

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 4, 2024

**CASE:** 2023-00523R

**Citation:** Skoczylas v. Peel Standard Condominium Corporation No. 954, 2024 ONCAT 31

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

**Member:** Ian Darling, Chair

**The Applicant,**

Blazej Skoczylas

Self-represented

**The Respondent,**

Peel Standard Condominium Corporation No. 954

Represented by Natalia Polis, Counsel

**Hearing:** Written Online Hearing – November 14, 2023 to February 14, 2024

### **REASONS FOR DECISION**

- [1] The Applicant, Blazej Skoczylas, filed an application with the Condominium Authority Tribunal (“Tribunal”) against the Respondent, Peel Standard Condominium Corporation No. 954 (“PSCC 954”) regarding a request for records submitted on September 1, 2023. The request was for specific core records, and for all of the non-core records from 2000-2023.
- [2] In this decision, I confirm that the Applicant has received all the records to which he is entitled. He has the requested core records. His request for non-core records is unreasonable.
- [3] During the hearing, the Applicant raised some issues that are outside of the Tribunal’s jurisdiction. The Applicant was advised that these issues were outside of the Tribunal’s jurisdiction at the start of the hearing. The Applicant continued to repeat the non-jurisdictional issues and requesting the Tribunal to order the Respondent to change its management practices (such as creating new online portals to manage records access or investing in a high-speed scanner to reduce the time to produce records). These are operational matters that are not within the

mandate of the Tribunal.

- [4] The Applicant also identified concerns with information contained in the records. These concerns were also outside of the Tribunal's jurisdiction because they relate to how the corporation is governed, and compliance with provisions in the *Condominium Act, 1998* (the "Act") over which the Tribunal has no jurisdiction.

**Has the Applicant received the records to which he is entitled?**

- [5] The evidence before me is that the Applicant has received all the requested core records. All but the Financial Statements were received within the timelines outlined in Ontario Regulation 48/01. The Applicant received the 2023 Financial Statements in November 2023 which was outside of the 30-day response period. The statements were not received from PSCC 954's auditor until November and were provided to the Applicant as soon as they were available.
- [6] The Applicant did not receive the non-core records. The Respondent asserts that the Applicant's request for non-core records was unreasonable.
- [7] The Applicant requested all non-core records from 2000-2023. PSCC 954 was registered in 2014. Therefore, there are no records between 2000-2013 and this portion of the request is moot. However, the broad time frame is relevant to the consideration of whether the request was reasonable.
- [8] After they received the request, the Respondent tried to clarify which specific non-core records were requested. The Applicant's request remained broad and general. The parties were unable to resolve the issue before the application was submitted to the Tribunal.
- [9] The Respondent described the request as unreasonable; specifically, a "fishing expedition". The Respondent cited two Tribunal decisions on his point. In *Martynenko v. Peel Standard Condominium Corporation No. 935*, 2021 ONCAT 125, the Tribunal explained the term "fishing expedition" at paragraph 31:

The term "fishing expedition" is used in law to describe a search or investigation, including demands for records or information, undertaken for the purpose of discovering facts that might be disparaging to the other party or form the basis for some legal claim against them, that the seeker merely hopes or imagines exist. Most cases where the term is used appropriately involve a person casting a wide net, as it were – such as requesting records that cover a broad period of time and/or wide range of topics – in the hopes of acquiring some fact or detail that could satisfy what is essentially an unfocussed vindictiveness or dislike for the other party.

- [10] In *Emerald PG Holdings Ltd. v. Toronto Standard Condominium Corporation No. 2519*, 2022 ONCAT 89, the applicant requested six years of records with the “explicit intent” of determining if the board of directors of the condominium was complying with the Act. The Tribunal concluded that the request was “overly broad, lacks specificity, is focussed on finding imaged wrong-doing, and meets the general definition of a ‘fishing expedition’”.
- [11] The Applicant submitted that the purpose of the request was to inquire into specific financial transactions. However, I do not find this compelling, as the request was for “all non-core records” – rather than for specific records, or records within a limited time period connected to a specific issue. I conclude that the request can be considered a fishing expedition.
- [12] Under Rule 19.1 of the Tribunal Rules of Practice, the CAT can dismiss an application or case where the Applicant(s) is using the CAT for an improper purpose. Although the reason for the Applicant’s request was to gain an understanding of the Corporation’s finances, the request is overly broad and lacks specifics. Coupled with the apparent unwillingness of the Applicant to clarify the requests, I conclude that the request is being made for an improper purpose. This application is dismissed.

### **Should the Tribunal award a penalty or costs?**

- [13] At the outset of the hearing, the Parties agreed that the Tribunal should consider if the Respondent had refused to provide the records without a reasonable excuse. And, if so, should the Respondent be required to pay a penalty under s. 1.44 (6) of the Act. Since the Application is dismissed without finding a refusal, I do not need to decide this issue.
- [14] In addition to the penalty, the Applicant requested a “significant cost award” as a “deterrent against misconduct and promote accountability.” The Tribunal has no jurisdiction to award a penalty on that basis, even if there was evidence of financial irregularity.
- [15] The Respondent requested the Tribunal to award costs against the Applicant because it incurred legal fees responding to an application that was submitted in bad faith. The Respondent referred to Rule 48.2 of the Tribunal’s Rules and cited the CAT Practice Direction: Approach to Ordering Costs. Rule 48.2 states:

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.

[16] The Applicant was given the opportunity to respond to PSCC 954's request for costs but did not adequately respond to the specific issues raised by the Respondent. I have considered the following in determining if an award of costs to the Respondent is appropriate. The following factors directly relate to the Applicant's conduct in this hearing, which was unreasonable and resulted in the Respondent unnecessarily incurring legal costs:

1. The Applicant continued throughout to pursue a Records Request which was overly broad.
2. The Applicant did not clarify which records were outstanding, so it was still unclear which records were being requested during this hearing.
3. The Applicant continued throughout the hearing to refer to issues which were outside of the Tribunal's jurisdiction despite instructions to refrain from doing so.
4. The Applicant did not follow the Tribunal instructions, uploading irrelevant documents during the hearing after the disclosure process was completed.
5. The Respondent's legal costs are reasonable. They followed the Tribunal's instructions not to respond without my direction, and they did not spend time responding to the non-jurisdictional submissions.
6. It would be unfair to have other unit owners bear all of the legal costs incurred by PSCC 954 to respond to this application.

[17] The Respondent has incurred legal costs of \$6,011.26 (inclusive of HST) in defending the application. Weighing the factors above, I find that an award of costs pursuant to Rule 48.2 in the amount of \$4,000 is appropriate.

**A. ORDER**

[18] The Tribunal's orders:

1. That the case is dismissed.
2. Pursuant to s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, and within 30 days of this Order, Blazej Skoczylas shall pay \$4,000 to Peel Standard Condominium Corporation No. 954 for its costs in this

matter.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: March 4, 2024