CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 20, 2022
CASE: 2022-00496SA
Citation: Sakala v. York Condominium Corporation No. 344, 2022 ONCAT 113

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

Member: Benjamin Drory, Member

The Applicant,
Helene Sakala
Self-Represented

The Respondent,
York Condominium Corporation No. 344
Represented by Justin McLarty, Counsel

Hearing: Written Online Hearing – August 18 to September 6, 2022

REASONS FOR DECISION

OVERVIEW

[1] The Applicant, Helene Sakala, a unit owner of the Respondent, alleged that the Respondent failed to observe the terms of the September 2, 2020, Settlement Agreement (the "Agreement") that resolved Tribunal case number 2020-00174R (the "2020 Case") between the parties.

[2] The relevant details of the Agreement are as follows:

> **Settlement**
>
> 1. The Respondent agrees to institute a procedure to have the minutes of board meetings signed by the Board and posted to the MaxCondoClub site within 7 days of their approval by the Board. This procedure will be put into place within 20 business days of the finalizing of this settlement agreement.
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> …
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> 3. Should the Applicant have any questions or concerns about the records she receives through this Settlement Agreement, the Applicant agrees to submit these questions to the Board in writing within 20 business days. The Board

agrees to respond to these inquiries in writing within 20 business days. (This is in lieu of a meeting).

…

Compliance

If either the Applicant or Respondent fails to comply with this Settlement Agreement, then the other User is entitled to file a case with the CAT requesting an order requiring compliance with this Settlement Agreement. That case must be filed within six months of when the terms of this agreement were broken.

Privacy & Confidentiality

This Settlement Agreement is confidential, meaning the Users are not allowed to share it with others, or tell others about the details of the settlement without the permission of the other User. The Users may share a copy of any document they received if required by law, such as to a government organization or a court. …

[3] The Applicant argued that the crux of this case was simply whether or not the Respondent observed the terms of the Agreement. She asserted that the Respondent was in non-compliance with the Agreement at least 59% of the time since the procedure was instituted on October 1, 2020.

[4] The Applicant submitted a lengthy table (48 rows x 7 columns) listing dates of board meetings, the dates their minutes were approved, signed and posted, and the number of days the Respondent took to sign and post minutes following their approval. Given the table's length, I will not reproduce it here. I noted improvements in the Respondent's timeframes for posting minutes to its website after the Applicant made her Request for Records in June 2020. If the Applicant's data is to be believed, then the Respondent had previously been frequently taking 6-7 months to post minutes of meetings.

[5] The Applicant asserted that the Respondent's compliance with the Agreement started well, but then became sporadic. She asserted that 13 out of 22 approved minutes posted to date (i.e., 59%) exceeded the agreed-to seven business days – and that therefore the Respondent and its property manager breached the mediated Agreement.

[6] The Applicant also expressed concern that somebody had deleted the January 28, 2021 board meeting minutes from MaxCondoClub, which she felt contained

important information.

[7] The Applicant asked how she could guarantee that the Agreement's procedure would continue to be enforced in future if there was a change in the board, property management, or its legal counsel, or if she was no longer a resident. She asked for the Agreement to be "forwarded" to future boards and property management for continuation of the process, including if she moved away.

[8] The Applicant further asked that the Respondent's condominium manager and board members each be held personally liable and fined $500 for every set of minutes in non-compliance with the Agreement, and that any instance of minutes deleted or removed from MaxCondoClub should carry fines of $1,000 each. She felt that the corporate Respondent shouldn't be held liable, as in her opinion it was the board and property manager who were continually in non-compliance with obligations, and they would only observe the Agreement if they were personally financially punished.

[9] The Respondent argued that the Applicant's table included 20 sets of entries from prior to October 1, 2020, and included meetings that weren't board meetings, but rather owners' meetings (including town halls), and as such were outside the scope of the Agreement.

[10] It stated that the Agreement provided for a six-month period to file a compliance case, and there were only six sets of board meeting minutes that fell within the timeframe to commence a case – being the minutes of the February 24, March 24, April 26, May 19, June 21, and July 8, 2022 board meetings. It submitted that for five of those six meetings, the minutes were amended and unavailable for signature at the meetings when they were approved, but upon being signed the minutes were each posted within one business day.

[11] The Respondent acknowledged a delay in posting the minutes of the March 24, 2022 board meeting, which were made available on MaxCondoClub on May 30, 2022. The Respondent asserted that all relevant minutes were available on the MaxCondoClub site.

[12] The Respondent also argued that the Agreement was ambiguous about the appropriate timeframe for posting minutes that needed further amendment prior to being signed and posted on MaxCondoClub. It stated that sometimes extra time is needed to make copies of the final minutes available for signature by the Board following the approval of amended minutes. It suggested that the Agreement should be interpreted to mean that such minutes are to be posted within seven days of the amended minutes being prepared and signed.

[13] In support of this, the Respondent's condominium manager, Ms. Corinne

Vortsman, stated that she and the board had worked diligently since the Agreement was made to ensure that minutes were approved, signed, and posted to MaxCondoClub within seven business days. However, she stated that sometimes minutes are approved with amendments, which require corrections and time for a final version to be prepared. She stated that the original minute-taker (which can change from meeting to meeting) must be contacted and asked to make the necessary changes, submit those changes for approval and review, and then arrange for the board to sign. She stated that the board's members are volunteers with other professional and personal commitments, and aren't always available. However, she insisted that once final versions of minutes are available, they are promptly signed by two members of the board and uploaded to MaxCondoClub, in accordance with the Agreement.

[14] The Respondent submitted that there was no basis for "transferring" its private agreement with the Applicant to other parties. It submitted that it had substantially complied with the Agreement, that the levying of any "fines" is unwarranted, and that the Tribunal couldn't order indefinite fines into the future. It argued that there was no basis to order damages personally against the condominium manager or members of the board, as the Agreement's purpose wasn't to provide for any monetary penalties or rewards, but rather to ensure that minutes of the board meetings were posted on MaxCondoClub.

[15] The Respondent argued that in *Scott v. Peterborough Condominium Corporation No. 16,* 2022 ONCAT 72 *("Scott")*,[1] this Tribunal had declined to award a penalty or costs in circumstances where a settlement agreement was ultimately complied with outside of the timeframe specified in the agreement. It argued that *Scott* should be interpreted as the Tribunal's acknowledgement that minor contraventions of settlement agreements shouldn't result in cases being commenced, or awards of costs or penalties. It also submitted that in other Tribunal cases involving ambiguity in the terms of settlement agreements, the Tribunal has declined to find material non-compliance with those agreements.[2]

[16] The Applicant disputed that there was any ambiguity in the Agreement, and felt its timeline could be achieved even when minutes were amended. She asserted that interpreting the Agreement more stringently would be in line with best practices, based on the following quote from the Toronto Condo News website:[3]

> *"Draft minutes should be approved no later than at the following board meeting after which owners should be informed that minutes are available. Best practice is for draft minutes to be provide to board members no later than 48 hours after a meeting ends.*

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[1] *Scott v. Peterborough Condominium Corporation No. 16,* 2022 ONCAT 72 at para. [10]
[2] *Harrison v. Toronto Standard Condominium Corporation No. 2714,* 2022 ONCAT 91 at para. [12]; and *Kai Sin Yeung v. Metro Toronto Condominium Corporation No. 1136,* 2020 ONCAT 13 at paras. [10]-[21]
[3] "Meeting Minutes Matter", Toronto Condo News (October 2017) https://tocondonews.com/archives/meeting-minutes-matter/

Directors should commit to review and respond to draft minutes within 48 hours. This makes meeting minutes available 5-7 days after each meeting."

RESULT

[17] The Respondent contravened the Agreement with respect to the minutes of the March 24, 2022 board meeting. However, I do not accept that s. 1.47 (6) of the Act permits the Tribunal to impose fines for breaches of Settlement Agreements. The contravention in this case has also already been remedied – i.e., the minutes of March 24, 2022 have been posted to MaxCondoClub. I order the Respondent to reimburse the Applicant her $125 Tribunal filing fee for this case, given that I have accepted her argument that a breach occurred. The Respondent's property manager and board members shall not be held personally liable.

ANALYSIS

[18] I begin by noting the parameters of the Agreement and who was subject to it. The Agreement was between the Applicant, Ms. Sakala, and the corporate Respondent, York Condominium Corporation No. 344 ("YCC 344"). They are the only parties that can be held responsible for breaches of its terms. There is no appropriate basis for holding any of the Respondent's directors or employees personally liable for any breach of the Agreement.

[19] The Agreement was private as between the parties, notwithstanding that some of its terms are now being made public by virtue of this Tribunal's ordinary procedures. It does not apply to anybody else, even if other owners of units in YCC 344 might have been incidentally benefiting from its terms being followed. If the Applicant moves out of YCC 344, then on the facts of this case, the Applicant would cease to have standing before this Tribunal respecting the Respondent, and accordingly would likely not be able to enforce the Agreement. However, it is presently a moot point. As long as the Applicant remains a resident, then the Agreement will continue to bind the Respondent irrespective of any potential changes in its board members or condominium management.

[20] The Agreement was short and uncomplicated. Its most important clause began: "The Respondent agrees to institute a procedure to have the minutes of board meetings signed by the Board and posted to the MaxCondoClub site within 7 days of their approval by the Board." The procedure took effect on October 1, 2020.

[21] Based on that clause's plain wording, I do not accept that it applies to any YCC 344 meetings other than board meetings. I agree with the Respondent that owners' meetings, town hall meetings, and any other kind of non-board meeting aren't subject to the clause as written. The Applicant might have subjectively

expected other meetings to be part of the Agreement, but the Agreement clearly only referred to board meeting minutes.

[22] Another provision of the Agreement established that if either party fails to comply with the Agreement, then the other party can file a case with the Tribunal requesting compliance within six months of when the Agreement's terms having been broken. This is based on the wording of s. 1.47 (3) of the Act, as below:

> 1.47 (1) If the parties to a proceeding that is the subject of an application agree to a settlement in writing and sign the settlement, the settlement is binding on the parties.
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> …
>
> (3) A party to the settlement described in subsection (1) who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (6),
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> (a) within six moths after the contravention to which the application relates; or
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> (b) after the expiry of the time limit described in clause (a) if the Tribunal is satisfied that the delay in applying was incurred in good faith and no substantial prejudice will result to any person affected by the delay.
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> …
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> (6) If, on application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make an order that it considers appropriate to remedy the contravention.

[23] I accept the Respondent's position that the appropriate timeframe is the six-month window preceding the Applicant's filing of her case with the Tribunal (August 8, 2022), which limits the inquiry to an analysis of the February 24, March 24, April 28, May 19, June 21, and July 8, 2022 board meeting minutes.

[24] The Respondent acknowledged a delay in posting the March 24, 2022 minutes, which were not made available on MaxCondoClub site until May 30, 2022. However, it asserted that in all five other cases, the minutes were amended and unavailable for signature at the Board meetings they were approved at, but were posted within one business day upon being signed. It argued that the Agreement should be interpreted to allow for the additional time necessary to make final minutes available for signature following the approval of amendments.

[25] I accept this interpretation as reasonable in this case's circumstances, notwithstanding that I note nothing in the Act legally defines "draft" minutes, nor speaks to a requirement to "approve" minutes. On this basis, I accept that the Respondent followed the terms of the Agreement for the February 24, April 28,

May 19, June 21, and July 8, 2022 board meetings.

[26] This leaves the question of what should be done about the delay respecting the March 24, 2022 minutes, for which Respondent couldn't offer any explanation. Rather, the Respondent argued that based on *Scott*, any "minor" contravention of a settlement agreement shouldn't result in a financial consequence. I do not find that *Scott* stands for the proposition suggested by the Respondent – in fact, I don't find *Scott* conclusive at all about the appropriate consequences when settlement agreements aren't complied with within their specified timeframes. However, I still found some of its commentary generally relevant.

[27] The contextual circumstances in *Scott* were completely different from this case, other than that they were both about whether a condominium corporation complied with the terms of a settlement agreement. The *Scott* decision resulted from a motion for early dismissal under rule 19 of the Tribunal's Rules of Procedure – which allows the dismissal of a case where "the issues 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". The Tribunal in *Scott* granted an early dismissal, as follows:

> *[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 … and in the context of the facts, the delay in providing the record was minor. …*
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> *…*
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> *[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.*

[28] Rule 19 was never argued in this present case. It is important to note that what qualifies as "minor" is based on the Tribunal's opinion – not the subjective opinion

of an applicant. It is unsurprising that no applicant will ever think of their own circumstances as a “minor” issue. Some weight has to be accorded to the specificity of the Agreement’s terms, which mandated an ongoing requirement for the Respondent to post board minutes within defined timeframes, every single time board meetings are held – i.e., within seven days of their approval by the board. The minutes were posted two months late. That delay was not minor or inconsequential – it was a breach of a clear term of the Agreement.

[29] While I disagree with many of the Applicant’s submissions regarding appropriate remedies in this case (notably against whom), I also disagree with the Respondent’s submission that, effectively, there should be no consequence for the breach at all. In my opinion, the Agreement would cease to have any meaningful value if a material breach of its terms carried no consequence. Its entire point was to ensure that its terms would be respected. Nonetheless, nothing in s. 1.47 (6) grants the Tribunal authority to issue a financial consequence for breaching a term of a settlement agreement (as contrasted to, say, s. 1.44 (1) 6 of the Act, which grants the Tribunal authority to order parties to pay penalties in certain circumstances). Section 1.47(6) of the Act only grants the Tribunal authority to make orders it considers appropriate to remedy the contravention. A fine is not a remedy, and does not fix the original problem – which in this case was the minutes not having been posted.

[30] The Applicant argued that the Respondent’s board members should be fined $500 each for every approved set of board meeting minutes in non-compliance with the Agreement, and for instances of deleted minutes (of which none were actually proven) to be fined $1,000 each. Fines are simply not left to a Member’s judgement.

[31] I simply find that the Respondent failed to comply with the Agreement with respect to the March 24, 2022 board meeting minutes, which were posted to MaxCondoClub on May 30, 2022. However, as those minutes have already been posted, the original problem has been remedied. As a consequence, I order the Respondent to reimburse the Applicant for her $125 cost for filing this case with the Tribunal, within 30 days of the date of this Order.

ORDER

[32] The Tribunal orders that within 30 days of the date of this Order, the Respondent must pay the Applicant $125.

Benjamin Drory
Member, Condominium Authority Tribunal

Released on: October 20, 2022