CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 18, 2021
CASE: 2020-00396R
Citation: Russell v. York Condominium Corporation No. 50, 2021 ONCAT 53

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

Member: Laurie Sanford, Member

The Applicant,
Rob Russell
Self-Represented

The Respondent,
York Condominium Corporation No. 50
Represented by Benjamin Rutherford, Counsel

MOTION ORDER

[1] Mr. Russell is an owner of a condominium unit in York Condominium Corporation No. 50 ("YCC50"). He has brought an application to the Condominium Authority Tribunal (the "CAT") seeking certain records of YCC50 under section 55 of the *Condominium Act, 1998* (the "Act"). In the course of the hearing, Mr. Russell introduced testimony from two of his fellow condominium owners. The testimony relates to their experience in requesting records from YCC50 and the records they did and did not receive. YCC50 brings this motion to exclude the testimony of these two witnesses on several grounds.

[2] The first of these grounds is relevance. YCC50 submits that it is the records that Mr. Russell is seeking, not the records sought by others, that is relevant. Mr. Russell argues that, in some cases, he has received records but, he submits, he has not received *adequate* records. It is his submission that the testimony of the two witnesses will tend to show that the records they received or had access to are inconsistent in some respect with the records provided to Mr. Russell.

[3] In addition to the question of relevance, YCC50 also submits that the testimony is repetitious.

[4] It should be noted that Ontario tribunals generally have a wider discretion to admit

evidence than do courts. Section 15 of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S. 22 sets out some general provisions as follows:

> **15** (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
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> (a) any oral testimony; and
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> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.
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> (2) Nothing is admissible in evidence at a hearing,
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> (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
>
> (b) that is inadmissible by the statute under which the proceeding arises or any other statute

[5] Thus, for example, hearsay evidence is generally inadmissible in court for the truth of its contents. However, Tribunals may not only consider this evidence, but may determine its reliability and what weight ought to be given to it. Generally, evidence submitted to a Tribunal should be relevant, not unduly repetitious and not subject to any privilege or any statutory inadmissibility.

[6] In this case, the witnesses called by Mr. Russell do appear to offer some evidence which is not relevant to the issues I must decide. Evidence as to whether or not YCC50 delayed in providing records or refused to provide records to those individuals is not relevant. Mr. Russell is claiming a penalty under subsection 1.44(6) of the Act. The only evidence that is relevant in determining whether a penalty is appropriate is whether or not YCC50 refused to provide records to Mr. Russell without reasonable excuse.

[7] As Mr. Russell submits, it will be possible for me to disregard testimony of his witnesses which is irrelevant while considering that which is relevant. I conclude that the testimony of Mr. Russell's two witnesses may be relevant to the question of whether or not YCC50 has provided him with adequate records and I will admit it for that purpose. While there is considerable overlap in the testimony of the two witnesses, I do not find their testimony to be unduly repetitious. In reaching this conclusion, I note that the testimony of each witness is short and direct. The testimony of the two witnesses will not be excluded on the grounds of either relevance or repetition. The issue of how much, if any, weight should be given to the testimony remains an open question and may be addressed in the parties' closing submissions.

[8] The second ground for YCC50's objection to the testimony of the two witnesses is based on a Supreme Court of Canada decision in *R. v. Handy* [2002] S.C.J. No. 57. In that criminal case the Court ruled that similar fact evidence is not admissible where its prejudicial effect outweighs its probative value. The Court went on to say that similar fact evidence is presumptively inadmissible. YCC50 submits that the two witnesses called by Mr. Russell are offering similar fact evidence.

[9] YCC50 produced no case where the principle in the *Handy* case was applied to the civil proceedings in an adjudicative tribunal. Nor would I expect to see such an application. The CAT does not, at present, regulate any occupation or sanction any conduct in a criminal or quasi-criminal way. Our role is to offer an expeditious and informal resolution to specific disputes involving condominiums and their owners. We should be cautious about incorporating principles of criminal law into this setting. I am not persuaded that the *Handy* case is of assistance in this matter.

[10] The third issue raised by YCC50 is that some of the testimony given is hearsay and, thus, in YCC50's submission, inadmissible. As noted above, tribunals such as the CAT may admit and act on hearsay evidence. In this case, the question is what weight should be given to hearsay evidence. That issue may be addressed by the parties in their closing submissions.

[11] I conclude that YCC50 has not established that the testimony of Mr. Russell's witnesses should be excluded. The weight that may be given to that testimony will be determined at the conclusion of the case.

ORDER

[12] The motion to exclude the testimony of two of Mr. Russell's witnesses is denied.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: June 18, 2021