

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 20, 2023

CASE: 2023-00154R

Citation: Stancu v. York Region Standard Condominium Corporation 1055, 2023 ONCAT 134

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

Member: Dawn Wickett, Member

The Applicant,
Eugenia Stancu
Self-Represented

The Respondent,
York Region Standard Condominium Corporation 1055
Represented by Antoni Casalnuovo, Counsel

Hearing: Written Online Hearing – August 11, 2023 to September 12, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a unit owner in York Region Standard Condominium Corporation No.1055 (“YRSCC 1055”).
- [2] The Applicant brings this case to the Tribunal because she believes the Respondent has failed to provide her records in response to her request for records of November 3, 2022. The request sought to examine the following records:
1. 2021/2022 reserve fund - list of expenses grouped under mechanical/plumbing, and Interior categories names.
 2. 2021/2022 reserve fund - list of expenses grouped under fire safety and security category name.
- [3] YRSCC 1055 responded to the Applicant’s request for records by email on January 3, 2023. It provided the Applicant with a copy of the general ledger for all reserve fund related expenditures for 2021/2022 fiscal year. It is the Applicant’s position that this record does not satisfy her request because she was not provided with notes explaining the breakdown for each category of the list of expenses that she requested to examine. The Applicant takes the position that

without the notes explaining the breakdown of expenses, the details of the 2021/2022 audited financial statement does not contain adequate details. The Applicant also takes issue with the fact that the Respondent did not respond to her request for records using the mandatory board response form.

- [4] The Respondent and the Applicant disagree on the date the request for records was sent to YRSCC 1055. The Applicant claims she sent her request on November 4, 2022. The Respondent claims it was sent on December 9, 2022, and that the Applicant backdated the request form. As such, it is the Respondent's position that it had thirty days to respond starting December 9, 2022, being the date, it received the request.
- [5] The Applicant believes a penalty should be imposed on the Respondent for failing to respond to and provide the requested records within the prescribed 30-day period, and for failing to respond to her request by using the mandatory board response form. The Applicant also seeks an order requiring the Respondent to "redact" the statement of reserve fund expenses by "adding a reference note on the Notes to financial statements section, to each of 3 categories expenses". The Applicant further seeks to be reimbursed the \$200 cost for filing this application and \$300 for legal fees.
- [6] The Respondent's Counsel submitted that YRSCC 1055 has been responsive to the Applicant's requests for records by providing her the general ledger showing the list of all expenditures for the fiscal year of 2021/2022. The Respondent submits there is no other "list" beyond the general ledger. Counsel submitted that if the Applicant wants to examine further records, she can submit a new request for records to the Respondent.
- [7] The Respondent's Counsel further submitted that the details of the 2021/2022 audited financial statement are adequate, and the Respondent should not be held to the "unreasonable standard of re-itemizing all the financial documents to meet the whims of one individual." Counsel submits that this matter is not about adequacy of records, but rather about the Applicant seeking to challenge the bookkeeping and accounting practices of the Respondent. It is the Respondent's position that this application was filed for an improper purpose and is abusing the Tribunal's process. As such, the Respondent submits the application should be dismissed with an order requiring the Applicant to "obtain permission from the Tribunal before filing any future application." The Respondent seeks an order requiring the Applicant to reimburse its legal fees, on a partial indemnity basis (\$4,500), incurred to respond to this application.
- [8] For the reasons that follow, I find the Respondent did provide the Applicant with the records she requested in her November 3, 2022, request for records, and that the audited financial statement contains adequate details. However, I am not satisfied that the Respondent has complied with the requirement of sections 13.3 (6) and (7) of Ontario Regulation 48/01 ("O. Reg 48/01") as it did not provide its response to the Applicant's request for records on the mandatory board response

form. I will not make any order for costs for either party.

- [9] Both parties provided evidence, most of which was not relevant to the issues in dispute. In making my determinations, I rely on and refer to only the relevant evidence.

B. ISSUES & ANALYSIS

Issue No. 1 - Has the Applicant received the records to which she is entitled and if so, was it within the prescribed 30-day period?

- [10] The Applicant contends that she sent her November 3, 2022, request for records to the Respondent on November 4, 2022, by email. The Respondent contends that the request was sent to it by email on December 9, 2022. Having reviewed the evidence of both parties, I find on a balance of probabilities that the Applicant sent her request for records to the Respondent on December 9, 2022, and not November 4, 2022. In making this finding, I considered the emails submitted by the Applicant and the Respondent, as well as the request for records form. While the Applicant's request for records is indicated to be for November 3, 2022, the date it was completed at the bottom of the form is November 11, 2022. This demonstrates that the Applicant could not have sent it on November 4, 2022. At the very least it had to be sent on or after November 11, 2022. The most compelling evidence as to when the request for records was submitted to the Respondent, is the email dated December 9, 2022. This email was sent by the Applicant to the Respondent. Attached to the email was the Applicant's November 3, 2022, request for records. The email of November 4, 2022, which the Applicant relies on to confirm when sent her request for records, does not support her account of events. In the Applicant's November 4, 2022, email to the Respondent, she clearly indicated that she was not making a request for records, but rather seeking clarification about the reserve fund expense statement.
- [11] Now that I have determined that the Applicant's request for records of November 3, 2022, was sent to the Respondent on December 9, 2022, I can turn my mind to the first issue in dispute. Did the Respondent provide the Applicant with the requested records and was it provided within the prescribed 30-day period?
- [12] Because the Applicant back dated her request for records and sent it to the Respondent on December 9, 2022, the prescribed 30-day period started on the day it was sent. This means the Respondent had until January 8, 2023, to respond the request.
- [13] The parties do not dispute that the Respondent provided the Applicant with the general ledger list of expenditures for the 2021/2022 fiscal year on January 3, 2023. As such, I am satisfied that the Respondent provided the record within the prescribed 30-day period. The question is, does this ledger fulfill the Applicant's request.
- [14] The Applicant submits that it does not. When I asked the Applicant what records

she believes she did not receive, she stated “None of the requested ones on the Request form. The 3 category expenses shown on the Audited reserve fund statement”. Throughout the hearing, the Applicant reiterated that the Respondent failed to disclose expenses and/or explanations for the categories of interior, mechanical/plumbing, fire safety and security set out in the 2021/2022 audited financial statement.

[15] The Respondent’s condominium manager, Linda Gabriele testified that she provided the Applicant with the general ledger because it lists all the expenditures for the 2021/2022 fiscal year, including the three categories identified by the Applicant. Ms. Gabriele further testified that the Respondent does not have any other “list” of transactions to provide the Applicant. Ms. Gabriele testified that if the Applicant would like other records such as invoices for the expenditures, the Respondent is willing to provide them if a request for records is submitted. Ms. Gabriele highlighted the fact that the Respondent cannot read the Applicant’s mind to know exactly what records she is seeking to examine.

[16] Based on the evidence before me, I find the Respondent fulfilled the Applicant’s request for records dated November 3, 2022, by providing her with a copy of the general ledger list of expenditures for the 2021/2022 fiscal year. This list outlines all the Respondent’s expenses, including those related to the three categories the Applicant requested. The fact the Applicant is not satisfied and believes the Respondent should have also provided her with notes, details, or other records to fulfill her request is not reasonable. I say this because the Applicant never indicated any other type of record in her request other than a “list of expenses” for three specific categories. Essentially, the Applicant requested a list of expenses, and she was provided a list of expenses.

Issue No. 2- Did the Respondent provide the Applicant with the mandatory board response form?

[17] There is no dispute that the Respondent did not provide the Applicant with the mandatory board response form in response to her request for records.

[18] The Respondent did not provide a reason for not providing the Applicant with the mandatory board response form pursuant to section 13.3 (6) and (7) of O. Reg 48/01.

[19] Given the Applicant has received the requested records set out in her request for records, I find there is no benefit to ordering the Respondent to now provide the Applicant with a completed board response form. However, going forward I encourage the Respondent to be more diligent by using the mandatory board response form in reply to all request for records it receives. Using the mandatory form could potentially mitigate further disputes on this issue.

Issue No. 3 - Does the 2021/2022 audited financial statement contain adequate details?

[20] The Applicant submitted that the 2021/2022 audited financial statement does not contain adequate details with respect to the three following categories:

1. Interior
2. Mechanical/plumbing
3. Fire safety and security

[21] The Applicant testified that in her opinion, the above three noted categories in the audited financial statement do not provide enough details because they do not contain disclosure notes for each category or itemized descriptions. The Applicant testified that these are groupings of categories, and it does not allow her to know the itemized expenses associated with each grouping.

[22] Ms. Gabriele testified that the financial statements of the Respondent are prepared by its auditor based on the invoices received and cheques rendered. The auditor has not raised any concerns with respect to how the Respondent records its transactions. Further, the Applicant has a copy of the audited financial statement and the general ledger of expenditures for cross reference. As such, it is the Respondent's opinion that the 2021/2022 audited financial statement contains adequate details.

[23] In this matter, the Applicant's evidence demonstrates that she is concerned about the adequacy of the 2021/2022 audited financial statement as it related to the above noted categories and her need for additional information to better understand the itemized breakdown for them. In *Ravells v. Metropolitan Toronto Condominium Corporation No. 564*, 2020 ONCAT 44 ("Ravells"), assessment of the adequacy of records is based on the Act and not on whether a unit owner find the record adequate for their own purpose. Ravells states the following:

However, the extent to which the corporation's records enable an owner to gain a "true understanding of their investment" is necessarily a subjective assessment. Each owner of a corporation might have a different perspective based on their own priorities and understanding of the records. The issue before me is not whether the Applicant finds the records she received sufficient for her purposes but whether the Respondent is keeping adequate records in accordance with section 55(1) of the Act.

[24] The 2021/2022 audited financial statement is a record created by a third-party auditor. The Respondent's duty is not to create this record and ensure it contains adequate detail, but rather maintain the record once it is received. This differs from other records of the corporation such as meeting minutes where the Respondent is accountable for creating the record and ensuring it contains adequate details. The Respondent is not responsible on how or what details are set out in the financial statement as this is determined by the bookkeeping/accounting practices of the third-party auditor pursuant to the requirements set out in section 16 of the O. Reg 48/01. As such, I do not find the Respondent failed to provide adequate details in the 2021/2022 audited financial statement.

[25] The Applicant's issues with the adequacy of details contained in the 2021/2022 audited financial statement appear to stem from her own standard of booking practices for which she would prefer that the third-party auditor adopt, rather than based on the requirements set out in the O. Reg 48/01.

Issue No. 4-Should a penalty be imposed on the Respondent?

[26] The Applicant submitted that a penalty should be imposed on the Respondent for failing to provide her with the requested records within the prescribed thirty-day period, and for failing to respond to her request using the mandatory board response form.

[27] Having reviewed the evidence before me, I find a penalty against the Respondent is not warranted. Penalties are only imposed, pursuant to section 1.44(1)6 of the Act when a corporation refuses without reasonable excuse to provide records to a unit owner. The evidence in this matter demonstrates that the records were provided to the Applicant within the prescribed 30-day period. There is no basis for me to impose a penalty against the Respondent as they did not refuse to provide the Applicant records without a reasonable excuse.

Issue No.5 - Should costs be awarded?

[28] The Applicant has requested that the Respondent reimburse her the cost of filing this application, and \$300 for legal fees.

[29] The Respondent has requested that the Applicant reimburse its legal fees incurred in responding to this application. Counsel submitted that the Applicant's filing of this application amounts to an abuse of the Tribunal's process, and as such she should be ordered to pay costs. In support of his position, Counsel relied on various Tribunal cases where costs were ordered because of an applicant's behaviour and the application having been filed for an improper purpose.

[30] The Applicant did not succeed in this matter. Though I did find that the Respondent did not use the mandatory board response form when providing the requested records, no remedy flows from that. I conclude that the Applicant is not entitled to an order requiring the Respondent reimburse her the cost of filing this application nor the cost of her legal fees.

[31] Regarding the Respondent's claim for the legal fees, it incurred to respond to this application, I decline to make such an order. While the Respondent's Counsel submitted that the application was an abuse of the Tribunal's process and that the Applicant's behaviour warrants a cost order, I disagree. Although the Applicant did not obtain the relief she sought, she was entitled to file this application to determine her dispute. The Respondent's non-compliance for not using the mandatory board response form was one of the issues that gave rise to this application. As such, the Respondent shares the responsibility for this application having been filed. Further, the Applicant's conduct during the hearing was respectful and did not cause any unnecessary delays which would be a

consideration should an award for cost have been ordered. For these same reasons, I find there are no grounds to make an order requiring the Applicant be required to first obtain the Tribunal's permission to file future applications.

[32] The evidence before me demonstrates a breakdown in the relationship between the parties. Both parties made allegations of impropriety against each other. This conduct is not conducive to fostering a positive sense of community, which is essential within condominium living. Going forward, the parties would benefit from finding resolution to their differences by working together in a more collegial manner.

C. ORDER

[33] The Tribunal dismisses the application, without costs.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: September 20, 2023