

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 4, 2023

CASE: 2022-00099R

Citation: Russell v. York Condominium Corporation No. 50, 2023 ONCAT 2

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice

Member: Jennifer Webster, Member

The Applicant,

Robert Russell

Self-Represented

The Respondent,

York Condominium Corporation No. 50

Represented by Matthew Varao, Paralegal

INTERIM ORDER

A. INTRODUCTION

- [1] Robert Russell (the "Applicant") is the owner of a unit of York Condominium Corporation No. 50 ("YCC 50"). He started a case with the Tribunal on March 26, 2022 in relation to a request for records he submitted to YCC 50 on February 15, 2022.
- [2] The case proceeded to Stage 2- Mediation on April 5, 2022. Before the mediation started, the Applicant submitted a motion for an order from the Tribunal in relation to issues raised by YCC 50 in a Notice of Mediation. YCC 50's Notice of Mediation claimed that the Applicant had made numerous requests for records, all of which has been fulfilled or refused, and further claimed that the Applicant's requests were vexatious, exceeded his rights as an owner and were interfering in the operations of YCC 50.
- [3] The Tribunal released a motion order on May 24, 2022 in *Russell v. York Condominium Corporation No. 50*, 2022 ONCAT 56. At paragraph 34 of the order, the Tribunal made the following orders:
1. The issues of whether the Applicant is entitled to make requests for records and whether he is exceeding his rights under the Act in making this request be added

to the issues in dispute in this case.

2. The Respondent shall use the CAT-ODR system exclusively to communicate with the Applicant about matters related to the issues in dispute in this case, as required by Rule 7.1 of the CAT's Rules of Practice.

- [4] Stage 2 – Mediation in this case finished on November 3, 2022, and the case was referred to Stage 3 - Tribunal Decision.
- [5] The Stage 2 Member prepared a Summary and Order in relation to Stage 2. In paragraph 4 of the Summary and Order, he identified the issues to be decided in Stage 3. The Stage 2 Member further described in paragraph 4 that the Applicant had raised three additional issues. The Applicant's statement of these three additional issues is as follows:
- A. The Respondent has delivered Code of Ethics records in response to the 15 Feb 2022 request where the Respondent has previously made submissions to the CAT that such records did not exist. Absent any explanation for the new mysterious discovery of these records, this renders the response inadequate.
 - B. The Respondent has provided a Statement of Compliance with CAT Order 2021 ONCAT 103 that now confirms that some minutes submitted in that case (6 Jun 2021 and 23 July 2021) were not bona-fide minutes of board meetings retained in the records of the corporation, rendering additional Respondent submissions in that case false and misleading, a violation of the CAT Rules of Practice.
 - C. The Respondent has violated the CAT Rules of Practice by sending a notice to all owners at YCC50 that makes false and misleading statements about confidential settlement negotiations that took place during Stage 2 of CAT Case 2020-00396R, and that also makes false and misleading statements about the CAT order in the same.
- [6] The Stage 2 Member also noted in paragraph 4 that he had invited submissions from the parties about whether these three issues would form part of the issues in dispute in this case. He did not, however, rule on this question and noted that "[t]he question of whether these issues fall within the CAT's jurisdiction and whether they should be included as issues in dispute in this case should be addressed at the outset of the hearing as a preliminary issue."
- [7] On December 2, 2022, I set a schedule for submissions from the parties in relation to the question of whether the three additional issues should be included in this case. YCC 50 argues that the Applicant is attempting to expand the scope of this dispute from the issues related to his records request of February 15, 2022, and it argues that these three issues are not properly part of the present dispute. In

particular, YCC 50 submits that the issues relate to a previously decided case between these parties, *Russell v. York Condominium Corporation No. 50*, 2021 ONCAT 103. It is the Respondent's position that the issues have been litigated and decided in the previous case.

- [8] The Applicant highlights that Rule 4.2 of the Tribunal's Rules outlines that the Tribunal has the power to make orders or give directions to prevent abuse of its processes, and he argues that the Tribunal should include the three additional issues in order to prevent such an abuse of processes by YCC 50. The Applicant submits that the three issues are relevant to the issue added through the earlier motion order (2022 ONCAT 56) of whether he is entitled to make requests for records and whether he is exceeding his rights under the *Condominium Act, 1998* (the "Act") in making the records request of February 15, 2022. Moreover, the Applicant states that these issues are relevant to his claim for an order of costs.
- [9] For the reasons set out below, I decline to add any of the three additional issues outlined in part 10 of paragraph 4 of the Stage 2 Summary and Order.

Issue A: The Code of Ethics

- [10] The Stage 2 Member noted in paragraph 4 that it appeared that the Applicant was alleging that the Respondent advised the Tribunal in case 2020-00396R (2021 ONCAT 103) that the Code of Ethics did not exist and that, despite this earlier submission, YCC 50 provided the Code of Ethics in response to the February 2022 records request.
- [11] YCC 50 submits that it provided the best information it had at the time of responding to the records request at issue in 2021 ONCAT 103. The Applicant, however, challenges this statement as false and he states that there is a version of the Code of Ethics that is dated January 2021. He argues that the Respondent's failure to provide the Code of Ethics in the earlier case negatively affected a debate about a proposed by-law for YCC 50. I note that the Applicant's argument seems to raise possible governance issues about which I cannot decide.
- [12] There is no reference to the Code of Ethics in the Tribunal's decision in 2021 ONCAT 103. Moreover, despite the limited information I have about the February 2022 records request and YCC 50's response, it appears as though the Code of Ethics was provided as part of the response to the current request. I will not accept evidence or submissions about the Code of Ethics in relation to the earlier case (2021 ONCAT 103) but will limit any submissions about the Code of Ethics to the records request of February 2022.

Issue B: Statement of Compliance with CAT Order in 2021 ONCAT 103

[13] The issue identified involves an allegation by the Applicant that minutes of board meetings provided in relation to the Tribunal's order in 2021 ONCAT 103 were not bona fide minutes. The Applicant submits that he has repeatedly asked for the Minute Book version of the minutes of July 23, 2020 and that these minutes have not been provided. Although the Stage 2 Member identified the minutes as being from June and July 2021, it is evident from the parties' submissions on this issue that the minutes relate to June and July of 2020.

[14] In 2021 ONCAT 103, the Tribunal issued a series of orders, including the following:

Within 30 days from the date of this Order, YCC50 will provide Mr. Russell with any minutes of in-camera or special meetings for the 12 months preceding March 29, 2021 not already provided to him. If there were no such meetings, YCC50 will provide Mr. Russell with a statement to this effect.

[15] I will not permit the issue of the minutes of the June 2020 and July 2020 meetings to be added to the issues in this case because the issues related to these records were addressed by the Tribunal in 2021 ONCAT 103. It appears that the Applicant is seeking to enforce the Tribunal's orders in 2021 ONCAT 103. His recourse for enforcement is through the Ontario Superior Court of Justice and not through the Tribunal.

Issue C: The Notice to Owners about CAT case 2020-00396R

[16] The Applicant argues that YCC 50 provided a notice to owners that included false statements about settlement discussions that occurred during Stage 2 – Mediation in CAT case 2020-00396R, the case that resulted in the decision of 2021 ONCAT 103. He also submits that the notice to owners breached the confidentiality of the settlement discussions, contrary to the Tribunal's Rules of Practice.

[17] The Applicant's issues with this notice relate to a previous case and not the current records request. I do not find that it is appropriate to add these allegations and issues to the current case.

B. CONCLUSION

[18] The Tribunal orders that the three issues identified in part 10 of paragraph 4 of the Stage 2 Summary and Order shall not be included as issues in dispute in CAT

case 2022-00099R.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: January 4, 2023