

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 31, 2024

CASE: 2024-00213R

Citation: Soper v. Muskoka Common Element Condominium Corporation No. 71, 2024 ONCAT 114

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

Member: Dawn Wickett, Member

The Applicant,

Ellen Soper

Self-Represented

The Respondent,

Muskoka Common Element Condominium Corporation No. 71

Represented by Natalia Polis, Counsel

Hearing: Written Online Hearing – July 4, 2024 to July 23, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a unit owner in Muskoka Common Element Condominium Corporation No. 71 (“MCECC 71”).
- [2] The Applicant brings this application alleging MCECC 71 refused to provide her with a copy of Paul Camm’s Property Management Report (“the Report”) that was presented at the Annual General Meeting (“AGM”) held on August 23, 2023. The Applicant made her request for records on March 1, 2024. MCECC 71 responded to her request using the mandatory board response form on March 19, 2024.
- [3] The Applicant seeks orders requiring MCECC 71 to provide her with a copy of the Report and reimburse her the Tribunal application filing fee (\$200).
- [4] The Respondent’s position is that they cannot provide the report to the Applicant as no draft or final report exists. At the AGM, the condominium manager used

personal notes to provide his verbal report.

- [5] The Respondent submits that the condominium manager's personal notes are not records of the corporation as they have not been included as part of the meeting minutes.
- [6] The Respondent seeks orders dismissing this application and for recovery of the legal costs (\$4,017.23) incurred for participating in the Tribunal proceedings.

B. OUTCOME

- [7] For the reasons that follow, I find the Applicant is not entitled to a copy of the condominium manager's personal notes/statements which he relied on for his verbal presentation at the August 2023 AGM.
- [8] The application is dismissed without an order for costs.

C. ISSUES & ANALYSIS

Issue No. 1: Is the Applicant entitled to receive a copy of the condominium management notes/statement?

- [9] The Applicant's March 1, 2024, request for records indicates that she is seeking to obtain a copy of "Paul Camm's Property Management Report for the August 2023 AGM".
- [10] In the March 19, 2024, response to the Applicant, MCECC 71 declined to provide a copy of the Report for the following reasons:

"Paul Camm's Property Management Report for the 23 Aug 2023 AGM" is not a record of the Corporation. The aforementioned report is a draft and/or management's notes and only become a report of the corporation to the extent that the report is reflected in the meeting minutes of the 23 Aug 2023 AGM. Please refer to the decision of Ronald Smith v. Metropolitan Toronto Condominium Corporation No. 773".
- [11] The Applicant takes issue with the Respondent's position that the condominium manager's notes/statement are not a record of the corporation. It is her belief that since the condominium manager read a prepared statement, the notes/statement are in fact a record of the corporation.
- [12] In support of her position, the Applicant submitted three witness statements from other unit owners. The witness statements confirm that during the AGM, the

condominium manager read from prepared notes/statement to deliver his report.

- [13] The Applicant submits that the AGM meeting minutes do not reflect meaningful content from the condominium manager's report which is another reason why she should be entitled to a copy of his personal notes/statement.
- [14] The Respondent submits that no condominium management report exists. It also submits that the condominium manager's personal notes used to present a verbal report to the owners during the August 2023 AGM are not records of the corporation, and therefore the Applicant is not entitled to receive a copy as they are not incorporated as part of the AGM meeting minutes.
- [15] In support of its position, the Respondent relied on *Ronald Smith v. Metropolitan Toronto Condominium Corporation No. 773*, 2019 ONCAT 24 ("Smith"). In Smith, the Tribunal held that "...management reports are drafts or notes and only become a record of the corporation to the extent that they are accepted by the Board and reflected in the minutes of a Board meeting".
- [16] During Stage 2-Mediation, the Respondent provided the Applicant with a copy of the draft AGM meeting minutes. The meeting minutes do not indicate that the condominium manager's personal notes/statement would form part of the record.
- [17] The Applicant may be correct that the draft AGM meeting minutes do not capture meaningful information from the condominium manager's verbal report, however, the absence of this information from the minutes does not mean that the notes then become records of the corporation which she is entitled to receive. The Applicant did not provide evidence to challenge the Respondent's position that the condominium manager's report during the AGM was delivered to owners by reading his personal notes/statement. Further, the draft AGM meeting minutes do not reflect that the condominium manager's notes would form part of the record. As such, I find that the condominium manager's report was provided during the AGM by him reading from his personal notes/statement, which are not records of the corporation.
- [18] The facts in this case are similar to those in Smith where the applicant sought to obtain copies of draft management reports and/or notes. I agree with the decision in Smith regarding a unit owner's entitlement to draft management reports or notes. As such, given my finding that the notes/statements are not records of the corporation, I further find that the Applicant is not entitled to receive a copy of the condominium manager's personal notes/statement relied on to deliver his report at the August 2023 AGM.

Issue No. 2: Costs

[19] The Applicant seeks an order requiring the Respondent to reimburse her the fee (\$200) she paid to file this application.

[20] The Tribunal's Rule 48.1 states:

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.

[21] The Applicant was not successful in this matter. As such, I find no basis to make an order for the Respondent to reimburse her the cost she incurred to file this application.

[22] The Respondent seeks an order requiring the Applicant to reimburse it for the legal costs (\$4,017.23) it incurred to participate in this proceeding. It is the Respondent's position that innocent unit owners should not have to shoulder the cost of defending this application, particularly when the corporation tried to resolve the issues in dispute prior to the hearing.

[23] The Tribunal's Rule 48.2, provides:

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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[24] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" (the "Practice Direction"), states that a determination of costs, including indemnification, shall consider,

(i) whether a party's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

(ii) the conduct of all parties and representatives requesting costs;

(iii) the potential impact an order for costs would have on the parties;

(iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their

respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[25] In this matter, both parties' participation was courteous and appropriate and did not cause any delays in the proceeding. The hearing was straightforward and uncomplicated. When considering these factors against those set out in the Tribunal's Practice Direction, I find no reason to make an order for cost.

D. ORDER

[26] The Tribunal Orders that:

1. The application is dismissed without costs.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: July 31, 2024