

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 13, 2021

CASE: 2021-00060R

Citation: 2630276 Ontario Inc. v. Toronto Standard Condominium Corporation No. 2519, 2021 ONCAT 117

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

Member: Nicole Aylwin, Member

The Applicant,

2630276 Ontario Inc.

Represented by Li Li, Agent

The Respondent,

Toronto Standard Condominium Corporation No. 2519

Represented by David Barkin, Agent

Hearing: Written Online Hearing – September 16, 2021, to November 24, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] 2630276 Ontario Inc. (the “Applicant”) is the owner of a unit in the commercial retail space of Toronto Standard Condominium Corporation No. 2519 (“TSCC 2519” or the “Respondent”). In its initial records request, the Applicant requested a variety of records from the Respondent, including various financial records, legal invoices and retainer agreements, court documents and a series of records related to the meeting of owners held in August 2020, including proxies from this meeting. During the Stage 2 – Mediation process, the parties settled issues relating to some of the requested records. At the start of this hearing, the parties agreed that the Applicant’s entitlement to the six remaining records from their request is not an issue. What is disputed is the amount of the fee that may be charged to produce them.

[2] In addition to the issue of fee that may be charged by the Respondent to provide the records, two other issues had to be decided:

1. Should the Respondent be required to pay a penalty under s.1.44(1)6 of the

Condominium Act, 1998 for failure to provide the Applicant with the records requested without a reasonable excuse? If so, in what amount?

2. Should any costs be awarded against either party? If so, in what amount?

- [3] Before setting out my reasons, I note that prior to the commencement of this hearing, there was a request made to the Tribunal by the Respondent to merge or dismiss several cases from various TSCC 2519 unit owners who had all made similar requests for records at or about the same time. This case was included in that motion.
- [4] As is explained in the *Ahmadi General Trading Inc. et al. v. Toronto Standard Condominium Corporation No. 2519, 2021 ONCAT 27* Motion Order, this case was not merged with the others as the date of the records request and the apparent issues to be decided were deemed different enough from the other cases to merit a separate proceeding. This case proceeded to Stage 3 – Tribunal Decision independently of the other cases.
- [5] After the close of this hearing, the Tribunal released a decision in one of the other cases, *North York Medicare Centre v. Toronto Standard Condominium Corporation No. 2519* (“North York”). In North York, the issues and records requested are very similar to those in this case. However, as this hearing had closed by the time that decision was released, neither party had a chance to comment on North York or its implications for this case. Therefore, despite the similar issues and circumstances, and the apparent similarities in the arguments made by the parties in North York and this case, the findings I have made here are based solely on the facts and submissions in front of me.

B. ISSUES & ANALYSIS

Issue 1: Is the Respondent entitled to charge a fee for the labour associated with the production of the records? If so, what is a reasonable fee?

- [6] The records that remain in dispute are:
1. General Ledger for the period of May 1, 2019 – April 30, 2020
 2. Proxies from the August 2020 meeting of owners
 3. Ballot summary from the August 2020 meeting of owners
 4. All Agro Zaffiro invoices for the period of May 1, 2016 – January 5, 2021
 5. All Miller Thomson invoices for the period of May 1, 2016 – January 5, 2021

6. All DSFM invoices for the period of May 1, 2016 – January 5, 2021.

[7] As noted above, there is no dispute between the parties over entitlement to the requested records. Both parties agree that the Applicant is entitled to the records and both parties agree that the records may be redacted as appropriate. They also agree that the Respondent is entitled to charge a fee for producing the records and that a fee of \$30 per hour is reasonable. What they disagree on is the amount of time it will take to prepare these records for examination, which ultimately impacts the total fee the Respondent may charge to produce these records.

[8] The criteria setting out the fees payable for the production of records is found in Ontario Reg. 48/01: GENERAL 13.3 (8) (“O.Reg 48/01” or “the Regulation”) of the *Condominium Act, 1998* (the Act). This subsection reads:

(8) The fee payable for the request shall be calculated in accordance with the manner set out in the board’s response, subject to the following conditions:

1. The fee shall be a reasonable estimate of the amount required to reimburse the corporation for the actual labour and delivery costs that the corporation incurs for making the record requested available for examination or for delivering a copy of the record, which costs shall include the printing and photocopying charges established under paragraph 3 and the actual labour costs that the corporation incurs during the examination.

2. The fee shall be reasonable.

3. The board shall establish a charge of no more than 20 cents per page for printing or photocopying.

4. If the request is to examine or obtain a copy of a core record, the corporation shall not charge any fee for the request if it delivers the copy to the requester in electronic form.

5. If the request is to examine a copy of a core record, the corporation shall not charge any fee for the request if it makes a copy of the record available for examination in paper form, other than a fee for the actual labour costs that the corporation incurs during the examination and the printing and photocopying charges established under paragraph 3.

6. If the request is to obtain a copy of a core record, the corporation shall not charge,

i. any fee for the request if it delivers the copy to the requester in paper form and if the request for records provides that the

requester wishes to obtain the copy in electronic form, or

ii. any fee for the request, other than the printing and photocopying charges established under paragraph 3, if it delivers the copy to the requester in paper form and if the request for records does not provide that the requester wishes to obtain the copy in electronic form. O. Reg. 180/17, s. 17 (1).

- [9] In the Board's Response to Request for Records Form sent to the Applicant by the Respondent, the Respondent estimated that a total of 21.5 hours of labour was needed to prepare and produce the records that are at issue in this hearing. In addition to the estimated labour hours, the Respondent also requested a fee of \$0.20 per page for printing and photocopying the records so that they could be redacted.
- [10] It is the Applicant's position that the number of hours proposed by the Respondent is unreasonable and does not represent the actual labour costs that the corporation will incur for making the requested record available. The Applicant also disputes the photocopying cost, submitting that the records can be redacted and delivered electronically.
- [11] In the Applicant's submissions, which focused primarily on the redaction of the general ledger, the Applicant argues that based on the number of hours the Respondent estimates it will take to redact the general ledger, the redactions would take two minutes per page. The Applicant finds this estimate unreasonable, arguing that despite the board's initial response which indicated that they would have to print each page and then redact the records by hand, the Respondent can now do the redactions electronically. According to the Applicant this reduces the amount of time per page needed for redactions since the computer can black out large amounts of text more quickly than a person doing the redactions by hand. The Applicant submits that under these circumstances 12 seconds per page is reasonable for redacting each page of the general ledger and 30 seconds per page is reasonable for redacting other types of records, such as the invoices. The Applicant also notes that doing redactions electronically eliminates the need for any photocopying costs.
- [12] The Respondent acknowledges that subsequent to the board's initial response, the corporation did acquire software that would allow them to properly redact records electronically. They submit that prior to the acquisition of this software, redacting the records by hand was the only way to ensure full confidentiality because, without the proper software, electronic redactions could not be done securely. The Respondent agrees that its recently acquired ability to securely redact records

electronically eliminates the need to charge printing and photocopying costs, but nonetheless maintains that two minutes per page is a reasonable estimate for the labour needed to properly redact the records. They submit that redaction requires not just the blacking out of information (whether done by hand or electronically) but also requires the careful reading and review of the documents by legal counsel to ensure that any sensitive information, including highly sensitive information, related to litigation, or otherwise protected by solicitor-client privilege is properly redacted, as well as information that may refer to other unit owners.

- [13] In this case, I agree with the Respondent that the laborious part of redacting a record is not the striking out of information but, rather, it is the careful and critical reading and review of the records for information that should be redacted that takes time. This type of critical thinking work and review is likely to take more than 12 seconds or even 30 seconds per page. Consequently, I find that the Respondent's claim that two minutes per page is a reasonable estimate for the time it will take to properly prepare the records for examination. I also find that photocopying and printing are not necessary given the Respondent's ability to redact the records electronically. The Respondent may not charge the Applicant for printing or photocopying costs for records that are kept, redacted, and sent electronically.
- [14] The Applicant also makes a secondary argument as to why the labour estimate is unreasonable, namely that the Respondent has already redacted and provided 202 pages of the general ledger to another owner. The Applicant argues that since a large portion of the ledger has already been redacted the Respondent is attempting to charge the Applicant for labour that has already been completed, which is unreasonable.
- [15] The Respondent argues that having previously provided a record does not, in this case, reduce their actual amount of labour required for providing the record to the Applicant. This is because the requested records must again be reviewed prior to their release to ensure that the circumstances have not changed what information must be redacted.
- [16] In this case, I find that the Respondent may need to conduct another review of the records requested despite having provided this record to another owner. I accept the argument that changing circumstances may impact what information needs to be redacted. Even providing the record to a different owner may change what redactions are needed if there are references in those records to a specific unit or unit owner.
- [17] Thus, for all the reasons above, I find that, in this case, the 21.5 hours estimated to

produce the requested records is a reasonable estimate of the actual costs the Respondent may incur to prepare and provide these records to the Applicant.

- [18] Based on \$30 per hour for 21.5 hours, the total estimated cost for producing these records is \$645. Yet, the Respondent has asked this Tribunal to order that the Applicant be required to make a payment of \$1000 in advance of the Respondent redacting the records. Here I agree with the Applicant that it is unclear why the Respondent is now requesting a payment of \$1000 when based on their own hourly estimates the total amount would be \$645. Thus, I find that the Respondent is to provide the redacted records to the Applicant in electronic format within 30 days of the date it receives payment of \$645 from the Applicant. If the Respondent's actual time incurred for such labour are less than \$645, it shall reimburse the difference to the Applicant, as per s.13.8(1)(d) of the Regulation.

Issue 2: Should the Respondent be required to pay a penalty under s. 1.44 (1)6 of the Act for failure to provide the Applicant with the records requested without a reasonable excuse? If so, in what amount?

- [19] The Tribunal's authority to order a penalty is set out in s.1.44(1)6 of the Act, which states that the Tribunal may order a penalty if it considers that the condominium corporation has without reasonable excuse refused to permit an entitled person to examine or obtain copies of records under s.55(3) of the Act.

- [20] The Applicant has asked the Tribunal to order the Respondent to pay a penalty of \$2000 for failing to provide the records without a reasonable excuse. This amount is based on what the Applicant considers to be an unreasonable refusal of all the records initially requested, not just those that were at issue in this hearing.

- [21] The Applicant finds it unreasonable that the Respondent refused to provide several records based on the fact that they are related to "contemplated or actual litigation" and argues that failure to provide a reasonable cost estimate to produce other records is also unreasonable.

- [22] The Respondent provided a timely response to the request for records on the mandated form within the 30-day timeframe. In that response, the Respondent provided clear reasons for why the Applicant was not entitled to examine or obtain a copy of each record, or alternatively provided specific cost estimates for redacting and providing the records to which the Applicant was entitled. None of those reasons have been proven, in this case, to be erroneous or unreasonable. Therefore, I do not find that the Respondent refused to provide records without a reasonable excuse, and I do not order a penalty.

Issue 3: Should any costs be awarded against either party? If so, in what amount?

- [23] The Applicant has asked that the Tribunal award it costs in the amount of \$200, which are the filing fees it paid to the Tribunal. Under s.1.44(1)4 of the Act the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding. The CAT Rules of Practice provide guidelines for the awarding of such costs.
- [24] Under CAT Rule 45.2, if a case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final decision, the unsuccessful User may be required to pay the successful User's CAT fees and reasonable dispute-related expenses. In this case, I find that the Applicant is not entitled to costs because it was not successful in any of its claims.
- [25] The Respondent has also asked for an award of costs, in the amount of \$1500. They submit that they have always offered the records but were simply unable to come to any reasonable resolution with the Applicant on the costs related to redaction. Moreover, they submit that during the hearing the Applicant repeatedly missed deadlines set by me resulting in a prolonged process. They seek costs to compensate for the management and legal fees incurred in responding to this application.
- [26] In considering the factors set out in CAT Rule 45.1 I do not find that the circumstances warrant a cost award. Failure to resolve the issues prior to a Stage 3 hearing is not a circumstance that, in this case, warrants a cost award. I also disagree with the Respondent that the Applicant 'repeatedly' missed deadlines. While two deadlines were missed at the beginning of the proceeding, once the Applicant was reminded of the importance of meeting deadlines the behavior was rectified. The Applicant's behavior was not unreasonable, and no significant length of time was added to this proceeding. I award no costs to the Respondent.

C. ORDER

[27] The Tribunal Orders that:

1. Prior to the redaction of the records, the Applicant shall pay to the Respondent a fee of \$645 for labour associated with redacting the following records:
 - i. General Ledger for the period of May 1, 2019 - April 30, 2020
 - ii. Proxies from the August 2020 meeting of owners

- iii. Ballot summary from the August 2020 meeting of owners
 - iv. All Agro Zaffiro invoices for the period of May 1, 2016 – January 5, 2021
 - v. All Miller Thomson invoices for the period of May 1, 2016 – January 5, 2021
 - vi. All DSFM invoices for the period of May 1, 2016 – January 5, 2021.
2. The Respondent will provide the redacted records as described in paragraph 1 to the Applicant within 30 days of receiving the Applicant's payment. When the record is delivered, in accordance with Ontario Regulation 48/01 s.13.8(1)(c) of the Act, the Respondent must also provide the Applicant with a separate written document that indicates the difference between the actual costs the corporation has incurred in preparing the record and the fee paid by the Applicant.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: December 13, 2021