

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 11, 2022

CASE: 2022-00333SA

Citation: Scott v. Peterborough Condominium Corporation No. 16, 2022 ONCAT 72

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Patricia McQuaid, Vice-Chair

The Applicant,

James Scott

Self-Represented

The Respondent,

Peterborough Condominium Corporation No.16

Represented by Margaret Rea, Agent

Hearing: Written Online Hearing – May 27, 2022 to July 4, 2022

DISMISSAL ORDER

A. INTRODUCTION

- [1] The Applicant, James Scott, is the owner of a unit in Peterborough Condominium Corporation No.16 (“PCC 16”). The parties were previously involved in a case before the Tribunal (2022-00138R) which they resolved by a Settlement Agreement dated May 4, 2022, in a Stage 2 mediation proceeding.
- [2] Mr. Scott filed this application on May 25, 2022 because he believed that PCC 16 had not complied with the terms of the Settlement Agreement. PCC 16 asserts that he has been provided with the records as per their agreement and that the matter should be dismissed. Under s. 1.47 (3) of the *Condominium Act, 1998* (the “Act”), a party to a settlement agreement who believes that the other party has contravened the settlement agreement may make an application to the Tribunal for an order to remedy the contravention.
- [3] The terms of the Settlement Agreement are as follows:
1. The parties agree that the Respondent will provide the Applicant with electronic copies of all bank statements of Peterborough Condominium Corporation No.16 from June 1, 2021 to date by Friday May 13, 2022 and all future bank statements received within two weeks of the receipt thereof for the duration of the Respondent’s (a typographical

error in the Settlement Agreement is noted by me; this should read the Applicant) ownership in Peterborough Condominium Corporation No.16.

- [4] At the outset of this matter, I asked Mr. Scott to indicate which documents he had not received pursuant to the Settlement Agreement and what remedy he was seeking from the Tribunal. Mr. Scott stated that he had not received the bank statements for the period of June 1, 2021 to date by May 13. He also requested an order that Babcock and Robson, the condominium manager (with whom Margaret Rea is employed) “discontinue the practice of posing as representative of PCC 16”. Mr. Scott expressed concern that Babcock and Robson’s management agreement with PCC 16 does not permit them to act on its behalf or as its agent to deny access to records and/or ignore requests for records.
- [5] I explained to Mr. Scott that any issue about the interpretation of the management agreement and the express or implied authority for Babcock and Robson to represent PCC 16 in relation to records requests was not included within the Settlement Agreement terms, and therefore not an issue before me in this proceeding, whether or not it was a point of discussion in the Stage 2 Mediation.
- [6] Mr. Scott then confirmed that the requested records for June 2021 to March 2022 were received on May 26 (13 days after the agreed date) and the records for April 2022 were received on May 30 (17 days after the agreed date); however, he did not consider the matter completely resolved because of his outstanding concern related to the lack of written authorization for Babcock and Robson to act as agent/representative for PCC 16 given the terms of the management agreement.

B. SHOULD THIS CASE BE DISMISSED?

- [7] Given this information, before the witness and document disclosure phase of this hearing began, I directed the parties’ attention to Rule 19.1 (a) and (c) of the Tribunal’s Rules of Practice and asked for submissions on whether this case should be dismissed. The relevant sections of Rule 19 read as follows.

19. Early Dismissal

19.1 The CAT can dismiss an Application or Case at any time in certain situations, including:

- (a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)’s concerns;
- (b) Where a case has no reasonable prospect of success;
- (c) Where a Case is about issues that the CAT has no legal power to hear or

decide;....

- [8] In her brief submission, Ms. Rea reiterated that the case should be dismissed, and that any late delivery was not intentional. She stated that the documents were ready for pick up at their front desk prior to May 26 as that is how documents were provided to Mr. Scott in the past, as opposed to electronic delivery. Further, she explained that the statements for a prior month are generally not available until mid month of the following month due to PCC 16's accounting procedures.
- [9] Mr. Scott responded by again confirming receipt of the records, though not by May 13, as agreed. He also advised that the records for May 2022 were received on June 15, in compliance with the Settlement Agreement which indicates that the requested records are being received on a continuing basis. On this basis, he stated that from his standpoint, all terms of the Settlement Agreement have been met and the case could now be dismissed.
- [10] Based on the submissions of the parties, I dismiss this case. PCC 16 has complied with the terms of the Settlement Agreement, although late. A lack of timely compliance may, in some circumstances, warrant a determination of noncompliance. But I do not find that to be the case here. There appears to have been some confusion about the form of the document delivery (despite the wording in the Settlement Agreement) and in the context of the facts, the delay in providing the records was minor. I also note that Mr. Scott has indicated that he received the May 2022 statement by June 15. This is important as it is indicative that going forward, the statements will be delivered electronically, in compliance with the Settlement Agreement. There is no reason to assume that this will not continue.
- [11] I note here that Ms. Rea expressed frustration about having to participate in this process and was at times dismissive of both the process and Mr. Scott. However, I also note that condominium managers participate as representatives of the condominium board. It does not reflect well on a board when an owner's records requests and concerns arising from the requests are summarily dismissed by the condominium manager, or when, as Ms. Rea stated, "things get lost or forgotten", no matter how busy managers purport to be. And I highlight here that this Settlement Agreement sets out an ongoing obligation to provide records.
- [12] The Tribunal is seeing an increasing number of cases filed because records which are the subject of a Settlement Agreement are provided late as per the terms of the agreement. As noted above, a particular fact situation may lead to a finding of noncompliance on that basis, but often, patience, flexibility and communication between the parties might more effectively resolve the issues. Filing a case one

day after a missed deadline in a Settlement Agreement (which was not the case here) is not a productive exercise in the context of an ongoing relationship between the parties. An owner can inquire why the records have not been received before filing a case and a condominium board can make a diligent effort to respond in a timely manner and provide an explanation as appropriate when circumstances prevent it from doing so.

[13] As stated above, the issue of Babcock and Robson's authority to represent PCC 16 pursuant to the terms of their management agreement is not before me nor is the interpretation of a management agreement an issue I have the legal power to decide. But this is clearly a significant point of concern for Mr. Scott as an owner. It would serve the board of PCC 16 well to address his concerns.

[14] For the reasons set out above, this case is dismissed.

C. ORDER

[15] The Tribunal Orders that:

1. This case is dismissed without costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: July 11, 2022