

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 13, 2022

CASE: 2022-00355SA

Citation: Raymond v. Leeds Condominium Corporation No. 8, 2022 ONCAT 73

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

Member: Jennifer Webster, Member

The Applicant,
Sherri Raymond
Self-Represented

The Respondent,
Leeds Condominium Corporation No. 8
Represented by Vince Bennett, Agent

Hearing: Written Online Hearing – June 1, 2022 to June 22, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case involves a dispute under section 1.47 of the *Condominium Act, 1988* (the “Act”) regarding compliance with a settlement agreement related to a previous case before the CAT, identified as File 2021-00421R.
- [2] On February 17, 2022, the parties entered into a settlement agreement in the Tribunal’s Stage 2—Mediation process. Through this agreement, they resolved all issues related to the Applicant’s request for records that was the subject-matter of the previous case. The settlement agreement is binding on the parties, and it expressly states that, if a party fails to comply with the agreement, the other party can file a case with the CAT requesting an order requiring compliance.
- [3] The Applicant claims that the Respondent breached the confidentiality provision of the settlement agreement in its written communication to owners of the condominium corporation on May 19, 2022. She seeks a retraction of the statements in the communication, an apology from the board, and her fees for the application. She also raises issues about how the condominium manager responded to her request for records that was at issue in the previous case. I will not, however, address these concerns because the Applicant’s issues about the

response to her records request are outside the scope of this application and the parties acknowledged in the settlement agreement that all issues related to the records request had been fully resolved.

- [4] The issues to be addressed in this hearing are:
1. Did the Respondent contravene the settlement agreement through a breach of confidentiality?
 2. If so, what orders (if any) should the Tribunal make to remedy the contravention?
- [5] In this decision, I find that the Respondent has not contravened the settlement agreement in its communication to owners, and I dismiss the application.

B. ISSUES & ANALYSIS

Issue 1: Did the Respondent contravene the settlement agreement through a breach of confidentiality?

- [6] The parties' settlement agreement included a provision that described their agreement to maintain confidentiality as follows:
- This Settlement Agreement is confidential, meaning the Parties are not allowed to share it with others, or tell others about the details of the settlement without the permission of the other Parties. The Parties may share a copy of any document they received if required by law, such as to a government organization or a court.
- [7] The Applicant submits that the Respondent breached confidentiality through a notice that accompanied the quarterly financial statements provided to owners on May 19, 2022. In the Respondent's notice, it explained that condominium management fees were over budget for the first quarter due to a request for records and a subsequent CAT case related to the request. It described that it had not provided all records to the owner in response to the request and outlined the reasons for not providing certain records. The Respondent then indicated that the Tribunal has made four rulings related to the records request and it provided details of the four rulings. Finally, the Respondent noted that, as a result of the CAT case and the rulings, it had provided requested records in accordance with CAT's recommendations, but that it had not provided certain records related to board decision-making for privacy reasons.
- [8] The Applicant contacted the Respondent's board on May 19, 2022, after having received the notice about the CAT case, and she stated that she viewed this

communication as a breach of confidentiality. She requested an apology, a retraction, and a meeting with the board. Although the board responded with an offer to meet with her in June to discuss her concerns, the Applicant started this case with the CAT on May 26, 2022, and the parties did not meet to discuss the issues related to the alleged confidentiality breach.

- [9] The Respondent denies that it breached the confidentiality of the settlement agreement. It presents two arguments in support of its position. Firstly, the Respondent argues that the Applicant shared details of the settlement in March 2022 and therefore the confidentiality provision no longer applied to the settlement agreement. Secondly, the Respondent states that the information provided to owners in its May 19, 2022 notice was general information about the CAT process and did not include details of the settlement agreement.
- [10] With respect to the Respondent's first argument, it states that on or around March 25, 2022, the Applicant's spouse, Mr. Larry Raymond, disclosed details of the CAT case and the settlement to another resident of the condominium corporation, Mr. David Hendin. Mr. Hendin is the tenant of the board president, and he reported details of his conversation with Mr. Raymond to the president. In particular, Mr. Hendin reported that Mr. Raymond told him that he took his issues with the board to the CAT and that he won his case and was awarded costs. Mr. Raymond provided a statement about his conversation with Mr. Hendin. He explained that he had expressed his frustrations to Mr. Hendin about the difficulties getting information from the board and the challenges with the condominium manager, but that he had not disclosed details of the settlement.
- [11] The Respondent argues that the settlement agreement became a public document and no longer subject to the confidentiality provision, once the Applicant disclosed information to her spouse and then her spouse disclosed to Mr. Hendin. I do not accept the Respondent's argument. Whether or not there was disclosure of settlement terms by the Applicant or her spouse, the confidentiality provision remained a term of the settlement agreement and the settlement is not a public document. If the Respondent had concerns about this alleged breach of confidentiality, it could address the breach directly with the Applicant or through an application to the CAT. The Respondent took neither of these steps. In weighing the evidence before me, I am not persuaded that there was a confidentiality breach by the Applicant or her spouse. Moreover, I find that the alleged breach of confidentiality by the Applicant is not relevant to the issue of whether the Respondent contravened the settlement agreement.
- [12] The Respondent's second argument is that the notice to owners provided only

general information and not details of the settlement agreement. The confidentiality provision of the settlement agreement prohibits the parties from sharing the agreement or the details of the agreement with others. In the Respondent's discussion of the CAT case in the notice to owners, I find that it did not disclose that there was a settlement agreement nor did it disclose details of the agreement. Instead, it provided a general description of the issues raised in the records request and it confirmed that it had provided requested records to the owner.

[13] The Respondent did, however, provide information about the CAT case in this notice that shared information from the Stage 2—Mediation and that represented that the CAT had made a ruling with respect to the case. Specifically, the Respondent described that “the Tribunal ruled as follows:

- Documents specifically referred to as “attached” in minutes, such as agenda and agreements, form part of the minutes and must be shared when the owner requests meeting minutes.
- Requested documents are not required to be shared with the owner upon request until they have been approved by the Board.
- Tenders received for projects undertaken by the Corporation are not considered confidential and must be shared with the owner upon request.
- The Board is not required to set out all details of its discussions, and, while minutes must be accurate, the standard is not perfection. Boards must document motions and decision. In other words, the recording of verbatim discussions is not a requirement under the Act.”

[14] In this communication, the Respondent also stated that it had provided records “as per the CAT’s recommendations.” In this statement, I find that the Respondent came close to revealing details of the settlement agreement because it appears to refer to one of the terms of the settlement that involved the Applicant’s acknowledgment that it had received a series of records during Stage 2. This statement, though, is a general statement that does not share details of the settlement, and I conclude that the Respondent’s statement did not breach the confidentiality provision.

[15] Despite my conclusion that the Respondent’s notice did not contravene the settlement agreement, it does appear to me that the Respondent has shared information about the CAT case in a manner that does not respect the confidentiality of the process. The settlement agreement was concluded by the parties in the Tribunal’s Stage 2—Mediation process. Rule 5.1 of the Tribunal’s

Rules of Practice provides the following direction about the confidentiality of the CAT process:

5.1 All messages and settlement offers shared for the purpose of resolving the dispute in Stage 1 – Negotiation or Stage 2 – Mediation are private and confidential. Messages and settlement offers exchanged in these stages cannot be made public or used in Stage 3 – Tribunal Decision, unless the parties agree and the CAT allows it. Parties will not have access to the messages and settlement offers exchanged in Stage 1 – Negotiation or Stage 2 – Mediation if the Case has moved to Stage 3 – Tribunal Decision or if it has closed.

- [16] The Tribunal also has a User Guide about Confidentiality that provides an overview of the confidentiality requirements that apply to everyone who participates in a CAT case. The User Guide is also intended to help Users understand what information must be kept private and confidential and what can be shared, both during a CAT case and after it concludes.
- [17] The User Guide includes a table that identifies the types of information that are confidential in a CAT case. Users can disclose general information about the CAT process, including a general description of what the case is about, the current status, and the reasons why a case closed. However, in Stage 2—Mediation, all messages exchanged and any private discussions with the Mediator are confidential.
- [18] In the notice to owners, the Respondent provided descriptions of Tribunal rulings about the record request. The word “ruling” was not used in the settlement agreement. I find that the information in the rulings described by the Respondent could only have been received through messages or private discussions with the Mediator in Stage 2. These messages are confidential, pursuant to the CAT’s Rules and the User Guide. Moreover, the Respondent characterized the information from the Member as rulings and I find that this characterization misrepresented the CAT’s process. The communication with the CAT member happened during Stage 2—Mediation. In this stage, the parties to a CAT case work with a Member to explore opportunities to resolve the issues in dispute. The CAT Member is working as a Mediator and not as an Adjudicator or a decision-maker and therefore, the Member is generally not making rulings but would instead be sharing information.
- [19] It is understandable that the Applicant would be upset about the Respondent’s communication to the owners and that she believed that confidentiality had been breached. The Respondent’s notice shared information from Stage 2 and

suggested that there was a ruling from the CAT rather than confirming that the parties reached a confidential settlement that fully resolved the issues.

[20] I find that the Respondent's communication misstated the details of the previous CAT case and breached the confidentiality of messages in Stage 2. Although the notice disclosed confidential information contrary to the Tribunal's Rules, it did not disclose the details or terms of the settlement and therefore, I conclude that it did not contravene the settlement agreement.

Issue 2: If the Respondent did contravene the settlement agreement, what orders should the Tribunal make to remedy the contravention?

[21] According to section 1.47(6) of the Act, the Tribunal may make any order it considers appropriate if it determines that a party has contravened a settlement agreement. Given my conclusion that there has been no contravention of the settlement agreement, there is no remedy to be ordered.

[22] The Applicant requested her Tribunal fees. I decline to order her fees because she was not successful in the application.

[23] I note that the Applicant was seeking a retraction, an apology, and a meeting with the board, and that the board offered to meet with her. I encourage the parties to explore again the idea of meeting to discuss the issues raised by the Respondent's notice to owners and to consider ways to address the Applicant's concerns about the information provided to the owners, particularly given my conclusion that the Respondent provided incorrect information and shared confidential messages from Stage 2 to the owners.

C. ORDER

[24] I find that the Respondent did not contravene the settlement agreement dated February 17, 2022. Therefore, I dismiss the application.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: July 13, 2022