

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 2, 2021

CASE: 2021-00151R

Citation: Garcia v. Peel Standard Condominium Corporation No. 857, 2021 ONCAT 115

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

Member: Keegan Ferreira, Vice-Chair

The Applicant,

Jaime Garcia
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 857
Represented by Darryl Fulton, Condominium Manager

Hearing: Written Online Hearing – August 12, 2021, to November 9, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Jaime Garcia (the “Applicant”) is the owner of a unit in Peel Standard Condominium Corporation No. 857 (the “Respondent”). The Applicant is also the treasurer and a member of the Respondent’s board of directors. The Applicant has taken a temporary leave from his role as a director for the duration of this case.
- [2] The Respondent and Peel Standard Condominium Corporation No. 920 (PSCC 920) jointly own and use a shared parking facility that is governed by a shared facilities agreement (SFA).
- [3] There is a dispute between the corporations over the insurance policies for the shared facility. The dispute previously came before the CAT in Peel Standard Condominium Corporation No. 857 v. Peel Standard Condominium Corporation No. 920 (2021 ONCAT 19) reported at: <https://decisia.lexum.com/cao-oosc/decisions/en/494092/1/document.do>.
- [4] In that case, the Respondent in this case filed an application against PSCC 920

seeking a copy of the same documents being sought by the Applicant in this case – namely, the documents used by PSCC 920 to procure an insurance policy on the shared facility jointly owned by the two condominium corporations. The CAT dismissed that case in Stage 2 - Mediation.

- [5] The Applicant now seeks copies of one or more documents that he believes must have been signed by both the Respondent and PSCC 920 to approve the procurement of the insurance policy from AON for the shared facility.
- [6] The SFA includes a process to resolve disputes between the two corporations. The Respondent has decided not to invoke the dispute resolution process in the SFA to obtain a copy of the documents the Applicant seeks. The Applicant asserts that the Respondent should use every legal means to obtain the document he seeks from PSCC 920, and requests that the CAT order the Respondent to invoke the dispute resolution provisions of the SFA to obtain a copy from PSCC 920.
- [7] The issues before me in this case are:
1. Does the Tribunal have the jurisdiction to order the relief the Applicant is seeking?
 2. Is the Respondent required to maintain a copy of the document to approve the procurement of the insurance policy for the shared facility from AON?
 3. If the Respondent is required to maintain a copy, what remedy should the Tribunal order?
 4. If the Applicant is entitled to examine the requested records, has the Respondent refused without reasonable excuse to permit him to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44 (1) 6 of the *Condominium Act, 1998* (the “Act”)?
 5. Is either party entitled to costs?

B. RESULT

- [8] For the reasons set out below, I find that the CAT does not have the jurisdiction to order the Respondent to invoke the dispute resolution clause in the SFA with PSCC 920 to obtain the documents the Applicant seeks. I order that this case be dismissed with no costs to either party.

C. EVIDENCE AND ANALYSIS

Issues #1 and #2: Does the Tribunal have the jurisdiction to order the relief the

Applicant is seeking? Is the Respondent required to maintain a copy of the document to approve the procurement of the insurance policy for the shared facility from AON?

- [9] At the outset of the Stage 3 hearing, I invited the parties to make submissions on whether the CAT had the jurisdiction to order PSCC 857 to invoke the dispute resolution provisions of the SFA to obtain the document the Applicant seeks from PSCC 920.
- [10] The Applicant clarified that he is not seeking a copy of the insurance policy itself, which he advised he already has. Instead, what he seeks is a copy of the document which he asserts must have been signed by both the Respondent and PSCC 920 to approve the procurement of the insurance policy from AON.
- [11] The Applicant argued that the Respondent is required to have copies of all approvals to procure services and copies of all contracts entered into by the shared facilities committee (SFC). In support of this argument, he cited other types of agreements entered into by the SFC, including maintenance contracts, and indicated that both PSCC 857 and PSCC 920 have copies of all those contracts. He also noted that even outside the condominium context, when one buys a house or car, both parties to the transaction receive and sign copies of those sales agreements.
- [12] I agree with the Applicant that the Respondent is obliged to maintain copies of all agreements entered into by or on behalf of the condominium corporation. That much is clear from the Act at paragraph 8 of section 55 (1):
- 55** (1) The corporation shall keep adequate records, including the following records:
- (...)
8. A copy of all agreements entered into by or on behalf of the corporation.
- [13] That said, what the Applicant seeks here is not a copy of the agreement itself, but a copy of the document he asserts must have been signed by both the Respondent and PSCC 920 to approve the procurement of the insurance policy.
- [14] The document the Applicant seeks in this case is one that he believes would have been created and provided to AON by PSCC 920, and not the Respondent. The Respondent advised me that it has never possessed a copy of this document, either electronically or in hard copy. The Respondent also expressed significant

doubt that the document the Applicant seeks exists at all. The Respondent noted that the Respondent's past three approvals for insurance were completed either verbally or by email, and that it is possible that the approval for the procurement of the insurance policy was done verbally. The Respondent has also reviewed its email correspondence (including the correspondence of individual directors on the SFC) and advised me that they have no documents relating to the approval of the procurement of the insurance policy.

- [15] The Respondent advised that it has previously requested a copy of the document, if it exists, from PSCC 920 at least twice (in October 2016 and in October 2020) but that it has not been successful in obtaining it. The Respondent's board of directors has decided that it does not wish to engage in a legal dispute with PSCC 920, considering the adverse impact such a dispute might have on the relationship between the two corporations and the potential costs to the unit owners.
- [16] During the hearing, the Applicant himself acknowledged that the Respondent has never been in possession of the document he seeks. He also argued that the Respondent has not proven that the document does not exist, but only that they do not have a copy, and that is precisely why he has filed this case: to seek an order requiring PSCC 857 to invoke article 16 of the SFA to obtain a copy.
- [17] Based on the evidence and submissions, it appears that the record likely does not exist. The parties both agree that the Respondent has never had the document in its possession. Furthermore, there is no persuasive evidence before me that the document that the Applicant seeks is a record that the Respondent is obliged to maintain.
- [18] The CAT has the jurisdiction to deal with disputes involving condominium corporation records, as set out in Ontario Regulation 179/17. As noted above, based on the evidence before me, I cannot conclude that the document sought by the Applicant is a record the Respondent is obliged to maintain. Accordingly, I find that the Applicant's request for an order requiring the Respondent to invoke the dispute resolution provisions in the SFA to obtain the document is a request for an order that falls outside of the CAT's jurisdiction.

Issue #3: If the Respondent is required to maintain a copy, what remedy should the Tribunal order.

- [19] Having found that the document sought by the Applicant is not one the Respondent is required to maintain, I find that no remedy is appropriate.

Issue #4: If the Applicant is entitled to examine the requested records, has the

Respondent refused without reasonable excuse to permit him to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44 (1) 6 of the Act?

[20] The Applicant requested that I issue an order for a penalty for “the maximum allowable” amount under the Act to encourage others to comply with the Act.

[21] Having found that the document sought by the Applicant is not one the Respondent is required to maintain, I find that the Applicant is not entitled to a penalty under s. 1.44 (1) 6 of the Act.

Issue #5: Is either party entitled to costs?

[22] The parties both advised that they are not seeking costs in this matter. Since I have found that the relief the Applicant seeks is outside the CAT’s jurisdiction, and since the Respondent has not requested costs, I make no order for costs.

D. ORDER

[23] The Tribunal Orders that:

1. The case is dismissed.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: December 2, 2021