

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 14, 2023

CASE: 2023-00373SA

Citation: Callaghan v. York Condominium Corporation No. 242, 2023 ONCAT 113

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Dawn Wickett, Member

The Applicant,
Peter Callaghan
Self-Represented

The Respondent,
York Condominium Corporation No. 242
Represented by Leza Blair, Agent

Hearing: Written Online Hearing – July 14, 2023 to August 3, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a unit owner in the Respondent, York Condominium Corporation No. 242 (“YCC 242”). The Applicant and the Respondent were parties to case 2022-00598R which they resolved by a settlement agreement dated May 30, 2023.
- [2] The Applicant alleges that the Respondent breached several terms of the agreement. Specifically, the Applicant alleges the Respondent breached the following terms:
2. The Corporation shall provide Mr. Callaghan with the president’s reports from the 2017 and 2018 AGMs within 30 days of this settlement agreement. While the Corporation does have the President/Chairperson’s reports from the 2017 and 2018 AGM, it does not have the rest and believes that they do not exist in a separate document form. However, the president’s reports were reflected in the AGMs’ minutes and Mr. Callaghan can review those to understand that information the president’s reports contained.
 3. The Corporation shall provide Mr. Callaghan with and all-inclusive payment of \$1,300 within 30 days of this settlement agreement.

5. The Edison reserve fund study shall be provided to all unit owners, including Mr. Callaghan, within 14 days of being finalized.

[7] This Settlement Agreement is confidential, meaning that all Parties and their representatives are not allowed to:

- Share this Settlement Agreement with others
- Publicly post this Settlement Agreement in any form
- Tell others about the details of this Settlement Agreement

[3] The Applicant requests an order from the Tribunal directing the Respondent to comply with the terms of the settlement agreement. The Applicant also requests that the Tribunal order a penalty against the Respondent for failing to provide him with the records by the deadline set out in the settlement agreement and an order compensating him for damages for having breached the terms of confidentiality. In addition, the Applicant seeks an order for the Respondent to reimburse the fee of \$125 paid to file this application, and \$330 which is the fee paid to the Respondent for producing the records.

[4] The Respondent does not dispute that it breached terms 2 and 3 of the settlement agreement. The Respondent's agent indicated that the breaches were inadvertent. They rectified the breaches by providing the Applicant the records and the payment when they received notice of this hearing. The records and payment were provided to the Applicant on July 7, 2023. Regarding term 5, the Respondent submits that the report was finalized on June 23, 2023, and provided to unit owners and the Applicant within the deadline set out in the settlement agreement. Regarding the issue of confidentiality, the Respondent takes the position that the information posted was "no confidential information of any materiality".

[5] For the reasons that follow, I find the Respondent breached terms 2 and 3 of the settlement agreement 2022-00598R. I further find that the Respondent did not breach terms 5 and 7 of the settlement agreement. As the Applicant was successful, I will order the Respondent to reimburse him \$125 for the cost of filing this application. I decline to make an order for compensation. Regarding the issues of penalty and the fee paid for producing the records, I do not have the authority to impose such orders in the context of this case, which is about compliance with a settlement agreement.

B. ISSUES AND ANALYSIS

Issue No. 1 - Did the Respondent breach terms 2, 3 and 5 of the settlement agreement?

- [6] The Respondent's representative for case 2022-00598R was their Counsel, and not the agent in this matter. On June 16, 2023, the Respondent's Counsel sent an email to the Applicant that she was aware of the deadlines and was going to abide by the terms of the settlement agreement. When the deadlines passed, the Applicant never received the records or payment. As such, on July 6, 2023, the Applicant filed this application with the Tribunal.
- [7] The Respondent's agent submitted that this matter could have been resolved without a Tribunal hearing had the Applicant sent an email to YCC 242.
- [8] The Applicant testified that based on the June 16, 2023, email from the Respondent's Counsel, he had no reason to believe that they were not aware of the deadlines set out in the settlement agreement, or that he needed to follow up with an email. The Applicant testified that the Respondent has a persistent history of not providing records within the prescribed time as set out in the *Condominium Act, 1998* (the "Act").
- [9] The Respondent does not dispute that it failed to provide the Applicant with the records and payment by the deadline (June 29, 2023) set out in terms 2 and 3 of the settlement agreement. The Respondent provided the Applicant with the records and payment on July 7, 2023. This was one day after the Applicant filed this application.
- [10] The Respondent's agent submitted that the record identified in term 5 of the settlement agreement was finalized and signed by the board on June 23, 2023. It was distributed to the owners on June 27, 2023, and a copy was given to the Applicant on July 7, 2023. As such, the Respondent complied with the deadline of providing the record to all unit owners, including the Applicant within 14 days of being finalized. A copy of the finalized record was submitted in evidence and confirms the board signed it on June 23, 2023.
- [11] Based on the evidence before me, I find the Respondent breached the terms 2 and 3 of the settlement agreement. In making this finding, I considered the fact that the Respondent does not dispute that it did not provide the Applicant with the records and payment by the deadlines set out in the settlement agreement. Given the Respondent has provided the Applicant with the records and payment, there is no requirement for an order they do so. However, I recommend that the Respondent improve its efforts to ensure compliance with settlement agreements as to minimize the potential for future applications being made against it.

[12] With respect to term 5 of the settlement agreement, I find the Respondent did not breach this term because the record was provided to all unit owners and the Applicant within 14 days of it being finalized. This complies with the deadline set out in the settlement agreement. A copy of the record was entered in evidence and confirms the date the board finalized the report. Further, the Applicant's evidence supports the Respondent's position that the record was distributed to all unit owners on June 27, 2023, and provided to him on July 7, 2023.

Issue No. 2 - Did the Respondent breach the terms of confidentiality set out in the settlement agreement?

[13] The Applicant testified that on June 13, 2023, the Respondent posted the March 28, 2023, board meeting minutes on its public website. The meeting minutes included an addendum which was to be restricted for viewing by other unit owners as it contained confidential information.

[14] The Applicant submitted in evidence a copy of the restricted meeting minutes that were posted to the Respondent's website. The information posted included the Applicant's name, the fact the parties were engaged in Tribunal mediation, and the issues in dispute. The Applicant stated that the information was removed on July 7, 2023, after the Applicant alerted the Respondent to the issue.

[15] The Respondent's agent submitted that "no confidential information of any materiality was revealed in the Restricted Minutes". Further, the information posted "largely spoke to how in the future, Records are to be stored and to be kept so that they are more readily available".

[16] Based on the evidence before me, I find that the Respondent did not breach the confidentiality terms of the settlement agreement. The information posted on the Respondent's public website contained details of the Tribunal's Stage 2 proceeding, but not any of the terms of the settlement agreement.

[17] It is understandable that the Applicant is upset about the information shared on the Respondent's public website. The information contained details of the Stage 2 mediation which is a confidential proceeding.

[18] I encourage the Respondent to be more diligent in its responsibility to safeguard the confidential nature of mediation proceedings. The Respondent would benefit from having its employees and board members review the CAT Rules of Practice, Rule 5.1, and the CAT User Guide: Confidentiality.

Issue No. 3 - Is the Applicant entitled to a penalty, reimbursement of fees and compensation for damages?

Penalty

- [19] The Applicant seeks a penalty against the Respondent for not providing the records by the deadline set out in the settlement agreement. The Applicant submitted that a penalty is warranted given the Respondent's longstanding history of not providing records as required. Further, it is the Applicant's position that a penalty could deter the Respondent from future breaches of its obligations under the Act.
- [20] The Respondent's agent submitted that they do not agree that a penalty should be ordered but provided no reasons in support of their position.
- [21] In making my determination about as to whether a penalty should be ordered against the Respondent, I have considered the reasoning set out in a previous Tribunal decision, *Wong v. York Condominium Corporation 43*, 2023 ONCAT 71 ("Wong"). In Wong, the Tribunal set out its reasons for declining the Applicant's request for a penalty as follows:

Once the previous CAT case was settled, the Tribunal lost any jurisdiction to address a penalty related to that dispute. The Agreement includes an acknowledgment that the terms fully resolve the issues in dispute. The matter before me relates solely to the enforcement of the Agreement. The penalty provisions for a refusal to provide records without a reasonable excuse do not apply to issues related to the enforcement of Settlement Agreements, even if the Settlement Agreement relates to providing records. In any events, there is no evidence of a refusal to provide the complete record in accordance with the Agreement. Rather, the complete record was not provided because of inadvertence.

- [22] The facts in this case are similar to those in Wong. The Applicant brought this application to the Tribunal for enforcement of the settlement agreement. Any issue related to a penalty should have or would have been addressed during the mediation process of the settlement agreement. Once the agreement was finalized, the issues in dispute were fully resolved and are now not open to be re-argued, including the issue of penalty. This means, my authority to impose a penalty ended upon the settlement agreement being finalized.

Fee for Records

- [23] The Applicant seeks an order that the Respondent reimburse him the fee (\$330) he paid for having the Respondent produce the records. This fee was paid prior the settlement agreement having been finalized.
- [24] The Respondent's agent submitted that they disagree that the Respondent be

ordered to reimburse the Applicant for the fee he paid for it to produce the records. The Respondent's agent did not provide any reasons in support of their position.

- [25] Like my finding about the issue of a penalty, my authority to order the Respondent to reimburse the Applicant the fee paid for producing the records ended when the settlement agreement was finalized. This case is about enforcement of the settlement agreement. It is not about re-arguing issues addressed during mediation proceeding. The settlement agreement resolved all issues in dispute between the parties, including all fees paid to the Respondent for having produced the records.

Compensation for Damages

- [26] The Applicant seeks compensation for damages incurred due to the breach of confidentiality. The Applicant submitted that paying damages may encourage the Respondent to "uphold the value of confidentiality clauses in settlement agreements made under the authority of the CAT". While the Applicant is upset about the breach of confidentiality, he did not provide evidence as to the impact or damage it caused him, except possible "reputational harm".
- [27] The Respondent's agent did not provide any submissions on this issue.
- [28] I decline to make such an order. For me to consider ordering compensation, I must be satisfied that the Applicant experienced damages from the Respondent's breach. The Applicant provided no evidence that he suffered damages because of the breach. He simply stated there may have been possible damage to his reputation, which is speculation and not fact.

Costs-Application Filing Fee

- [29] The Applicant seeks reimbursement of the fee paid to file this application.
- [30] The Respondent's agent submitted that YCC 242 is agreeable to reimburse the Applicant for the cost of filing this application.
- [31] The Applicant was successful in this application and the Respondent agreed to reimbursing the cost of filing this application. As such, I find it appropriate to make an order requiring the Respondent to reimburse the Applicant \$125 for the cost of filing this application.

C. ORDER

- [32] The Tribunal Orders that:

1. Pursuant to section 1.44 (1) 4 of the Act, within thirty (30) days of the date of this order, York Condominium Corporation No. 242 shall pay to the Applicant, Peter Callaghan, \$125 for the cost of filing this application.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: August 14, 2023