

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 15, 2024

CASE: 2023-00485R

Citation: Govindu v. York Condominium Corporation No. 456, 2024 ONCAT 25

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

Member: Mary Ann Spencer, Member

The Applicant,
Franklin Govindu
Self-Represented

The Respondent,
York Condominium Corporation No. 456
Represented by Greg Marley, Counsel

Hearing: Written Online Hearing – December 7, 2023 to February 7, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] Franklin Govindu is the owner of a unit of York Condominium Corporation No. 456 (the “Respondent” or “YCC 456”). On July 14, 2023, he submitted a Request for Records in which he requested copies of e-mails he sent to the corporation from June, 2021 to November, 2022. His position is that YCC 456 has refused to provide the records without reasonable excuse and he requests that a penalty be assessed; he alleges that the e-mails were deleted from the corporation’s records by its former condominium manager and that the corporation’s current condominium manager and its board of directors are “covering up” this fact to protect that former manager. He requests his costs in this matter.
- [2] YCC 456 requests that this matter be dismissed. It submits that the Request for Records was not properly delivered to the corporation. Should the Tribunal reject that argument, it submits that it has not refused to provide the requested records. Rather, it cannot readily produce them because the corporation’s past e-mail correspondence is in an electronic format that cannot be searched. Further, YCC 456 submits that the evidence is that Mr. Govindu already possesses the requested records. It requests payment of its legal costs in this matter on a partial indemnity basis.

[3] For the reasons set out below, I find that YCC 456 has not refused to provide the records without reasonable excuse. I find that Mr. Govindu had the records he requested in his possession when he made the Request for Records and that he filed his application with the Tribunal for the purpose of sanctioning a former condominium manager. I order him to pay YCC 456 \$500 in costs.

B. BACKGROUND

[4] On July 14, 2023, Mr. Govindu submitted, by e-mail, a Request for Records form in which he requested “a copy of all e-mails sent to Maple Ridge Community Management (“MRCM”) from June 2021 to November 2022.” In his accompanying e-mail addressed to Jim O’Neill, the senior vice-president of current condominium management services provider Integrity Property Management (“IPM”), he explained that the requested e-mails were sent to YCC 456 and MRCM and they all related to the replacement of hot and cold-water valves in his unit and the associated charges for that work. MRCM was YCC 456’s condominium management services provider until December 1, 2022, when IPM took over.

[5] Mr. Govindu’s testimony is that he received no response from Mr. O’Neill. He filed his application with the Tribunal on September 9, 2023. On October 12, 2023, Property Administrator Sahil Sadioura e-mailed Mr. Govindu a Board Response to Request for Records form. The response states that the request is refused, with the explanation “We do not have the documents. We are still trying to get them but at this time, we don’t have anything to deliver.”

[6] Mr. O’Neill testified that the corporation’s e-mail records were not turned over to the corporation by MRCM when its contract ended. He testified that MRCM was contacted when IPM realized it did not possess all of the records and an electronic file was provided. MRCM had difficulty accessing the file. Mr. O’Neill further testified that MRCM was contacted again in July, 2023 after receipt of Mr. Govindu’s request and provided IPM with a flash drive which it indicated contained Mr. Govindu’s e-mails. However, the files could not be retrieved from the drive. IPM then sought the assistance of its information services provider and the file was successfully opened. However, the file contains all of the corporation’s past e-mail correspondence and is not searchable. Therefore, each e-mail must be opened and read. He stated that IPM staff were working their way through the file and that Mr. Govindu’s request would be fulfilled when the requested e-mails were found.

[7] On December 18, 2023, YCC 456 disclosed copies of 24 e-mails Mr. Govindu sent to the corporation between June 24, 2021 and November 26, 2022. These were e-mails which Mr. Govindu had submitted with a Small Claims Court Statement of Claim he filed against the corporation but subsequently abandoned. Mr. Govindu

states that these are not all of the e-mails responsive to his Request for Records.

C. ISSUES & ANALYSIS

- [8] The first issue to be addressed in this matter is YCC 456's request that Mr. Govindu's application be dismissed because his Request for Records was not properly delivered. Section 13.3 (4) (d) of Ontario Regulation 48/01 ("O. Reg. 48/01") states that a request is "sufficiently delivered" if it is:

sent by facsimile transmission, electronic mail or any other method of electronic communication if the board has, by resolution, decided that it is a method for receiving delivery of the request.

Greg Marley, counsel for YCC 456, submits that the application should be dismissed because YCC 456's board has made no such resolution. Mr. Govindu disputes this, arguing that the board made a resolution in December, 2022. However, the document to which Mr. Govindu refers is in fact a form to obtain an owner's consent to receive notices from the corporation in electronic format.

- [9] I am not dismissing this matter because the request was not delivered in accordance with the regulatory provisions; while Mr. Marley is correct that Mr. Govindu's request was not delivered in strict accordance with those provisions, I find that the corporation has accepted the request.

- [10] Mr. Marley referred me to the Tribunal's decision in *Florentine Financial Corporation v. Peel Condominium Corporation* No. 346, 2021 ONCAT 77 (CanLII), a case in which the Tribunal determined that the applicant's Request for Records was valid notwithstanding that it was submitted by e-mail when the respondent corporation had no resolution to accept electronic delivery. The Tribunal, at paragraph 13, wrote:

The purpose of 13.3 (4) of O. Reg. 48/01 does not seem to be to provide an opportunity for a corporation to invalidate a records request on a technicality, but rather to ensure that the corporation receives the request and has a fair chance to acknowledge and respond to the request. PCC 346 had this opportunity.

Mr. Marley submits that the case before me can be distinguished from *Florentine* because, notwithstanding that YCC 456 may have taken some steps to determine if it had the requested records, unlike the respondent in *Florentine*, it did not formally respond to Mr. Govindu until the Tribunal proceedings began. He further submits that the Tribunal erred in stating at paragraph 14 of *Florentine* that the corporation "has to" notify owners that it will not accept requests by e-mail before it

can rely on s. 13.3. (4) of O. Reg. 48/01. I disagree with Mr. Marley's reading; paragraph 14 states it is the corporation's choice to ignore owners' requests delivered by e-mail but "in the interests of maintaining a harmonious community, I would strongly encourage" the corporation to be transparent by notifying them that it would not accept e-mailed requests.

[11] The fact that YCC 456 did not respond formally to Mr. Govindu's Request for Records until it became a party to the Tribunal proceedings does not persuade me to dismiss this matter. YCC 456 could have raised this issue when it first received notice of Mr. Govindu's application. Further, it was represented by counsel in the Stage 2 - Mediation in this matter. While an argument could be made that it was in everyone's interest to participate in the mediation to attempt to resolve the matter, YCC 456 delivered the Board Response to Request for Records on October 12, 2023, undermining the strength of Mr. Marley's argument about formal response. Further, the hearing in this matter began on December 7, 2023. On December 8, 2023, I asked the parties to confirm the issues to be decided in this matter. Notwithstanding that this hearing was adjourned between December 20, 2023 and January 3, 2024, Mr. Marley had ample opportunity to submit a motion for dismissal before first raising this issue in submissions received on January 15, 2024.

[12] The remaining issues to be addressed in this matter are:

1. Has the Respondent refused to provide records requested by the Applicant without reasonable excuse?
2. If it is found that the Respondent refused to provide records without a reasonable excuse, should a penalty be assessed?
3. Should the Tribunal award costs in this matter?

When I requested confirmation of the issues, Mr. Govindu raised a number of matters that are outside the jurisdiction of this Tribunal. These included that owners have no direct e-mail access to YCC 456's directors; that minutes of board meetings are not routinely distributed; that what he described as an "illegal" lien was placed on his unit in March, 2023; and, that a "libellous" letter about him had been distributed to YCC 456's owners in September, 2023. He alleged that YCC 456's directors have violated the standard of care which s. 37 of the *Condominium Act, 1998* (the "Act") requires them to exercise. He also alleged that a former condominium manager employed by MRCM deleted his e-mails and should be sanctioned. He advised that he was seeking \$30,000 in compensation. I advised Mr. Govindu that the Tribunal's jurisdiction as set out in Ontario Regulation 179/17 is limited and that I would only be considering evidence on the issues related to his

Request for Records.

Issue No. 1: Has the Respondent refused to provide records requested by the Applicant without reasonable excuse?

- [13] There is no dispute between the parties that Mr. Govindu is entitled to receive copies of the e-mail records he requested in his July 14, 2023 Request for Records. There is also no dispute that no records were provided until December 18, 2023 when YCC 456 disclosed copies of e-mails Mr. Govindu had included in a Statement of Claim he filed in Small Claims Court. Both parties take the position that the initial failure to provide the records was because YCC 456 did not have them; however, their positions vary significantly with respect to the reason that YCC 456 could not produce them.
- [14] Mr. Govindu alleges that YCC 456 did not have copies of the e-mails he sent to the corporation because an employee of MRCM deleted them. He testified “I know this for a fact because in November of 2022, the last administrator that worked for MRCM at YCC 456 told me that there were no e-mails from me on the YCC 456 computer.”
- [15] YCC 456’s position is that the corporation’s e-mail records were not transferred from MRCM when IPM took over as its management services provider on December 1, 2022. Further, while IPM subsequently obtained a file from MRCM, that file is not searchable. Rather, it contains thousands of e-mails which must be viewed individually. The corporation is prepared to provide the records when it locates them. Mr. Marley also notes that unlike some records of a corporation, such as Periodic Information Certificates, owners’ e-mails are not records which a corporation can re-create from other information it holds.
- [16] At paragraph 55 of its decision in *Jasper Developments Corp. v. York Condominium Corporation No. 82*, 2022 ONCAT 4 (CanLII), the Tribunal found that a corporation could not rely on the failure to transfer records as a reasonable excuse for refusing to provide them:

That a condominium management provider did not turn over records does not abrogate a corporation’s responsibility to both create and maintain records in accordance with its obligations under the Act. The Respondent should have taken steps to ensure the records were both created, which is unclear in the case of both the PIC’s and the minutes of board meetings, and that the records were properly turned over during the transition between management companies.

In the case before me, the evidence is that IPM quickly realized that it had not received the e-mail records of the corporation and took steps to address this. The

Respondent provided documentary evidence of correspondence between the two management companies dating from December 14, 2022 to January 5, 2023 which indicates that IPM had requested and had received a file of YCC 456's e-mail correspondence from MRCM but that it was having difficulty accessing it. It is somewhat unclear whether YCC 456 abandoned its attempts to open the file at that time. However, on June 12, 2023, Mr. Govindu sent an e-mail to IPM requesting a copy of a November 25, 2022 e-mail he had sent to the corporation. In his June 22, 2023 response, Mr. O'Neill replied stating that the corporation was working to retrieve old e-mails from MRCM.

- [17] Mr. O'Neill testified that after receiving Mr. Govindu's Request for Records on July 14, 2023, IPM again contacted MRCM and asked for a copy of Mr. Govindu's e-mails. It then received a flash drive which he expected would contain them. However, IPM could not access the information on the flash drive. After this matter was before the Tribunal, YCC 456 asked its information services provider, YL Skynet Inc., for assistance. The invoice from that firm indicates that it was able to open and download the file on October 25, 2023. However, the file contained all of YCC 456's e-mail records. Mr. O'Neill's testimony is that the records are not searchable and that staff have to review each e-mail individually in order to find those requested by Mr. Govindu. He testified that this work is underway but because staff's time is limited, he could provide no estimated time frame for its completion.
- [18] Mr. Govindu disputes the corporation's evidence. Because Mr. O'Neill referred to records obtained from MRCM in both December, 2022 and July, 2023, he argues that the evidence is unreliable and therefore must be untrue. Further, he appears to have interpreted YL Skynet Inc.'s invoice to mean that the flash drive was picked up from MRCM rather than IPM in October, 2023. He questions why the corporation did not ask for another copy of the file if the July 2023 file was corrupted as Mr. O'Neill testified. I note, however, that Mr. O'Neill testified that MRCM advised IPM that it had no difficulty opening the file and therefore the problem appeared to be IPM's to address.
- [19] Mr. Govindu submitted a detailed argument disputing that the file format was not searchable, apparently basing his arguments on his reading of the invoice from YL Skynet Inc. When questioned, he advised that he has no training in information technology but had retained an IT consultant. Later, when asked to provide substantiation of his cost claim for consulting fees, he advised that his consultant was in fact a paralegal who had referred him to an IT professional. In his closing submission, he stated that he had contacted YL Skynet directly and that the individual to whom he spoke knew nothing more than what was contained in its

invoice. Therefore, he characterizes the invoice as “inauthentic”. He also accuses both Mr. O’Neill and Mr. Marley of lying throughout this proceeding in order to deceive the Tribunal and “to hide a crime”, the “crime” being what Mr. Govindu alleges was the deliberate deletion of his e-mails by MRCM’s employee.

[20] The documentary evidence supports that IPM contacted MRCM to obtain the missing e-mail records of the corporation almost immediately after it took over as YCC 456’s condominium management services provider. And I find no reason to doubt Mr. O’Neill’s testimony that it asked MRCM specifically for Mr. Govindu’s e-mails in July, 2023; the evidence supports Mr. O’Neill’s testimony that IPM received a flash drive in response to this request and subsequently incurred the expense of seeking assistance from its information technology services provider when it could not open it. I also do not doubt the testimony that the records are not searchable. As Mr. Govindu himself noted, there is no apparent advantage to the corporation to be untruthful, particularly given it disclosed copies of the e-mails which Mr. Govindu included when he filed a Small Claims Court Statement of Claim against the corporation.

[21] When Mr. Marley asked Mr. Govindu if it was true that he had all of the requested records in his possession, he replied “what I have in my possession is private and confidential.” When I asked him to answer the question, he stated that the e-mails the Respondent disclosed were not all of those which he had sent to the corporation but he offered no information about what was missing. On a balance of probabilities, I find that Mr. Govindu does in fact have all of the records in his possession. On June 12, 2023, when he asked for a copy of a November 25, 2022 e-mail, he included a copy of an October 25, 2022 e-mail’s header in his request “as just some detailed information.” This suggests that the November date was an error and that he in fact already had the e-mail he was requesting. Further, the fact that he was able to produce the e-mails to support his Small Claims court Statement of Claim indicates he has maintained his own records.

[22] The evidence indicates that YCC 456 has made all reasonable efforts to provide the requested records. I accept Mr. O’Neill’s testimony that the files are not searchable and, as Mr. Marley submitted, that there are thousands of e-mails which must be reviewed individually in order to respond to Mr. Govindu’s request. Therefore, I find that YCC 456 has not refused to provide records without reasonable excuse.

[23] Further, I am not ordering YCC 456 to continue to work to produce the requested e-mail records. I have found on a balance of probabilities that Mr. Govindu has copies of the records in his possession. It would not be reasonable in these

circumstances to order the corporation to expend the staff time which would be needed to locate further copies.

Issue No 2: If it is found that the Respondent refused to provide records without a reasonable excuse, should a penalty be assessed?

[24] Section 55 (8) of the Act provides for the payment of a penalty if a corporation refuses to provide copies of records without reasonable excuse:

A corporation that without reasonable excuse does not permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing to examine or to obtain copies of records under this section shall pay a sum determined in accordance with the regulations to the owner, purchaser or mortgagee on receiving a written request for payment from that person.

Because I have found that YCC 456 did not refuse to provide records without reasonable excuse, there is no basis on which to assess a penalty in this matter.

Issue No. 3: Should the Tribunal award costs in this matter?

[25] Mr. Govindu requests costs of \$1,700 comprised of the \$200 he paid as Tribunal fees and \$1,500 in consulting fees. YCC 456 requests \$4,000, a portion of the legal fees it has incurred.

[26] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 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.

[27] Mr. Govindu was not successful in this matter as I have found that YCC 456 did not refuse to provide records without reasonable excuse. Therefore, he is not entitled to reimbursement of his Tribunal fees. Further, I am not considering his request for reimbursement of his consulting fees; although he submitted an invoice for \$1,500 for paralegal services he was not, in fact, represented in this matter.

[28] YCC 456 requests costs of \$4,000, representing partial payment of its legal fees

and disbursements which the submitted invoice indicates totalled \$12,798.27 to January 15, 2024. Approximately \$9,900 of these fees was accrued during the Stage 3 – Tribunal Decision proceeding. Mr. Marley submits that Mr. Govindu's position in this matter was unreasonable; that he knew before he submitted his Request for Records that the corporation was attempting to obtain the records because he had received the corporation's June 22, 2022 response to his June 12, 2023 request for a specific e-mail. Further, Mr. Govindu had the requested records in his possession when he submitted his July 14, 2024 Request for Records. Mr. Marley submits that Mr. Govindu was driven not by a desire to obtain copies of his e-mails but rather by a desire to prove that his e-mails to the corporation had been deleted by an employee of MRCM.

[29] The Tribunal has the discretion to award costs when behaviour is unreasonable. In this case, I am distinguishing between an unreasonable position and unreasonable behaviour. While Mr. Govindu was certainly not circumspect in choosing his words when challenging the evidence of the corporation, he generally complied with instructions and his behaviour did not disrupt or prolong the proceeding. Taking an unreasonable position is not necessarily unreasonable behaviour. And, before preparing submissions, Mr. Marley asked for and received confirmation that he did not need to address the ancillary issues I had advised Mr. Govindu that the Tribunal did not have jurisdiction to decide.

[30] However, I do find that Mr. Govindu, notwithstanding his closing submission which was more focused on whether the corporation had unreasonably refused to provide records, did make this application for an improper purpose. His submissions made it clear that he was not seeking copies of his records; while he stated that he does not possess all of the records which he requested, he offered no explanation of what was missing from the e-mails disclosed by the Respondent. Therefore, I have found that he possesses the records he sought. Rather, as Mr. Marley submits, Mr. Govindu's Request for Records and his application to the Tribunal were to prove that a former condominium manager improperly removed e-mails from the corporation's files and to have that individual sanctioned.

[31] In Mr. Govindu's combined witness statement/submission, he set out a detailed chronology of his interaction with the corporation with respect to the valve replacement in his unit and of what he indicated was a persistent ignoring of his inquiries. He set out numerous sections of the Act, including s. 37 relating to directors' standard of care and s. 38, relating to directors' indemnification, which I had already advised were not within the Tribunal's jurisdiction. He stated:

[name redacted] and MRCM must be held accountable for deleting YCC 456's records. I decided to ask for my emails, which can never be found on the YCC

456 computer, which in turn would make [names redacted] expose [name redacted], (General Licence Property Manager of the Maple Ridge Community Management), accountable for violating Condo Act s 55(1)(3) for deleting my emails.

I note he made this submission notwithstanding that I had previously advised him that condominium managers are governed by the *Condominium Management Services Act, 2015*, over which this Tribunal has no jurisdiction, and that the only issues I could address in this matter were those set out above in paragraph 12. While I acknowledge that responsibility for records maintenance is the corporation's, Mr. Govindu's submissions made it clear that he wanted the previous condominium manager sanctioned.

- [32] Mr. Govindu's submissions indicate he was aware that the corporation would not be able to provide the e-mails he requested. He testified that he had known this since November, 2022. After cross-examination questions were received in this matter, he posted a message stating that the requested records should be referred to as "copies of e-mails" to distinguish them from the original e-mails he sent. He noted that only copies of e-mails would be on the flash drive YCC 456 received from MRCM. His argument appears to be that what he is seeking is confirmation that the e-mails do not exist in the corporation's records rather than copies of the e-mails themselves which is what s. 55 (3) of the Act entitles him to receive. In his closing submission, he again maintained that an employee deleted them going as far as to submit that Mr. O'Neill has refused to acknowledge this because Mr. O'Neill himself is a former employee of MRCM.
- [33] Owners are not required to provide a reason for their requests for records and requesting copies of records an owner already possesses in and of itself may not be an improper reason. In this case, however, Mr. Govindu's concern was not that the records were not produced but rather that the individual he believes is responsible for deleting them, a fact which I note is not proven and on which no evidence was submitted other than Mr. Govindu's own statements, be held accountable. This is an improper reason for filing an application with the Tribunal. Mr. Govindu had the right to pursue his application on the records-related issues. However, because his case largely focused on sanctioning that manager, I am exercising my discretion and ordering that Mr. Govindu pay costs to the corporation.
- [34] Mr. Marley submitted that it would be unfair for the owners to pay costs which the corporation was forced to incur, particularly those related to the Stage 3 proceeding, because one owner unreasonably refused to accept the corporation's evidence. I do find that the legal fees the corporation incurred are not

proportionate to the complexity of the matter before me. The issues in this case were straightforward. Lengthy submissions were neither required nor submitted by the Respondent, although I note that Mr. Govindu did prepare over 75 cross-examination questions which required some time for both Mr. Marley's and my review. While I acknowledge that the corporation has asked for costs on a partial indemnity basis, I also recognize that Mr. Govindu is not a legal professional, notwithstanding that it appears from his own cost request that he had some assistance from a paralegal. In accordance with the *Tribunal's Practice Direction; Approach to Ordering Costs*, I have considered whether an award of costs would have a disproportionate impact on Mr. Govindu. In these circumstances, I award the corporation \$500 in costs. I recognize that this is a small percentage of its request; I make this order to discourage Mr. Govindu from pursuing unsubstantiated claims.

D. ORDER

[35] The Tribunal Orders that:

4. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this decision, Franklin Govindu shall pay YCC 456 \$500 in respect of its legal fees.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: February 15, 2024