

Corrected Decision

Paragraph 18 of this decision was amended to clarify the timelines for compliance with the order.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 4, 2023

CASE: 2023-00436R

Citation: Emerald PG Holdings Ltd. v. Toronto Standard Condominium Corporation No. 2519, 2023 ONCAT 188

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

Member: Laurie Sanford, Member

The Applicant,

Emerald PG Holdings Ltd.

Represented by Cameron Thomson, Agent

The Respondent,

Toronto Standard Condominium Corporation No. 2519

Represented by David Barkin, Agent

Hearing: Written Online Hearing – October 13, 2023 to November 23, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] Emerald PG Holdings Ltd. (“Emerald”) is a corporate owner of two units in Toronto Standard Condominium Corporation No. 2519 (“TSCC 2519”). This is the third time that Emerald has been obliged to apply to the Tribunal for access to a current version of what is referred to as the “Aged Receivable Report” (“ARR”) and sometimes called the “Aged Receivable Report detail by owner”. This is the third time that the Tribunal will order TSCC 2519 to provide Emerald with the ARR, this time with the ARR that is current on the date it is produced. As the previous two decisions have determined, Emerald is entitled to the ARR with appropriate redactions to protect information relating to specific units and owners.

[2] What will be different this time is that the consequences to TSCC 2519 of its continued intransigence will be more severe. TSCC 2519 will pay a penalty of \$5,000 under subsection 1.44(1)(6) of the *Condominium Act, 1998* (the “Act”). This is the maximum penalty that may be levied under subsection 1.44(3) of the Act. TSCC 2519 will pay Emerald’s costs in bringing this application in the amount of \$510 and will reimburse Emerald \$200 for its Tribunal filing fees. Additionally,

TSCC 2519 is directed to bring itself into compliance with subsection 55(3) of the Act, which sets out the entitlement to records and refers to the exceptions to that entitlement.

B. ISSUES & ANALYSIS

[3] The issues in this case are straightforward and may be summarised as follows:

1. Is Emerald entitled to receive the ARR, with appropriate redactions?
2. Is TSCC 2519 refusing to provide the ARR to Emerald without reasonable excuse and, if so, what is the appropriate amount of the penalty?
3. Should TSCC 2519 pay all or any part of the costs of Emerald?
4. What other remedies should be ordered?

Issue 1 – Is Emerald entitled to receive the ARR, with appropriate redactions?

[4] Subsection 55(3) of the Act contains a broad entitlement by owners to examine or obtain records of a condominium, including financial records, of which the ARR is one. Subsection 55(4) of the Act exempts certain records from examination, including records relating to specific units and owners. The way these sections are reconciled is by permitting a condominium corporation to redact information that relates to specific units or owners from records to which a unit owner is otherwise entitled.

[5] Two earlier Tribunal cases have considered the question of whether Emerald was entitled to receive the then current version of the ARR and whether TSCC 2519 was entitled to make redactions to protect information relating to specific units and owners. In the first, *Emerald PG Holdings Ltd. v Metro Toronto Condominium Corporation 2519*, 2019 ONCAT 5, TSCC 2519 made no response to the application. The Tribunal determined that Emerald was entitled to the ARR under subsection 55(3), although TSCC 2519 was entitled to redact information which related to specific units and owners. No penalty was awarded against TSCC 2519 in that case.

[6] In *Emerald PG Holdings Ltd. v Toronto Standard Condominium Corporation No. 2519*, 2022 ONCAT 15, the Tribunal reached the same conclusion that Emerald was entitled to the ARR and TSCC 2519 was entitled to redact information that related to specific units and owners. In this case, the Tribunal castigated both parties for the ongoing antagonism between them. The Tribunal concluded that TSCC 2519 had refused to provide the ARR without reasonable excuse and ordered a penalty of \$2,000 but no costs.

[7] The redaction of information related to specific units and owners, which TSCC 2519 did in response to the Tribunal's orders, was straightforward. The report is arranged in columns with the owner and unit numbers in single columns. Once

these columns are redacted, it is not possible to identify units or owners. There is no evidence before me that the format of the ARR has changed. However, TSCC 2519 now takes the position that:

The Corporation considered the request and determined that an aged receivable list could not be redacted and “scrambled” in a way that would prevent information relating to other units / owners being ascertained from the aged receivables report.

While aged receivable reports may have been provided by the Corporation to the Applicant in the past, the Corporation re-evaluated its past practices and determined that identifiable information could potentially be disclosed by providing a Receivables by Owner report.

- [8] The ARR is a financial record of TSCC 2519 to which Emerald is entitled under subsection 55(3). While TSCC 2519 is entitled to redact information relating to specific units and owners, it is not entitled to refuse access to the record without reasonable excuse. While TSCC 2519 now takes the position that it is no longer possible to redact identifying information, it has produced no evidence to support this bald assertion. I have reviewed ARRs previously provided by TSCC 2519 with the columns identifying units and owners redacted and I find that no information is left that relates to specific units or owners. Not all owners are listed on the ARR. Only delinquent accounts are referenced and, when the owner and unit information is redacted, what is left is the amount in arrears, aged by time outstanding. It is not possible to deduce the identity of any owner or unit. I do not accept TSCC 2519's explanation for its refusal to provide the ARR.
- [9] I conclude that Emerald is entitled to the ARR that is current on the date it is produced and TSCC 2519 is entitled to make reasonable and minimal redactions, as it has in response to the two earlier Tribunal Orders.

Issue 2 – Is TSCC 2519 refusing to provide the ARR to Emerald without reasonable excuse and, if so, what is the appropriate amount of the penalty?

- [10] TSCC 2519 has twice before been ordered to provide then current versions of the ARR with appropriate redactions. To take the position, with no supporting evidence, that it is now impossible to redact information related to specific units and owners when it has done so in the past, is not credible.
- [11] I conclude that TSCC 2519 is refusing to provide the ARR to Emerald without reasonable excuse. Moreover, this is the third time that it has done so. Although Emerald only requested a penalty of \$3,000, I believe that TSCC 2519 must understand that its conduct is unacceptable. Therefore, I am awarding the maximum penalty allowable, \$5,000.

Issue 3 – Should TSCC 2519 pay all or part of the costs of Emerald?

- [12] Emerald claims reimbursement of its filing fees with the Tribunal in the amount of

\$200. Rule 48.1 of the CAT Rules of Practice, January 1, 2022 (the “Rules of Practice”) sets out the general rule that a successful party is entitled to a reimbursement of the fees paid to the Tribunal. I will direct TSCC 2519 to pay Emerald the amount of \$200 for its Tribunal fees.

[13] Emerald also claims the amount of \$510 for its costs of this application. This amount is calculated by estimating the time spent by Mr. Thomson, the agent for Emerald, in preparing and participating in the case. The time is set at 17 hours and the per hour rate is \$30. TSCC 2519 argues that the amounts are not substantiated and, in any event, the Rules of Procedure do not contemplate an award of costs to someone who is not a legal representative. Emerald argues that although Mr. Thomson is neither a lawyer nor a paralegal, his status as an employee of Emerald means that Emerald can measure its costs of this proceeding in an objective way.

[14] Rule 49.1 of the Rules of Procedure states, “The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.” This general rule serves the purpose of keeping access to the Tribunal affordable to parties, many of whom are self-represented. However, there are exceptions. The Tribunal has a Practice Direction, Approach to Ordering Costs, January 1, 2022 (the “Cost PD”) which states, in part:

3. Factors Relevant to Deciding whether to Order Costs

When deciding whether to order a party to reimburse another party’s costs under Rule 48 and/or 49, the CAT will balance the parties’ rights and interests to arrive at a fair decision. Some of the factors that the Tribunal may consider include:

(a) Whether a party or representative’s conduct was unreasonable, for an improper purpose, or caused a delay or expense; • If the CAT determines that a party or representative’s conduct was unreasonable, for an improper purpose, or directly caused or contributed to a delay or expense for other parties, the CAT may order that party to pay some or all of the other parties’ costs.

[15] TSCC 2915’s conduct in this matter is unreasonable and caused Emerald both a delay and an expense. It is impossible to avoid the conclusion that TSCC 2519 was motivated in this case by the desire to frustrate Emerald’s legitimate claim to the ARR. There is no other obvious way to interpret TSCC 2519’s position in this case in light of the two earlier decisions on the same format of ARR. I conclude the costs of Emerald should be reimbursed.

[16] TSCC 2519 argues that Emerald has not provided any backup for its estimate of the hours spent by Mr. Thomson or the hourly rate. That is correct but I find the hours and the rate are reasonable. Mr. Thomson is an employee of Emerald and every hour he spent on this case was an hour he could not be spending on more profitable work. In all the circumstances of this case, I will award Emerald the amount of \$510 for its costs in this matter.

Issue 4 – What other remedies should be ordered?

[17] Emerald requested that TSCC 2519 be ordered to provide all future versions of the ARR that it requests. This is not appropriate as there are too many unknowns in such an order. However, subsection 119 (1) of the Act requires condominium corporations to comply with the Act. I will direct the TSCC 2519 bring itself into compliance with subsection 55(3) of the Act which sets out the entitlement to records and refers to the exceptions to that entitlement.

C. ORDER

[18] The Tribunal Orders that:

1. TSCC 2519 will provide Emerald with a copy of the Aged Receivable Report current as of the date it is provided within 30 days of the date of this Order.
2. TSCC 2519 will be entitled to make the minimal redactions required to protect information related to specific units and owners. These redactions should be consistent with the redactions made in response to previous Tribunal Orders.
3. TSCC 2519 shall pay Emerald the following amounts within 30 days of the date of this Order:
 - a. \$5,000 as a penalty for the refusal to provide the Aged Receivable Report without reasonable excuse;
 - b. \$200 in reimbursement for the fees that Emerald paid the Tribunal; and
 - c. \$510 for the costs incurred by Emerald in this application.
4. TSCC 2519 shall bring itself into compliance with subsection 55(3) of the Act within 30 days of the date of this Order.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: December 4, 2023