

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 13, 2024

CASE: 2023-00367SA

Citation: Gagnon v. Carleton Condominium Corporation No. 331, 2024 ONCAT 20

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

Member: Marisa Victor, Member

The Applicant,

Edith Gagnon

Self-Represented

The Respondent,

Carleton Condominium Corporation No. 331

Represented by Emily Deng, Counsel

Hearing: Written Online Hearing – August 3, 2023 to December 19, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Edith Gagnon, is the owner of a unit in the Respondent, Carleton Condominium Corporation No. 331. The Applicant and Respondent were parties to CAT case 2022-00383R that they resolved on January 3, 2023, by Settlement Agreement (“SA”).

[2] The Applicant alleges that the Respondent breached several terms of the SA. Specifically, the Applicant alleges the Respondent breached the following terms:

[5] The Respondent will provide to the Applicant, by email, a copy of the February 2021 Board meeting minutes, within 1 day of the date of this Settlement Agreement.

[10] The Respondent will provide to the Applicant, by email, copies of minutes for all Board meetings that took place between April 2021 and April 2022, redacted in accordance with S.55(4) of the Condominium Act, 1998, within 3 days of the date of this Settlement Agreement.

[11] The Respondent will provide to the Applicant, by email, copies of Board

meeting minutes in which the 2019 insulation project is discussed, a copy of the associated quote, contract, and invoice for the 2019 insulation project, redacted in accordance with section 55(4) of the Condominium Act, within 7 days of the date of this Settlement Agreement. The Respondent confirms that there were no consultations made with anyone.

[12] The Respondent will provide to the Applicant, by email, a completed copy of the prescribed Board Response to Request for Records form, within 3 days of the date of this Settlement Agreement.

[13] In settlement of this matter, the Respondent will pay to the Applicant, by cheque, a lump sum in the amount of \$500.00, within 20 days of the date of this Settlement Agreement.

- [3] The Applicant requests an order from the Tribunal directing the Respondent to comply with the terms of the SA. The Applicant also requests that the Respondent pay a penalty and reimburse her for filing fees in the amount of \$125 for this application.
- [4] The Respondent disputes that it has breached the SA. It seeks its costs from the Applicant.
- [5] For the reasons that follow, I find that the Applicant has shown that the Respondent breached paragraph 10 of the SA when it did not deliver the relevant board meeting minutes in accordance with the SA. The breach has been resolved and therefore no remedy is ordered. The Applicant is entitled to her costs.

B. ISSUES & ANALYSIS

Issue 1: Did the Respondent breach paragraph 5 of the SA?

- [6] The parties agree that the Respondent provided a copy of the February 2021 board meeting minutes on January 4, 2023.
- [7] The Applicant states that she is entitled to a corrected copy of the meeting minutes. The Applicant submitted an email from the condominium manager, Cathy Basso (Ms. Basso). In that email, Ms. Basso confirmed that in relation to the ongoing hearing at the time, she had requested an extension of two days and not a postponement of the hearing as the minutes stated. Ms. Basso agreed that the minutes were inaccurate but that nothing turned on it. She also agreed to amend the minutes. The Applicant states that the Respondent must provide her with the corrected minutes.
- [8] The Respondent states that there is no other version of the minutes. The

Respondent submits that since there is no other version in the Respondent's records, it has fulfilled its obligation under paragraph 5 of the SA. I agree.

- [9] The term of the SA was for the Respondent to provide the February 2021 minutes. It has done so. There is no corrected version. Although the email chain provided by the Applicant indicates that Ms. Basso agreed to amend the minutes, it appears that this didn't happen. Any changes to board meeting minutes need to be approved by the board of the corporation. This did not happen, so the current minutes remain the official minutes. As such, the Applicant has been provided with the official minutes for February 2021 and the Respondent met its obligations under this paragraph of the SA.

Issue 2: Did the Respondent breach paragraph 10 of the SA?

- [10] The parties agree that the Respondent provided copies of the April 2021 to April 2022 board meeting minutes on January 6, 2023.
- [11] The Applicant states that these minutes are incomplete and inadequate. She states that some of the minutes only include agendas and are inadequate because they don't contain basic information.
- [12] The Respondent states that the Applicant has not submitted evidence to support her position, which is based on the Applicant's own view of what the minutes should say. The Respondent submits that while some minutes have more detail than others, this does not render them inaccurate or inadequate. I agree.
- [13] The words of the SA were that the Respondent was to provide its records, namely the minutes from April 2021 to April 2022. The parties agree that these have been provided.
- [14] It is not necessary for me to determine whether the SA included an implied term that the records also be adequate. I find that the minutes provided included information about the date, who attended the meeting, the issues discussed, and decisions made. They were certainly not overly detailed but that is not the standard that the Respondent is held to. What is in the minutes is enough to satisfy the basic requirements of minutes.

Issue 3: Did the Respondent breach paragraph 11 of the SA?

- [15] The Applicant states that the Respondent only provided a draft version of the annual general meeting ("AGM") minutes which were not part of the SA, two quotes (one of which was for an unrelated project), an unsigned contract and a July 9, 2019 invoice. She states that the Respondent failed to provide the relevant

board meeting minutes and the relevant June 25, 2019 quote.

- [16] In relation to the quote, the Applicant states that she was able to locate the relevant quote herself and uploaded it as evidence in this proceeding.
- [17] In relation to the minutes, although the Applicant agrees that she was already in possession of some of the relevant minutes in draft form due to a previous CAT case, she says she had requested final copies as part of the SA. The Applicant states that the final versions of those minutes were not provided by the Respondent.
- [18] The Respondent states that it provided a copy of the 2019 AGM minutes in which the 2019 insulation project was discussed, a copy of the quote, contract, and invoice for that same 2019 project.
- [19] The Respondent concedes that it did not provide copies of the board meeting minutes in which the 2019 insulation project was discussed. It states that at the time it complied with the SA, it was unable to locate any relevant board meeting minutes. It also believed that the Applicant already had in her possession some of the minutes due to a previous CAT case.
- [20] The Respondent states that it provided a copy of the AGM minutes in lieu of the board meeting minutes because it could not locate the board meeting minutes referred to in the SA. Its position is that this record was a reasonable alternative to the board meeting minutes it could not locate. It believed the AGM minutes would be relevant because of their content, even though they weren't part of the SA. Initially it provided a draft of the AGM minutes in error. It provided the final 2019 AGM minutes during this proceeding.
- [21] During the course of these proceedings, the Respondent states that it conducted a further search of its records and located the relevant 2019 board meeting minutes. These were then provided during this proceeding.
- [22] With regard to the quotes, the Respondent submits that its position is that the SA does not require it to provide all copies of the quotes obtained in relation to the 2019 insulation project. The Respondent provided a further quote as part of the late evidence response in this proceeding, dated May 25, 2019. It submits that although the quote was not previously provided, it was produced verbatim in the July 9, 2019 invoice which it did provide, and which set out the details of the quote. Its position is that the Applicant was already in possession of the information she requested during this proceeding.

- [23] The Respondent states that it made good faith efforts to comply with the SA. It says that any error in its record search has now been corrected and therefore there are no other reasonable remedies available.
- [24] I find that the Respondent did breach paragraph 11 of the SA by failing to provide the 2019 board meeting minutes that discussed the insulation project. The evidence establishes that not all the relevant board meeting minutes were provided, and that the “in lieu” document provided was a draft of the AGM minutes which also did not satisfy the SA. When the Applicant was able to locate the relevant board meeting minutes by other means, this not only showed that these records existed and were relevant, but also that the Respondent had not met its obligations under this paragraph of the SA.
- [25] With regard to the quote for the insulation work, the Respondent didn’t actually provide the requested quote. It provided an invoice which included the quote. Until this proceeding, the Applicant would not have known that the actual quote was the same as the invoice quote since it had not been provided. Nevertheless, in this case, the breach is minor because the quote has been provided, and in the end, it was the same as that provide in the invoice, therefore the Applicant was already in possession of the information she was seeking.
- [26] I find that the Respondent was only required to provide the actual quote, and not other quotes that were not accepted. This is because the wording of the SA states that the Respondent will provide “a copy of the associated quote” (emphasis added). However, in the spirit of cooperation, it could have provided any additional quotes given that their interpretation turns on the word “the” and that there are some language differences among the parties. Nevertheless, I do not find that the Respondent breached its obligations in relation to this item.
- [27] Finally, the Respondent provided a copy of an unsigned contract. It states that this complies with the requirements of the SA. It relies on the decision in *Harrison v. Toronto Standard Condominium Corporation No. 2714*, 2021 ONCAT 55¹ where, in a similar case, the Tribunal found that a quote provided (which lacked proof of having been accepted) pursuant to a settlement agreement was still enough to satisfy the settlement agreement. I agree with that reasoning here.
- [28] Although the copy of the contract provided was unsigned, there is no evidence that suggests this is not the contract entered into. The Applicant now has the quote, the contract, and the invoice. The lack of the signature, though frustrating for the

¹ 2021 ONCAT 55 at para. 25.

Applicant, does not mean that the Respondent has not complied with the requirements of the SA which were to provide a copy of the contract.

Issue 4: Did the Respondent breach paragraph 12 of the SA?

[29] The Applicant states that the Respondent provided a copy of the prescribed Board Response to Request for Records form (the “Board Response”) but that it was inadequate because it did not include accompanying statements that explain the reason for the redactions in the board meeting minutes.

[30] The Respondent states that the only obligation under this paragraph was to provide the Board Response and it did so.

[31] The Respondent states that, while not relevant to this item, a general statement regarding the redactions was set out in the SA terms. This statement was that redactions would be made in accordance with section 55 (4) of the *Condominium Act, 1998* (the “Act”). The Respondent submits that this satisfies its obligation.

[32] I find that the Respondent has not breached paragraph 12 of the SA. The exact wording of that paragraph is found above in paragraph 2 of this decision. The requirement was for the Respondent to provide the Board Response and it has done so.

Issue 5: Did the Respondent breach paragraph 13 of the SA?

[33] The Applicant states that the Respondent breached the SA when it failed to deliver the \$500 cheque within 20 days.

[34] The Applicant states that although the Respondent says it delivered the cheque on January 13, 2023, she never received the cheque. She contacted the Respondent on June 19, 2023 to ask where the cheque was. She received the new cheque on July 5, 2023.

[35] The Respondent states that it made a genuine effort to deliver the cheque on January 13, 2023. It was not aware that the Applicant had not received or cashed the cheque until many months later and then it re-issued the cheque and delivered it to the Applicant.

[36] I find that the Respondent made a genuine effort to deliver the cheque. Once it was informed that the cheque was not received, it issued a new one. The Applicant confirms she has received the replacement cheque. Therefore, I find that the Respondent has complied with the SA.

[37] This issue exemplifies how the parties have failed to communicate to resolve their issues. The Applicant could have raised her concerns about the cheque sooner but chose to wait several months before notifying the Respondent that she had not received it. She was not obligated to inform the Respondent sooner, but her decision to do so explains why it took months for the Applicant to receive the cheque.

[38] This issue was resolved before this hearing began. Since the cheque was provided, there is nothing for me to order.

Issue 6: Is the Applicant entitled to a remedy, including a penalty?

[39] The Applicant seeks an order for records she believes are outstanding. I decline to make such an order as the evidence does not show any further missing documents. The Applicant has obtained the records she requested pursuant to the SA.

[40] The Applicant also requested that I draft a detailed summary of the case so that owners could be made aware of the facts. I decline to make such an order as this hearing was confined to the issue of whether or not the SA was breached. This hearing did not require or result in an overall review of the facts of the previous case that resolved in the SA.

[41] Finally, the Applicant seeks a penalty due to the Respondent's refusal to allow her to examine records she is entitled to without a reasonable excuse.

[42] The Respondent relies on *Callaghan v. York Condominium Corporation No. 242*, 2023 ONCAT 113 ("Callaghan")² for the position that the Tribunal does not have the authority to award a penalty in cases involving enforcement of a SA. This is because the penalty provisions available under the Act do not apply to the enforcement of a settlement agreement. The Tribunal held that once a settlement agreement is finalized, the issues are fully resolved. A dispute about compliance with a settlement agreement does not open up anew the initial issues.

² 2023 ONCAT 113 at para. 21-22.

[43] I agree with the reasoning in Callaghan. I do not have the jurisdiction to order a penalty under section 1.44 (1) (6) of the Act because those powers do not apply to the enforcement of a settlement agreement. However, under section 1.47 (6) of the Act, if I find that a party has contravened a settlement agreement, the Tribunal does have the power to “make an order that it considers appropriate to remedy the contravention.”

[44] There were some minor breaches of the SA with relation to the delivery of the board meeting minutes. However, I decline to order any remedy under section 1.47 (6) of the Act as the issues have been satisfactorily resolved.

Issue 7: Is either party entitled to costs?

[45] The Applicant seeks her costs of \$125 for filing this application. The Applicant was partially successful, most notably on the issue of the 2019 board meeting minutes. This proceeding resulted in the delivery of further records in compliance with paragraph 11 of the SA. These were delivered as a result of the proceeding. Therefore, the Applicant is entitled to her filing costs of \$125.

[46] The Respondent says that it is entitled to its costs in the amount of \$16,732.46, which is a substantial indemnity of its actual costs (\$18,591.62). The Respondent states that it is entitled to its costs because the Applicant brought an unnecessary and improper proceeding, and her conduct was unreasonable throughout the case, and this resulted in a prolongation of the case. The Respondent further states that the Applicant had an improper purpose for bringing this case which was to use the SA as a sword against the Respondent. It points to eight different record requests and four CAT cases against the Respondent since 2019.

[47] The Respondent relies on *Scott v. Peterborough Condominium Corporation No. 16, 2022 ONCAT 72*³ where the Tribunal found that patience, flexibility, and communication between the parties would more effectively resolve the issues. I fully agree with that statement and note that it applies to both parties here.

[48] I agree that it appears that the Applicant did not provide a genuine opportunity for the Respondent to resolve the dispute before commencing this CAT case, because the Applicant did not communicate her dissatisfaction with the records received until the deadline to file a CAT case was near. She also did not advise that she had not received the \$500 cheque until, again, the deadline to file this CAT case was drawing near.

³ 2022 ONCAT 72 at para. 12.

[49] Nevertheless, I find that both parties were respectful throughout the proceeding. I also note that the Applicant withdrew a number of issues at the start of the hearing with the aim of having a more focused proceeding.

[50] As a result, I do not find that this case is one where the Respondent's legal costs should be awarded.

[51] The parties have been through a number of proceedings in only a few short years. It does not seem productive for either party to continue in this fashion. Both parties should reconsider their strategies going forward and engage more proactively in communication prior to launching a CAT case.

C. ORDER

[52] The Tribunal orders that:

1. Within 30 days of the date of this decision, the Respondent is ordered to pay the Applicant her filing fees of \$125.
2. In the event that the full amount of the penalty and costs are not provided to the Applicant within 30 days of this Order, pursuant to section 1.45 (3) of the Act, the Applicant is entitled to set off all remaining amounts due against the common expenses attributable to the Applicant's unit.

Marisa Victor
Member, Condominium Authority Tribunal

Released on: February 13, 2024