

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 27, 2024

CASE: 2024-00144R

Citation: Clarkson v. Brant Vacant Land Condominium Corporation No. 110, 2024 ONCAT 95

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

Member: Anne Gottlieb, Member

The Applicant,

Estate of Karen Clarkson

Represented by the Executor of the Estate, Nicole Clarkson, Agent

The Respondent,

Brant Vacant Land Condominium Corporation No. 110

Not represented

Hearing: Written Online Hearing – May 9, 2024 to June 19, 2024

Video Conference – June 17, 2024

DECISION AND ORDER

A. INTRODUCTION

[1] Nicole Clarkson (“Ms. Clarkson”) is the Estate Trustee of Karen Clarkson. She submitted a Request for Records (“Request”) on January 4, 2024 to the Respondent Brant Vacant Land Condominium Corporation No. 110 (“BVLCC 110”). BVLCC 110 is comprised of nine (9) units. The condominium corporation did not provide a Board Response to the Request for Records (“Board Response”) on the mandated government form, as required by the *Condominium Act, 1998* (the “Act”) and did not provide the records requested. BVLCC 110 did not participate at all during this hearing, despite requests and opportunities in the tribunal online system to engage.

[2] BVLCC 110 did not provide any reasonable excuse for failing to provide the requested records. Through the total lack of response and participation of BVLCC 110, I deem them to have no reasonable excuse, and to be effectively

refusing to provide the records. I find that Ms. Clarkson is entitled to the records she requested.

- [3] I order BVLCC 110 to produce the records within thirty (30) days from the date of this decision. If any of these records do not exist, BVLCC 110 is to provide a detailed written confirmation itemizing the record and explaining that it does not exist. Ms. Clarkson does not seek any penalty from BVLCC 110 for failing to comply with provisions of the Act. She is not seeking filing fees paid to the Tribunal, or any costs. I make no such orders.

B. BACKGROUND

- [4] I am satisfied that the condominium corporation was aware of this application and had access to the Tribunal's online system. The Stage 2 – Mediation ("Stage 2") Summary and Order indicates that BVLCC 110 did participate once in Stage 2. Throughout the hearing, I posted messages in the Tribunal's online system inviting and allowing BVLCC 110 to be heard. There was ample opportunity and time for the condominium corporation to join and engage. All the instructions and documents were available for both parties, as was the link to the video conference portion of the hearing.
- [5] The role of Nicole Clarkson as Trustee was not in dispute. This information was corroborated by Yvonne Martin, a witness who testified that she assisted with transitional matters at BVLCC 110 following the death of Karen Clarkson. Karen Clarkson was a property owner and the Developer of BVLCC 110 and was President of the board of directors prior to her passing in December 2022.
- [6] Ms. Clarkson provided evidence and made submissions regarding the Request. She answered questions put to her by me, during the hearing, to clarify her evidence. I find her to be credible, and I accept her version of the facts leading up to the filing of this application.
- [7] The Request asked for the following records in electronic form:
1. Records of Owners and Mortgagees
 2. Periodic Information Certificates from the past 12 months
 3. Budget for the corporation – current fiscal year including amendments
 4. Most recent approved financial statements
 5. Minutes of Board Meetings (February 16 - December 20, 2023)

C. ISSUES & ANALYSIS

[8] The issues that relate to the Request in this case are as follows:

1. Is Ms. Clarkson entitled to receive copies of the requested records?
2. Did BVLCC 110 refuse to provide the requested records without a reasonable excuse?
3. What is an appropriate remedy?
4. Should any penalty or costs be awarded?

Issue #1: Is Ms. Clarkson entitled to the records that she requested?

[9] The right of an owner to examine or obtain copies of the corporation's records is set out in Section 55 (3) of the Act:

55 (3) The corporation shall 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 obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).

[10] With respect to the record of owners and mortgagees, Section 46.1 (3) of the Act requires a corporation to keep a record of owners and mortgagees which includes the identification of the unit, the name of the owner or mortgagee, and their address for service in Ontario. This is a record to which Ms. Clarkson is entitled.

[11] Section 26.3 of the Act and Section 11 of Ontario Regulation 48/01 ("O. Reg. 48/01") set out the requirements for a corporation to provide periodic information certificates ("PICs") to owners. The certificates are to be sent within 60 days of the end of the first and third quarters of a corporation's fiscal years. These are records to which Ms. Clarkson is entitled.

[12] The budget, and the approved financial statements, are records listed in Section 55 (1) of the Act and O. Reg. 48/01 as records the corporation is required to maintain. Per Section 67 (1) of the Act, audited statements are to be prepared every year. These are records to which Ms. Clarkson is entitled.

[13] The minute book containing minutes of meetings of the board of directors, is required to be maintained under Section 55 (1) of the Act. The minutes of the prior 12 months are core records and are records to which Ms. Clarkson is entitled.

Issue #2: Did BVLCC 110 refuse to provide the requested records without a reasonable excuse?

[14] BVLCC 110 did not follow the mandatory statutory requirements of the Act and did not respond to the Request. Ms. Clarkson testifies that no records were provided by the Respondent regarding the Request. There is no evidence before me to explain the absence of a Board Response or any reason for not providing the records requested. This is tantamount to a refusal to provide the records without a reasonable excuse.

Issue #3: Should any penalty or costs be awarded?

[15] Ms. Clarkson has waived any consideration of a penalty under Section 1.44 (1) 6 of the Act. She has indicated that she does not seek an award of costs.

C. ORDER

[16] The Tribunal orders that:

1. Within thirty (30) days of the date of this decision, BVLCC 110 shall, at no cost to the Estate of Karen Clarkson, or Ms. Clarkson, provide electronic copies of the records listed below:
 - a. Records of Owners and Mortgagees
 - b. Periodic Information Certificates from the past 12 months
 - c. Budget for the corporation – current fiscal year including amendments
 - d. Most recent approved financial statements
 - e. Minutes of Board Meetings (February 16 - December 20, 2023)
2. If any of the records listed above do not exist, BVLCC 110 is to provide Ms. Clarkson with a written confirmation explaining that the record does not exist.

Anne Gottlieb
Member, Condominium Authority Tribunal

Released on: June 27, 2024