

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 3, 2023

CASE: 2023-00094R

Citation: De Lint v. Carleton Condominium Corporation No. 9, 2023 ONCAT 65

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

Member: Ian Darling, Chair

The Applicant,

Carol De Lint

Self-Represented

The Respondent,

Carleton Condominium Corporation No. 9

Submission Dates: March 24 2023 - April 7, 2023

DISMISSAL ORDER

- [1] An application was submitted to the Condominium Authority Tribunal (CAT) on February 16, 2023. The CAT reviewed the application but did not accept the case. Under Rule 19.1 of the CAT's Rules of Practice, the CAT can close a case if the CAT determines that that it has no legal power to decide the dispute.
- [2] On March 24, 2023, the CAT issued a Notice of Intent ("the Notice") to dismiss the Application for the following reasons:
1. The CAT's jurisdiction is established by the Ontario Government. Ontario Regulation 179/17 contains the specific wording of the CAT's jurisdiction. The CAT does not have the legal authority to decide issues that are outside its jurisdiction.
 2. The application was filed as a dispute about records under section 55 of the *Condominium Act, 1998* (the "Act").
 3. In the problem description, the Applicant alleges that the Respondent has not provided information which relates to the board's decision not to enforce a by-law. The Applicant also argues that the Respondent is asking them to pay an unreasonable amount to obtain this record.
 4. The Applicant is a director of the Respondent, Carleton Condominium Corporation No. 9 (the "Respondent"). The Applicant argued that they require the requested information to carry out their duties as a director.

5. Section 13.3 of Ontario Regulation 48/01 under the Act sets out that the right to examine records does not apply unless the request is solely related to that person's interest as an owner.
6. The application also relates to a dispute about the conduct of the condominium manager. Allegations of condominium management misconduct is the responsibility of the Condominium Management Regulatory Authority of Ontario (CMRAO).

[3] The Applicant was asked to make submissions in response to the Notice, and the relevance of that decision. No submissions were received. In the Notice, the CAT informed both parties of a recent decision (Sharma¹) that considered similar issues. Prior Tribunal decisions are not precedent, and each case is decided on the unique facts and circumstances. However, prior decisions can inform the parties, and the tribunal about relevant considerations.

[4] In Sharma, the CAT dismissed the case since:

.. the Applicant requested the records in order to satisfy his obligations/duties as a director under section 37 of the Act, and not solely related to his interest as a unit owner.

[5] The conclusions contained in Sharma do not mean that all directors are precluded from requesting records. At times a requester's interests as an owner may overlap with their role as a director of the corporation. Each situation will require an analysis of the substance of the dispute.

[6] In this application, the problem description states that:

"as a board member having this document is essential to determine the reasoning, voting etc on the reason to not follow by-law #5. It is my fiduciary duty as a board member to know this to make informed decisions. I also feel that every other member of the board should have access to this document."

The Application demonstrates that the attempt to access the corporation's records is to fulfil their duties as a director. The Applicant did not request the record in her capacity as an owner. The Applicant did not file the CAT case as an owner. Since this dispute relates to the Applicant's role as a director, and not their interest as an owner, the issues in this application are outside of the CAT's jurisdiction.

ORDER

[7] I find that the issues that make up this dispute are not within the jurisdiction of the CAT. Accordingly, I order that this case be dismissed.

¹ Sharma v. Toronto Standard Condominium Corporation No. 2510, 2023 ONCAT 39

Ian Darling
Chair, Condominium Authority Tribunal

Released on: May 3, 2023