

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 10, 2024

CASE: 2024-00263R

Citation: Bogue v. Carleton Condominium Corporation No. 288, 2024 ONCAT 154

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Margaret Ann Bogue

Represented by Douglas Forsythe, Agent

The Respondent,

Carleton Condominium Corporation No. 288

Represented by Cheryl Wood, Counsel

Hearing: Written Online Hearing – July 8, 2024 to September 25, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Margaret Ann Bogue (the “Applicant”) is a unit owner in Carleton Condominium Corporation No. 288 (“CCC 288”). The Applicant submitted a Request for Records (the “Request”) to CCC 288 on March 9, 2024, in which she requested “any and all audio-visual recordings and audio transcripts of the AGM held on June 15, 2023”. CCC 288 responded on April 5, 2024, stating that the board had determined that the Applicant could not examine or obtain a copy of the record requested because “the corporation is not in receipt of any such record”.

[2] This is not the first dispute between these parties arising from a records request; indeed, it is the fifth time that the parties have been before the Tribunal, and this dispute is to some extent a reprise of the issues in their case before the Tribunal in late 2023.

B. BACKGROUND

[3] The Applicant’s position regarding her entitlement to the record in this case is

grounded in the decision issued by the Tribunal on January 26, 2024¹ (the “January decision”) which is an important backdrop to this dispute.

[4] At issue in the January decision was a request for all audio/video recordings of the virtual Annual General Meeting (“AGM”) held on July 22, 2022. In the decision, the Tribunal noted that the 2022 AGM was hosted by CCC 288’s law firm, Davidson Houle Allen (DHA), and that GetQuorum provided the virtual meeting and electronic voting platform. The Tribunal found that the recording of the AGM was made and managed by DHA, the reasonable inference from the evidence being that DHA did so at the request and direction of CCC 288. Given that DHA was found to be an agent of CCC 288, the Tribunal concluded that the recording was a record of the corporation to which Ms. Bogue was entitled. I note that this decision was not appealed by CCC 288, though counsel in her submissions suggests now that its conclusions were based on mistaken assumptions.

[5] It is also worth noting that at paragraph 6 of the decision, the Tribunal stated:

Before I address the issues, the evidence shows that the Applicant is a former board member of the Respondent and I wish to remind both parties that the Tribunal has commented in previous decisions that board governance disputes are not within the Tribunal’s jurisdiction, even if framed as a records dispute....

[6] The evidence before me is that in fact the Applicant continued to be a director on the board until her resignation on March 21, 2024. As in the January 2024 decision, the evidence in this case suggests that board governance issues persist and are at the core of the continuing dispute between the Applicant and CCC 288.

[7] In this case, CCC 288 takes the position that the 2023 AGM recording is not a record of the corporation; however, its condominium manager (CMG) has obtained a copy of the audio-visual recording and offered “as a courtesy” that the Applicant may attend at the CMG offices to “view” it. At the hearing, CCC 288 clarified that there is no transcript of the recording.

[8] The Applicant did not accept this ‘offer’, stating: “it does not fulfill her request, made as an owner for access to corporate records of the AGM subject to restrictions under s. 55(4)” of the *Condominium Act, 1998* (the “Act”).

[9] For the reasons set out below, I find that the audio-visual recording of the 2023

¹ Bogue v. Carleton Condominium Corporation No. 288 2024 ONCAT 15 (CanLII).

AGM is not a record of the corporation although the Applicant has been provided with access to it. No penalty is warranted and there will be no order for costs.

C. ISSUES AND ANALYSIS

Issue: Is the audio-visual recording of the 2023 AGM a record of CCC 288

- [10] CCC 288's evidence concerning the 2023 AGM is that it retained DHA to host and chair the AGM, and that it retained GetQuorum to provide the meeting platform as well as to provide back-office support in advance of the meeting. A minute taker, Every Moment Minute Takers ("EMMT") was retained to attend and prepare the minutes for the AGM. The individual who attended for EMMT made a personal recording of the meeting to assist her in preparing the minutes but did not (as is her practice) keep a copy of the recording.
- [11] Nikki Monette, CCC 288's condominium manager² in 2023, testified that she was not asked to retain the services of any company to prepare a recording of the AGM, and she did not do so. CCC 288 states that it did not choose to make a recording nor direct anyone to record the meeting for them. It was not part of its contract (a copy of which was in evidence before me) with GetQuorum for this meeting. However, based on the evidence of Maryna Panova, Ms. Monette's successor, it appears that upon receipt of the March 9, 2024, records request, she contacted GetQuorum about a recording and it then provided her with a copy of the audio-visual recording of the 2023 AGM.
- [12] GetQuorum, according to its policy, records the virtual meetings as a matter of course for training, quality assurance and compliance purposes. Its policy states that the "recordings are the sole possession of GetQuorum", though a copy of the recording can be made available to the customer upon request within 10 days of the meeting. Their policy also states that they keep the data for at least a period of one year. Although Ms. Panova requested a copy well after the 10 days set out in the policy, the recording was still available and was provided to her.
- [13] Unlike the facts of the January 2024 decision where the recording was found to be produced by DHA as a service to CCC 288 for a fee, CCC 288 did not pay a fee for GetQuorum to record the 2023 AGM as a service to it. The recording was not created at the behest of CCC 288. The evidence before me is that Ms. Panova, in

² Ms. Monette and the subsequent person in her position, Maryna Panova, describe themselves as property managers. However, they are described in this decision using their proper professional designation as condominium managers and are, based on the evidence, employees for CMG, CCC 288's condominium management provider.

her role as condominium manager for CCC 288, upon receipt of the records request, made inquiries regarding the recording. She testified that she was not “asked” to reach out to GetQuorum, but reached out on her own, “in an attempt to be helpful.” Ms. Panova also stated that responding to records requests and providing access to records is an “extra” under the management agreement with CMG in that there is an additional cost of \$125 per hour for CMG to address these requests. There is no suggestion in the evidence that Ms. Panova was acting outside the scope of her role as condominium manager when she contacted GetQuorum; however, it is clear on the evidence that she was not asked or directed by CCC 288 to seek out a copy of the recording.

- [14] Regardless of Ms. Panova’s actions, CCC 288 submits that it does not have a copy of the recording – it is not in “receipt” of it as stated on the Board Response form - but that CMG does have a copy which is at its offices. Although, respectfully, this is a slightly disingenuous argument which likely caused the Applicant some consternation given the January 2024 decision, I am not persuaded that because CMG obtained a copy of the recording, it means, on these facts, that it is a record of the corporation. It is not. To find this to be a record here, would, by extension, mean that a recording made of a board meeting by an owner, unbeknownst to a condominium corporation, could, if provided to the corporation, become a record of the corporation when it had no intention nor gave any direction that there be a recording. This is neither logical nor consistent with the prescriptions for records which a corporation is required to keep under s. 55 of the Act.
- [15] The facts before me are different from those set out in the January 2024 decision. I do not find that CMG’s possession of the recording makes it a record of CCC 288. Simply because the condominium manager asked for a copy of the recording and received it, does not mean it becomes a record of CCC 288; it was not created by or for the corporation as a corollary of its documentation of the business and management of the corporation.
- [16] Despite its position that the audio-visual recording is not a record, CCC 288 submits that it took reasonable steps to give the Applicant access to the recording. So, in fact, whether or not it is a “record”, the Applicant has been given the opportunity to ‘examine’ it.
- [17] CCC 288 has, since April 5, 2024, permitted the Applicant to examine the record by stating that the audio-visual recording is available for viewing at the CMG offices. CCC 288 reiterated at this hearing that the Applicant may watch the recording, take notes, but not record it. The Applicant submits that if the recording

is not a record of the corporation, then s. 55(4) of the Act which lists and/or restricts records that corporations may not disclose, is not applicable. However, the condominium corporation's obligation to protect the privacy of owners is to be respected and here, where CCC 288 is providing the opportunity to view the recording in circumstances where it was not obliged to under the Act, it may place appropriate restrictions on the examination such as set out by it.

[18] Though I find that the audio-visual recording is not a record in this case, I will address two additional points made by the parties.

[19] The Applicant is not required to state her reasons for her request, but she did provide her rationale in her reply submissions. She stated that she wishes to study the statements made at the AGM by Ms. Houle and the board president about the ongoing project to amend the corporation's governing documents to better understand their explanations. She wishes to fully understand the need for changes and their implications. She stated further that she "wishes to review the detailed explanations from the AGM with interested owners in advance of the promised owners meeting and vote to be scheduled". In essence, she is seeking information, or confirmation of her understanding gleaned when she was present at the AGM.

[20] While I do not accept CCC 288's submission that the Applicant's request was not related to her interest as owner, I do agree with its assertion that her stated reasons for the request are adequately accomplished by viewing the recording and by taking notes. The Applicant has stated that she is not seeking to challenge the 2023 minutes which were approved at the 2024 AGM. She is interested in one discrete discussion item at the AGM. Further, if she has questions about the affairs of CCC 288, she, and other owners, can requisition a meeting under the Act. The nature of the issue discussed at the AGM and the explanations given which the Applicant wishes to review highlight that this is, as noted at the beginning of this decision, a board governance dispute cloaked in a records request.

[21] On the question of access, the Applicant stated that any real study would involve multiple views and the ability to start and stop the recording. Given that the Applicant has stated that she has a specific interest in a particular discussion at the meeting (and I note that the draft minutes of the AGM indicate that the entire meeting lasted two hours and seven minutes), it is unclear why 'multiple' views are necessary. In an attempt to mitigate further conflict between the parties, I will order, pursuant to s. 1.44(1)7 of the Act, that the Applicant be provided a reasonable time, which I estimate to be two hours, to view and take notes on the

recording.

Issue: Penalty and Costs

- [22] Having found that the audio-visual recording is not a record, there was no refusal and no penalty is warranted.
- [23] On the issue of costs, to a certain extent this appeared to be a case which each party sought to combatively pursue this case on a point of principle when there ought to have been an early resolution. CCC 288's insistence that the audio-visual recording was not a record was seen by the Applicant to be contrary to the decision made in her favour in January 2024. Her perspective on that point was not unreasonable. Yet her refusal to accept the offer to view the recording, especially considering her stated reason for wanting to have access to the recording, was unreasonable. She was not successful on this application, and I will not order reimbursement of her Tribunal filing fee.
- [24] CCC 288 is seeking its costs of \$10,000 asserting that it was "forced" to incur costs as a result of the proceedings, which costs were unnecessarily exacerbated by the Applicant. While I question whether these costs are reasonable and proportionate given that this was not a complex case, the more relevant consideration in exercising my discretion on costs is the particular context of this dispute and the Applicant's firm belief that the January 2024 decision meant that the 2023 AGM recording was also a record of the corporation to which she is entitled. Though unsuccessful, that was not an unreasonable understanding. The question of whether an audio-visual recording is a "record" is both somewhat novel given the more recent phenomenon of "Zoom" meetings in the condominium context and, as the Tribunal jurisprudence reveals, somewhat dependent on the particular facts. I find no improper purpose by the Applicant. Parties find themselves on the losing side of questions of law not infrequently – that does not necessarily result to an award of costs against them, especially in the administrative tribunal setting.
- [25] In making this decision to award no costs to either party, I also issue a caution to both parties. To the Applicant in particular, using a records request (and Tribunal resources) as a tool to pursue board governance issues is not appropriate and could potentially lead to liability for costs orders in the future. To CCC 288, alleging an improper purpose, as was done in this case, exacerbates the already contentious relationship between the parties. There appears to be a level of dysfunction within this condominium community which needs to be addressed; however, the avenue for addressing such issues is not in repeated cases before

this Tribunal. This is not the appropriate forum for such disputes.

ORDER

[26] The Tribunal Orders that:

1. Under s. 1.44 (1)7 of the Act, and within 15 days of the date of this decision, the Applicant and Respondent shall agree to a mutually convenient time for the Applicant to attend the CMG offices to view the audio-visual recording and take notes of the recording should she wish to do so, but not to record any portion of it. The attendance shall be scheduled within 30 days thereafter and the Applicant shall have two consecutive hours to view the recording.
2. Neither party is entitled to costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: October 10, 2024