

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 27, 2024

CASE: 2024-00191R

Citation: Tiltins v. Toronto Standard Condominium Corporation No. 1709, 2024 ONCAT 175

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

Member: Anne Gottlieb, Member

The Applicant,

Artis Tiltins

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1709

Represented by Victor Yee, Counsel

Hearing: Written Online Hearing – June 3, 2024 to September 9, 2024

Video Conference Hearing – July 16, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] Mr. Tiltins is a unit owner of Toronto Standard Condominium Corporation No. 1709, (“TSCC 1709”). On February 4, 2024 he submitted a Request for Records (the “Request”) which included a request for core records and an attached schedule (“Schedule A”), detailing non-core records requested. On March 6, 2024, TSCC 1709 provided the core records requested and a Board Response to the Request for Records (“1st Board Response”). On April 26, 2024, a second Board Response to the Request for Records was issued (“2nd Board Response”) and redacted minutes of board meetings were provided to Mr. Tiltins. The non-core records were refused by TSCC 1709 both times, for different reasons.
- [2] Mr. Tiltins alleges that the condominium corporation refused to provide the non-core records without a reasonable excuse. He asks the Tribunal to order the corporation to provide the non-core records, pay a penalty of \$5000 and reimburse

his fees before this Tribunal. He also requests that the Tribunal order TSCC 1709 to provide a list of every document for which privilege is claimed and provide a sworn affidavit listing all the documents which are the total documents within the Respondent's possession.

- [3] For the reasons set out below, I find that Mr. Tiltins was refused some of the non-core records without a reasonable excuse. I order TSCC 1709 to provide a copy of purchase orders, and work orders relating to elevator servicing and parts ordered in 2023 and up to February 4, 2024 pursuant to the recommendations of the elevator companies. If any of these records do not exist, TSCC 1709 is to provide a list setting out which of these records do not exist. I award a penalty of \$1500 to be paid to Mr. Tiltins under s. 1.44 (1) (6) of the *Condominium Act, 1998* (the "Act"), for refusing to provide some of the non-core records without a reasonable excuse. I further award Mr. Tiltins \$200 for the fee he paid to bring this case to the Tribunal.
- [4] I decline to order that TSCC 1709 provide a list of every document for which privilege is claimed. I further decline to order TSCC 1709 to provide a sworn affidavit to Mr. Tiltins that a complete list of documents are the total documents within the Respondent's possession.

B. ISSUES

- [5] I have considered all the evidence and submissions of both parties. I will only refer to matters that are relevant to the issues to be decided. The issues to be addressed in this case include:
1. Has Mr. Tiltins been refused non-core records without a reasonable excuse?
 2. Is a penalty warranted against TSCC 1709 in accordance with s. 1.44 (1) 6 of the Act?
 3. Should an order for costs be awarded?

C. ANALYSIS

Issue 1: Has Mr. Tiltins been refused non-core records without a reasonable excuse?

Request for Records – Schedule A:

- [6] The Applicant's Request listed "see Schedule A" on the Request form under non-core records. Schedule A was attached and itemized the non-core records he

was seeking. Schedule A states (*italics in original*):

Confidential Minutes related to Sabbath Elevator¹ as referred in Minutes of the Board of Directors' Meeting, dated June 15, 2023

*Any Document*** related to elevator noise investigation, assessment, remediation, including **but not limited to**:*

A) Leading to the Report by National Elevator Consulting, dated July 11, 2023 and further purchase orders, etc, implementing the recommendation (remedying the steel flow of the elevator room, adjusting the Sabbath elevator times, etc):

B) Signed confirmation of the Purchase Order/Acceptance of March Elevator proposal, dated October 30, 2023;

C) Any Purchase Orders/Agreements implementing the recommendations (isolating elevator machines from the building structure, etc) contained in the report by WSP, dated November 17, 2023

**** a "Document" shall include, but not be limited to:*

any paper format notes, reports, letters, agendas;

any audio or video recordings (zoom calls, voice messages, etc);

any correspondence or other information kept in electronic format (emails, reports, notes taken by any Director at a meeting, phone call, etc);

any elevator directly or indirectly related correspondence among members of the Board, between any Member of the Board and MRC Management (emails, call notes, etc) and any other 3rd party.

1st Board Response

- [7] On March 6, 2024, TSCC 1709 provided a Board Response to the Request for Records which addressed the core records. TSCC 1709 provided the core records and stated by email to Mr. Tiltins that Schedule A was not on the proper form and was too broad.

¹ A Sabbath Elevator is an elevator that runs continuously during the Sabbath. It stops automatically on each floor so that no one needs to push a call button or push a button to request the elevator to stop on a specific floor.

- [8] Initially the condominium corporation refused to deal with the request for the non-core records on the grounds that it was not on the actual Request form. The manager for TSCC 1709 testified that she had many years of experience in the condominium sector and did not accept Schedule A as part of the Request form. This is despite the fact that the Request form itself identified, under the non-core records category, that these records were being itemized in Schedule A, which was attached.
- [9] This Tribunal has recognized that substance takes precedence over form, with respect to both the Request for Records form and the Board Response to the Request for Records form. Section 84 of the *Legislation Act, 2006* permits people to deviate from a statutory form as long as “they do not affect the substance and are unlikely to mislead” and “the form is organized in the same or substantially the same way as the form whose use is required.”
- [10] I find that Mr. Tiltins’ Request clearly identified, in the non-core records section on the form, that the non-core records being requested were listed in Schedule A, which was attached. It is trite for the Respondent to claim that the form was not completed when the form itself indicated “see attached Schedule A.” I find that this is not a reasonable excuse for refusal to provide non-core records.
- [11] The condominium manager further testified that the list in Schedule A was too broad and that she did not understand what Mr. Tiltins was requesting. I find that with respect to the non-core records requested in Schedule A, the actual details of the request are clearly listed.
- [12] In Schedule A, Mr. Tiltins clearly identified that he wants copies of purchase orders, and acceptance of recommendations (i.e. work orders) relating to the recommendations from the elevator companies. In his testimony he elaborated and included that he wanted quotes for servicing of the elevators. This was not specifically listed in Schedule A. I find that Mr. Tiltins did specify in his Request the purchase orders and work orders relating to elevator servicing and parts ordered in 2023 and up to February 4, 2024, pursuant to three elevator company reports and recommendations².
- [13] Mr. Tiltins also includes by way of asterisk a ‘definition section for documents’ which I find to be very broad. He includes categories such as notes, audio recordings, correspondence (emails) “leading to or accompanying the various

² National Elevators, WSP and March Elevators

elevator company reports,” and he also includes directors’ notes. This portion is not a proper request for a record. It includes several categories of items which may or may not be records of the corporation to which an owner is entitled.

- [14] By way of explaining the ‘definition section’ on Schedule A, Mr. Tiltins testified that he wanted more details respecting the references in the board meeting minutes to steps that the condominium was taking to make elevator repairs. This Tribunal has indicated previously that a request for records is different than an exploration for information.

2nd Board Response

- [15] In the 2nd Board Response dated April 26, 2024, TSCC 1709 sets out two other reasons for its refusal to provide the non-core records, on an “and/or” basis. The 2nd Board Response states that the Applicant was not entitled to the non-core records because the records do not exist “and/or” are excluded by virtue of s. 55 (4) (b) of the Act.³ The first part of this refusal is that Mr. Tiltins was not entitled to the records because they do not exist. TSCC 1709 does not indicate which records may not exist. A blanket assertion that all of the records do not exist is not reasonable, and is not a reasonable excuse for not providing records.
- [16] TSCC 1709 also refuses the records on the basis of the exemption set out in s. 55 (4) (b) of the Act which relates to actual or contemplated litigation. Again, TSCC 1709 fails to indicate which records might fall within this exemption. There is no evidence before me respecting any actual litigation. TSCC 1709 did put into evidence eight emails spanning the period of August 6, 2023, to April 13, 2024, in which Mr. Tiltins threatened lawsuits.⁴ I accept that litigation may be a possibility; however, this does not mean that TSCC 1709 can rely on a blanket assertion that all non-core records are exempt.

³ Section 55 (4) (b) states that:

(4) The right to examine or obtain copies of records under subsection (3) does not apply to,

...

(b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;

⁴ The emails include a reference to a claim for nuisance; a proceeding against the corporation’s directors; a personal injury/medical impairment claim; specific performance; and an action to preserve evidence.

[17] The particular records described in paragraph 12 above, namely the purchase and work orders for elevator repairs and parts in 2023 and up to February 4, 2024, are part of maintenance and upkeep of a common element. These are records to which an owner is entitled. I order that these be produced by TSCC 1709. If any of these records do not exist, TSCC 1709 is to provide Mr. Tiltins with an itemized list.

Other

[18] I further find that Mr. Tiltins is not correct in stating that the onus is on TSCC 1709 to provide him with a list and an affidavit itemizing all the documents in the possession of the condominium corporation. There is no basis, in this case, for such an order.

Issue 2: Is a penalty warranted against TSCC 1709 in accordance with s. 1.44 (1) 6 of the Act?

[19] Section 1.44 (1) 6 of the Act states that the Tribunal may order a penalty if it finds that the condominium corporation has, without reasonable excuse, refused to permit an owner to examine or obtain copies of records. I have found that TSCC 1709's reasons for its refusals to provide the records, in both the 1st Board Response and the 2nd Board Response, were in significant measure unreasonable. Four different bases for the refusals were put forth by TSCC 1709, and only one – the overly broad request relating to some, not all, of the records – was reasonable. Further, I caution TSCC 1709 that issuing blanket reasons such as 'the records do not exist' for a large swath of records without any specificity is inappropriate. Having found that there has been a refusal without a reasonable excuse, a penalty is warranted. The question is, in what amount.

[20] Mr. Tiltins asks that the maximum penalty of \$5000 be awarded in this case. I find that a penalty of \$1500 is appropriate because I have found that some of the records were refused without a reasonable excuse. This will also serve as a reminder to TSCC 1709 of its obligations to appropriately respond to a Request for Records.

Issue 3: Should an order for costs be awarded?

[21] Mr. Tiltins has been mostly successful in bringing this case to the Tribunal. I order that TSCC 1709 pay Mr. Tiltins the costs of his filing fees in the amount of \$200, pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

D. ORDER

[22] The Tribunal orders that:

1. Within 30 (thirty) days of the date of this Order, TSCC 1709 is to provide Mr. Tiltins with purchase orders and work orders relating to elevator servicing and parts ordered for 2023 and up to February 4, 2024. There were no submissions made for any fee to produce the non-core records, and Mr. Tiltins is to receive these records without paying any fee. If any record does not exist, then TSCC 1709 is to provide Mr. Tiltins with a written statement itemizing which record does not exist.
2. Within 30 (thirty) days of the date of this Order, TSCC 1709 is to pay Mr. Tiltins the sum of \$1500 as a penalty pursuant to s. 1.44 (1) 6 of the Act.
3. Within 30 (thirty) days of the date of this Order, TSCC 1709 is to pay Mr. Tiltins the sum of \$200 as reimbursement of filing fees for this case pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

Anne Gottlieb
Member, Condominium Authority Tribunal

Released on: November 27, 2024