

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** May 10, 2024

**CASE:** 2023-00650R

**Citation:** Anderson v. Toronto Standard Condominium Corporation No. 1786, 2024 ONCAT 65

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**

Jacqueline Anderson

Self-Represented

**The Respondent,**

Toronto Standard Condominium Corporation No. 1786

Represented by Angad Singh, Counsel

**Hearing:** Written Online Hearing – March 6, 2024 to May 6, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Jacqueline Anderson (the “Applicant”) is the owner of a unit of Toronto Standard Condominium Corporation No. 1786 (the “Respondent” or “TSCC 1786”). On December 15, 2023, she submitted a Request for Records to TSCC 1786 in which she requested multiple core and non-core records. In her application to the Tribunal, she alleged that the fee the corporation estimated for the provision of the non-core records was unreasonable. The fee was negotiated during the Stage 2 – Mediation process in this matter. Ms. Anderson then paid the fee and TSCC 1786 provided the requested records. However, she moved this matter to Stage 3 – Tribunal Decision, alleging that TSCC 1786 had not provided all of the records she requested and that certain records she received were either incomplete or inadequate. She requests that the Tribunal order TSCC 1786 to refund the fee she paid for the records.

[2] TSCC 1786’s position is that this case should be dismissed. It submits that it did not refuse to provide records to Ms. Anderson; while one set of records was not provided until the Stage 3 proceeding, this was an oversight and therefore no penalty should be assessed. TSCC 1786 requests its costs in this matter; it submits that Ms. Anderson moved this matter to Stage 3 for an improper purpose

and that she delayed the Stage 3 process by raising additional issues late in the proceeding, requiring it to incur additional expense.

- [3] For the reasons set out below, I find that TSCC 1786 did not refuse to provide records to Ms. Anderson without reasonable excuse and I award no penalty in this matter. Further, I find that TSCC 1786 is keeping adequate records. I also find that Ms. Anderson is not entitled to a refund of the fee she paid for the non-core records she received. Finally, I order the corporation to pay Ms. Anderson \$75 representing partial reimbursement of the Tribunal fees she paid. I award no other costs in this matter.

## **B. BACKGROUND**

- [4] In October, 2023, Ms. Anderson submitted a Request to Records to TSCC 1786 in which she requested numerous core and non-core records. In its Board Response to Request for Records, TSCC 1786 indicated it would provide all of the records and estimated the fee for the non-core records which Ms. Anderson had requested be provided as paper copies. Because Ms. Anderson believed the fee was excessive, she withdrew the request and re-submitted it on December 15, 2023, requesting electronic copies of the non-core records. TSCC 1786 again indicated it would provide the records; however, Ms. Anderson filed her application with the Tribunal on the basis that the revised estimated fee was still unreasonable.
- [5] The Stage 2 Summary and Order in this matter indicates that the fee for the provision of the records was negotiated and agreed upon by the parties during the Stage 2 – Mediation. Ms. Anderson paid the fee on February 7, 2024 and, in a series of e-mails dated between February 13 and 21, 2024, Counsel for the Respondent forwarded copies of the requested records to her. Ms. Anderson then elected to move this matter forward to Stage 3 – Tribunal Decision.

## **C. ISSUES & ANALYSIS**

- [6] At the outset of the Stage 3 proceeding, I asked the parties to confirm the issues to be decided which were set out in the Stage 2 Summary and Order as follows:
1. Has TSCC 1786 provided all records requested by the Applicant?
  2. If not, has TSCC 1786 refused the Applicant's request without reasonable excuse?
  3. Is TSCC 1786 keeping adequate records?
  4. What orders should the Tribunal make?

I advised the parties that if it was found that TSCC 1786 had refused to provide records without reasonable excuse, that an additional issue would be whether or not a penalty should be awarded. I also noted that a further issue was whether costs should be awarded in this matter. In this decision, I address what orders, if any, the Tribunal should make when I address the other issues.

[7] In order to narrow the first issue, I asked Ms. Anderson to specify the records at issue. Her response included a number of issues that related to the governance of the corporation; for example, she indicated that TSCC 1786 had not held an Annual General Meeting since 2022 and that the corporation's reserve fund had been depleted. I advised her that these issues were outside of the jurisdiction of the Tribunal and that I would only address issues related to her December 15, 2023 Request for Records. When she responded that she believed the issue about depletion of the reserve fund should not be dismissed, I again asked her to specify what records were at issue. On March 18<sup>th</sup>, she advised that:

1. she had not received the demolition contracts/invoices she requested in her December 15, 2023 Request for Records;
2. the two records she received in response to her request for settlements entered into by the corporation were overly redacted; and,
3. the ledgers for the guest suites she received were incomplete and inadequate.

[8] When Ms. Anderson indicated the demolition contracts/invoices were at issue, Counsel for the Respondent noted that she had acknowledged receipt of all of the records when TSCC 1786 had provided them in February. Ms. Anderson confirmed that she had done so and advised that she had only just noticed that the demolition contracts/invoices had not been provided. Counsel uploaded the records to the CAT-ODR system on April 12, 2024. He submitted that their omission in February had been an oversight which would have been rectified at that time had Ms. Anderson advised him they were missing. As these records have now been provided, they are no longer at issue in this matter.

### **Issue 1: Has TSCC 1786 provided all records requested by the Applicant?**

#### Settlements

[9] Ms. Anderson received two records in response to her request for settlements executed by the corporation from 2020 to December 15, 2023. When she identified that these records were at issue, she indicated they were overly redacted.

However, she provided no submission with respect to this issue other than to note that she received no written explanation of the reason for the redactions, contrary to s. 13.8 (1) (b) of Ontario Regulation 48/01 (“O. Reg 48/01”) which requires the corporation to provide the records with an accompanying statement setting out the reason for redaction. I note, however, that she also indicated that the reason for redaction of the settlements was discussed during the mediation.

[10] That Ms. Anderson was well aware of why the corporation redacted the records is evident from the description she wrote when she identified the records that were at issue in this matter:

My concern are with the records that are under the confidentiality cause [sic]. Is this in the best interest of the corporation, as this excessive amount was withheld from the owners. This amount actually went for damages, which is unknown to the owners. Also the settlement has no letterhead, which make me question who created it. Then there is the only one signature on this settlement. I'm question [sic] the validation.

[11] Counsel for the Respondent submitted that the two records were redacted in accordance with s. 55 (4) (c) of the *Condominium Act, 1998* (the “Act”) which states that an owner’s right to examine or obtain copies of records does not apply to records relating to specific units or owners.

[12] The first of the two records is a settlement agreement which sets out a schedule for payment of \$600,000 by TSCC 1786 to a party in respect of damages. The party’s name, signature and the description of the damages are redacted. I accept Counsel’s explanation that the redactions are to protect the identity of the involved owner(s). With respect to Ms. Anderson’s concern that the agreement is not on letterhead, there is no reason this would necessarily be produced on any party’s letterhead.

[13] The second record provided to Ms. Anderson is a copy of a mutual release in recognition of a payment by TSCC 1786 of \$75,000, related to Superior Court filings by both TSCC 1786 and another party. The name of the other party is redacted as are the court file numbers. Redaction of documents requires the exercise of some judgment. Notwithstanding that the court file numbers are public records, I accept that the corporation redacted this information to comply with s. 55 (4) (c) of the Act and therefore I find that the redaction is not inappropriate.

[14] In fact, Ms. Anderson’s primary concern appears to be with the financial impact of the settlements rather than with identifying the involved parties. Section 11.1 of O. Reg. 48/01 requires a corporation to include a statement of the financial implications of legal actions in its periodic information certificates and to set out the

total amount of damages, compensation or costs claimed against it. There is no evidence before me to suggest that TSCC 1786 failed to do so. While Ms. Anderson expressed her concern with the amount the two records indicate the corporation has agreed to pay, the reasons why the corporation chose to do so would not be revealed in unredacted or less-conservatively redacted agreements.

[15] With respect to Ms. Anderson's concern that the record only contains the signature of TSCC 1786's representative, it appears that the signature page of the other party, which would be on a following page, was not provided. Because this would have been redacted, I am not ordering the corporation to provide it now.

### Additional Records

[16] In her closing submission posted on April 26, 2024, Ms. Anderson stated "I now see that I did not receive any records prior to 2021." I asked her to specify what additional records she believed were missing and she advised that she had not received any records dated before June, 2021 although she had requested contracts, board meeting minutes and the guest room ledgers for the period 2020 to 2023.

[17] Counsel for the Respondent confirmed that there were no records dated before June 2021 with respect to the contracts Ms. Anderson requested. With respect to minutes, he noted that his February 13, 2024 e-mail to Ms. Anderson enclosed board meeting minutes dating back to January, 2020. Therefore, I find Ms. Anderson has received the records responsive to these requests.

[18] The guest room ledgers provided to Ms. Anderson begin on June 8, 2021 with a zero balance "obtained from the previous management company." Counsel for the Respondent advised that the records date from when TSCC 1786's contract with its current condominium management services provider began. He explained that the corporation experienced difficulty obtaining some of its past records from the previous management firm which was uncooperative. I cannot order the corporation to provide records that it does not possess; therefore I make no order with respect to the ledgers and I find that Ms. Anderson has received all of the records she requested which were in TSCC 1786's possession.

### **Issue 2: Has TSCC 1786 refused the Applicant's Request for Records without reasonable excuse? And, if it is found that it has refused to provide records without reasonable excuse, should a penalty be assessed?**

[19] The evidence is that TSCC 1786 did not refuse to provide records. While the fees initially requested by the corporation for the provision of non-core records may

have presented a barrier to access to those records, that issue was successfully resolved during the Stage 2 mediation process. And, while the corporation did not in fact provide the demolition invoices until it was notified during this proceeding that they were missing, I accept TSCC 1786's explanation that their omission was an oversight; when Ms. Anderson advised that she had not received them, the corporation uploaded them to the CAT-ODR system.

[20] The only other records which Ms. Anderson did not receive were the guest suite ledgers dated from January 1, 2020 to June 8, 2021. Section 13.1 (2) 1 of O. Reg 48/01 requires a corporation to retain its financial records for seven years. The board of directors of a corporation is responsible for maintaining the records of the corporation; that responsibility extends to ensuring they are properly transferred when there is a change in condominium managers. However, as the evidence of the provision of minutes dating from 2020 indicates, this is not a case where none of the corporate records were transferred. While no witness testified on behalf of the corporation to speak to its efforts to obtain the missing records, I accept Counsel for the Respondent's submission that TSCC 1786 attempted to obtain them. For this reason I find that the failure to provide the ledgers does not constitute a refusal to provide them without reasonable excuse.

[21] Because the corporation did not refuse to provide records without reasonable excuse, there is no basis on which to assess a penalty. For the Applicant's information, there is no provision in the Act to assess a penalty for failure to provide accompanying statements to redacted records.

### **Issue 3: Is TSCC 1786 keeping adequate records?**

[22] Ms. Anderson alleges that the ledgers for TSCC 1786's two guest suites, which set out the common expense fee charged and the revenue received for each suite for the period June 8, 2021 to February 8, 2024, are incomplete and inadequate.

[23] Section 55 (1) of the Act requires a corporation to keep adequate records. However, the word "adequate" is not defined. *McKay v. Waterloo North Condominium Corp. No. 23, 1992 CanLII 7501 (ON SC)* provides some guidance:

The Act obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s. 12 (2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must

be adequate, therefore, to permit it to fulfil its duties and obligations.

The Tribunal has also determined that accuracy of a record is a component of adequacy.

[24] Ms. Anderson testified that a guest suite was occupied for a period of nine months beginning in 2022 by an individual related to a member of the corporation's board of directors and that one of the suites has been occupied for seven months by two individuals but that the ledgers record no revenue related to these occupancies. Because no one testified on behalf of the corporation, there is no evidence to indicate that these individuals were charged for these occupancies and therefore no evidence that the corporation received revenue which it failed to record. Therefore, I cannot conclude that the ledgers are incomplete and/or inadequate. While there may be a question about whether a fee should have been charged for the occupancies, this question does not relate to the accuracy, completeness or adequacy of the records of the corporation but rather to its governance practices. Ms. Anderson appears to be alleging there may be financial mismanagement; this is not an issue over which this Tribunal has jurisdiction.

[25] In her written testimony, Ms. Anderson raised two additional issues which she did not initially identify. The first was that the amount spent on a roof contract which was disclosed in financial statements exceeded the contract amount. While Ms. Anderson appears to be questioning the reason for the difference, she did not indicate what records she believed were inadequate. She did not, for example, suggest that the invoices she received did not correspond to the amount recorded in the statements. She also stated that contractor bids were not presented at board meetings and questioned the way in which contractors were selected. These concerns relate to the financial management practices of the corporation rather than to the adequacy of its financial records.

[26] There is no evidence before me to indicate that the corporation is failing to keep adequate records and I make no order in this regard.

#### **Issue 4: Should the Tribunal award costs in this matter?**

[27] Ms. Anderson requests reimbursement of the \$200 she has paid in Tribunal fees. She also requests that I order TSCC 1786 to reimburse the fees she paid for the provision of the non-core records she received. TSCC 1786 requests costs of \$6,695.25 representing the legal fees it incurred in this matter.

[28] 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.

- [29] Ms. Anderson was not successful in Stage 3 – Tribunal Decision. While TSCC 1786 did not provide the demolition invoices until this stage, this is only because Ms. Anderson did not identify they were missing when she received the records. Further, I have accepted TSCC 1786's explanation that the failure to provide them initially was an oversight; had Ms. Anderson advised that the demolition invoices when she received the records during the Stage 2 mediation, they would have been provided at that time. I have also found that the corporation is keeping adequate records. Therefore, I am not ordering the Respondent to pay the Stage 3 fees.
- [30] Ms. Anderson is entitled to reimbursement of her Stage 1 and Stage 2 Tribunal fees. Her application to the Tribunal was filed because she believed the fee the corporation estimated for provision of the non-core records was unreasonable, an issue that was addressed and resolved during Stage 2 – Mediation. I am not considering Ms. Anderson's request that the fee she paid for those records be reimbursed by the Respondent. The fee was negotiated and agreed upon during the Stage 2 – Mediation. Ms. Anderson had the option to reject the negotiated fee and bring the issue forward to Stage 3. She chose not to do so. Further, the Stage 2 Summary and Order in this matter states that the fee issue "will not be discussed further during Stage 3 – Decision."
- [31] Counsel for the Respondent submits that TSCC 1786 should be reimbursed for its legal fees because Ms. Anderson acted in an unreasonable manner and filed her application with the Tribunal for an improper purpose; that is, to raise issues other than those related to her Request for Records. Further, the fact that she raised a number of issues late in the Stage 3 proceeding caused the Respondent to incur additional costs.
- [32] I note that \$3,147.05 of the Respondent's cost request of \$6,695.25 was incurred during Stage 2 – Mediation. The fact that the estimated fee for the provision of the non-core records was adjusted during that process indicates that Ms. Anderson was successful in that part of her case and therefore I am not considering the

Respondent's request for costs incurred in Stage 2.

- [33] With respect to TSCC 1786's request for its costs incurred in the Stage 3 process, I acknowledge that Ms. Anderson raised a number of issues during this proceeding which are outside of the Tribunal's jurisdiction and that some of those were raised late in the proceeding. However, while I have made no order with respect to the redaction of the settlement documents and found there is no evidence to support that the guest suite ledgers are inaccurate and/or inadequate records, the issues that Ms. Anderson brought forward to Stage 3 with respect to those records were legitimately before the Tribunal. Ms. Anderson is not a legal professional and it is not unexpected that she may not have a complete understanding of the Tribunal's jurisdiction.
- [34] I also acknowledge that the fact that Ms. Anderson did not advise that she had not received some records until she submitted her closing submission caused an extension of this proceeding and required some additional response from the Respondent. However, the additional time required was not significant. I note that some minor delay was also caused in this proceeding by the Respondent's representative who had not fully addressed some systems issues.
- [35] Rule 48.2 of the Tribunal's Rules of Practice is clear that the Tribunal will generally not award legal fees. An award of costs is at the Tribunal's discretion. I find there is no reason to award them in this case.

**D. ORDER**

[36] The Tribunal Orders that:

1. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this decision, TSCC 1786 shall pay \$75 to Jacqueline Anderson.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: May 10, 2024