

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 24, 2023

**CASE:** 2022-00699R

**Citation:** Wlodarczyk v. Metropolitan Toronto Condominium Corporation No. 1359, 2023 ONCAT 117

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

**Member:** Marisa Victor, Member

**The Applicant,**  
Halina Wlodarczyk  
Self-Represented

**The Respondent,**  
Metropolitan Toronto Condominium Corporation No. 1359  
Represented by Natalia Polis, Counsel

**Hearing:** Written Online Hearing – March 10, 2023 to July 24, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, Halina Wlodarczyk, is a unit owner in Metropolitan Toronto Condominium Corporation No. 1359 (MTCC 1359), the Respondent.
- [2] The Applicant submitted one request for records to MTCC 1359 on July 6, 2022 and another one September 12, 2022. The Applicant alleges that the MTCC 1359 has not provided her with two contracts for balcony drip ledges which was the purpose of the two requests for records.
- [3] For the reasons set out below, I find that the July 6, 2022 request for records has been provided and the September 12, 2022 request for records does not exist. The Tribunal will make no order for costs.

#### **B. BACKGROUND**

- [4] MTCC 1359 entered into a July 2021 Master Contract with Talbot Park Construction Contract for its Exterior Project June 2021 (the Talbot Contract). The Talbot Contract was entered into evidence but is not a record request that is at issue in this Application. During the Talbot Contract project, MTCC 1359 added

additional work to add drip edge ledges to the balconies. This additional work is the subject of the two record requests.

- [5] In her first request on July 6, 2022, the Applicant requested “Contract with Talbot Park Construction re: Balcony drip ledges, date range 2021” (July 6, 2022 Request). On August 10, 2022, the Respondent filed its response granting the Applicant access to the record at no cost. On August 12, 2022, it delivered the requested record which was a contract dated October 15, 2021 (October 15, 2021 Contract). In response, the Applicant states that MTCC 1359 did not provide her with an adequate record. This is because the response was late and because the October 15, 2021 Contract only has one signature and MTCC 1359’s governing documents require two signatures on contracts.
- [6] The Applicant’s second record request on September 12, 2022 was for “Contract with Talbot Park Construction, P-909708, date range Dec 2021” (September 12, 2022 Request). The Respondent’s response to the request was on time. The Respondent’s position is that the second document as requested does not exist because there is no contract with the identifier P-909708. However, the Respondent did provide the Applicant with a November 3, 2021 invoice (November 3, 2021 Invoice), paid to Talbot Park Construction in the amount of \$8,938.30 and entered in the general ledger as P-909708. The invoice was for additional costs related to two work stoppages. In response, the Applicant states that the November 3, 2021 Invoice is not the document she requested.

## **ISSUES & ANALYSIS**

- [7] The issues are:
1. Do the records provided by the Respondent satisfy the Applicant’s Requests for Records under the *Condominium Act, 1998* (the “Act”)?
  2. Is the Applicant entitled to a penalty?
  3. Is either party entitled to costs?

### **Issue 2: Do the records provided by the Respondent satisfy the Applicant’s Requests for Records under the Act?**

- [8] There is no dispute that under the Act the Applicant is entitled to the records requested. The issue for me to decide is whether the Respondent has provided the records requested. In both cases, I find that the Respondent has satisfied its obligations under the Act.

## The July 6, 2022 Request

[9] The Applicant states that the Board's response to the July 6, 2022 Request was provided on August 10, 2022, which was not within the 30-day requirement in the Act and Regulations.

[10] The Applicant also states that the October 15, 2021 Contract which was provided is not adequate because:

1. Section 55(1) of the Act requires a condominium corporation to maintain adequate records;
2. It was signed by one officer and not two in violation of MTCC 1359's By-Law No 1, section 7.10 (By-Law 1);
3. The minutes of the Board meetings do not show a reference to the approval of the October 15, 2021 Contract in violation of s. 32(1) of the Act which requires a corporation to conduct its business at a meeting of directors;
4. The owners of MTCC 1359 were not notified of the project and there is a history of lack of communication from MTCC 1359 to the owners on common element projects;
5. The Treasurer of MTCC 1359 was not able to provide the overall cost of the project until it was finished in November 2021; and
6. There appears to be no approval at a Board meeting for the master contract, though it was signed by two officers on June 11, 2021.

[11] The Respondent acknowledges that the Board response was delivered several days after the prescribed 30-day period. The Respondent's witness, Christina Luik, Board Treasurer, provided an explanation for the delay. She testified in her revised second witness statement that MTCC 1359's management provider had advised the Board that the July 6, 2021 request was a duplicate request. On August 10, 2022, the management provider realised his mistake and informed the Board of the error. That same day, Ms. Luik provided the Applicant with the Board response on the prescribed form. She also testified that she was unaware of the requirement under the Act to provide a Board response to record requests within 30 days.

[12] The Respondent states that the Applicant signed off on the Board's response on August 10, 2022. The October 15, 2021 Contract was then provided to the Applicant electronically on August 12, 2022. The Respondent submits that this document was provided within two days which is within the timelines provided in

the Act and Regulations.

- [13] I find that the July 6, 2022 Board's response to the record request was sent five days after the prescribed 30-day period for a response had ended.<sup>1</sup> The Respondent has now provided a reason for the late response. The Respondent provided a copy of the requested contract to the Applicant on August 12, 2022. While there was a breach of the Regulation, the breach is minimal.
- [14] The Respondent says that the October 15, 2021 Contract is adequate and fulfills the requirements of the Act. The Respondent submits that, while Article 7.10(1) of By-Law 1 requires the Board to have two signatures on all contracts or cheques, Article 7.10(3) of By-Law 1 allows the Board by resolution and from time to time, to direct the manner in which a contract is signed. The Respondent did not provide evidence of such a resolution but states that there is no evidence that the Board did not authorize just one signature. The Respondent also states that the September 1, 2021 Board minutes show that MTCC 1359 accepted a quote which resulted in the October 15, 2021 Contract as a change to the larger Talbot Contract. The Talbot Contract does have at least two signatures in compliance with the requirement in By-Law 1.
- [15] The Respondent submits that, even if the one signature is in violation of By-Law 1, it would be beyond the Tribunal's jurisdiction to question the governance practices of the Respondent and that the proper focus should be on the record itself.<sup>2</sup>
- [16] The Respondent relies on *McKay v. Waterloo North Condominium Corp. No. 23*<sup>3</sup> where the Court stated that what constituted "adequate records" must be adequate to permit a corporation to fulfill its duties and obligation to control and manage the corporation's property and assets.
- [17] The Respondent states that the October 15, 2021 Contract is adequate because:
1. It notes what work was done: "Balcony Drip Ledges, Street permits, Traffic control, Zoom Boom.
  2. It says when the work was done: "October 15, 2021."
  3. It states that Talbot Park Construction did the work.

---

<sup>1</sup> S. 13.3(6) General, O Reg 48/01.

<sup>2</sup> The Respondent relies on *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72.

<sup>3</sup> 1992 CanLII 7501 (ON SC).

4. It states the cost as \$8,938.30.
5. It is signed and dated by both a representative of MTCC 1359 and Talbot Park Construction.

[18] In regard to s. 32 of the Act, the Respondent states that the October 15, 2021 Contract was approved by the Board as evidenced by the September 2021 Board minutes.

[19] The Respondent also relies on *Kim v. York Condominium Corporation No. 96*, (Kim)<sup>4</sup> where the CAT found that, with respect to records relating to contracts entered into by a corporation, the critical information is what was done, when it was done, who did it, and how much it cost. The CAT further stated that “this may be best contained in signed contracts.”

[20] Finally, the Respondent relies on *Ravells v. Metropolitan Toronto Condominium Corporation No. 564*,<sup>5</sup> for the proposition that the issue is not whether or not the Applicant finds the record sufficient but whether the Respondent is keeping adequate records in accordance with s. 55(1) of the Act.

[21] I find that the October 15, 2021 Contract is adequate.<sup>6</sup> As stated in *Kowalchuk v. Metropolitan Condominium Corporation No. 983*,<sup>7</sup> (Kowalchuk) “[w]hat is required of a condominium corporation is determined by the Act and its regulations.” Section 55 of the Act requires a corporation to maintain adequate records. As in *Kowalchuk*, what I am being asked here is to consider the materiality of the shortcomings. As stated above, what the Applicant requested was “Contract with Talbot Park Construction Re: Balcony Ledges”. This is what the Respondent provided on August 12, 2022.

[22] The October 15, 2021 Contract is a signed contract. The deficiency alleged is that it contains just one signature, not two. There is no requirement under s. 55 of the Act that contracts signed by corporations must contain two signatures. I am not convinced that a violation of By-Law 1 means that the record does not comply with s. 55 of the Act. Section 55 requires MTCC 1359 to maintain a “copy of all agreements entered into by or on behalf of the corporation”. The October 15, 2021 Contract is an agreement entered into on behalf of MTCC 1359. One signature versus two does not change the essential qualities of the record and does not

---

<sup>4</sup> 2021 ONCAT 124 at para 19.

<sup>5</sup> 2020 ONCAT 36

<sup>6</sup> S. 13.5 General, O Reg 48/01.

<sup>7</sup> 2023 ONCAT 84 at para 6.

prevent the reader from understanding what the contract is for. The only “adequacy” that this Tribunal can consider is the adequacy of a record under s. 55 of the Act. The Applicant may be concerned about the adequacy of this agreement as an effective contract, but that is not something this Tribunal has jurisdiction over.

[23] Further, whether or not the contract was approved at a Board meeting as required by s. 32 of the Act is not something I can consider. That is also an issue relating to the validity of the contract as opposed to the adequacy of the record under s. 55 of the Act.

#### September 12, 2022 Request

[24] The Applicant says that record provided in response to the September 12, 2022 Request is not the record she requested. She says that the November 3, 2021 Invoice is not adequate because:

1. She requested the contract that corresponds to the general ledger entry P-909708 dated November 3, 2021, not an invoice;
2. The November 3, 2021 Invoice is for exactly the same amount: \$8,938.30 as the October 15, 2021 Contract, and for the same item: balcony drip ledges;
3. There are two invoices that total \$17,876.60 but the contract was for \$8,938.30 and the Respondent has indicated that the work was not paid for twice.
4. The Respondent has not provided supporting material for the record of the general ledger transaction such as source document to substantiate the accuracy of the journal entry;
5. The payment of transaction P-909708 was not approved by the Board at a Board meeting and therefore violates s. 32 of the Act.

[25] The Applicant submits that failure to provide a record for this request is a refusal.

[26] The Respondent submits that the record as requested does not exist. It says that in correspondence with the Applicant, it had clarified the general ledger identifiers with the Applicant. The Respondent explained that the “P909708” noted in the record request was an accounting reference created by the Respondent. In responding to the September 22, 2022 Request, it also provided the entire July 2021 Master Contract that correlated to the “P909708” accounting reference - the Talbot Contract. On February 2, 2023, the Respondent amended its response to

the records request which reiterated its clarification that there was no “P909708” contract, that this number is an accounting reference, and that the Talbot Contract correlated to this reference had been produced.

- [27] Ms. Luik testified that there was no separate contract associated with the September 12, 2022 Request. The Talbot Contract allowed the contractor to subcontract and bill MTCC 1359 for that work. In this case, the subcontractor was DY Build. The Respondent states that the drip edge ledges project totalled \$17,876.00.
- [28] The Respondent states that it has provided a detailed explanation to the Applicant for why the record does not exist. The Respondent submits that no additional contract existed for the general ledger identifier of P-909708 and that instead it provided a detailed explanation as to why there were two general ledger identifiers for the same amount as well as the November 3, 2021 invoice and the Talbot Contract.
- [29] The Respondent submits that it cannot provide the Applicant with a record that does not exist. It relies on *Novak v. Peel Condominium Corporation No. 485*<sup>8</sup> where the CAT found in that case that the condominium had not unreasonably withheld records when those records did not exist.
- [30] I find that the September 12, 2022 request was a request for a record that does not exist. I accept that the evidence shows that the entry P-909708 was for an invoiced amount that was part of the Talbot Contract. The emails in evidence show that this explanation was also sent to the Applicant pursuant to her record request. This explanation is also in the Respondent’s Exterior Project 2021 Financial Summary, a document that reconciles the Talbot Contract and the reserve general ledger. It shows two payments for \$8938.30. One is for the “Talbot Park invoice October 15, 2021” with a note saying it is a change order issued by the Board to install drip edge ledges on balconies. The second is for “Talbot Park Construction Invoice November 3, 2021” with a note saying that the invoice is a final true-up payment to Talbot Park to cover costs of additional charges incurred due to two work stoppages.
- [31] The sum of the evidence shows that there is no additional contract entered into in December with Talbot Park Construction with a general ledger identifier of P-909708. At best, the identifier noted in the request refers to the November 3, 2021

---

<sup>8</sup> 2021 ONCAT 3.

Invoice which was already provided.

- [32] The Applicant may have some valid questions about how MTCC 1359 conducted its business. It is certainly unusual that the final invoice for the Talbot Contract should be identical to the October 15, 2021 Contract down to the cents, given that the amounts are for different aspects of a large project. It may be unusual that all the other numbers in the general ledger correspond with a specific contracts, not invoices. But these are not issues over which I have jurisdiction.
- [33] Based on the evidence before me, I find that the Respondent is not in breach of its obligations under the Act. The record requested does not exist and the Respondent has provided a satisfactory reason for that.

### **Issue 2: Is the Applicant entitled to a penalty?**

- [34] The Applicant is seeking a penalty of \$5,000.
- [35] Section 1.44(1)6 of the Act states that the Tribunal may make an order directing a corporation subject to a dispute under subsection 55(3) of the Act, such as is the case here, to pay a penalty. A penalty can only be ordered if the Tribunal considers that the corporation has without reasonable excuse refused to provide the record.
- [36] With regard to the July 6, 2022 Request, the only violation of the Act that I found was that the Respondent was five days late in providing its response. The Respondent conceded this and has provided a reasonable excuse, further the delay was short. The requested document was provided within approximately six weeks of the request. As stated in *Joan MacDonald v. Wentworth Condominium Corporation No. 96*,<sup>9</sup> “[l]ateness in providing a record is not necessarily a refusal per s. 144(1)6 of the Act.” I do not find that the five-day delay in providing the Board response should result in a penalty.
- [37] With regard to the September 12, 2022 Request, as explained above, the evidence does not support a finding that the Respondent has refused to provide the records without a reasonable excuse. The record requested was not provided, but there is reasonable explanation for not doing so.

- [38] Therefore, there shall be no order for a penalty in this case.

---

<sup>9</sup> 2020 ONCAT 14 at para 25.



### **Issue 3: Is either party entitled to costs?**

#### Filing Fees

[39] The Tribunal's Rules of Practice (CAT Rules) allow the me to award costs which may include an applicant's costs of filing a case with the Tribunal. If an applicant is successful, in the normal course, their filing fees are ordered to be reimbursed by the respondent.

[40] The Applicant was provided with all the documents prior to the start of the Application. While the hearing did provide the Applicant with some explanations for the delay and the reason that there was no second contract, I find that she did not have to pursue her case before the Tribunal to obtain the requested records. I therefore decline to award her the Tribunal filing fees in the amount of \$200.

#### Legal Costs

[41] The Respondent requested its legal costs in this matter. It says it provided the records requested together with explanations. It says the Applicant pursued this matter in bad faith and for an improper purpose because she had, prior to beginning this case, all the documents that existed. As a result, it says it is entitled to its costs pursuant to Rule 48.2 of the CAT Rules. The Respondent seeks its costs in the amount of \$6,907.69.

[42] Rule 48.2 of the CAT Rules states that:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[43] The CAT Practice Direction on Costs sets out further factors to be considered when ordering costs that includes whether a party's conduct was unreasonable, whether the case was filed in bad faith or for an improper purpose, and the conduct of all the parties and representatives including the party requesting costs.

[44] The Respondent states that the Applicant's conduct was unreasonable given that the requested records were provided to the Applicant prior to the start of the application. The Respondent also states that the Applicant made serious and unsubstantiated defamatory allegations against the Respondent's witness, Ms. Luik. The Respondent states that the Applicant's improper purpose was her long-standing and ongoing harassment of MTCC 1359's Board.

- [45] The Applicant submits that the Respondent's allegations about her character are unsupported by the evidence and that there are no exceptional reasons to support an order for legal costs. The Applicant states that the Respondent provided contradictory responses about records which led to the Applicant's pursuit of an answer. The Applicant states that her only purpose in pursuing the case was to obtain a ruling on whether the requested records were provided and whether they were adequate. The Applicant denies making any defamatory statements about Ms. Luik but instead pointed out inaccuracies regarding her testimony.
- [46] I do not find that this case is appropriate for awarding legal costs to the Respondent.
- [47] The Respondent's only witness was Ms. Luik, who testified that she was responsible for responding to record requests. Her affidavits were contradictory, and at times, incorrect. Her testimony required clarification and a revised affidavit. The Applicant is entitled to point out these inaccuracies in her submissions. The witness also admitted that it was only after the cross-examination that she became aware of the timelines required by the Act when responding to record requests. This may have led to some frustration on the part of the Applicant.
- [48] The Respondent also stated that the Applicant harassed the Respondent. However, all the emails I saw from the Applicant to the Respondent requesting records and clarifications were written in a respectful manner.
- [49] The Applicant is an owner of MTCC 1359. As such, under s. 55(3) of the Act, she is entitled to examine or obtain copies of the records of MTCC 1359 in accordance with the Act and Regulations. The Respondent may not like that the Applicant requests records that she, and all other owners, are entitled to, but this is what the Act allows.
- [50] On the other hand, the Applicant obtained the records she requested. Her July 6, 2022 Request was responded to five days late but then the record requested was provided to her very quickly after that. But the Applicant knew all this well before starting this Application. With regard to the second request, she did not accept the explanation that the September 12, 2022 record request was for a document that did not exist. Had she accepted this explanation, this case would not have been necessary.
- [51] It is clear there are shortcomings on both sides. I also note that this is the third CAT case between these parties since 2022. Both parties should reconsider their strategies. The Applicant fought a long battle that was unsuccessful. The Respondent has blamed the Applicant when some of the shortcomings appear to

lie with it. If the parties continue in the manner they have, I have no doubt their disputes will result in further CAT cases, further expenses, and further bad blood between these parties.

[52] No costs will be granted in this matter.

**C. ORDER**

[53] The Application is dismissed without costs.

---

Marisa Victor  
Member, Condominium Authority Tribunal

Released on: August 24, 2023