

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 12, 2024

CASE: 2023-00183R

Citation: Sava v. York Condominium Corporation No. 386, 2024 ONCAT 35

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

Member: Nicole Aylwin, Member

The Applicant,

Lucian Sava

Self-Represented

The Respondent,

York Condominium Corporation No. 386

Represented by Michael Pascu, Counsel

Hearing: Written Online Hearing – January 16, 2024 to March 5, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Lucian Sava, is a unit owner in the Respondent, York Condominium Corporation No. 386 (“YCC 386”). On February 17, 2023, Mr. Sava submitted a request for records to YCC 386 for several core and non-core records. According to Mr. Sava, YCC 386 has not provided him with the records he is entitled to and the fee proposed by YCC 386 to produce the non-core records for examination is unreasonable. Among other orders, he has asked the Tribunal to order a penalty against YCC 386 for the refusal to provide records without a reasonable excuse and to reimburse him for his Tribunal fees.

[2] YCC 386 argues that they have never refused to provide Mr. Sava with records to which he is entitled without a reasonable excuse. YCC 386 submits that initially they did not provide the non-core records to Mr. Sava because he did not pay the fee requested, and it was only later (during mediation) that they discovered that despite an extensive search, some of the requested records could not be located and thus could not be provided. They assert that in the first instance, their refusal was reasonable as Mr. Sava did not pay the requested fee; and in the second instance, they cannot provide records they do not have. Thus, no penalty is

warranted.

- [3] For the reasons set out below, while I order YCC 386 to provide Mr. Sava with several records to which he is entitled to at no cost, I find that YCC 386 has not refused to provide Mr. Sava with the records requested without a reasonable excuse and no penalty is warranted in this case. I order no costs to either party.
- [4] Finally, I note that this is not the first case between these parties, and it is not likely to be the last. It is clear from Mr. Sava's submissions that he is highly critical of the board and its governance practices, however, these are not issues for the Tribunal and thus none of the issues or evidence related to them are considered or addressed in my decision. Nor are the arguments or evidence submitted that relates to previous orders of the Tribunal, which Mr. Sava sought to have addressed here. As explained to him, if Mr. Sava believes an order has not been properly followed by YCC 386, the recourse is to the courts, not at the Tribunal. While I have reviewed all the evidence and submissions provided to me, only those relevant to my analysis and the issues properly before me are addressed in this decision.

B. ISSUES & ANALYSIS

Issue No. 1: Has YCC 386 refused to provide records to Mr. Sava to which he is entitled without a reasonable excuse?

Core Records

- [5] Ms. Sava requested the following core records on February 17, 2023.
1. Condominium Corporation Rules.
 2. Record of notices relating to leases of units under s. 83 of the *Condominium Act, 1998* (the "Act").
 3. Most recent approved financial statements.
 4. Most recent auditor's report.
 5. Minutes of meetings held within the last 12 months.
- [6] At the outset of this hearing, Mr. Sava confirmed that of these core records, only two remained at issue: the record of notices relating to leases of units; and, the most recent auditor's report.
- [7] YCC 386's condominium manager, Nicole Roper, testified that an email was sent

to Mr. Sava on March 17, 2023, containing the Board's Response to the Request for Records. In its response, YCC 386 agreed to provide all of the requested core records as well as a file that contained all of the core records requested, including the record of owners and mortgagees which Mr. Sava had listed in the "non-core" records section of his request. Mr. Sava claims that he only received the minutes, no other documents.

[8] YCC 386 has never indicated (either at the time of the request nor in its submissions before the Tribunal) that they would not provide the core records requested to Mr. Sava. Given the evidence that YCC 386 sent all the core records in the file attachment on March 17, one of which included the minutes, based on the balance of probabilities, I find the records were more likely than not provided to Mr. Sava as indicated. Thus, I find there was no refusal of these records.

[9] In any event, the two core records that Mr. Sava identified as outstanding (i.e. record of notices relating to leases of units and the most recent auditor's report) were uploaded as documents during this hearing. Therefore, there is no need to order the production of these records as requested by Mr. Sava as he now has them.

Non-Core Records

[10] In addition to the core records requested, Mr. Sava also requested 18 non-core records, which he believes have been refused to him without a reasonable excuse. These records were listed by Mr. Sava on his record request form as follows:

1. All legal expenses related to the Corporation for the fiscal year or the time period of January 1, 2022 – December 31, 2022.
2. All legal expenses related to the Corporation for the fiscal year for the time period of January 1, 2021 – December 31, 2021
3. All meeting expenses of the Corporation for the fiscal year in the amount of \$5000 for the period of December 1, 2022 – December 31, 2022.
4. General repairs and maintenance of the corporation in the amount of \$23 000 for the period of January 1, 2022 – December 31, 2022
5. Invoices and/or receipts related to all-season grounds care for the building in the amount of \$23,000 for the period of January 1, 2022 and December 31, 2022.
6. Invoices and/or receipts related to annual garage cleaning in the amount

of \$5,000 for the period of January 1, 2022 and December 31, 2022.

7. Invoices and/or receipts related to plumbing repairs done in the common areas in the amount of \$25,000 for the period of January 1, 2022 and December 31, 2022.
8. A list of the names of the owners of each unit in the corporation and their addresses for service for the period of February 17, 2022 – February 17, 2023.
9. A list of the fee schedule for each unit in the corporation for budget calls approved by the board for an increase in the FYE common Element Fee of 3.48% for the 2023 Fiscal budget, for the period of January 1, 2023 – December 31, 2023.
10. Invoices and/or receipts related to pool repairs in the amount of \$19,633 for the period of January 1, 2019 – December 31, 2019.
11. Invoices and/or receipts related to pool repairs in the amount of \$45,087 for the period of January 1, 2018- December 31, 2018.
12. Landscaping and snow removal in the amount of \$20 864 for the period of January 1, 2019 – December 31, 2019
13. Landscaping and snow removal in the amount of \$20 361 for the period of January 1, 2018 – December 31, 2018.
14. Canopy and roofing in the amount of \$104 362 for the period of January 1, 2018 – December 31, 2018.
15. Canopy and roofing in the amount of \$54 500 for the period of January 1, 2019 – December 31, 2019.
16. General repairs in the amount of \$62 286 for the period of January 1, 2019 – December 31, 2019.
17. Fire protection and security in the amount in the amount of \$36 188 for the period of January 1, 2018 – December 31, 2018
18. A list of all payments received by the corporation from Mr. Sava for the period of January 1, 2022 – December 31, 2022.

[11] In its March 17, 2023, response, in addition to agreeing to provide the core records requested by Mr. Sava, YCC 386 also agreed to provide all the non-core records

requested and set out the fee the YCC 386 would charge for the labour and delivery of the non-core records. YCC 386's response form indicated that if Mr. Sava wished to proceed with obtaining the non-core records, he should complete the confirmation section of the records response form and send a money order or bank draft payable to the corporation for the amount outlined. It further indicated that should payment not be received by May 16, 2023 (2 months after the response) the request would be deemed abandoned.

- [12] On the same day he received YCC 386's response, Mr. Sava wrote to the condominium manager disputing the fee. He indicated he thought the fee was unreasonable and should be reduced. He also outlined several other 'errors' that he believed were contained in YCC 386's response. Namely, that they had listed "electronic delivery" for some records when Mr. Sava had requested a paper copy and he claimed that YCC 386 had included in its response form records that he had not requested, i.e. the Record of Owners and Mortgages. Shortly after sending this letter, Mr. Sava filed an application with the Tribunal.
- [13] While often the events and discussions of a Stage 2 – Mediation are confidential, in this case what happened at Stage 2 – Mediation is critical to understanding the facts in this case and the issues before me. Some evidence was provided regarding the events that took place during mediation. So, while I have considered the sequence of events that took place in the mediation, which is directly relevant to the issues in front of me, I have not given any weight to any information provided about mediation that is not relevant to the issues properly in front of me. No consideration has been given to whether parties chose to settle or not.
- [14] During the Stage 2 – Mediation, YCC 386 agreed to provide Mr. Sava with the records requested at no cost, provided they could locate the records. The reason for this caveat was because, at the time the offer was made the condominium manager, who had begun to compile the records in anticipation of settlement, could not locate several of the requested documents. At some point after this realization, the mediation ended, and the case proceeded to Stage 3 – Adjudication.
- [15] Mr. Sava provides several different reasons for why he believes YCC 386 refused to provide him records. First, he argues that originally, by attempting to charge an unreasonable fee YCC 386 refused him records without a reasonable excuse. Second, he submits that the fact that YCC 386 now claims it cannot find the records he requested (and thus cannot provide them), amounts to a refusal without a reasonable excuse. Finally, he implies that YCC 386 has refused to provide him records because of his behavior.

- [16] YCC 386 takes the position that it is entitled to charge a reasonable fee for producing non-core records for examination and that the fee requested by YCC 386 was not unreasonable (and therefore, not a refusal). It further argues, that at no time did YCC 386 seek to mislead Ms. Sava on the availability of the records. Rather, since Mr. Sava refused to pay the initially requested fee, YCC 386 did not undertake the labour required to search for the requested records until the mediation, and only then did it realize records were missing. YCC 386 submits that they have made every effort to find these records and obtain new copies, however, they have been unable to do so and cannot provide records that they do not have. In this case, not having the records is a reasonable excuse for not providing them.
- [17] First, I will address the question of the fee. Section 13.3(8) 1 of the Ontario Regulation 48/01 (“O. Reg 48/01”) provides that a condominium can charge a “reasonable” fee to produce non-core records for examination. The fee proposed should be a reasonable estimate of actual labour and delivery costs. Section 13.3 (9) outlines some of the factors that may impact the fees payable, such as whether the record requested is a core record, whether the corporation keeps the record in electronic or paper format, whether the record requires redaction and the time the board estimates spending or responding to the request.
- [18] In this case, YCC 386 proposed to provide the 18 non-core records requested by Mr. Sava for a total of \$864.45. The total represented an estimated 17 hours of labour at a rate of \$45 per hour (+HST). According to the testimony of YCC 386’s condominium manager the labour hours estimated were based on the time it would take to search for the documents requested.
- [19] Mr. Sava, in responding to YCC 386’s proposed fee, suggested that \$20 per hour, was a more reasonable labour fee. According to Mr. Sava, \$20/hour reflected the average rate for a clerk in Toronto.
- [20] The non-core records requested by Mr. Sava are extensive. They are not single records, but a collection of receipts and invoices related to several general categories of maintenance and repair (e.g. plumbing repairs in common areas, pool repairs, landscaping and snow removal, roofing repairs, etc.) and the date range for each request is a one-year period. One hour of labour per category to search out receipts and invoices and prepare those for examination does not seem unreasonable in this case.
- [21] As to the proposed hourly wage, the Tribunal has endorsed a wide range of ‘reasonable’ hourly rates depending on the circumstances and I do not find \$45 to be an unreasonable hourly rate in this case given that it was the condominium manager who was to be the one reviewing and preparing the documents for

review.

[22] Based on the facts before me, I accept that the condominium manager made a reasonable estimate of the labour involved in searching for the records and a reasonable hourly wage was proposed. While Mr. Sava, was entitled to dispute the fee, and to bring this matter forward to the Tribunal when no agreement was reached on that fee, I do not find that the proposed fee was such an exorbitant amount that I am prepared to find that the fee constituted a refusal without a reasonable excuse.

[23] As to the missing records, as discussed above, YCC 386 admits that they do not have some of the records requested by Mr. Sava. In particular, the invoices relating to:

1. Pool repairs amounting \$19,633.
2. Pool repairs amounting to \$45,087.
3. Pool repairs for the fiscal year ended December 31, 2019, amounting to \$6,904.44.
4. Fire protection and security amounting to \$36,188.
5. Fire protection and security for the fiscal year ended December 31, 2018, amounting to \$33,230.18.
6. Landscaping and snow removal amounting to \$20,864.
7. Canopy and roofing amounting to \$20,864.

[24] YCC 386 admits to being somewhat unsure about how the records went missing (they suspect either during the audit or during a transition between condominium management companies); however, they assert that once they became aware that records were missing, they took immediate steps to try to find them. YCC 386's condominium manager testified that upon learning the records were missing, she contacted the auditor to determine if the auditor had any of the documents in their possession (since they would have had those documents for the purposes of the annual audit) and she contacted YCC 386's previous condominium management company to ensure they had properly transferred all the records of the corporation. When neither inquiry yielded results, she began reaching out to various contractors attempting to get new copies of the documents. To date, YCC 386 has been unable to locate or obtain new copies of these records.

- [25] Mr. Sava argues that these missing documents 'are cause for concern' and should require further investigation of an administrative body. This is not an issue that is within the jurisdiction of the Tribunal. What I must decide is whether failing to have the records Mr. Sava requested amounts to a refusal without a reasonable excuse.
- [26] In this case, I find it does not. The evidence before me suggests that, at all times, YCC 386 was prepared and willing to provide the records to Mr. Sava. While in the end, YCC 386 cannot provide Mr. Sava with some of the requested records, this is not a refusal. It was only in their attempt to be responsive to Mr. Sava's request that YCC 386 realized the records were missing. YCC 386 then made all reasonable efforts to locate and provide those records.
- [27] Finally, in his submissions, Mr. Sava advanced the argument that despite his professed willingness to resolve matters amicably with the board of YCC 386, they have refused him records because of his difficult behaviour. He referred me to several cases where the Tribunal ruled that a party's difficult behavior did not amount to a reasonable excuse for the refusal of records. In this case, at no time did the board indicate they would not provide Mr. Sava with records he requested, and at no time has YCC 386 advanced the argument, or even suggested, that Mr. Sava's behavior was a factor in its decision making. While Mr. Sava may perceive YCC 386 as penalizing him for his behavior, there is no evidence to suggest this is true.

Issue No. 2: Should YCC 386 be required to pay a penalty and in what amount?

- [28] Section 1.44(1) 6 of the Act provides that the Tribunal has the authority to order a penalty of up to \$5000 if it considers that a condominium corporation has refused to provide records without a reasonable excuse.
- [29] In this case, I have concluded that YCC 386 has not refused to provide Mr. Sava with the records he requested and thus no penalty is warranted.

Issue No. 3: What records are to be provided and will there be a fee for the records?

- [30] While there is no dispute over entitlement, I have found that some of the records requested by Mr. Sava are not available for examination. So that there is no further dispute or confusion over what records are to be provided to Mr. Sava, I will be making the following orders related to the records requested.
- [31] As set out above, I found that YCC 386 sent the core records to Mr. Sava on March 17, 2023, though he disputed receiving all of them, in particular the record

of notices relating to leases and the most recent auditor's report. These records were again provided in the course of this hearing uploaded as documents by YCC 386. There is therefore no need for any order regarding these as Mr. Sava already has them in his possession.

[32] Regarding the non-core records, I note that some are not available as set out in paragraph 23. The invoices and receipts related to the expenditure of \$5000 for annual garage cleaning in 2022, does not exist. YCC 386's evidence is that it did not pay for garage cleaning in 2022 as it was provided complimentary by the company who did some other work on the garage. YCC 386 notes that the amount of \$5000 cited by Mr. Sava on his request form is what was budgeted for, not what was spent. I accept that evidence. Further the "list of the names of the owners of each unit in the corporation and their addresses for service for the period of February 17, 2022 – February 17, 2023" as listed in paragraph 10 of this decision has already been provided to Mr. Sava. Therefore, to provide clarity to the parties, YCC 386 will be ordered to provide the remaining records (in their possession) as follows:

1. All legal expenses related to the Corporation for the fiscal year or the time period of January 1, 2022 – December 31, 2022.
2. All legal expenses related to the Corporation for the fiscal year for the time period of January 1, 2021 – December 31, 2021
3. All meeting expenses of the Corporation for the period of December 1, 2022 – December 31, 2022.
4. Invoices and/or receipts related to general repairs and maintenance of the corporation for the period of January 1, 2022 – December 31, 2022
5. Invoices and/or receipts related to all-season grounds care for the building for the period of January 1, 2022 and December 31, 2022.
6. Invoices and/or receipts related to plumbing repairs done in the common for the period of January 1, 2022 and December 31, 2022.
7. A list of the fee schedule for each unit in the corporation for budget calls approved by the board for an increase in the FYE common Element Fee of 3.48% for the 2023 Fiscal budget, for the period of January 1, 2023 – December 31, 2023.
8. Invoices and/or receipts related to pool repairs for the period of January 1, 2018 – December 31, 2019, other than those YCC 386 indicated it does not

have in its possession as set out in in paragraph 23 of this decision.

9. Invoice and/or receipts related to landscaping and snow removal for the period of January 1, 2018 – December 31, 2019, other than those YCC 386 indicated it does not have in its possession as indicated in paragraph 23 of this decision.
10. Invoices and/or receipts related to canopy and roofing for the period of January 1, 2018 – December 31, 2019, other than those YCC 386 indicated it does not have in its possession as set out in paragraph 23 of this decision.
11. Invoices and/or receipts related to general repairs for the period of January 1, 2019 – December 31, 2019.
12. Invoice related to fire protection and security for the period of January 1, 2018 – December 31, 2018, other than those YCC 386 indicated it does not have in its possession as set out in paragraph 23 of this decision.
13. A list of all payments received by the corporation from Mr. Sava for the period of January 1, 2022 – December 31, 2022.

[33] I note that when Mr. Sava originally listed the invoices/receipts he was requesting, he not only specified a time period but also listed the amount he believed that each set of invoices/receipts should total. The records will be provided, but whether or not each set totals the amount he believes they should total shall not be determinative of whether the records are provided in accordance with the Tribunal order.

[34] As noted above, YCC 386 had responded on March 17, 2023, that it would provide these non-core records to Mr. Sava for a fee and Mr. Sava disputed that fee. While I have decided that their proposed fee was reasonable, during the hearing YCC 386 stated that it was now prepared to provide the records for no fee. Thus, I do not need to determine what fee may be charged to produce the records and I will order the records to be provided at no cost.

Issue No. 4: Should any other remedies be ordered?

[35] In addition to requesting that YCC 386 pay a penalty and provide the outstanding records, Mr. Sava has asked the Tribunal to make an order under s. 1.44 (1)7 of the Act, requiring the board of directors to retake the director training course provided by the Condominium Authority of Ontario (“CAO”) and prescribed under s. 29 (2) (e) of the Act. Mr. Sava was not specific about his reasons for this request, however, in his submissions he identified several ‘errors’ in the way in

which the board filled out the response form and responded to his request. The errors included checking off the 'electronic delivery' box, when he had requested paper delivery and 'adding' records to his request that he did not ask for, namely the record of owners and mortgagees. It is reasonable to assume based on his submissions, that Mr. Sava believes such errors might be eliminated if the board were to be ordered to redo the CAO board of directors training course.

[36] The Tribunal has in some instances ordered directors to take (or retake) the CAO training when it has been clear that the board is ignorant, willfully unaware, or in need of a refresher of its responsibilities and/or the requirements of the Act as they relate to records requests¹. This is not the case here. There has been no refusal without a reasonable excuse and there is no evidence that the board was unaware or ignorant of their responsibilities to provide records under the Act or was careless with its response. The errors cited by Mr. Sava are trivial (e.g. checking the wrong box) and in the case of Mr. Sava's allegation that the board added records to his request, this appears to stem from an error that was Mr. Sava's – not the board's. On his records request form, under non-core records Mr. Sava requested: "A list of the names of the owners of each unit in the corporation and their addresses for service". This is in fact the record of owners and mortgagees and it is a core-record. When YCC 386 agreed to provide this record to him and identified it as a core record, they were not adding a record to Mr. Sava's request, but simply listing this record differently (classifying it as a core-record, which is correct). Had Mr. Sava, been less quick to assume ineptitude – this confusion may have been easily cleared up. There was no reason for this issue of an 'added record' to come before me.

[37] Given the facts and findings in this case there is no reason to grant the order requested by Mr. Sava, and I decline to do so.

Issue No. 5: Is any party entitled to costs?

[38] The Tribunal's authority to make cost-related orders is set out in s. 1.44 (1) 4 of the Act. Section 1.44 (2) of the Act further states that an order for costs "shall be determined in accordance with the rules of the Tribunal."

[39] 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

¹ See for e.g. Kowalchuk v. Metropolitan Toronto Condominium Corporation No. 983, 2023 ONCAT 84, Roumy v. York Condominium Corporation No. 50, 2022 ONCAT 109.

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.

[40] Mr. Sava has requested that YCC 386 reimburse him for his Tribunal fees. No costs were requested by YCC 386.

[41] As Mr. Sava has not been successful in his application, he is not entitled to costs.

C. ORDER

[42] The Tribunal Orders that:

1. Within 30 days of this order, YCC 386 shall provide Mr. Sava with the following records at no cost as agreed to by them:
 - i. All legal expenses related to the Corporation for the fiscal year or the time period of January 1, 2022 – December 31, 2022.
 - ii. All legal expenses related to the Corporation for the fiscal year for the time period of January 1, 2021 – December 31, 2021
 - iii. All meeting expenses of the Corporation for the period of December 1, 2022 – December 31, 2022.
 - iv. Invoices and/or receipts related to general repairs and maintenance of the corporation for the period of January 1, 2022 – December 31, 2022
 - v. Invoices and/or receipts related to all-season grounds care for the building for the period of January 1, 2022 and December 31, 2022.
 - vi. Invoices and/or receipts related to plumbing repairs done in the common for the period of January 1, 2022 and December 31, 2022.
 - vii. A list of the fee schedule for each unit in the corporation for budget calls approved by the board for an increase in the FYE common Element Fee of 3.48% for the 2023 Fiscal budget, for the period of January 1, 2023 – December 31, 2023.

- viii. Invoices and/or receipts related to pool repairs for the period of January 1, 2018 – December 31, 2019, other than those YCC 386 indicated it does not have in its possession as set out in in paragraph 23 of this decision.
 - ix. Invoice and/or receipts related to landscaping and snow removal for the period of January 1, 2018 – December 31, 2019, other than those YCC 386 indicated it does not have in its possession as indicated in paragraph 23 of this decision.
 - x. Invoices and/or receipts related to canopy and roofing for the period of January 1, 2018 – December 31, 2019, other than those YCC 386 indicated it does not have in its possession as set out in paragraph 23 of this decision.
 - xi. Invoices and/or receipts related to general repairs for the period of January 1, 2019 – December 31, 2019.
 - xii. Invoice related to fire protection and security for the period of January 1, 2018 – December 31, 2018, other than those YCC 386 indicated it does not have in its possession as set out in paragraph 23 of this decision.
 - xiii. A list of all payments received by the corporation from Mr. Sava for the period of January 1, 2022 – December 31, 2022.
2. YCC 386 shall provide each record in the format listed on Mr. Sava's records request form of February 17, 2023.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: March 12, 2024