

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 18, 2024

CASE: 2024-00256R

Citation: Bolanos v. Carleton Condominium Corporation No. 141, 2024 ONCAT 191

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

Member: Nasser Chahbar, Member

The Applicant,
Socorro Bolanos
Self-Represented

The Respondent,
Carleton Condominium Corporation No. 141
Represented by Mitchell Robinson, Counsel

Hearing: Written Online Hearing – August 21, 2024, to November 12, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in Carleton Condominium Corporation No. 141 (“CCC 141”). On March 20, 2024, the Applicant submitted a records request, and after the conclusion of Stage 2 – Mediation, the provision or adequacy of the following records remained at issue:

Core Records

1. An up-to-date record of Owners and Mortgagees
2. Record of Notices relating to Leases of Units under section 83 of the *Condominium Act, 1998* (the “Act”)
3. Budget for CCC 141’s current fiscal year, including any amendments
4. January 2024 and February 2024 minutes of board meetings

Non-Core Records

5. Bank statements from the general and Reserve Fund accounts from January 2024 to present (March 20, 2024)
 6. CCC 141's water bills for July 2017, November 2017, December 2017, January 2018, September 2018 and October 2018
- [2] On April 17, 2024, the Respondent emailed all the records to the Applicant except for the water bills and bank statements, for which they attached a cost estimate for the production of these records. On April 18, 2024, the Applicant paid the fees to produce the remaining records. That Applicant also emailed the board alleging that out of the records provided to them, some of the requested records were missing and that some of the records that were provided were inadequate.
- [3] The Applicant claims that CCC 141 did not respond to their follow-up email for the next two weeks, and as a result, they filed a case with the Tribunal. The Respondent provided the water bills and bank statements to the Applicant on May 7, 2024, by which time the Applicant's case was already underway in Stage 1 – Negotiation. By the time the case proceeded to Stage 2 – Mediation, the Applicant claimed that the Respondent "corrected some of the documents" but maintained that some of the records were inadequate.
- [4] For the reasons set out below, I find that the Respondent has provided the Applicant with all the records to which they are entitled, and that the records the Applicant received are adequate. I find that the Respondent did not refuse to provide the records without a reasonable excuse and that imposing a penalty against the Respondent is not warranted. In addition, no order will be made to require the Respondent's Board members to retake the mandatory director training. Since the Applicant's claim was unsuccessful, I make no order for costs.

B. BACKGROUND

- [5] This is the third records case between the parties (all resulting in a Stage 3 – Tribunal Decision). Based on each party's submissions, it is clear that the issues between the parties extend beyond issues related to records. As is common in records cases before the Tribunal, there are other underlying issues relating to the board's governance practices and day-to-day management of the corporation. The Applicant accused the board of mismanaging funds and mistreating other unit owners when seeking information about the board's construction projects, while the Respondent accused the Applicant of using the Tribunal to validate her allegations of fraud against the Corporation and its representatives.
- [6] The parties were informed several times that issues relating to the governance

practices of the corporation are outside of the Tribunal's jurisdiction, and that any submissions on these issues would not be considered in my decision.

- [7] After their third case at the Tribunal, it is my hope that both parties have learned enough about records cases and their obligations under the Act so that any further issues may be resolved amicably before hastening to file a case with the Tribunal.

C. ISSUES & ANALYSIS

- [8] The issues to be addressed in this hearing are:

1. Has the Respondent refused to provide records to the Applicant without a reasonable excuse, either because the Board Response form has not been provided, or because the records were provided late? If so, is a penalty warranted under section 1.44 (1) 6 of the Act?
2. Are the records provided adequate? If not, what is the appropriate remedy?
3. Should the Applicant be awarded any costs?

Issue #1: Has the Respondent refused to provide records to the Applicant without a reasonable excuse, either because the Board Response form has not been provided or because the records were provided late? If so, is a penalty warranted under section 1.44 (1) 6 of the Act?

- [9] The Applicant submitted their records request on March 20, 2024. On April 17, 2024, the Respondent provided the Applicant with all of the records except the water bills and bank statements, which were provided to the Applicant on May 7, 2024, after they paid the fees for the production of these records.
- [10] As noted above; after receiving the board's response on April 17, 2024, the Applicant took the position that not all of the records were provided and that some of the records provided were inadequate.
- [11] The Applicant requested CCC 141's water bills for the following months: July 2017, November 2017, December 2017, January 2018, September 2018, and October 2018. These records were provided to the Applicant on May 7, 2024, after they paid the fee estimate include in the Respondent's mandatory Board response form.
- [12] The Applicant claims that the water bills they received did not include the first 18 days of September of 2018 and that the Respondent intentionally refused to provide this water bill until they were pressed on the issue during Stage 2 –

Mediation.

- [13] The Respondent submitted that the water bills do not have “typical” billing periods as some of the bills have start periods towards the end of the month. The Corporation’s condominium manager, Mr. Eric Danso, testified that he thought he had located and produced the entirety of the September 2018 water bill when he initially searched through the Corporation’s physical records to locate the relevant water bills. Upon realizing that the Applicant had not been provided with water bills that captured the first eighteen days of September 2018, Mr. Danso states that he conducted an additional search and eventually located the relevant water bill. These records were provided to the Applicant and uploaded to the CAT-ODR system during Stage 2 – Mediation. The Respondent asserts that prior to advancing this matter to Stage 3 – Tribunal Decision, the Applicant had been provided with all the of the water bills she had requested and that CCC 141 had not refused to provide these records to the Applicant.
- [14] The Applicant requested a copy of the budget for CCC 141’s current fiscal year. On April 17, 2024, the Respondent provided the Applicant with the budget for its current fiscal year, being the 2023-2024 budget. The Applicant then explained to the Respondent that they were requesting the next fiscal year’s budget (2024-2025 fiscal year running from June 1, 2024, to May 31, 2025), as the previous year’s budget had already been provided to owners last year in May 2023. The Respondent communicated to the Applicant that the budget for the following fiscal year had not yet been approved. The budget for the 2024-2025 fiscal year was subsequently approved in May 2024 and provided to all owners, including the Applicant.
- [15] The Applicant also takes issue with the accuracy of estimate amounts for various construction projects in the previous year’s budget. The Applicant’s concerns with the accuracy of the estimated budget amounts relate to the governance practices of CCC 141, which is an issue not within the Tribunal’s jurisdiction.
- [16] Under section 1.44 (1) 6 of the Act, the Tribunal may make an order directing a condominium corporation to:
- Pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under section 55 (3) if the Tribunal considers that the corporation has, without reasonable excuse, refused to permit the person to examine or obtain copies under that subsection.
- [17] The evidence before me does not support a finding of a refusal to provide the records without a reasonable excuse. On the issue of the September 2018 water

bill, I accept the Respondent's submissions along with the witness statement of their condominium manager, that a clerical error was made which resulted in the other bill for September 2018 being overlooked and not initially provided to the Applicant. There is no evidence or reasons before me to suggest that the Respondent intentionally withheld this particular water bill.

- [18] Furthermore, the Respondent fulfilled the Applicant's request for the corporation's budget for the current fiscal year because at the time of the Applicant's request (March 2024), the 2023-2024 budget was still current as the 2024-2025 fiscal year had not yet begun. The Respondent communicated to the Applicant in their initial response to the records request that the 2024-2025 budget had not yet been approved by the board. Therefore, the Respondent provided the record in question, being the current fiscal year's budget and as such, there is no basis for an award of a penalty.

Issue #2: Are the records provided adequate? If not, what is the appropriate remedy?

Record of Owners and Mortgagees

- [19] The Applicant claims that the first record of Owners and Mortgagees the Respondent provided on April 17, 2024, was incomplete since it did not list the addresses for service of owners living outside the condominium community. The Respondent provided a corrected version on May 7, 2024, which contained the owners' names, unit numbers and addresses for service.
- [20] The Respondent asserts that in accordance with section 46.1 (3) of the Act, the record of Owners and Mortgagees is adequate and was provided to the Applicant well in advance of the date this application proceeded to Stage 3 – Tribunal Decision.
- [21] Based on the parties' submissions, although the complete record was not initially provided to the Applicant on April 17, 2024, the Applicant was provided with the corrected version during Stage 2 – Mediation once the Respondent was made aware of the omission. Therefore, I find that the Respondent satisfied this request and has provided an adequate record of Owners and Mortgagees.

Records of Notices of Leased Units

- [22] The Applicant claims that the record of Notice of Leased Units "is incomplete" and that the Respondent is refusing to provide this information. In their initial response to the Applicant, the Respondent provided them with a list of unit numbers that are

leased, but no other information. The Applicant asserts that they have knowledge of the Respondent receiving Notices of Leased Units in the past. The Applicant does not explain how they know this other than by stating that they know of a board member who lives off site and they would assume that the board member would submit this kind of information.

- [23] The Respondent states that the record provided to the Applicant did not include “the type of notice received” and “the date the notice was received”, because they had not yet received any Notices from owners who are leasing out their units. In order to remedy this lack of information, the condominium manager sent an email to all owners on May 28, 2024, to remind them of their obligations pursuant to section 83 of the Act.
- [24] The property manager received responses from two owners who were leasing their units, and the Respondent updated this record to reflect the new information received. The Respondent uploaded an updated version of this record during Stage 2 – Mediation on June 12, 2024.
- [25] The Respondent claims that they provided the Applicant with an adequate up-to-date record of Notices of Leased Units, as this is all of the information that they currently possess. They also stated that they will continue to update this record as they receive more Notices pursuant to section 83 of the Act and that they will maintain a record of such Notices.
- [26] Section 83 (3) of the Act states: “A corporation shall maintain a record of the notices that it receives under this section. 1998, c. 19, section 83 (3).” Section 83 of the Act does not task the corporation with seeking out Notices of Leased Units from owners, but that the corporation is required to maintain a record of Notices that they receive. The onus is placed on unit owners to provide the corporation with the information listed in section 83 of the Act.
- [27] At the time of the Applicant’s request, the Respondent provided them with the existing records they possessed. There is no evidence to suggest that the Respondent had more complete records of Leased Units and that they intentionally withheld this information from the Applicant. Therefore, I find that the record of Notices of Leased Units is adequate, and that the Respondent satisfied the Applicant’s request for these records.

Minutes of January 2024 and February 2024 meetings

- [28] The Applicant asserts that “the minutes of their meetings are inadequate and lack detail about decisions the board is making.” The Applicant claims that the

Respondent did not mention any details relating to a construction project which included repairs to the foundation of six different units. The Applicant further states that “the foundations project and borrowing all kinds of monies, should have been included in the minutes, in detail and clearly stating all kinds of monies used or needed for this project.” The Applicant concluded that the Respondent is “trying to withhold information from other owners, as there is a lack of transparency.”

- [29] Later in their submissions regarding the adequacy of the board’s meeting minutes, the Applicant further stated:

It appears to me that the board members at CCC No. 141 and management are trying to withhold information from the owners, as there is a lack of transparency. In my view this is not in accordance with the Condominium Act, or anything that board members are supposed to represent, as they seem to omit information that should be included in the minutes of the meeting and/or provided to all other owners, especially big projects like the foundations and the need to borrow money.

- [30] The Respondent submits that the January 2024 and February 2024 meeting minutes are adequate in accordance with the Act. They also state that the Applicant has not provided any evidence to suggest that these minutes do not document the board’s business transactions, or that the minutes do not adequately reflect the board’s discussions that took place at those meetings.

- [31] The Respondent further states that the Applicant has been provided with the meeting minutes of subsequent months in a good faith effort to resolve this matter. These further minutes contain more detail about the foundation repair project and CCC 141’s borrowing practices because these issues were discussed in greater detail at those later meetings.

- [32] The Tribunal has adopted the standard established in *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC) (“McKay”) which found that:

The Act obliges the corporation to keep adequate records. One is impelled to ask -- adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s. 12(2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be

adequate, therefore, to permit it to fulfil its duties and obligations.

[33] In *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72, the Tribunal summarized the principles outlined in McKay, stating that:

These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.

[34] The Applicant speculates that the Respondent is withholding information and that some of the discussions are either not being recorded during board meetings or that business is being conducted outside of board meetings and is not properly documented. However, these decisions could have been ratified during subsequent board meetings in which the Respondent claimed were provided to the Applicant as a good gesture. Nevertheless, the minutes of any further meetings were not a part of the Applicant's case and as such, serve no purpose in my decision.

[35] Based on the evidence, I find that the January 2024 and February 2024 meeting minutes are adequate. They include sufficient detail to allow owners to understand what was discussed during those meetings. It is true that some of the issues that the Applicant has raised were not documented in those meeting minutes. However, I cannot conclude that a discussion of these issues should have been documented in these particular minutes and that because they are not, the minutes are rendered inadequate. There is no evidence before me to suggest that the issues regarding the foundation repair project and CCC 141's borrowing practices were discussed during those meetings and that the board failed to document them. The minutes themselves may very well reflect the record of everything discussed at those meetings.

Issue #3: Should the Applicant be awarded any costs?

[36] The Applicant requested \$200 in costs for their Tribunal application fees. The Respondent did not request any costs.

[37] 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.

[38] The Applicant in this case was unsuccessful as almost all of their concerns were resolved prior to Stage 3 – Tribunal Decision. Therefore, I find that they are not entitled to any costs.

D. CONCLUSION

[39] In conclusion, having found that no records were refused without a reasonable excuse and that the records provided are adequate in accordance with the Act, I do not find that an order is warranted to require the Respondent's board members to retake the mandatory director training. There is no evidence to suggest that the board members are not aware of their obligations under the Act.

E. ORDER

[40] The Tribunal Orders that:

1. The Applicant's case is dismissed without costs.

Nasser Chahbar
Member, Condominium Authority Tribunal

Released on: December 18, 2024