

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 4, 2024

CASE: 2024-00207SA

Citation: Nurmi v. York Condominium Corporation No. 43, 2024 ONCAT 73

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Peter Nurmi

Self-Represented

The Respondent,

York Condominium Corporation No. 43

Represented by Angie Tracey, Counsel

Hearing: Written Online Hearing – May 1, 2024 to May 29, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Peter Nurmi, is the owner of a unit in York Condominium Corporation No. 43 (“YCC 43”). The parties were previously involved in a case before the Tribunal (2023-00503R) which they resolved by Settlement Agreement (the “SA”) dated October 5, 2023, in Stage 1 – Negotiation.
- [2] Mr. Nurmi filed this application because he believes that YCC 43 had not complied with terms of the SA. Under s. 1.47(3) of the *Condominium Act, 1998* (the “Act”), a party to a settlement agreement who believes that the other party has contravened the settlement agreement may make an application to the Tribunal for an order to remedy the contravention.
- [3] The terms of the SA in issue are clauses 1.i and 1.k which, respectively, require the Respondent to provide the Applicant with Information Certificate Updates (ICU) between February 2023 and March 31, 2023, and the “Property tax bill for Corporation-owned unit for 2022”, by October 20, 2023.
- [4] In addition, Mr. Nurmi alleges that YCC 43 breached the privacy and confidentiality

terms of the SA in a notice of meeting for March 20, 2024, sent to all owners by sharing details of the SA in a table of CAT cases included in the meeting package.

- [5] Mr. Nurmi is seeking compliance with the SA by YCC 43 providing the documents as well as an explanation for the contraventions, his costs of filing the case, and a penalty. Regarding the penalty, I explained to Mr. Nurmi that the penalty provisions for a refusal to provide records without a reasonable excuse, as set out in s. 1.44 (1) 6 of the Act, do not apply to issues related to the enforcement of settlement agreements. Given this information, Mr. Nurmi did not pursue this requested remedy.
- [6] YCC 43 does not dispute that it did not provide the records by the October 20, 2023 deadline, but states that it has now provided all of the records that it has. YCC 43 also asserts that the disclosure of information in the meeting package does not constitute a breach of confidentiality.
- [7] YCC 43 submits that in any event, Mr. Nurmi is out of time in filing this application as an applicant is required under s. 1.47 (3) (a) of the Act to make an application to the Tribunal within six months after the alleged contravention of a settlement agreement. Here, because compliance was required by October 20, 2023, the application had to be filed by April 21, 2024. YCC 43 submits that it appears that the application was not accepted by the Tribunal until April 29, 2024. As this may have been a relevant point in this case, I requested that Tribunal staff confirm when the application was filed. They advised that it was filed on April 5, 2024, though there were some changes required to the application and it was accepted on April 29. In the circumstances, I am satisfied that Mr. Nurmi did in fact make an application to the Tribunal within the requisite six-month time period.

B. ANALYSIS

ISSUE: Has YCC 43 provided the Information Certificate Updates (ICU) between February 2023 and March 31, 2023 as required by the SA

- [8] On October 23, 2023, YCC 43 provided Mr. Nurmi with one ICU dated March 3, 2023 related to the appointment of a director to the board. However, Mr. Nurmi states that the board meeting minutes of March 15, 2023 indicate that two directors resigned effective March 6, 2023 and no ICUs have been provided related to those changes, in contravention of the SA.
- [9] YCC 43 acknowledges that the ICU was provided late and states that there are no other ICUs for that time period - if it was required to issue an ICU for the other two directors, it did not. No other records exist.

[10] The SA term states that ICUs between February 2023 and March 2023 will be provided. The only ICU for that period has been provided. Based on the evidence before me, I accept that there are no other ICU and therefore I do not find a breach of this term of the SA. Whether there ought to be as per s. 26.3 (b) of the Act, or whether an ICU was issued between March 31 and April 5 (the latter date being 30 days after the March 6 resignations) are not inquiries for the Tribunal to undertake in the context of this dispute.

ISSUE: Has YCC 43 provided the property tax bill for the corporate owned unit for 2022?

[11] This record was provided by YCC 43 as part of the documents uploaded in this case, on May 14, 2024. It was indisputably late and a contravention of the term of the SA. This record was requested based on an entry in the unaudited financial statements for the month of July 2022. There is evidence before me of some confusion about what document this was; though described as a property tax bill it was actually a City of Toronto transfer to tax bill for a false alarm charge. YCC 43 suggests that this misunderstanding was the reason for it being provided late.

[12] I note that in an email to Mr. Nurmi from YCC 43's counsel on October 23, 2023, they indicated that the property tax bill could not be located but that management was continuing to make best efforts to locate it. YCC 43 submits that they realized, after they provided this record (the transfer to tax bill for the false alarm charge) to another owner (and Mr. Nurmi asserts the "tax bill" was given to that owner on October 20, 2023) that this was in fact the record that Mr. Nurmi had requested. Assuming that the record was provided to another owner in October 2023, there is no explanation for why it took six months and the commencement of this case for YCC 43 to come to its realization and provide the document to Mr. Nurmi.

[13] Mr. Nurmi stated in his submissions that given that he has the record, the remedy he was seeking was an explanation as to why YCC 43 agreed to provide the record by October 20, 2023 without first verifying it would be able to do so, I will not order that an explanation be provided – it is likely fruitless in this circumstance to do so. While I appreciate Mr. Nurmi's concern on this point, a reasonable inference from the evidence and submissions provided by YCC 43 is that misunderstanding and/or poor attention to detail by YCC 43 management was cause.

ISSUE: Has YCC 43 breached the confidentiality terms of the SA?

[14] The standard confidentiality terms in a settlement agreement state as follows:

This Settlement Agreement is confidential, meaning that all parties and their representatives are not allowed to:

- Share this Settlement Agreement with others
- Publicly post this settlement Agreement in any form
- Tell others about the details of this Settlement Agreement

In addition, the terms state that parties may only share details or copies of the Settlement Agreement with the written permission of all other parties.

[15] In addition to the agreement to provide specified records, the SA also stated that YCC 43 would pay a penalty to Mr. Nurmi in the amount of \$340 and reimburse his filing fee of \$25.

[16] Mr. Nurmi submits that YCC 43 breached the confidentiality term by publishing the amount of the penalty and costs paid to him pursuant to the SA. In a March 20, 2024 Requisition Meeting Package YCC 43 included a table listing 24 Tribunal cases filed against YCC 43 since March 2022. Included in the list was case 2023-00503R. The information about the case discloses that the case was resolved by way of a confidential settlement agreement, that damages/penalties were paid to Mr. Nurmi in the amount of \$365 and legal costs incurred of \$1554.32. Mr. Nurmi was not told that this information would be disclosed; his permission was not requested.

[17] The disclosure of the existence of the SA is not in itself a breach. The SA was not shared or posted. The legal fees incurred by YCC 43 in case 2023-00503R were not a term of the SA. However, one of the details of the SA – the payment of \$365 to Mr. Nurmi was disclosed. This is problematic and I find it to be a breach of confidentiality.

[18] YCC 43 submits that various provisions in the Act require a condominium corporation to deliver information to its auditor and to disclose financial liabilities to owners. YCC 43 submits that a status certificate is required to disclose matters such as outstanding judgments against the corporation and legal actions to which the corporation is a party. YCC 43 argues that if it were to abide by the confidentiality terms it would not be able to fulfil its disclosure obligations under the Act.

[19] Honouring the confidentiality terms in a settlement agreement need not lead to an abrogation of the corporation's obligations under the Act. As indicated above, the fact of the SA is not confidential. The amount of the financial liability arising from

an SA may be disclosed to the auditor without disclosing the party to that agreement. It is correct that status certificate is required to contain a statement of all outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party.¹ However, a settlement agreement is not a judgment and in this particular situation, by March 2024, the monetary amounts owed were not “outstanding” as they had been paid to Mr. Nurmi in October 2023. A status certificate, if issued in March 2024, would not have included reference to case 2023-00503R. YCC 43 board may have, for reasons unrelated to this case, wished to provide a fulsome description of the issues in advance of the meeting called by owners, but it was not appropriate that it disclose the financial terms of the SA.

[20] I have found a breach of confidentiality in relation to the SA terms. Mr. Nurmi had asked that YCC 43 provide an explanation for the breach. In submissions, YCC 43’s counsel has provided an explanation, as set out in paragraph 18; however, it is not one which I have found to be persuasive. In addition, Mr. Nurmi asked that YCC 43 be censured, that it issue an admission and apology to all owners and be ordered to review the Tribunal’s Rule and Guide on Confidentiality. I have weighed the need for and benefit to the condominium community of such an order, and while I have decided that I will not be making a specific order in relation to the breach, I do caution YCC 43 - they must ensure adherence to confidentiality provisions going forward. Confidentiality is critical to settlement discussions and agreements. I also strongly urge YCC 43, its board, management, and legal representatives to review the CAT User Guide on Confidentiality and to exercise caution about how and when it lists CAT cases in which it is involved, whatever stage a CAT case is in.

ISSUE: Is the Applicant entitled to costs?

[21] Mr. Nurmi is seeking reimbursement of the \$125 fee paid to file this application. He submits that he was required to file this application to obtain the property tax bill and to have the issue of the confidentiality breach addressed. While I have not found contraventions of the SA to the extent alleged by Mr. Nurmi, records were not provided within the specified time; the property tax bill was, inexplicably not provided until May, after the case was filed and the SA’s confidentiality was breached. In the circumstances, pursuant to Rule 48.1 of the Tribunal’s Rules of Practice, I will order that Mr. Nurmi be reimbursed the filing fee of \$125 by the Respondent.

¹ S. 76(1)(h) of the Act

C. CONCLUSION

[22] I note that in its March 20, 2024 Requisition Meeting Package, YCC 43 has stated that it is “actively taking steps to improve its practices for record keeping and responding to requests for records.” This is a commendable goal and given the number of cases that package disclosed, likely a necessary one. And it may be that in their attempt to reach that goal, YCC 43 agreed to provide records within a timeframe that was perhaps not feasible in this case. Agreeing to provide records when the corporation is not sure whether the records even exist, or where they might be found, might appear to be an indication of corporate transparency, but agreements made without exercising appropriate diligence may only increase the frustration that an owner may feel concerning the corporation’s record keeping practices, as it did with Mr. Nurmi in this case.

D. ORDER

[23] The Tribunal Orders that:

1. Pursuant to Rule 48.1 of the Tribunal’s Rules of Practice, the Respondent shall reimburse the Applicant the Tribunal filing fee in the amount of \$125 within 30 days of the date of this Order.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: June 4, 2024