

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** September 14, 2022

**CASE:** 2022-00403R

**Citation:** Petersen v. Durham Condominium Corporation No 139, 2022 ONCAT 99

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Keegan Ferreira, Vice-Chair

**The Applicant,**

Darla Petersen  
Self-Represented

**The Respondent,**

Durham Condominium Corporation No. 139  
Represented by Patrick Nelson, Counsel

### **DISMISSAL ORDER**

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 3 – Tribunal Decision on August 18, 2022. The only issue in dispute is whether the Respondent meeting minutes are adequate as required by s. 55 (1) of the *Condominium Act, 1998* (the Act).
- [2] The Applicant argues that the Respondent's records are inadequate for a variety of reasons discussed individually and in detail below.
- [3] The Respondent brings this motion to dismiss this matter pursuant to Rule 19.1 of the Tribunal's Rules of Practice on the grounds that:
  - (a) The case is about issues that are so minor that it would be unfair to make the Respondent go through the CAT process to respond to the Applicant's concerns;
  - (b) The case has no reasonable prospect of success;
  - (c) The case is about issues that the CAT has no legal power to hear or decide;
  - (d) The Applicant is using the CAT for an improper purpose, namely, to change the management practices of the Corporation.
- [4] Rule 19.1 of the Tribunal's Rules of Practice states that the CAT can dismiss a case at any time if 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, where a case has no reasonable prospect of success, or

where the Applicant is using the CAT for an improper purpose (among other reasons).

- [5] The Applicant made submissions in response to the Respondent's motion. have considered the submissions made by both parties and find that this case meets the criteria for dismissal in Rule 19.1. Accordingly, I order that this case be dismissed.

## **ANALYSIS**

- [6] The Applicant's position is that the Respondent's records are inadequate because they do not include reference to the restricted portions of the minutes, because there are two different versions of the February 2022 minutes, because some of the minutes that she received are unsigned, and because the Respondent has not addressed and rectified ten alleged errors identified by the Applicant.
- [7] The Tribunal has previously held *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72 that:

...an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.

I concur that these are the requisite elements of adequate board meeting minutes, and it is through this lens that I will consider the parties' arguments in this motion.

## **Reference to Restricted Portions**

- [8] The Respondent divides its meeting minutes into two portions – a general portion and a restricted portion. The restricted portions include information about topics that cannot be provided to unit owners without redactions because they include the type of information covered by s. 55 (4) of the Act.
- [9] The Applicant notes that in the past, when the Respondent included an item in the restricted portion of the minutes (e.g., an issue related to an individual unit or unit owner), the regular portion of the minutes would include a notation that the issue was addressed in the restricted portion. This type of notation is no longer being made.
- [10] The Respondent states that the Applicant requested and received the board meeting minutes, including both the general and restricted portions. The Respondent also provided the Applicant with the accompanying statements as required by s. 13.8 (1) of Ontario Regulation 48/01, setting out the reasons for each redaction.
- [11] The Respondent submits that the Applicant's concerns do not relate to the adequacy of the records, and that she is not contending that any information was improperly withheld. The Respondent submits that the Applicant is seeking to change the way the Respondent chooses to draft its minutes. The Respondent

argues that this the Applicant has no prospect of success with respect to this issue and that this issue was filed for an improper purpose.

- [12] I agree with the Respondent. I find that the Applicant has not presented any information as to how the Respondent's approach might render the records inadequate, and that the Applicant is instead seeking to change how the Respondent drafts its minutes.

### **February 2022 Minutes**

- [13] The Applicant argues that there are two different signed versions of the February 2022 minutes. One version was signed by the two officers on April 14 and 18, while the other was signed on May 10 and 16. The Applicant also notes that there was no motion to amend the previously approved February minutes.
- [14] The Respondent submits that it has provided the Applicant with the final version of the February 2022 minutes as requested. The Respondent advised that that an earlier version of the minutes was uploaded to its internal website by mistake and were later taken down and replaced with the correct version
- [15] The Respondent also submits that the Tribunal has previously found that there is no requirement that meeting minutes be signed in *Wei v. Toronto Standard Condominium Corporation No. 2297*, 2021 ONCAT 8. In that case, the Tribunal found that the failure to sign the meeting minutes was not sufficient basis to conclude that the Respondent has failed to provide the record, or to render the records themselves inadequate.
- [16] The Applicant has not alleged that the minutes provided are different from the signed versions in any way save for different dates on which they were signed.
- [17] The Respondent argues that this issue is so minor that it would be unfair to make the Respondent go through Stage 3 to address it, and that the Applicant has no reasonable prospect of success on this point. I agree with the Respondent. The issue of the signatures is very minor and does not prevent the Applicant or other owners from understanding the decisions the Respondent has made, or the basis for those decisions.

### **Alleged Errors**

- [18] The Applicant alleged that there are four different types of errors in the minutes at issue in this case that render the minutes inadequate.
- [19] First, the Applicant alleges that the records are inadequate because there were four amendments to the records that were not recorded. It appears that the Applicant is arguing that the Respondent ought to have retroactively changed the text of the minutes once they were approved as amended. The Respondent submits that this is not required and that this is not an error, noting that the Tribunal has already ruled on whether these types of amendments are required in

*Chai v. Toronto Standard Condominium Corporation No. 2431*, 2021 ONCAT 116:

...while it would be a best practice to produce a final amended version of minutes, it is up to the corporation to determine how the minutes are amended and it is not for the CAT to order that it make revisions retroactively. The corrections that Mr. Chai seeks are relatively minor and not substantial and I accept that the board has determined that the minutes are complete and final for its purposes.

- [20] The corrections that the Applicant seeks here are likewise minor and not substantial. While I agree with the Tribunal's previous finding that this would be a best practice, I conclude that the issue of whether amendments must be retroactively incorporated into the minutes is an issue so minor that it would be unfair to make the Respondent go through Stage 3 to address it and that the Applicant has no reasonable prospect of success on this point.
- [21] Second, the Applicant contends that the records are inadequate because two sets of minutes were not approved. The Respondent advised that the minutes actually had been approved, but that the motion to approve was not recorded. The Respondent has since addressed this issue, and the motions to approve the minutes were recorded in the August 8, 2022, minutes. The Respondent submits that these are minor procedural issues that have already been rectified, and that this issue is so minor that it would be unfair to make the Respondent go through Stage 3 to address it.
- [22] Third, the Applicant contends that the records are inadequate because there are two items in the restricted portion that she believes should have been included in the general portion. The Applicant did not provide specific information on these two items.
- [23] The Applicant is not stating that the records were inappropriately redacted, or that the Respondent had failed to provide reasons for the redactions – only that items that were included in the restricted portion should have been included in the general portion. The Applicant provided me with no reason to believe that the Respondent's choices regarding what information to include in the regular portion vs. the restricted portion were inappropriate or how those choices would render the records inadequate. The Respondent submits that and that the Applicant has no reasonable prospect of success on this point.
- [24] Fourth, the Applicant contends that the records are inadequate because the resignation of two directors in October was not recorded therein. The Respondent submitted that the resignation of two directors was not a matter of discussion in any board meeting during the period responsive to the Applicant's request. The resignations were instead discussed and included in the May 2022 minutes, which were outside of the period of this request. The Respondent submits that the Applicant has no reasonable prospect of success on this point.
- [25] As the Tribunal noted in *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72, an adequate record of a board meeting is one that includes "sufficient

detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.” The issues cited by the Applicant are minor procedural issues. I find that none of the issues cited by the Applicant, considered either individually or collectively, could render the Respondent’s records inadequate, and that it would be unfair to make the Respondent go through the CAT process to respond to the Applicant’s concerns. Accordingly, I order this case be dismissed.

## **ORDER**

[26] The Tribunal orders that:

1. This case is dismissed pursuant to Rules 19.1 of the CAT’s Rules of Practice.

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Keegan Ferreira  
Vice-Chair, Condominium Authority Tribunal

Released on: September 14, 2022