

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 16, 2021

CASE: 2020-00326R

Citation: Bolanos v. Carleton Condominium Corporation No. 14, 2021 ONCAT 52

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

Member: Keegan Ferreira, Vice-Chair

The Applicant,

Socorro Bolanos

Self-Represented

The Respondent,

Carleton Condominium Corporation No. 141

Represented by Tammy Zollinger, Condominium Manager

Hearing: Written Online Hearing – April 1, 2021 to May 17, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] Socorro Bolanos (the “Applicant”) is the owner of a unit in Carleton Condominium Corporation No. 141 (the “Respondent”). The Applicant submitted a Request for Records on the mandatory form to the Respondent on September 16, 2020 and received the Board’s Response to a Request for Records form on September 30, 2020.

[2] The Applicant requested access to the following records for the period of May 2017 to September 16, 2020:

- A. Mark Johnson’s contract
- B. Landscaping/snow company contracts
- C. Roof company contract
- D. Eavestrough company contract
- E. CMG contract
- F. Engineer’s report and contract

- G. All invoices for three years
- H. All foundation reports and invoices

[3] In its response, the Respondent indicated that it would provide those records and set out the fee for each record as follows:

- A. Mark Johnson's contract: \$262.00
 - Fee based on four hours of labour and 20 pages.
- B. Landscaping/snow company contracts: \$132.00
 - Fee based on two hours of labour and 20 pages.
- C. Roof company contract: \$195.70
 - Fee based on four hours of labour and 20 pages.
- D. Eavestrough company contract: \$196.50
 - Fee based on three hours of labour and 15 pages.
- E. CMG contract: \$0
- F. Engineer's report and contract: \$328.00
 - Fee based on five hours of labour and 30 pages.
- G. All invoices for three years: \$11,850.00
 - Fee based on 180 hours of labour and 1,500 pages.
- H. All foundation reports and invoices: \$3,258.00
 - Fee based on 50 hours of labour and 80 pages.

The Applicant asserts that these fees are unreasonable and so filed this application with the Tribunal.

[4] There was no dispute that the Applicant is entitled to these records. All the requested records are non-core records.

[5] The issues before me in this case are:

- a) What amount is the Respondent entitled to charge the Applicant for providing her the requested records?
- b) Should any costs be awarded?

B. RESULT

- [6] For the reasons set out below, I order the Respondent to provide the Applicant with the implied contract with Johnson which the Respondent intended to compile and provide, the requested landscaping / snow company contracts, roof company contract, eavestrough company contract, CMG contract, engineer's reports, and foundation reports and invoices at no cost within 30 days of this decision.
- [7] I also order the Respondent to reimburse the Applicant for their CAT fees totalling \$200 within 30 days of this decision.

C. EVIDENCE AND ANALYSIS

- [8] At the outset of the Stage 3 hearing, the Respondent clarified its position regarding the records and noted that some of the records which it indicated it would provide did not, in fact, exist: specifically, Mark Johnson's contract and the engineer's contract.
- [9] With respect to Mark Johnson's contract, the Board's Response form indicates that there are approximately 20 pages and that it would take approximately four hours to provide this record. The Respondent informed the Tribunal that Mark Johnson is the Owner of Johnson Construction and Renovation and he is also the Respondent's general contractor. The Respondent indicated that there is no contract with either Mr. Johnson or with Johnson Construction and Renovation (collectively, "Johnson").
- [10] The Respondent advised the Tribunal that there is no formal contract or agreement with Johnson because the Respondent's engagement with them developed organically. The Board hired Johnson Construction to inspect the foundation for one of the units and to provide a report along with a quote. The Respondent indicated that this work then expanded to five other units, of which three required engineering and the installation of metal plates. The Respondent also indicated that Johnson Construction was paid approximately \$90,000 between 2019 and 2021.
- [11] When asked why the Board's Response form indicated that this record would be provided for a fee of \$262, the Respondent indicated that this amount reflected the work that they intended to undertake to compile an "implied contract," being a compilation of emails and correspondence. In so doing, the Respondent indicated it may also need to redact information relating to individual units or unit owners.
- [12] With respect to the engineer's report and contract, the Respondent indicated that the engineer's reports relate to other units and consequently they cannot share those records. They also explained that there is no contract because the

relationship developed organically (as was the case with Johnson Construction). The Respondent did not provide any explanation for indicating that the reports would be provided for a fee of \$328, or why it changed its position about providing the reports to the Applicant.

Issue 1: What amount is the Respondent entitled to charge the Applicant for providing the requested records?

- [13] For all the requested records, the hourly rate set out on the Board's Response form is \$65 per hour. When asked about the basis for that amount, the Respondent's representative indicated that this was their first time responding to a Request for Records, and so they had confirmed with their employer (CMG Management) what amount was appropriate. The Respondent's representative stated that CMG's contract with the Respondent stipulates that "all extra work is \$125/hr" but that they were told we were not allowed to charge that much. As a consequence, they would need to hire someone to do this work. No other explanation or basis justifying the \$65 hourly rate was provided.
- [14] While it is clear that some of the records may relate to other units / other unit owners and so may require review and/or redaction, it is not clear that any difference in the work required to provide these records has been used as a factor to determine the amount of work involved, or the appropriate fee, for producing each record.
- [15] For example, the Respondent indicates that it would take a total of eight hours to provide the Respondent's landscaping / snow company contracts, roof company contract and eavestrough company contract. There was no evidence to suggest that these records would include information about other units or other unit owners, or that they would require review or redaction. Nevertheless, the Board's Response form indicates that the Respondent is charging the same hourly rate for records that do require review and may require redaction, such as the engineering reports for other units.
- [16] Since the Respondent is charging the same hourly rate for all records without any apparent consideration for the work involved in compiling them, I cannot conclude that rate represents either the real rate of pay of the individuals who would be involved in the work to provide these records or the Respondent's actual labour and delivery costs. Accordingly, I find that these fees are unreasonable.
- [17] Since there is no evidence before me to suggest that the work involved in reviewing the records requires specialized knowledge, I am prepared to set the hourly rate for the work involved in providing these records at \$32.00 per hour,

which is approximately double the current minimum wage in Ontario plus H.S.T. I have included HST as this might be charged if the person performing the work is a contractor rather than an employee, which the Respondent's representative indicated would likely be the case. I recognize that a different rate might be reasonable in other cases based on the specifics of the case.

- [18] As noted above, all the requested records are non-core records. The Applicant requested electronic copies of each, but these records are not maintained electronically. Accordingly, the Respondent is entitled to charge up to 20 cents per page under s. 13.3 (8) 3 of Ontario Regulation 48/01 but had indicated that it was only charging 10 cents per page for the printing / photocopying fees in its response form.
- [19] Having addressed the hourly rate and printing / photocopying costs, I will now turn to a consideration of the total number of hours of work involved in providing each requested record, looking first at the Respondent's response for the invoices for the past three years.
- [20] The Respondent indicated that it would take approximately 180 hours to provide the roughly 1,500 pages worth of invoices. The Respondent also stated during the hearing that someone would need to sort through boxes to compile the records, and that some of the invoices may relate to individual unit owners or units and so would require review and/or redaction. This demonstrates to me that the Respondent can compile, review and redact records at the rate of at least 8.3 pages per hour. Accordingly, 8.3 pages per hour is the rate I will use to calculate the expected work involved in providing all the requested records that require review and/or redaction. I recognize that a different rate might be reasonable in other cases based on the specifics of the case.
- [21] For Mark Johnson's contract, the Respondent has indicated that no contract exists. In lieu of providing an existing contract, the Respondent intended to compile an "implied contract" from among its correspondence with Johnson. The Respondent indicated that this record would consist of approximately 20 pages and that compiling the implied contract would require review and/or redaction as some of the correspondence may relate to other units. I calculate the expected work involved to be 2.4 hours (20 pages at 8.3 minutes per page). The respondent is entitled to charge \$78.80 for this record (($\32.00 per hour for 2.4 hours) + (20 pages at 10 cents per page)).
- [22] I also note that the Applicant appears to desire more information regarding the relationship between the Respondent and Johnson, and the amounts of money the Respondent has paid them. The Applicant may find this information in other

records to which they may be entitled but which are not part of this Request (i.e., in the Respondent's financial records or meeting minutes).

- [23] The landscaping / snow contracts, roof contracts and eavestrough contracts consist of approximately 42 pages and are simple contracts between the Respondent and its service providers. There is no evidence before me to suggest that they include any information relating to individual units or unit owners and so should not require careful review and/or redaction. I conclude that it should take no longer than one hour to provide these records, and so the Respondent is entitled to charge \$36.20 for these records (($\$32.00$ per hour for one hour) + (42 pages at 10 cents per page)).
- [24] For the engineering reports and a copy of the Respondent's contract with the engineering firm, the Board's response form indicated that these records total 20 pages. As noted above, the Respondent asserts that no contract exists and so I conclude that all 20 pages are the requested engineering reports. These reports require review and/or redaction as they may relate to other units or unit owners, and so I calculate the expected work involved to be 2.4 hours (20 pages at 8.3 minutes per page). The respondent is required to provide the Applicant with these reports, redacted to protect any personal information, and is entitled to charge \$78.80 for these records (($\$32.00$ per hour for 2.4 hours) + (20 pages at 10 cents per page)).
- [25] For the CMG contract, the Respondent has indicated that it is willing to provide this record at no cost.
- [26] For the invoices for the past three years, the Respondent indicated that it would take approximately 180 hours to compile and provide all the invoices, and that some of the invoices may relate to individual units or owners and so may require redaction. The Tribunal notes that this is a very broad request and suggests that if the Applicant is looking for specific information, they may wish to narrow their request to avoid unnecessary work and expense for both them and for the Respondent. The respondent is entitled to charge \$5,760 for these records (($\$32.00$ per hour for 180 hours) + (1,500 pages at 10 cents per page)).
- [27] For the engineering reports and invoices, the Respondent indicated that it would take approximately 50 hours to provide approximately 80 pages. Since these records require review and/or redaction as they may relate to other units / unit owners, I calculate the expected work involved to be six hours (80 pages at 8.3 minutes per page). Accordingly, the Respondent is entitled to charge \$197 for these records (($\32.00 per hour for 6 hours) + (50 pages at 10 cents per page)).

Issue 2: Should any costs be awarded?

[28] The Applicant asserted during the hearing that they believe the Respondent had requested arbitrarily high fees to discourage the Applicant from obtaining the requested records. Whether that was the Respondent's motivation or not, considering the amounts requested by the Respondent against the amounts I have determined are appropriate, I conclude that may have been the effect, and that the Respondent has requested unreasonably high fees from the Applicant.

[29] It was only by filing this application that the Applicant was able to exercise their right to obtain the records without having to pay the unreasonably high fees charged by the Respondent. If the Applicant had not done so, those fees would have been an unreasonable barrier to obtaining the records.

[30] Accordingly, I deem it fair in the circumstances to require that the Respondent provide the following requested records at no cost to the Applicant:

- I. The implied contract with Johnson which the Respondent intended to compile and provide
- II. Landscaping/snow company contracts
- III. Roof company contract
- IV. Eavestrough company contract
- V. CMG contract
- VI. Engineer's reports
- VII. All foundation reports and invoices

[31] This represents all the records at issue in this case other than the invoices from the past three years. As noted above, the Applicant's is entitled to those invoices and the Respondent is entitled to charge \$5,760 for providing them. If the Applicant is looking for specific information from among those invoices, they may wish to narrow their request to avoid unnecessary work and expense for both them and for the Respondent.

Costs

[32] Rule 45.2 of the CAT's Rules of Practice states that if a case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the successful User's CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise.

[33] In this case, the Applicant was successful. Accordingly, I order the Respondent to reimburse the Applicant \$200 for their CAT fees.

D. ORDER

[34] The Tribunal Orders that:

1. Within 30 days of the date of this decision, the Respondent will provide the Applicant the following requested records at no cost to the Applicant:
 - I. The implied contract with Johnson which the Respondent intended to compile and provide
 - II. Landscaping / snow company contracts
 - III. Roof company contract
 - IV. Eavestrough company contract
 - V. CMG contract
 - VI. Engineer's reports
 - VII. All foundation reports and invoices
2. If the Applicant wishes to pursue their request for all the invoices for the preceding three years, they must pay the Respondent \$5,760 to the Respondent within 30 days of the date of this decision. If they do, the Respondent must provide the invoices within 30 days of receipt of the payment.
3. Within 30 days of the date of this decision, the Respondent shall pay the Applicant \$200 for their CAT fees. If the Respondent does not do so, the Applicant is entitled to set off that amount from their common expenses contributions, as set out under s. 1.45 (3) of the Condominium Act.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: June 16, 2021