

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 3, 2023

CASE: 2022-00756R

Citation: Geburt v. York Condominium Corporation No. 274, 2023 ONCAT 66

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

Member: Eleanor White, Member

The Applicant,

Nancy Geburt

Represented by Peter Geburt, Agent

The Respondent,

York Condominium Corporation No. 274

Represented by Shawn Pulver, Counsel

Submission Dates: April 17, 2023 to April 27, 2023

DISMISSAL ORDER

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 2 - Mediation on January 29, 2023. The Applicant was an owner of a unit of York Condominium Corporation No. 274 (YCC-274).
- [2] Neither party has disputed that the Applicant was an owner of the unit when the application was made, nor has either party disputed that the unit was sold, with a closing date of March 23, 2023. Following this disclosure, I issued a Notice of Intent to Dismiss the case.
- [3] Under Rule 34.3 of the CAT's Rules of Practice, the CAT can close a case in Stage 2 - Mediation if the CAT determines that that it has no legal power to hear or decide upon the dispute.
- [4] For the reasons outlined below, I find the Applicant is no longer a person entitled to obtain condominium records under section 55 of the *Condominium Act, 1998* (the "Act") and I dismiss this case.

ISSUE & ANALYSIS

- [5] The Applicant filed an application with the CAT to obtain specific records, requested, but not received, from the corporation. In Stage 2 of the CAT process, an online mediation resulted in settlement terms, provisionally and broadly agreed to. The Applicant had reported the unit was listed for sale, and later in the process, as settlement terms were being finalized, confirmed in response to the Respondent's query, that the unit had been sold.
- [6] On March 24, 2023, the Settlement Agreement (SA) document was prepared and posted for parties to review and record their approval or commentary within an assigned deadline. The terms included a minor cost issue; the reimbursement of 50% of the application filing fee. The Applicant approved of the document on March 27th, however the Respondent had new concerns. I then requested of the Applicant the date of the unit's sale closing and the Applicant reported that the Applicant's termination of ownership was March 23, 2023. At that time, the Respondent made no further response to the SA.
- [7] On April 6, 2023, I issued to the parties a Notice of Intent to Dismiss (NOID) (the case). Submissions were requested.
- [8] The Applicant submitted that he would "withdraw the application...", as following the posting of the SA, he had been given the requested documents through friends, and the issues were no longer relevant. The Applicant then continued to say that "a dismissal should be contingent upon the payment of the costs as there was agreement on that settlement term on March 16, 2023".
- [9] The Respondent wrote on April 27, 2023, that his client had other concerns regarding the named Applicant and representative, but finally asked that the case be dismissed fully without costs.
- [10] The issue of concern is the Applicant's entitlement to both records of the corporation and to standing in any involvement in the current file's CAT process, as the unit's sale closed prior to the mutual approval of a SA. The SA is voided by that fact.
- [11] This finding is supported by section 55(3) of the Act, detailing not only who is entitled to the records of the corporation, but also the responsibilities of the corporation to the request.

The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations...

- [12] The Act and the Regulation, Ontario Regulation 48/01 (O.Reg 48/01), are clear in

the issue of entitlement to corporation records. Based on the circumstances of this matter, this Applicant loses their entitlement to the receipt of requested records.

- [13] The Applicant's representative, in his post-submission postings stated that he was advised that there is legal precedence of the continuation of a case through all stages of the CAT process but offered no specific citation. Upon review, I referred to a recent Motion Order ¹ concerning a similar file, in which a Motion to Dismiss was granted due to the timing of sale of the unit in dispute.
- [14] I note that in this case, the date of the closure of the sale was very close to the presentation of the SA, however the date still preceded an approval of the SA by the Respondent. The clock had run out.
- [15] Again, the Act specifies in section 55(3) of the Act that entitlement is determinative at the time of the request of the records but also when they are examined or obtained.
- [16] The issue of costs is directly tied to issues in dispute in the application. The Applicant's request for the previously discussed reimbursement of 50% of the filing fee, equal to \$37.50, as part of the dismissal is denied. The application itself cannot continue due to the change in status of the Applicant in the process, with respect to both standing and entitlement and the cost issue is directly tied to the records issues. In addition, in Stage 2—Mediation, the Member does not have the ability to order costs independently of the issues.

CONCLUSION

- [17] I find that although the Applicant had standing to submit the application to the Tribunal at the time it was filed, the Applicant's status of entitlement to the records was changed with the sale of the unit on March 23, 2023. Accordingly, this case is dismissed.

ORDER

- [18] The Tribunal orders that:
1. This case is closed in Stage 2 - Mediation under Rule 34.3 of the CAT's Rules of Practice.

¹ Baljak v. Halton Condominium Corporation No. 371, 2021 ONCAT 2

2. Any documents and messages that have been shared for this Case in Stage 1 - Negotiation and / or Stage 2 - Mediation are private and confidential. That means that the Users cannot share, or tell anyone about, messages or documents they received from other Users during these stages without the permission of the other User.
3. The Users may share a copy of any document they received during the course of this case if required by law, such as to a government organization or a court.

Eleanor White
Member, Condominium Authority Tribunal

Released on: May 3, 2023