of the condominium. He has been contacted by the Tribunal staff and by the Applicant about the case and clearly has knowledge that it is proceeding and that a decision would be made in the absence of the Respondent if it did not participate.
- [7] In these circumstances, this case is decided on the basis of the submissions and evidence of the Applicant only, as the Respondent provided none.

### **C. The Records Request**

- [8] The Applicant filed the Records Request on November 19, 2020. He requested non-core records relating to the siding project. The Respondent was required to

send a response form within 30 days. The Respondent did not do that, but sent an email dated December 19, 2020, acknowledging the request and advising that the Respondent was “seeking an opinion on the requested records” and would respond shortly.

[9] On November 29, 2020, Mr. Singh wrote to the Applicant and stated:

Not to be difficult but I believe as a homeowner you are ONLY entitled to documents specific to your unit boundaries and might want to reach out to your real estate lawyer that acted on your behalf at closing to confirm the same. Should he take a different position please have him write a letter to us outlining where under the Act every unit owner is entitled for unlimited information pertaining to the site or complex boundaries.

[10] Since the Respondent has not participated, it is not possible to know the basis for the incorrect statement that the Applicant was entitled only to documents specific to his unit. It is also not clear why the Respondent would require the Applicant to hire a lawyer to address this issue.

[11] The Applicant is entitled to receive all the records he has requested. None of the exemptions in section 55(4) of the *Condominium Act, 1998* (the “Act”) apply.

#### **D. The Applicant’s evidence**

[12] The Applicant filed a witness statement. While the Applicant was not obliged to explain the reason for his Request, he has nevertheless explained that he wanted to understand what had happened during a protracted siding replacement project involving four of the 11 blocks that make up the condominium and why the anticipated costs had been significantly exceeded.

[13] The Applicant identified four categories of records he requested:

##### **1. Awarded contracts**

[14] The Applicant advises that these records were provided on January 4, 2021.

##### **2. Tendering documents and bids**

[15] The Applicant states that he did not receive these records. He notes that the Respondent told him that they had been sent by email. However, he states he did not receive such an email. In the absence of any evidence from the Respondent, I accept the Applicant’s evidence and find that the records have not been provided. The Respondent is directed to provide the tendering documents and bids requested by the Applicant.

### **3. Engineering Records, Reports, and Drawings**

- [16] This request was for engineering drawings, reports and any associated recommendations from Hayat Engineering and Tacoma Engineering including “Field Reports, Progress Reports, Site Review Reports, and Mold inspection/remediation reports, or any other similar report of this nature whether it was presented to the Board or not”.
- [17] The Applicant states that the Respondent provided three drawings from Hayat Engineering but no other engineering report or drawing pertaining to the siding projects. He further states that the three drawings that were provided were for Block 4 which was a block that was not included in the siding project. Those blocks were 1, 2, and 7.
- [18] The Respondent is directed to allow the Applicant to access the drawings related to the siding project for the blocks 1, 2 and 7.
- [19] The Applicant has indicated he would prefer to receive electronic copies of these drawings but that he would also be prepared to review paper copies if that is more convenient. The Respondent is directed to provide electronic copies of the drawings unless the Applicant consents in writing to review existing paper copies.
- [20] The Applicant’s evidence is that the Respondent told him that no engineering reports were created during this project and that they could not provide records that do not exist. In his witness statement, the Applicant said that he has documents that show that some engineering reports were provided. I asked the Applicant to clarify what this evidence is. He provided a copy of a report from Tacoma Engineering dated June 14, 2018 which he obtained through a Freedom of Information request. It concerns a “Deteriorated Lumber Review” which involved an examination and assessment of the structural integrity of the exterior walls of three units.
- [21] In the absence of any evidence to the contrary from the Respondent, I accept the Applicant’s evidence and find that engineering reports were prepared as part of the siding project. The Respondent is directed to provide any reports from Tacoma Engineering and Hayat Engineering that it received. If the Respondent no longer has the reports, it shall contact the engineering firms to obtain copies and then provide them to the Applicant.

### **4. Invoices**

- [22] The Applicant requested a number of specified invoices. His evidence is that he

received four invoices on January 4, 2021 but has not received the others requested. These are:

- Maritime Environmental (Invoice #4469) - \$339.00
- Maritime Environmental (Invoice #4470) - \$508.50
- Maritime Environmental (Invoice #4471) - \$508.50
- Maritime Environmental (Invoice #4480) - \$508.50
- Maritime Environmental (Invoice #4764) - \$508.50
- Maritime Environmental (Invoice #4798) - \$508.50
- ERO Custom Exteriors (Invoice #07/06/17) - \$30,510
- ERO Custom Exteriors (Invoice #711132) - \$18,109.05
- ERO Custom Exteriors (Invoice #711133) - \$2,260
- ERO Custom Exteriors (Invoice #711134) - \$2,260
- ERO Custom Exteriors (Invoice #711135) - \$3,955
- ERO Custom Exteriors (Invoice #711127) - \$10,170
- ERO Custom Exteriors (Invoice #711128) - \$15,000
- M&D Aluminium (Invoice #12/21/17) - \$10,000
- M&D Aluminium (Invoice #18-0237) - \$18,645.45
- M&D Aluminium (Invoice #18-0244) - \$9,544.26
- M&D Aluminium (Invoice #18-0250) - \$19,859.75
- M&D Aluminium (Invoice #18-0252) - \$429.40
- M&D Aluminium (Invoice #18-0253) - \$2,621.04
- M&D Aluminium (Invoice #18-0254) - \$9,435.50
- Peter Karloinczak (Invoice #361236) - \$51.98
- Peter Karloinczak (Invoice #685703) - \$54.24
- Peter Karloinczak (Invoice #291507) - \$768.40
- Peter Karloinczak (Invoice #291460) - \$1,412.5
- Tacoma Engineering (Invoice #69061) - \$621.50

[23] I accept the Applicant's evidence that he has not received these requested invoices. The Respondent is directed to provide the Applicant with the requested invoices.

#### **E. Costs**

[24] The Applicant has spent \$200 to get to this stage in the Tribunal process and has been successful in his application. The Applicant is entitled to a costs award of \$200 representing the fees paid to the Tribunal.

[25] Since the records in question in this case are all non-core records, the Respondent could have requested reasonable costs to produce them. However, the

Respondent did not make such a request and I therefore find that it is not now entitled to request costs.

## **F. Penalty**

[26] Section 1.44(1) of the Act provides in part:

**1.44 (1)** Subject to subsection (4), in a proceeding before the Tribunal, the Tribunal may make any of the following orders:

6. An order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55(3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[27] Section 1.44(3) provides that the maximum penalty is \$5,000.

[28] *Surinder Mehta v. Peel Condominium Corporation 389, 2020 ONCAT 9*, discussed the purpose of a penalty: “[T]he purpose of a penalty is to impress upon condominium corporations that they must be aware of their responsibilities under the Act, understand what is involved in meeting these responsibilities, and take these responsibilities seriously.”

[29] In this case, the Respondent has provided some of the requested records. It appears that its ability to more fully engage in the process may have been hampered because the condominium manager was on an extended medical leave. There may be other reasons as well which the Respondent has not identified because it has not engaged in the Tribunal’s process beyond the preliminary stages of Stage 2 - Mediation. However, the Respondent has not provided me with any reasons for its non-participation. Further, it is clear that the Respondent has not provided records that the Applicant is entitled to request. I find that the Respondent has refused to provide records without reasonable excuse and that a penalty is in order under section 1.44 of the Act.

[30] In contrast to the Respondent’s lack of engagement, the Applicant has been very reasonable and appropriate in his communications with the Respondent and the Tribunal. He agreed with the Respondent that it would be preferable for everyone concerned, including him, to resolve the matter in such a way as to minimize costs for the corporation and that accordingly the amount of the penalty need not be significant. At the same time, he is legitimately concerned that the Respondent may not be aware of its obligations under the Act or how it should respond to

legitimate requests for records. I agree with the Applicant that the Respondent appears not to fully understand its obligations under the Act.

[31] Weighing the need to remind the Respondent of its obligations under the Act and the Applicant's submission that the penalty need not be significant, I find that a penalty of \$500 is appropriate in this case.

## **G. ORDER**

[32] The Tribunal Orders that:

1. Within 30 days of the date of this decision, the Respondent shall:
  - a. Provide the Applicant with the tendering documents and bids requested by the Applicant in relation to the siding project.
  - b. Allow the Applicant to access the drawings related to the siding project for the blocks 1, 2 and 7. The Applicant and the Respondent may negotiate whether the access should be to an electronic copy of the drawings, or a review of the physical drawings.
  - c. Provide any reports from Tacoma Engineering and Hayat Engineering that it received. If the Respondent no longer has the reports, it shall contact the engineering firms to obtain copies and then provide them to the Applicant.
  - d. Provide the Applicant with copies of the invoices he has requested.
  - e. Pay the Applicant costs in the amount of \$200.
  - f. Pay the Applicant a penalty in the amount of \$500.
2. The time for doing these things may be extended with the written consent of the Applicant.
3. The records shall be provided to the Applicant at no charge to him.
4. If the penalty and costs are not paid within 30 days of this Order, the Applicant is entitled to set-off the amount against the common expenses attributable to the Applicant's units in accordance with section 1.45(3) of the Act. In order to ensure that the Applicant does not have to pay any portion of the penalty and cost awards, he will also be given a credit toward the common expenses attributable to his unit in the amount equivalent to his proportionate share of the penalty and costs awarded.

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Brian Cook  
Member, Condominium Authority Tribunal

Released on: May 14, 2021