

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 21, 2023

CASE: 2022-00393R

Citation: Slee et al. v. Peel Condominium Corporation No. 110, 2023 ONCAT 61

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

Member: Laurie Sanford, Member

The Applicants,

Richard Slee and Mary Harsant

Represented by Richard Slee

The Respondent,

Peel Condominium Corporation No. 110

Represented by Carol Dirks, Counsel

Hearing: Written Online Hearing – December 19, 2022 to April 10, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] Mr. Slee and Ms. Harsant, who are unit owners in Peel Condominium Corporation No. 110 (“PCC 110”), are requesting accounting records concerning specific transactions between PCC 110 and one of its contractors. Mr. Slee and Ms. Harsant consider that PCC 110 has refused them access to these records without reasonable excuse. They also object to the fee that PCC 110 is proposing to charge for access to the records.

[2] PCC 110 does not contest Mr. Slee’s and Ms. Harsant’s rights to obtain copies of the records they are seeking. It takes the position that it could not have anticipated the detailed accounting records that they request and that this constitutes a reasonable excuse for not having provided the records earlier. PCC 110 maintains that had Mr. Slee and Ms. Harsant been more specific about the records they wanted at the outset, this hearing could have been avoided. PCC 110 seeks costs of \$2,000 for what it argues are the additional and unnecessary costs incurred to respond to Mr. Slee’s and Ms. Harsant’s expanded record request made during the hearing.

[3] PCC 110 asserts that it has already provided all the records that it knows to exist. PCC 110 is requesting a fee of \$270 for the records it has provided during this hearing and for the labour involved in looking for the records, the existence of which is uncertain, and producing any records found.

- [4] For the reasons set out below, I conclude that PCC 110 did not refuse the records Mr. Slee and Ms. Harsant are requesting without reasonable excuse. The initial records requests were general in nature and became progressively more specific during the mediation of this dispute and during the hearing. It was only in the concluding stages of this hearing that Mr. Slee and Ms. Harsant were able to be very specific about which records they were seeking. These records support specific accounting entries and include a level of detail that could not have been reasonably anticipated by PCC 110 based on the earlier iterations of the requests.
- [5] Concerning the requested fee of \$270, I conclude that the portion of the fee that relates to records already provided, that is \$180, should not be allowed. To charge for records already produced denies the requestor the option to refuse the records and to avoid paying the fee. However, the amount of \$90 is a reasonable estimate of the cost to PCC 110 of attempting to locate any remaining records and provide copies of them. PCC 110 has also requested a portion of the costs of this hearing. While I agree that Mr. Slee and Ms. Harsant could have been more cooperative in specifying which records they sought, it is also fair to say that PCC 110 was occasionally unnecessarily obstructive. In the circumstances, no order for costs, other than Tribunal fees, will issue. Mr. Slee and Ms. Harsant are entitled to a reimbursement of their Tribunal fees of \$200.

B. ISSUES & ANALYSIS

[6] The issues in this case may be summarised as follows:

1. Did PCC 110 refuse Mr. Slee and Ms. Harsant the records they are seeking without a reasonable excuse?
2. Is PCC 110 entitled to a fee for the production of the records?
3. Is PCC 110 entitled to its costs in the amount of \$2,000?

Issue 1 – Did PCC 110 refuse Mr. Slee and Ms. Harsant the records they are seeking without a reasonable excuse?

- [7] Section 55 of the *Condominium Act, 1998* (the “Act”) gives condominium unit owners the right to access a range of records of the condominium corporation in which they live. Subparagraph 1.44 (1) 6 of the Act provides that a condominium corporation which refuses to permit an owner access to a record without reasonable excuse may be ordered to pay a penalty.
- [8] On May 11, 2022, Mr. Slee and Ms. Harsant made a 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.
- [9] Hearings before this Tribunal are usually preceded by mediation between the parties, facilitated by a Tribunal Member acting as mediator. Mr. Slee and Ms.

Harsant received a number of the records they wanted during the mediation. At the conclusion of that process, the statement of the records still being sought was made more specific and included, for the first time, a reference to certain accounting records.

[10] During the course of the hearing, PCC 110 provided Mr. Slee and Ms. Harsant with copies of some more of the records they requested. At the same time, Mr. Slee and Ms. Harsant modified their records request. During closing submissions, a dispute arose about which records properly remained the subject of the hearing. These records related to transactions between PCC 110 and Nikana Group Inc. ('Nikana'), a contractor of PCC 110. On March 20, 2023, I ruled that the following records remained at issue:

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:
 - i. 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; and
 - ii. 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.

[11] Mr. Jason Kwan, the condominium manager of PCC 110 gave evidence. He testified that the invoices and vendor credit documents concerning cheque number 5593 have already been provided to Mr. Slee and Ms. Harsant. Mr. Kwan testified that PCC 110 would be able to provide a scanned copy of the front and back of cheque number 5593. For any other supporting accounting documents, including accounting approval records, PCC would have to review the boxes containing the audited financial records for the fiscal year ending September 20, 2021 to determine if there are any other records available.

[12] PCC 110's position is the same regarding supporting documentation for cheque number 3081. It was Mr. Kwan's testimony that the invoices and vendor credit documents for the issuance of cheque number 3081 have already been provided

to Mr. Slee and Ms. Harsant. PCC 110 would be able to provide a scanned copy of the front and back of cheque number 3081. In order to locate and provide any other supporting accounting documents, PCC 110 would have to review the boxes containing the audited financial records for the fiscal year ending September 20, 2021 to determine if there are any other records in existence.

- [13] Concerning the records referred to in subparagraph [10] 2 above, Mr. Kwan's testimony was that all the supporting documentation for the accounting adjustments numbered 20947, 20948, 20950, 20964 and 21002 have already been produced. These include all the vendor credit documents, supporting accounting records and copies of actual invoices issued by Nikana. Mr. Kwan's testimony did not address the accounting adjustment numbered 20949. However, it based on the totality of his testimony, it seems likely that this was an oversight and that his testimony would be the same regarding this accounting entry.
- [14] Mr. Kwan testified that the only records referred to in subparagraph [10] 3 which have not been provided are a copy of cheque number 1010 in the amount of \$3,036 issued by Nikana and an extract of PCC 110's "Details of Deposits by Account" showing the posting of that amount. Mr. Kwan produced the posting of the cheque but did not produce the cheque itself. I assume, given that the cheque was deposited by PCC 110, the details of the deposit are the best remaining evidence of it. Mr. Kwan stated that he could not locate any other emails or written communications to accounting with respect to this reimbursement. He is unaware of any cover letter which accompanied the cheque and does not believe one exists.
- [15] I accept Mr. Kwan's testimony. It was detailed and provided a plausible explanation of the remaining records and what would be involved in locating the balance of the supporting accounting documents. In other testimony, Mr. Kwan said that the normal verification and back-up procedures for accounting entries were not followed during the Covid pandemic due to safety concerns. It is therefore reasonable to expect that locating supporting documentation would not be a routine matter.
- [16] The records described in paragraph 10 are very detailed and specific. PCC 110 submits that they could not have anticipated this level of required detail. I have reviewed the earlier iterations of the records requests and I agree. It was not until the closing stages of this hearing that the detailed nature of the records was clarified. I find that PCC 110 had a reasonable excuse for not providing all the records that Mr. Slee and Ms. Harsant requested prior to this hearing. It follows that no penalty under subparagraph 1.44(1)6 is warranted.
- [17] Subject to the payment of a reasonable fee, as set out below, for the production of the remaining records, I will direct that PCC 110 provide to Mr. Slee and Ms. Harsant with scanned copies of the fronts and backs of cheque numbers 5593 and 3081, together with any existing supporting accounting records for these cheques, including accounting approval records.

Issue 2 – Is PCC 110 entitled to a fee for the production of the records?

- [18] Ontario Regulation 48/01 to the Act (the “Regulation”) sets out the process to be used in accessing requested records. Subparagraph 13.3 (8) of the Regulation permits a condominium corporation to charge a fee to produce records like the ones which Mr. Slee and Ms. Harsant are requesting. The fee must be a “reasonable estimate” of the actual labour and delivery costs and the actual fee charged must be reasonable.
- [19] PCC 110 seeks a fee of \$270 for the records it produced during this hearing and for the records to be produced. It requests labour charges at \$30 an hour. The fee for the records already produced, in PCC 110’s submission, is \$180. This consists of “more than” 6 hours of work in reviewing and responding to the records requests, including contacting Nikana directly to confirm aspects of the request. For providing the scanned copies of the fronts and backs of cheques number 5593 and 3081, it is requesting half-hour fee, or \$15, based on its estimate of the time involved. For the process of retrieving, reviewing and producing any existing supporting documentation, PCC 110 estimates a further two-and-one-half hours, or \$75.
- [20] The labour rate of \$30 an hour has been found in earlier cases before this Tribunal to be reasonable for the kind of work being done and I accept it as a reasonable estimate here. While the labour of scanning cheques might be considered clerical in nature, the process of reviewing and locating detailed accounting records, which may or may not exist, will require some accounting knowledge.
- [21] My concern with the \$180 that PCC 110 is proposing to charge for records it has already produced is that this would be unfair to Mr. Slee and Ms. Harsant. Under the Regulation, the normal procedure is to provide the production fee before providing access to the documents. This gives the records requestor the option of paying the fee and gaining access, refusing to pay and declining the records or disputing the fee. By charging the fee after providing the records, Mr. Slee and Ms. Harsant are denied the opportunity to refuse the records. It was open to PCC 110 to propose the fee during the hearing. Under the circumstances, I conclude that the fee of \$180 should not be allowed.
- [22] I will allow the fee of \$90 for the records not yet produced. While half-hour for scanning the two cheques seems high, the amount of \$15 is not unreasonable. The two-and-one-half hours estimated to search for the supporting documents, if they exist, seems reasonable. The supporting documents relate to very specific transactions which should reduce the time. However, given that the Covid-19 protocols that PCC 100 was using at the time of these transactions, locating the specific documents which Mr. Slee and Ms. Harsant seek might reasonably be expected to take hours rather than minutes. It is open to Mr. Slee and Ms. Harsant to refuse to pay this fee and to decline the records.
- [23] Mr. Slee and Ms. Harsant object to paying any more on the grounds that they paid

the estimated fee after their initial records request. They also submit that the remaining records relate to dealings with only one contractor and should be easy to locate. However, as noted above, PCC 110 could not have been expected to anticipate what level of detail Mr. Slee and Ms. Harsant would want and that did not become clear until this hearing was nearly ended. Further, given the non-standard accounting methods used by PCC 110 during the pandemic, it cannot be assumed that the remaining records will be easy to find. In fact, as Mr. Kwan testified, at present PCC 110 is not sure that they exist.

Issue 3 – Is PCC 110 entitled to its costs in the amount of \$2,000?

[24] Under Rule 48.2 of the Condominium Authority Tribunal Rules of Practice, effective January 1, 2022 (the “CAT Rules”), the Tribunal will not ordinarily reimburse a party for its legal costs. However, in appropriate circumstances, costs may be awarded that directly relate to the other party’s behaviour that was “unreasonable, undertaken for an improper purpose, or that caused a delay or additional expenses”.

[25] PCC 110 is requesting \$2,000 for its costs specifically related to what it characterises as Mr. Slee and Ms. Harsant’s “expanded record requests” during the hearing. PCC 110 submits that had Mr. Slee and Ms. Harsant been specific about the records they wanted, this hearing could have been avoided. It is true that Mr. Slee’s and Ms. Harsant’s records requests evolved during the hearing. It is also true that Mr. Slee and Ms. Harsant attempted to expand on their original records request. This is not uncommon in records request cases before this Tribunal and I am satisfied that the order I made concerning the remaining records at issue was a clarification rather than an expansion of the scope of the request.

[26] There is an unfortunate history between the parties and each accused the other of various misdeeds during the hearing. Had both sides been more accommodating, it is possible that the details of the records at issue between them could have been finally established before this hearing began. Given that PCC 110 does not deny Mr. Slee and Ms. Harsant’s rights to the requested records, I agree with PCC 110 that this hearing could have been avoided. I do not agree that this was solely the responsibility of Mr. Slee and Ms. Harsant. There were times when PCC 110 seemed resistant to providing any further records. In all the circumstances of this case, no order as to costs other than Tribunal fees will issue.

[27] Under Rule 48.1 of the CAT Rules, the successful parties are generally reimbursed for their Tribunal filing fees. I am awarding Mr. Slee and Ms. Harsant their Tribunal fees in the amount of \$200.

C. ORDER

[28] The Tribunal Orders that:

1. Subject to paragraph 2, below, PCC 110 will provide Mr. Slee and Ms. Harsant with the copies of the following records concerning cheques number

5593 and 3081, both of which were issued by PCC 110 and payable to Nikana Group Inc:

- a. scanned copies of the fronts and back of cheques number 5593 and 3081 and,
 - b. any existing accounting records with the appropriate accounting stamps or alternate source accounting or approval records for all invoices, vendor credit documents and supporting accounting records concerning these two cheques.
2. PCC 110 may charge a production fee of \$15 for scanning cheques number 5593 and 3081 and \$75 for retrieving, reviewing and producing any existing supporting accounting records for these cheques, including accounting approval records. Mr. Slee and Ms. Harsant may choose not to pay these amounts, in which case they will not receive the records.
 3. PCC 110 will pay Mr. Slee and Ms. Harsant costs in the amount of \$200 in reimbursement of their Tribunal filing fees.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: April 21, 2023