

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** January 9, 2024

**CASE:** 2023-00101R

**CITATION:** Zugec v. Wentworth Standard Condominium Corporation No. 566, 2024 ONCAT 8

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

**Member:** Celia Chandler, Member

**The Applicant,**

Lynda Zugec  
Self-Represented

**The Respondent,**

Wentworth Standard Condominium Corporation No. 566  
Represented by Luis Hernandez and Angie Tracey, Counsel

**Hearing:** Written Online Hearing – September 15, 2023 to December 22, 2023

### **DECISION AND ORDER**

**A. INTRODUCTION**

- [1] The Applicant is a unit owner of Wentworth Standard Condominium Corporation No. 566 ("WSCC 566").
- [2] WSCC 566, together with Wentworth Standard Condominium Corporation No. 573 and the Royal Connaught Incorporated ("RCI"), jointly operates the Shared Facility Liaison Committee (the "SFLC") which oversees shared facilities including the lobby, as set out in WSCC 566 By-law 4. The lobby appears to be an underlying issue in this case.
- [3] The Applicant brings this case in relation to a request for records made on January 21, 2023.
- [4] The Applicant requested and received copies of eight core records. The Applicant questions the adequacy of the following four core records:

1. Record of Notices of Leases (the “Record of Leases”) – the Applicant questions a discrepancy between information contained on the Notice of Leases and on Periodic Information Certificates.
2. Most recent auditor’s report – the Applicant questions why there is no auditor’s report since 2020.
3. Mutual Use Agreements – The Applicant initially received the Respondent’s By-law Nos. 4, 5, and 6 (the “By-laws”), and the Grand Lobby Agreement, but believes there are other agreements that govern the relationship among the parties of the SFLC.
4. Board Minutes – The Applicant received some minutes for the prior 12 months, but none dated after July 2022. She believes there were meetings, and therefore should be minutes, for later dates.

[5] The Applicant also requested copies of nine non-core records described in the paragraphs that follow.

[6] Of the non-core records requested, the following five were granted, but only upon payment of fees at \$35/hour. The Applicant has not paid the fee.

1. The preceding 12 months of minutes, contracts, discussions, and correspondence regarding the ongoing RCI Mediation process – WSCC 566 estimated a fee of \$280 (8 hours)
2. The preceding 12 months of minutes, contracts, discussions, and correspondence regarding the RCI lawsuit - WSCC 566 estimated a fee of \$280 (8 hours)
3. The preceding 12 months of minutes of the SFLC - WSCC 566 initially estimated a fee of \$35 (1 hour) but later denied that it has those records.
4. Latest Reserve Fund Study (“RFS”) – WSCC 566 estimated a fee of \$8.75 (.25 hour). Later, WSCC 566 provided the Applicant with the 2019 RFS. The Applicant questioned whether it was the most recent. During the hearing, WSCC 566 provided a more recent RFS.
5. Billing for parties to three Mutual Use Agreements, referred to in the request and throughout the hearing by the parties as shared facilities agreements (“SFAs”) - WSCC 566 estimated a fee of \$105 (3 hours).

[7] WSCC 566 referred the Applicant to the By-laws in response to three of her non-core record requests:

1. Three SFAs
2. A record or records describing the voting power of parties to the SFAs
3. A record or records describing the financial obligation structure of parties to the SFAs

[8] WSCC 566 denied the existence of the ninth non-core record requested:

1. Movie shoot agreements or contracts.

[9] For the reasons that follow, I find the Respondent refused to provide some documents, as described below, without reasonable excuse. I order their production. I further impose a penalty on WSCC 566 of \$2,000 and order for costs of \$200 in favour of the Applicant.

[10] Both parties provided evidence, some of which was not relevant to the issues in dispute. In making my decision, I rely on and refer only to the relevant evidence.

## **B. BACKGROUND**

[11] This is the third time these parties have been before the Tribunal on the same sort of issue, being a request for records made by the Applicant.

In the first Tribunal proceeding, *Zugec v. Wentworth Standard Condominium Corporation No. 566*, 2022 ONCAT 13, the Applicant requested a number of records, including the mutual use agreements also requested in this case. The Respondent failed to respond on the prescribed form or within the prescribed time. The Tribunal found the Respondent failed to comply with statutory provisions and, with respect to the mutual use agreements, the Tribunal ordered the Respondent to undertake a search for a number of specified mutual use agreements and provide the Applicant with a written statement that they do not exist or copies of those that do exist within 30 days of the order. The Respondent was also ordered to pay a penalty to the Applicant in the amount of \$1,000 and costs of \$200. The specified mutual use agreements referred to in that Tribunal order have not been discussed in the case before me and the parties provided no evidence about compliance with the Tribunal's order.

[12] In the second Tribunal proceeding, *Zugec v. Wentworth Standard Condominium Corporation No. 566*, 2022 ONCAT 81, the Applicant requested records related to shared facilities, including minutes from SFCLC meetings other than those in the

case before me. The Respondent again failed to respond according to the statutory requirements. With respect to the SFLC meeting minutes, the Tribunal ordered the Respondent to immediately seek copies of minutes for the period in question from the SLFC manager and provide them to the Applicant at no charge, within 30 days. The Tribunal further ordered the Respondent to pay the Applicant a penalty of \$2,000 and costs of \$200. In the case before me, the parties provided no evidence about compliance with the Tribunal's order.

### **C. ISSUES & ANALYSIS**

[13] There are four issues in this application:

1. Is the Applicant entitled to the core records at issue? Did the Respondent refuse to provide records to the Applicant without reasonable excuse? If received, was the record adequate?
2. Is the Applicant entitled to the non-core records at issue? Were fee estimates provided reasonable? Did the Respondent refuse to provide records to the Applicant without reasonable excuse? If received, was the record adequate?
3. Should a penalty be imposed against the Respondent?
4. Should costs be awarded?

**Issue No. 1. Is the Applicant entitled to the core records at issue? Did the Respondent refuse to provide records to the Applicant without reasonable excuse? If received, was the record adequate?**

#### *Record of Leases*

[14] The Applicant is entitled to and did receive the Record of Leases, redacted according to section 55(4)(c) of the *Condominium Act, 1998* (the "Act").

[15] Upon reviewing the Record of Leases, the Applicant questioned its adequacy, noting a discrepancy between the Record of Leases and recent Periodic Information Certificates ("PICs"). The Record of Leases says seven units are leased; recent PICs say over 60 units are leased, which reflects the general understanding of the Applicant's witnesses, both unit owners.

[16] PICs, however, do not form part of this application and therefore I am not going to comment on the accuracy of the information they contain.

[17] Section 83 of the Act requires owners to notify the condominium of units that are leased and maintain a record of those notices. There is no statutory requirement for the condominium to maintain a record of units it suspects are leased or to investigate whether units are in fact leased. The evidence from the condominium manager is that the condominium received notices of lease from owners as provided to the Applicant in the Record of Leases.

[18] I find the Respondent provided the record requested and that the record was adequate.

#### *Most Recent Auditor's Report*

[19] In response to her request, the Applicant is entitled to and did receive the auditor's report dated April 2020. Both parties agree this is the most recent report.

[20] The Applicant questions its adequacy, specifically why there is not a more recent auditor's report.

[21] This is a records request. This Tribunal has no authority over the frequency of audits conducted by a condominium corporation.

[22] I find that the Respondent responded with the record requested and that the record was adequate.

#### *Mutual Use Agreements*

[23] The Applicant requested Mutual Use Agreements (or shared facilities or reciprocal agreements) mentioned in section 113 or 154(5) of the Act.

[24] Section 113 refers to agreements (excluding telecommunication agreements) for the mutual use, provision or maintenance or the cost-sharing of facilities or services entered into before the meeting at which the declarant turns over responsibility for the running of the condominium to the board. Section 154(5) refers to similar agreements in a phased condominium situation which does not apply in this case.

[25] In response to this part of the request, the Respondent provided the By-laws.

[26] The Respondent also provided a copy of the Grand Lobby Agreement. The Respondent's witness, its condominium manager, states that it is the only mutual use agreement that is not contained in the By-laws.

[27] The documents and submissions provided during this hearing show that at some point, WSCC 566 believed it had validly terminated the Grand Lobby Agreement, a belief which resulted in litigation against WSCC 566. In August 2023, the Respondent advised its owners that it had settled the litigation. The Respondent confirms the Grand Lobby Agreement is in effect.

[28] The Applicant believes she should have been provided with copies of other agreements. She provided, as evidence, an example of another agreement she believes falls within the scope of a Mutual Use Agreement. It is an agreement between the three parties in the SFLC and the condominium management provider from 2020. There is no evidence before me that it falls within the scope of section 113. The Applicant has not provided any other evidence of other agreements within the scope of section 113.

[29] I find that the Respondent responded with the records requested.

#### *Board Minutes*

[30] The Applicant requested board minutes for the 12 months prior to the date of her request, January 21, 2023, core records to which she is entitled. She received some minutes, but none dated after July 2022.

[31] The Respondent agrees that there were meetings between July 2022 and the date of the Applicant's request but denies there are minutes to which the Applicant is entitled because the board had not yet approved them due to legal matters that needed to be prioritized. They have since been approved, according to the Respondent. They have not yet, however, been provided.

[32] The Respondent relies on *Nurmi v York Condominium Corporation No. 43, 2023 ONCAT 99* to support its argument that unapproved minutes are not minutes to which the Applicant is entitled, and that prioritizing legal matters that prevented minute approval is a reasonable excuse for refusing to provide more recent minutes.

[33] I do not agree with the Respondent that *Nurmi* applies in this case. In *Nurmi*, the delay was related to a desire to ensure the minutes were accurate despite transitions in board and management. In the case before me, there is no evidence provided of a similar reason.

[34] Approving minutes is not time-consuming for a board. Furthermore, during a time when a condominium was engaged in litigation, would make having decisions well-documented and confirmed by boards through the minute-approval process that much more important.

[35] I find WSCC 566 has failed to give a reasonable excuse for refusing to provide the minutes to the Applicant. I order minutes from July 2022 to January 21, 2023, the date of the Request for Records, to be provided to the Applicant within 15 days of this Order.

**Issue No. 2. Is the Applicant entitled to the non-core records at issue? Did the Respondent refuse to provide records to the Applicant without reasonable excuse? Were the fees estimated for search and preparation of records reasonable? If received, was the record adequate?**

*Preceding 12 months of minutes, contracts, discussions, and correspondence regarding ongoing RCI Mediation and RCI lawsuit*

[36] The Applicant requested documents related to (a) the mediation and (b) the lawsuit with RCI.

[37] In its response of February 2023, WSCC 566 agreed to provide them and estimated a total of 16 hours of time at \$35/hour (\$560) necessary to find and prepare records responding to these requests. The Applicant neither paid the estimated fee nor did she address her reason for failing to pay in her submissions.

[38] The parties made only passing references to these aspects of the request during this hearing. However, the evidence provided suggests that while there was a lawsuit and a mediation underway, the matter settled, as discussed in an August 4, 2023 communication from WSCC 566 to the owners.

[39] As neither party made submissions regarding the application of section 55(4)(b) of the Act, I am therefore not addressing that possible exemption to disclosure in this decision.

[40] There is no dispute that the Applicant is entitled to these records, subject to redaction, and further, I find the estimated fee is appropriate.

[41] I order the Applicant to pay the estimated fee to the Respondent within 30 days of this Order, if she wishes to continue with this part of her records request.

*Preceding 12 months of minutes of the SFLC*

- [42] The Applicant requested minutes from the SFLC for the 12 months prior to her request.
- [43] In its response of February 2023, WSCC 566 agreed to provide them and estimated one hour of time at \$35/hour to find and prepare the minutes. The Applicant neither paid the estimated fee nor did she address her reason for failing to pay in her submissions.
- [44] During the course of the hearing, the Respondent's witness, the property manager, provided evidence that the condominium does not have the minutes of the SFLC. The Applicant provided evidence that meetings of the SFLC took place during the period in question. The Respondent provided no evidence that there were no meetings held. The Respondent also provided no evidence that SFLC meeting minutes are not records of the condominium.
- [45] I order the Applicant to pay the estimated fee to the Respondent within 30 days of this Order if she wishes to continue with this part of her records request.
- [46] Upon receipt of the fee, I order that WSCC 566 seek minutes of meetings of the SFLC taking place in the 12 months prior to the current request from the shared facilities manager and provide them to the Respondent within 30 days. This is consistent with Member Bhalla's order in 2022 ONCAT 81 with respect to SFLC minutes from a previous time period.

*Reserve Fund Study ("RFS") from 12 months prior to her request*

- [47] The Applicant requested the RFS from the 12 months prior to her request.
- [48] In its response of February 2023, WSCC 566 agreed to provide it and estimated .25 hour of time at \$35/hour necessary to find and prepare it. The Applicant did not pay the estimated fee. Subsequently, the Respondent provided her with the RFS from July 2019 without payment.
- [49] During the course of the hearing, the Applicant's witness, Jessica Fabrizio, a director until October 21, 2022, provided the date of a newer RFS that was received by WSCC 566 in June 2022.
- [50] The Respondent takes the position that it provided the RFS it had in its possession at the time of its February 2023 response. Upon receiving the Applicant's



evidence, the Respondent made further inquiries and obtained the most recent RFS. It attributes its inability to locate the 2022 RFS to “a change over of the Board’s composition and management during the material time.”

[51] During the hearing, the Respondent provided the Applicant with a copy of the June 2022 RFS, without charge.

[52] Even though the Respondent did not expressly refuse to provide the RFS, its failure to maintain its records competently and carefully in this regard is an inexcusable dereliction of duty to the unit owners that is tantamount to refusal. A RFS is a document of the corporation, not of any particular board or property management company. Furthermore, not having access to the most recent RFS, if true, would limit a condominium manager’s ability to provide good advice to directors in their decision-making and a board’s ability to make informed decisions.

*Three Shared Facilities Agreements (SFAs) and records related to Voting Power and Financial Obligation Structure of three condos under the three SFAs*

[53] The Applicant requested three SFAs as well as records related to the voting power and financial obligation structure of the three condominiums which are parties to those SFAs.

[54] In its response of February 2023, WSCC 566 reasonably assumed that this part of her request referred to three SFAs that comprise part of the By-laws, to which access was given as core records. WSCC 566 further indicated that the voting power and financial obligation structure was contained within the By-laws.

[55] I find, upon reviewing the evidence, that the Applicant received the records she requested and that those records received were adequate.

[56] While there is no requirement in the Act to create records explaining other records, and nor do I have authority to order this, in the interests of complying with the open book principle referred to above, WSCC 566 may wish to create more user-friendly explanations of the relationship among the parties to the SFAs.

*Billing to each of the three condos under the three SFAs*

[57] The Applicant requested copies of records showing billing to each of the three condominiums under the SFAs from the 12 months prior to her request. (Her

request was not for a copy of the financial statements for the shared facilities, although she refers to wanting financial statements in her submissions.)

[58] In its response of February 2023, WSCC 566 agreed to provide these records and estimated 3 hours of time at \$35/hour necessary to find and prepare them (\$105). The Applicant did not pay the estimated fee.

[59] There is no dispute that the Applicant is entitled to these records and further, I find the estimated fee is appropriate.

[60] I order the Applicant to pay the estimated fee to the Respondent within 30 days of this Order, if she wishes to continue with this part of her records request.

*Movie shoot agreements or contracts (shared facilities)*

[61] The Applicant requested copies of movie shoot agreements or contracts entered into related to the shared facilities.

[62] In its response of February 2023, WSCC 566 denied the existence of any such records.

[63] In the absence of evidence before me of any agreements, I find there are no records that respond to this part of her request.

**Issue No. 3. Should a penalty be imposed against the Respondent?**

[64] Under section 1.44 (1) 6 of the Act, the Tribunal may make an order directing a condominium corporation “to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under section 55 (3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.”

[65] Under section 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to \$5,000. What penalty amount is appropriate depends on the specific facts in each case. It is important to outline the basis for a penalty under the Act. In previous Tribunal decisions it has been held that the purpose of a penalty is to impress upon condominium corporations the seriousness of their legal responsibilities to comply with the provisions of the Act and to provide unit owners with a remedy when there has been non-compliance.

- [66] The Applicant submitted that the maximum penalty of \$5,000 should be ordered against the Respondent because this is the third time it has refused to provide records to her without reasonable excuse.
- [67] The Respondent submitted that this is not a case where a penalty is warranted because it didn't deny access to requested records other than those it doesn't have in its possession. All others not yet received by the Applicant are ones for which she has failed to pay the fees for their search and preparation.
- [68] As discussed above, I have found that the Respondent has refused without reasonable excuse to provide the Applicant with board minutes from July 2022 to January 21, 2023. Its failure to provide the 2022 RFS is tantamount to a further refusal. These refusals occurred despite consequences for similar behaviour having been imposed against the Respondent by this Tribunal. In the previous cases involving these parties, the Tribunal imposed first a \$1,000 penalty, and then a \$2,000 penalty. The evidence in this matter demonstrates that the Respondents have not learned from past errors and continue to demonstrate a disregard for their obligations under the Act.
- [69] In determining the quantum of the penalty, I have considered the length of the delay, the number of records not provided, and the type of record. I have also considered the Respondent's repeated non-compliance under the Act regarding requests for records. Considering these factors, I find that a penalty in the amount of \$2,000 is appropriate.

#### **Issue No. 4. Should costs be awarded?**

- [70] Neither party has requested costs other than the Applicant's request that the Respondent reimburse her the cost of filing this application in the amount of \$200. I find this reasonable in these circumstances and in accordance with Rule 48.1 of the CAT Rules of Practice, given she was partially successful in her application.

#### **ORDER**

[71] The Tribunal Orders that:

1. WSCC 566 shall provide the Applicant with board minutes from July 2022 to January 21, 2023 within 15 days of this Order.
2. The Applicant shall pay the estimated fees to the Respondent within 30 days of this Order, if she wishes to continue with these parts of her records request:

- a) 12 months of minutes, contracts, discussions and correspondence regarding ongoing RCI Mediation and RCI lawsuit;
  - b) 12 months of minutes of the SFLC;
  - c) 12 months of billings under the SFAs.
3. Upon receipt of the fee for part 2(b) of this order above, WSCC 566 shall seek minutes of meetings of the SFLC taking place in the 12 months prior to the request from the shared facilities manager and provide them to the Applicant within 30 days. If the fee is not paid by the Applicant within the 30 days of this Order, that part of her request is deemed to be withdrawn.
  4. All records provided as a result of this Order will be provided in electronic format where available. If not available electronically, the records will be provided in paper copy.
  5. Within 30 days of this Order, WSCC 566 shall pay a penalty in the amount of \$2,000 to the Applicant.
  6. Within 30 days of this Order, WSCC 566 shall pay \$200 to the Applicant for the cost of filing this application.
  7. If the penalty and costs are not paid to the Applicant within 30 days of this Order, the Applicant is entitled to off set these amounts against the common expenses attributed to her unit(s) in accordance with section 1.45 (3) of the Act.

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Celia Chandler  
Member, Condominium Authority Tribunal

Released on: January 9, 2024