

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 20, 2023

CASE: 2022-00393R

Citation: Slee et al. v. Peel Condominium Corporation No. 110, 2023 ONCAT 40

Order under section 1.44 of the Condominium Act, 1998.

Member: Laurie Sanford, Member

The Applicants,

Richard Slee

Mary Harsant

Represented by Richard Slee

The Respondent,

Peel Condominium Corporation No. 110

Represented by Carol Dirks, Counsel

MOTION DECISION AND ORDER

- [1] Mr. Slee and Ms. Harsant, who are unit owners in Peel Condominium Corporation No. 110 (“PCC 110”), are requesting records concerning certain building and maintenance projects either considered or undertaken by PCC 110. During the hearing, a question has arisen about what specific records they are requesting. Further, Mr. Slee and Ms. Harsant wish to have PCC 110 penalised for an incident they characterize as intimidation. PCC 110 opposes the introduction of the alleged intimidation incident.
- [2] PCC 110 takes the position that Mr. Slee and Ms. Harsant are attempting to expand the list of records they are seeking beyond the original request and beyond what was agreed to during mediation. Mr. Slee, who represented both himself and Ms. Harsant, submits that the list of records they seek is a clarification or specification of the list set out in the summary of the mediation which preceded this hearing.
- [3] The issues in this motion are:
1. What records are the subject matter of the hearing?
 2. Should the incident of alleged intimidation form part of this hearing?

Issue 1 – What records are the subject matter of the hearing?

- [4] There are three iterations of the records at the centre of this hearing that are relevant. The first are the original records requests made by Mr. Slee and Ms.

Harsant to PCC 110. Second is the summary of the outstanding records requests set out in the summary of the mediation. Third is the records requested by Mr. Slee and Ms. Harsant during the hearing. It is this third iteration of the records requested that PCC 110 contests.

- [5] Mr. Slee and Ms. Harsant made two records requests of PCC 110. On March 21, 2022, they requested, “All documents related to the Tender for the modernization of the Elevators,” Date Range: April 1, 2021 to March 31, 2022. On May 11, 2022, Mr. Slee and Ms. Harsant made a second records request for, “All documents related to the conversion of the Guest Room into a Parcel Delivery room (see email of May 11, 2022 to Liron Daniels for details)”, Date Range: July 1, 2020, to January 31, 2021.
- [6] Hearings before this Tribunal are usually preceded by mediation between the parties, facilitated by a Tribunal Member acting as mediator. At the conclusion of the mediation, the mediator writes a summary of the results of the mediation and, if the matter is to proceed to a hearing, the mediator writes a procedural Order. The Order is binding on the parties. The mediation summary, while it does not bind the parties, is intended as a statement of the results of the mediation and as guidance in determining the scope of the issues to be decided during the adjudication. In this case, the mediation summary states:

The only records that remain in dispute are:

- a. The accounting records related to Nikana and posted to Accounts Payable and the General Ledger for three separate projects; painting of the Stairwells, [overhang] and the [conversion] of the guest room to the parcel room.
 - b. A copy of the cancelled cheque for \$8,846 and the bank statement recording the deposit from Nikana reimbursing the amount for not performing the work OR and accounting invoices (with all necessary accounting stamps) from another project showing a credit for the work not done on the conversion of the guest room to parcel room.
 - c. Two change orders relating to the Elevator Modernization.
- [7] The mediation process expanded the scope of the records request to include “accounting records for three separate projects: painting of the Stairwells, [overhang] and the [conversion] of the guest room to the parcel room. The parties agreed to this expansion so the scope of the records at issue in this case now includes accounting records not only from the conversion of the guest room to a parcel room but also accounting records relating to painting the stairwells and the overhang. However, the mediation summary narrows the scope of the records requested to specific accounting records for the three projects of Nikana Group Inc. (“Nikana”) a contractor of PCC 110, and the two change orders for the elevator modernization. The two change orders concerning the elevator modernization project relate to additional items contracted for during the project.

Both parties understand the reference.

[8] During the hearing, Mr. Slee and Ms. Harsant received some of the records they had requested. However, they now request the following records, which they submit are a clarification of the records set out in the mediation summary:

1. Original accounting records concerning specific dealings with Nikana, in particular scanned copies of accounting records with the appropriate accounting stamps or alternate source, accounting or approval records for the following:
 - a. the decision documents of the board of directors of PCC 110 dated October 29, 2020, and supporting the issuance of cheque number 3007 for \$22,973.65 to Nikana on October 31, 2020;
 - b. all invoices, contract, vendor credit documents and supporting documents concerning the issuance of cheque number 5593 for \$2,750.00 to Nikana on November 24, 2020, together with the cancelled cheque number 5593;
 - c. all invoices, vendor credit documents and supporting documents concerning the issuance of cheque number 3081 for \$13,403.56 to Nikana on December 3, 2020, together with the cancelled cheque number 3081.
2. The supporting documents and vendor credit documents concerning the following transactions recorded in the PCC 110 Financial Statements of April 1, 2021 numbered 20947, 20948, 20949, 20950, 20964 and 21002, all of which concern dealings with Nikana.
3. Any other records which support the reimbursement of the \$8,846 paid to Nikana to convert the guest room to a parcel delivery room.
4. An order permitting Mr. Slee and Ms. Harsant to inspect the Guest Room.
5. Concerning the elevator modernization project, Mr. Slee and Ms. Harsant are seeking the tender document for the elevator maintenance contract, believed to have been issued April 1, 2022.

[9] Under Rule 4.1 of the Condominium Authority Tribunal Rules of Practice, effective January 1, 2022, "The CAT may give directions or make Orders to provide a fair, focused and efficient process in each Case." The question is what would constitute a "fair, focused and efficient process" in this case. The Stage 2 Summary and Order makes it clear that the parties had narrowed their dispute to accounting records relating to three projects contracted for with Nikana as well as two change orders relating to the elevator modernization project. I am prepared to give a liberal interpretation of which accounting records are at issue. This is because I accept Mr. Slee's submission that he has been able to clarify the accounting records he

wants based on information he learned during the hearing. However, I am not prepared to expand the scope of the records beyond what are traditionally thought of as accounting records. To do so would be to expand the hearing beyond what was contemplated at the conclusion of the mediation. As well, the date range in the original records requests must remain as initially set out. The hearing is now in its closing submissions stage and it would not be fair to PCC 110 to expand the scope beyond accounting records related to the three Nikana projects and the two change orders relating to the elevator modernization project.

- [10] Applying these principles, I conclude that the first heading of records requested, referred to in subparagraph (8) 1 above should be restricted to the scanned copies of the original accounting records relating to the specified dealings with Nikana. These accounting records appear to be more specific than had been set out in the mediation summary and I conclude that specifying them as the records sought in this matter will permit the parties to focus on them. However, requests for the decision documents, contracts and unspecified supporting documents go beyond the scope of the records set out in the summary of the mediation and may extend beyond what are traditionally thought of as accounting records. Any supporting documents must be restricted to supporting accounting documents. By the same reasoning, the second heading of records, referred to in subparagraph (8) 2 above, should be restricted to vendor credit documents and supporting accounting documents. The third set of records requested, in subparagraph (8) 3 above, that is, “any other records which support the reimbursement ...” will be restricted to accounting records.
- [11] Concerning Mr. Slee and Ms. Harsant’s request to inspect the Guest Room, Mr. Slee argues that the guest room is properly considered to be a “record”. He takes this position because PCC 110 has advised that, while they originally contracted with Nikana to convert the Guest Room to a parcel room, the conversion project was cancelled and the work did not proceed. He submits that inspecting the Guest Room is the best way to determine if the conversion project proceeded or not. The *Condominium Act, 1998*, section 55 deals with “records” which is not a defined term. The Oxford English Dictionary defines a record as, “a thing constituting a piece of evidence about the past, especially an account kept in writing or some other permanent form.” Under this definition, a record is inherently different from a structure. I conclude that the Guest Room is not a “record” for the purposes of this hearing.
- [12] The records that Mr. Slee and Ms. Harsant now seek concerning the elevator modernization project, which are set out in subparagraph (8) 5 above, go beyond the two change orders that were set out in the mediation summary. The tender documents for the elevator maintenance now being sought also go well beyond what was originally requested by Mr. Slee and Ms. Harsant. I will disallow this record.
- [13] What remains as the records that are the subject of this hearing are the following:

1. Original accounting records concerning specific dealings with Nikana, in particular scanned copies of accounting records with the appropriate accounting stamps or alternate source, accounting or approval records for the following:
 - a. all invoices, vendor credit documents and supporting accounting documents concerning the issuance of cheque number 5593 for \$2,750.00 to Nikana Group Inc. on November 24, 2020, together with the cancelled cheque number 5593;
 - b. all invoices, vendor credit documents and supporting accounting documents concerning the issuance of cheque number 3081 for \$13,403.56 to Nikana Group Inc. on December 3, 2020, together with the cancelled cheque number 3081.
2. The vendor credit documents and supporting accounting documents concerning the following transactions recorded in the PCC 110 Financial Statements of April 1, 2021 numbered 20947, 20948, 20949, 20950, 20964 and 21002, all of which concern dealings with Nikana.
3. Any other accounting records which support the reimbursement of the \$8,846 paid to Nikana to convert the guest room to a parcel delivery room.

[14] PCC 110 submits that these accounting records go beyond those that were the basis of their original estimate of the cost of producing them. That matter may be dealt with in the closing submissions. It is open to PCC 110 to provide an estimate of the increased cost of producing the records.

Issue 2 - Should the incident of alleged intimidation form part of this hearing?

[15] During the hearing, an incident occurred which Mr. Slee and Ms. Harsant characterise as an attempt on the part of PCC 110 to intimidate them for bringing this records request. PCC 110 was doing ant removal in the condominium units and sent out a notice asking unit owners to confirm they wanted the service. Mr. Slee and Ms. Harsant wrote to say that they were dealing with the issue on their own and did not want the exterminator in their unit. They then left the country. There was a security camera set up in their unit and on it Mr. Slee and Ms. Harsant saw strangers entering their unit. PCC 110 says that there was a miscommunication and the exterminators were not told to stay out of Mr. Slee and Ms. Harsant's unit. Mr. Slee reports that Ms. Harsant was distressed by the incident and is having trouble sleeping. They request that a penalty be assessed against PCC 110 for this incident.

[16] It is understandable that seeing people making an unauthorised entry into your home would be distressing. However, there is no evidence connecting the alleged intimidation to the records that Mr. Slee and Ms. Harsant are requesting or to PCC 110's response to their records request. This matter is outside the scope of the

hearing.

ORDER

[17] The records that are the subject of this hearing are the following:

1. Original accounting records concerning specific dealings with Nikana, in particular scanned copies of accounting records with the appropriate accounting stamps or alternate source, accounting or approval records for the following:
 - a. all invoices, vendor credit documents and supporting accounting documents concerning the issuance of cheque number 5593 for \$2,750.00 to Nikana Group Inc. on November 24, 2020, together with the cancelled cheque number 5593;
 - b. all invoices, vendor credit documents and supporting accounting documents concerning the issuance of cheque number 3081 for \$13,403.56 to Nikana Group Inc. on December 3, 2020, together with the cancelled cheque number 3081.
2. The vendor credit documents and supporting accounting documents concerning the following transactions recorded in the PCC 110 Financial Statements of April 1, 2021 numbered 20947, 20948, 20949, 20950, 20964 and 21002, all of which concern dealings with Nikana.
3. Any other accounting records which support the reimbursement of the \$8,846 paid to Nikana to convert the guest room to a parcel delivery room.

[18] Mr. Slee and Ms. Harsant's motion to add an incident of alleged intimidation as an issue in this hearing is denied.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: March 20, 2023