

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 17, 2021

CASE: 2020-00288R

Citation: Cameron v. Toronto Standard Condominium Corporation No. 2078, 2021 ONCAT 83

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

Member: Noeline Paul, Member

The Applicant,

Don Cameron

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2078

Represented by Victor Yee, Counsel

Hearing: Written Online Hearing – May 7, 2021 to July 19, 2021

REASONS FOR DECISION AND ORDER

A. INTRODUCTION

[1] This is the decision of the Condominium Authority Tribunal (“CAT”) in the application (“Application”) brought under the *Condominium Act, 1998*¹ (“Act”). The Applicant is a unit owner of the Respondent (“TSCC 2078”), which is a residential condominium. He submitted multiple requests to obtain several core and non-core records between August 2020 and February 2021, and four of these requests form the subject-matter of this Application. Some of the requested records were delivered to the Applicant by the Respondent prior to the start of the CAT Stage 3 hearing. The Applicant requests that he be provided with all outstanding records and that the CAT order a penalty.

B. ISSUES

[2] The issues to be decided in this Application are as follows:

¹ S.O. 1998, c.19.

1. Was there valid delivery of the Applicant's requests for records?
2. Is the Applicant entitled to the records requested?
3. If a record was not provided by the Respondent, should a penalty be awarded under section 1.44(1)6 of the Act?

C. DECISION

[3] For the reasons below, I find that there was valid delivery of the Applicant's requests for records.

[4] I also find, based on the evidence provided, that the Applicant is not entitled to all the records that he has requested in the requests for records. I have ordered the production of certain records that the Respondent may have in its possession and, if the Respondent does not have these records, it must provide a sworn statement of this fact.

[5] Further, I find that a penalty is not warranted in the circumstances of this case.

D. BACKGROUND

[6] The Applicant submitted requests to obtain several core and non-core records from the Respondent. These requests were completed on the prescribed government form and dated August 18, 2020 ("August 2020 Request")² and October 26, 2020 ("October 2020 Request").³ A third request was dated October 26, 2020 but delivered on November 25, 2020 ("November 2020 Request")⁴. After failing to receive these records, the Applicant commenced his case at the CAT. He submitted a further request for records to the Respondent on February 4, 2021 ("February 2021 Request")⁵. At the outset of the CAT Stage 3 hearing, both parties indicated that they were agreeable to addressing the February 2021 Request at the hearing. Therefore, the February 2021 Request was included as a matter to be decided in this Application.

[7] A large focus of the requests in this case relates to a special assessment levy that was imposed by TSCC 2078 on unit owners to cover expenditures associated with

² Exhibit A-15.

³ Exhibit A-8.

⁴ Exhibits A-3, A-4, and A-20, Evidence of D. Cameron at p.7.

⁵ Exhibit A-2.

the COVID-19 pandemic (“Special Assessment”). A virtual meeting was held in October 2020 by TSCC 2078 for the unit owners for the purposes of providing information to them regarding the Special Assessment. The amount and calculation of the Special Assessment raised concerns among some unit owners and caused multiple inquiries and requests for records and information, which were sent to TSCC 2078’s management.⁶ The Applicant has sought access to the information available to TSCC 2078’s Board and related to how it went about its decision-making.

[8] TSCC 2078 was professionally managed by a licensed condominium management services provider, 360 Community Management Ltd. (“360 CM”), and management services changed to another provider effective June 1, 2021.⁷ For the relevant time periods related to the Applicant’s records requests in this case, 360 CM was the Respondent’s condominium management services provider.

[9] The Applicant delivered the August 2020 Request to the Respondent by email to 360 CM and TSCC 2078.⁸ The October 2020 Request, November 2020 Request, and February 2021 Requests were delivered to the Respondent by means of an email from the Applicant’s former counsel to 360 CM and the Respondent’s counsel.⁹ The February 2021 Request was also sent by express post.¹⁰

[10] In the August 2020 Request, the Applicant used the prescribed form to request the following as core records:

1. Budget for the corporation’s current fiscal year, including any amendments;
2. Most recent approved financial statements; and
3. A “supplementary schedule”, indicating the following items:

⁶ A-20, Evidence of D. Cameron at pp. 3-4.

⁷ Exhibit R-23, Witness Statement of Ms. Marilyn Dumaresq at para. 4.

⁸ Exhibit R-23, Witness Statement of Ms. Marilyn Dumaresq at para. 8 and Exhibit A-20, Evidence of D. Cameron at p.3.

⁹ Exhibit R-23, Witness Statement of Ms. Marilyn Dumaresq at paras. 9-11 and Exhibit A-20, Evidence of D. Cameron at pp.6-7.

¹⁰ Exhibit A-1.

- i. COVID Costs: Expenditures incurred up to August 10, 2020 [supporting documentation to include name of vendor, nature of expenditure, how it was derived, how it has been allocated and the rationale for doing so];
- ii. COVID Costs: Expenditures estimated to be incurred after August 10, 2020, that include the levy announced on August 10, 2020 [supporting documentation to include name of vendor, nature of expenditure, how it was derived, how it has been allocated and the rationale for doing so];
- iii. Itemized list of "COVID Savings", with copies of supporting documentation, for all saving or budget surplus that have been included in the aggregate amount of the levy of \$420,000;
- iv. Summary reconciliation of the COVID Costs less the COVID Savings to the \$420,000 identified for the total of the levy, including an assessment of the operating budget for the year ending December 31, 2020, exclusive of the COVID Costs;
- v. Organizational Structure with respect to the operation of Hearthstone by the Bay, including legal entities involved and their respective ownership interests, service agreement, and sharing of costs among the group; and
- vi. Listing of Property Managers, for each entity listed in the Organization Structure.

[11] In the October 2020 Request, the Applicant indicated under the "Request for non-core records" section of the prescribed form that he was requesting the following items:

1. A copy of the Zoom recording of the meeting of the owners held on October 13, 2020;
2. Documents resulting from the virtual meeting of October 13, 2020, including the registration report, attendee report, chat text, Q&A report, and polling report;
3. The proposals presented for the recovery of expenditures incurred and to be incurred by TSCC 2078 related to COVID-19 (in excel format, if possible), referred to in the July 30, 2020 Board Meeting minutes;
4. The analysis of the costs incurred by TSCC 2078 from March to June 2020 and the projections of the best case and worst case basis for the balance of the fiscal year ending December 31, 2020, referred to in the Board Meeting Minutes of July 30, 2020;

5. Any additional documents reviewed by the Board in reaching the \$420,000 special assessment amount;
6. Copies of the spreadsheet file(s), with formulas (in excel format if possible) that were printed off and included as pages at the end of the document provided to owners for the meeting on October 13, 2020;
7. Copies of the information and documents provided to the auditor in performing their agreed upon procedures engagement, outlined both in the engagement letter and the engagement report; and
8. Interim Financial Statements to September 30, 2020, with a date range starting from the beginning of the fiscal year to September 30, 2020.

[12] In the November 2020 Request, the Applicant indicated under the “Request for non-core records” section of the prescribed form that he was requesting the following items:

1. Copies of the same types of materials that were provided to the auditor for their agreed-upon procedures covering the period of March to August 2020, covering transactions for the date range of August 14, 2020 to October 31, 2020, including supporting documents; and
2. Copies of the actual spreadsheet file(s) with formulas (in excel format) that were printed and included as pages at the end of the document provided to the owners on November 4, 2020 (dated Oct 30, 2020), revising the Special Assessment downward by \$165,333.36 (Date range: October 30, 2020 to November 4, 2020).

[13] In the February 2021 Request, the Applicant indicated under the “Request for non-core records” section that he was requesting copies of all agreements between TSCC 2078 and Hearthstone Community Services by the Bay Limited or any other related companies, with a date range from 2010 until 2021.

[14] The Respondent provided a response using the prescribed forms within 30 days of receiving each request, except for the August 2020 Request. The Respondent provided responses to the August 2020 Request on January 20, 2021 and January 28, 2021.¹¹

[15] The Respondent’s counsel also sent a letter, via email and dated September 30, 2020, to the Applicant’s former counsel. In this letter, the Respondent’s counsel

¹¹ Exhibits R-13 and R-14.

advised, amongst other things, that information could not easily be shared with all unit owners because of, in part, litigation being contemplated and threatened by some owners.¹² This potential litigation was related to the Special Assessment.

[16] Prior to the CAT Stage 3 hearing, the Respondent provided certain records to the Applicant and these documents, along with their respective dates of delivery, are as follows:

1. From the August 2020 Request, on January 28, 2021 and again on April 15, 2021, as follows:
 - i. Budget for the corporation's current fiscal year, including any amendments; and
 - ii. Most recent approved financial statements¹³;
2. From the October 2020 Request, "Interim Financial Statements to September 30, 2020" which were emailed to the Applicant's previous counsel on November 25, 2020¹⁴;
3. From the February 2021 Request, copies of agreements between TSCC 2078 and Hearthstone Community Services by the Bay Limited or any other related companies, with a date range from 2010 until 2021 over the period between February 26, 2021 to April 12, 2021.

[17] The hearing into this Application started on May 7, 2021 and ended on July 19, 2021 and was conducted online through the CAT's online platform. Both the Applicant and Respondent uploaded documents for use at the hearing stage. The Applicant further provided evidence through a sworn statement, with cross-examination also conducted by sworn statement. In addition, witness evidence was provided through sworn statement by Ms. Marilyn Dumaresq, who is a Board member and President of TSCC 2078, and the Applicant had an opportunity for cross-examination of this witness. Both parties provided closing submissions in writing.

[18] In his closing submissions, the Applicant withdrew his requests contained in the October 2020 Request for a copy of the Zoom recording of the October 2020

¹² Exhibit R-12.

¹³ Exhibits R-14 and R-15.

¹⁴ Exhibit R-23 at para.9.

owner's meeting and documents resulting from this meeting.¹⁵

[19] The requested records that are outstanding as of the conclusion of the hearing are those listed in the "supplementary schedule" of the August 2020 Request, five from the October 2020 Request and two from the November 2020 Request.

E. ANALYSIS

Issue 1: Was there valid delivery of the Applicant's requests for records?

[20] The Act enables certain individuals¹⁶ to obtain records from condominium corporations, subject to exemptions,¹⁷ and part of this process requires that they complete and send to the condominium corporations prescribed forms indicating the requested records. The requested records are categorized as core or non-core records within these prescribed forms, pursuant to the Act and Ontario Regulation 48/01 (the "Regulation"). The Regulation sets out the valid form of delivery of these requests for records in section 13.3(4) and this subsection specifically states that the use of electronic mail will be sufficient if the condominium corporation's Board has decided by resolution that this is a method of receiving delivery of the request.¹⁸

[21] In this case, the Applicant submitted four requests for records using the prescribed forms and he submitted these to the Respondent by email. The Respondent argues that the Applicant's requests for records were not validly delivered because the requests were sent by email and its Board has not passed a resolution to permit this method of delivery.

[22] The evidence is that the Board of TSCC 2078 has not decided that a request for records can be delivered by a unit owner via email to the condominium

¹⁵ Exhibit A-23.

¹⁶ Individuals who are entitled to access records are set out in section 55(3) of the Act, which reads as follows:

s.55(3) The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4). 2015, c. 28, Sched. 1, s. 51 (4).

¹⁷ The Act, section 55(4).

¹⁸ The Regulation, section 13.3(4)(d).

management.¹⁹

- [23] It is clear from the evidence that the Respondent received all four of the Applicant's requests for records. The Respondent responded by email to all requests, using the prescribed forms. In his letters to the Applicant's previous counsel, the Respondent's counsel advised that email was not an accepted form of delivery for the Respondent.
- [24] A difficulty in this case is that the Respondent's previous condominium management services provider had established two separate email addresses to receive requests for records.²⁰ A reasonable expectation from the submission of a records request by email to one of these email addresses is that this would be a valid form of delivery and would be accepted as such by the Respondent. It is misleading for the Respondent to have permitted the condominium management services provider to establish this procedure and, at the same time, refuse to acknowledge email transmission to these email addresses as a valid form of delivery.
- [25] The CAT has, in a similar case, found that a request for records was valid despite the request being delivered by email.²¹
- [26] Based on the evidence, I am satisfied that the requests for records in this case was validly delivered for the purposes of accessing the records to which the Applicant has entitlement.
- [27] As an additional point and for the purpose of promoting the wellbeing of the condominium community, I urge the Respondent to adopt a consistent procedure that is made known to those who may request records, so that uncertainty and dispute over whether or not requests are validly delivered can be avoided. The procedure that was in place in 2020 is confusing for individuals attempting to access records to which they have a legal entitlement.

Issue 2: Is the Applicant entitled to the records requested?

- [28] As noted above, the Applicant has requested several core and non-core records and a central issue in this case is whether the Applicant is entitled to all the

¹⁹ Exhibit R-23, Witness Statement of Ms. Marilyn Dumaresq at para. 7.

²⁰ Exhibit R-24, Cross-Examination Answers of Ms. Marilyn Dumaresq at para. 3.

²¹ *Florentine Financial Corporation v. Peel Condominium Corporation No. 346*, 2021 ONCAT 77 (CANLII) at para 13.

records requested.

[29] Section 55(1) of the Act lists records that condominium corporations are required to create and maintain. The Act requires that the Respondent retain financial records, such as budgets and approved financial statements, and agreements that it has entered. These records can then be accessed by an owner of the condominium, subject to any applicable exemptions under the Act.

[30] In this case, the outstanding requested core and non-core records are as follows:

1. Budget for the corporation's current fiscal year, including any amendments;
2. Most recent approved financial statements;
3. Items listed in a "supplementary schedule" of the August 2020 Request as follows:
 - i. COVID Costs: Expenditures incurred up to August 10, 2020, with supporting documentation;
 - ii. COVID Costs: Expenditures estimated to be incurred after August 10, 2020, that include the levy announced on August 10, 2020, with supporting documentation;
 - iii. Itemized listing of "COVID Savings", with supporting documentation;
 - iv. Summary reconciliation of the COVID Costs less the COVID Savings;
 - v. Organizational Structure with respect to the operation of Hearthstone by the Bay; and
 - vi. Listing of Property Managers, for each entity listed in the Organization Structure;
4. The proposals presented for the recovery of expenditures incurred and to be incurred by TSCC 2078 related to COVID-19 referred to in the July 30, 2020 Board Meeting minutes.
5. The analysis of the costs incurred by TSCC 2078 from March to June 2020 and the projections of the best case and worst case basis for the balance of the fiscal year ending on December 31, 2020, referred to in the Board Meeting Minutes of July 30, 2020;
6. Any additional documents reviewed by the Board in reaching the \$420,000.00 special assessment amount;

7. Copies of the spreadsheet file(s), with formulas that were printed off and included as pages at the end of the document provided to owners for the meeting on October 13, 2020;
8. Copies of the information and documents provided to the auditor in performing their agreed upon procedures engagement, outlined both in the engagement letter and the engagement report;
9. Interim Financial Statements to September 30, 2020, with a date range starting from the beginning of fiscal year to September 30, 2020;
10. Copies of the same types of materials that were provided to the auditor for their agreed-upon procedures covering the period of March to August 2020, including supporting documents;
11. Copies of the actual spreadsheet file(s) with formulas that were printed and included as pages at the end of the document provided to the owners on November 4, 2020, revising the Special Assessment downward by \$165,333.36; and
12. Copies of all agreements between the Corporation and Hearthstone Community Services by the Bay Limited or any other related companies, with a date range from 2010 until 2021.

[31] The evidence is that the Respondent has provided the records listed at 1, 2, 9, and 12 above, namely the budget, approved financial statements, interim financial statements, and copies of agreements. Entitlement to those records is not in issue. The timeliness of their delivery will be discussed below.

[32] The Applicant takes the view that all the outstanding documents are financial records that he should be able to access. In the alternative, he argues that these documents are management reports and relies on the CAT case in *Ronald Smith v. Metropolitan Toronto Condominium Corporation No. 773*²² to support his assertion of entitlement to these records.

[33] The Respondent argues that these items are not records. The Respondent further argues that the outstanding requested records from the October 2020 Request and the November 2020 Request were withheld pursuant to the exemptions in subsections 54(4)(b) and 54(4)(c) of the Act.²³

²² 2019 ONCAT 24 (CANLII).

²³ The relevant exceptions set out in section 55(4) of the Act are as follows:

[34] I will first address the six requested records set out in the “supplementary schedule” of the August 2020 Request. These all relate to the Special Assessment that was levied for COVID-19 expenses. I am not satisfied that the documents sought are all actual records that exist. Based on the wording of the request and the evidence in this case, some of these items relate to information that the Applicant seeks in order to better understand the condominium Board’s decision-making process around the Special Assessment. The Applicant has requested documentation that specifically includes certain information, such as the Organizational Structure of Hearthstone by the Bay and a listing of property managers for each entity listed within the Organizational Structure. The Applicant has also requested supporting documentation related to COVID costs, including how the expenditure was allocated and the rationale for doing so. While the Applicant would like to access information that supports the Board’s decisions, not all the items requested in the “supplementary schedule” can be categorized as records. To the extent that the Applicant has requested information, as opposed to actual records, I find that the Applicant does not have entitlement. The Applicant has received certain records from the Respondent related to the Special Assessment and, notably, some were provided as part of the Respondent’s efforts to give owners details of the Special Assessment. Some of these documents have been filed as evidence in this case.

[35] It is understandable that the Applicant would like a better understanding of the significant, additional expenses incurred due to the COVID-19 pandemic, despite the steps taken by the Respondent to provide information. However, whether or not such steps and information were sufficient to provide an appropriate level of transparency for unit owners is not an issue that is within the current jurisdiction of the CAT to decide. Likewise, the records provided to the Applicant to date may not be at the standard that he is looking for but, from the perspective of the

(4) The right to examine or obtain copies of records under subsection (3) does not apply to,

- (a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;
- (b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;
- (c) subject to subsection (5), records relating to specific units or owners; or
- (d) any prescribed records. 1998, c. 19, s. 55 (4); 2015, c. 28, Sched. 1, s. 51 (5-7).

condominium corporation keeping adequate records under the Act, it may be acceptable. As the CAT noted in *Ravells v. Metropolitan Toronto Condominium Corporation No. 564*²⁴, the requirement for a corporation to keep adequate records does not mean that each owner will find the information contained in those records to be sufficient for their individual purposes. In this case, the Applicant has a sophisticated understanding of accounting practices and the content of the records obtained to date are not satisfactory for his own review of the Special Assessment.

- [36] With respect to the remaining items requested by the Applicant in the October 2020 Request and the November 2020 Request, these items can be described as proposals, information, spreadsheets, and other documents related to the Special Assessment. Some of the records relating to the Special Assessment have been provided by the Respondent. However, the Applicant has requested more detailed information and documents that the Board may have considered in its decision-making process. The Respondent maintains that these items are not records of the corporation and that some of the items were the internal work-product of the previous condominium manager.
- [37] According to Ms. Dumaresq's evidence, 360 CM's internal accounting team presented the Board with various scenarios for calculating the Special Assessment and the information shared with the Board was contained in Excel spreadsheets prepared by 360 CM and viewed on 360 CM's laptop computer.²⁵ Ms. Dumaresq further states that these documents were not retained by TSCC 2078.²⁶
- [38] The evidence before me indicates that the Respondent does not possess some of the items sought in the October 2020 Request, such as those related to spreadsheets and projections for the Special Assessment. The CAT has previously found that there is no entitlement to a record that a condominium corporation is not legally required to keep and which does not exist.²⁷ I find that the requested spreadsheets, projections, and analysis are working documents of the previous property management services provider. I am satisfied that the documents in question are not records of the condominium and, therefore, the Applicant is not entitled to them under s. 55 of the Act.
- [39] As indicated earlier, the Applicant has already been provided with some items,

²⁴ 2020 ONCAT 44 (CANLII) at paras. 24 and 44.

²⁵ Exhibit R-23, Witness Statement of Ms. Marilyn Dumaresq at paras. 20-22.

²⁶ Exhibit R-23, Witness Statement of Ms. Marilyn Dumaresq at paras. 20-22.

²⁷ *Bukhari v. Wentworth Condominium Corporation No.10*, 2020 ONCAT 2020 4 (CANLII).

such as spreadsheets related to the downward revision of the Special Assessment. The Applicant's October 2020 Request more broadly captures requests for information. The Applicant requests further details, such as spreadsheet files with formulas in excel format. The evidence before me does not clearly establish that specific records exist in this regard. However, I am mindful that, ultimately, the Applicant seeks clarification on the calculation of the Special Assessment and, therefore, the Applicant should have access to records that the Respondent has and that were provided to the condominium corporation's auditor in 2020 for the purposes of the Special Assessment. I have reflected this direction in my Order below.

[40] Further, with respect to the February 2021 Request, I am satisfied that the Respondent has provided all records available to it at the time and I cannot speculate if further records exist. I find that the Respondent has met its obligations regarding access to records pertaining to this request.

[41] As indicated earlier, the Respondent changed management services providers effective June 2021. Both parties in this case have referred to the turnover of documents with the change in management and, specifically, whether all records have been transferred to the condominium corporation. The CAT does not have jurisdiction to consider any concerns in this regard and oversight of such management issues should be pursued with the Condominium Management Regulatory Authority of Ontario.

Issue 3: If a record was not provided by the Respondent, should a penalty be awarded under section 1.44(1)6 of the Act?

[42] Section 1.44(1)6 of the Act permits the CAT to impose a penalty when appropriate in cases where the condominium corporation has, without reasonable excuse, refused to permit a person to examine or obtain records. While the Act does not define what is a reasonable excuse, the CAT in its decisions has emphasized the importance of ensuring that condominium corporations comply with their obligations for access to records under the Act.

[43] As indicated above, the evidence in this case is that the Respondent has provided the requested budget, financial statements, interim financial statements, and copies of all agreements between TSCC 2078 and Hearthstone Community Services by the Bay Limited or any other related companies. The notable delay in providing records to which the Applicant is entitled relates to the requested budget and financial statements from the August 2020 Request, which were provided by the Respondent in January 2021.

[44] The evidence indicates that the Respondent received numerous requests for records and may have been overwhelmed with tasks during this time. I accept that there were extraordinary circumstances taking place, specifically responding to the pandemic and the Respondent's efforts to meet the needs of its particular condominium community. The Respondent undertook numerous initiatives related to the Special Assessment and met with multiple inquiries, which in turn became labour intensive for management personnel and the volunteer Board. I further note that the Respondent otherwise acted in good faith. In light of all of the circumstances noted above, I find that the Respondent had a reasonable excuse for the delay in providing the entitled records.

[45] With respect to the outstanding requested records, the Respondent has argued that the requested items are not records of the condominium corporation. I am not satisfied that there has been a clear refusal of specific records to which the Applicant is entitled, as set out in my earlier findings. The award of a penalty is discretionary and given the broad reach of the records requests, which includes requests for information, and the Respondent's efforts to comply with its obligations under the Act, I find that a penalty is not warranted in this case.

[46] Costs were not requested and I make no order for costs.

F. CONCLUSION

[47] Based on the evidence provided in this case, I conclude that there was valid delivery of the Applicant's requests for records but that the Applicant does not have entitlement to all the items that he has requested. The Applicant has received some of the records that he requested. While there was a delay in the delivery of some of the entitled records, I find that a penalty is not warranted.

G. ORDER

[48] The Tribunal Orders that:

1. The Respondent shall provide the Applicant with any records in its possession that were provided to the condominium corporation's auditor in 2020 for the purposes of the Special Assessment. If the Respondent does not have such records in its possession, the Respondent shall provide the Applicant with an attestation of this fact, in electronic format, within 30 days of the date of this decision.
2. No penalty or costs are awarded.

Noeline Paul
Member, Condominium Authority Tribunal

Released on: September 17, 2021