

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 24, 2024

**CASE:** 2024-00414SA

**Citation:** Nezhinsky v. York Region Standard Condominium Corporation No. 1175,  
2024 ONCAT 192

Order under section 1.47 of the *Condominium Act, 1998*.

**Member:** Roger Bilodeau, Member

**The Applicant,**

Marina Nezhinsky

Self-Represented

**The Respondent,**

York Region Standard Condominium Corporation No. 1175

Represented by Irma Natale, Counsel

**Hearing:** Written Online Hearing – July 17, 2024, to December 8, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant is a unit owner of the Respondent, York Region Standard Condominium Corporation No. 1175 (“YRSCC 1175”).
- [2] In a previous case before the Tribunal (case 2024-00065R: “the parent case”), the parties agreed to a settlement in Stage 3 – Tribunal Decision. In that case, the Applicant had filed a request for records relating to a renovation project (“the Project”) of a significant dollar amount which resulted in a \$1.5 million Special Assessment for all owners.
- [3] The Settlement Agreement (the “SA”) was issued on April 9, 2024, and the Applicant now alleges that the Respondent has breached subsection 4(2) of the SA. Within varying deadlines for different action items provided for in that subsection, the SA required YRSCC 1175 to inquire from the bidding contractors about obtaining copies of ‘engineer materials’ that they may have received, to report back to the Applicant about its inquiry and finally, to discuss at a board

meeting the results of its inquiry and of what was reported to the Applicant.

- [4] The Applicant states that none of the terms of the SA were complied with in accordance with its wording, including the fact that she did not receive any communications from YRSCC 1175 during the timeframes described in the SA nor at any other time. She therefore seeks a finding that YRSCC 1175 is in breach of the terms of the SA and an order for strict compliance by a clear and enforceable deadline. She also seeks an order that would compel YRSCC 1175 to prepare and send a letter to all owners, via email and postal mail, to clarify all details which led to the Project, including all options that were considered in that regard. In addition, the Applicant is seeking penalties in the total amount of \$10,000 for non-compliance with the SA. Finally, the Applicant seeks an order requiring the Respondent to reimburse the fee which she paid to file this application.
- [5] For its part, YRSCC 1175 takes the position that it is in compliance with all aspects of the SA and that there are no outstanding issues of non-compliance. It is also seeking costs on a full or, in the alternative, on a substantial indemnity basis, for its legal fees of \$12,553.45. Finally, YRSCC 1175 is seeking a ruling that any order made by the Tribunal in this case, as well as any unproven allegations made by the Applicant against the Corporation's agents, will remain confidential and/or be restricted from public access due to sensitive information which could impact its legal proceedings in regard to the Project.
- [6] For the purposes of arriving at my decision, I have considered all relevant evidence and submissions filed by the parties, except for evidence and submissions which relate to the dispute between the parties about access to records in the parent case. On more than one occasion in this case, I reminded and made clear to the parties that my jurisdiction in this case is solely about compliance with the SA and that I cannot reconsider evidence or submissions which relate to the parent case. I also reminded the Applicant that if other issues need to be addressed, she must pursue other avenues in that regard, either directly with YRSCC 1175 or in the courts, as may be provided for in the *Condominium Act, 1998* ('Act') or its regulations.
- [7] For the reasons that follow, I find YRSCC 1175 as being non-compliant with many parts of the SA and I therefore order it to take all necessary steps to bring itself into compliance with all aspects of the SA within the various deadlines set out below. I also order YRSCC 1175 to reimburse to the Applicant the amount of \$125 which she paid to file this application.

## **B. ISSUES AND ANALYSIS**

### Alleged Breach of Subsection 4(2) of the SA

[8] That subsection reads as follows:

“Within 30 calendar days of the release of the Settlement Agreement by the CAT, the Respondent will contact the contractors that provided bids for the Hot & Cold Riser Replacement Project (“Project”) to request a copy of any engineer materials that the contractors may have received from the engineer with respect to the bidding process or confirm that the contractors have no additional materials from the engineer.”

[9] YRSCC 1175 retained the services of a law firm to contact the contractors to obtain copies of the ‘engineer materials’. However, the law firm (and by extension YRSCC 1175) was late in doing so since the letters to the contractors are dated May 21, 2024, well past the 30-day limit of May 9, 2024, as set out in that provision of the SA.

[10] I reject YRSCC 1175’s position that the above was a minimal breach of the SA. YRSCC 1175 was well aware on April 9, 2024, of all the terms and conditions of the SA when it entered into it on that date. It therefore had a clear responsibility to act accordingly, either on its own or through its law firm.

[11] YRSCC 1175 also takes the position that its law firm needed time ‘to get up to speed’ on the file and that it was in the process of transitioning to a new condominium management provider, as reasons for the delay. In the circumstances of this case, I find YRSCC 1175’s responses as being insufficient. At the very least, YRSCC 1175 could have or should have contacted the Applicant before the expiry of the deadline on May 9, 2024, to request her consent to an extension of the 30-day time limit. It did not do so.

[12] On the question of the 30-day time limit, YRSCC 1175 also takes the position that subsection 4(2) contains the expression ‘calendar’ days, which would extend the calculation of any limit beyond May 9, 2024. I also note that in other parts of the SA, we find the term ‘days’, as opposed to ‘calendar days’. In both cases, I reject YRSCC 1175’s argument that those terms should be interpreted so as to extend the calculation of any time limits found in the SA. In my view, a plain reading and interpretation of the terms ‘days’ and ‘calendar days’ in the SA is such that the first deadline provided for in subsection 4(2) ended on May 9, 2024. The law firm letters were sent well beyond that date. It appears to me that YRSCC 1175’s argument on that point could only have succeeded if the term ‘business days’ or similar wording had been used in the SA.

[13] YRSCC 1175 also argues that it “took steps in a timely manner to direct the

Corporation's litigation counsel to contact the Contractors within the 30-day deadline". Even if that were the case, no evidence was provided to support that claim.

- [14] As for the transition to a new condominium management provider, I also reject that argument as a valid reason for YRSCC 1175's delay in contacting the contractors. In evidence filed by the Applicant, YRSCC 1175 announced in a memo to owners on April 4, 2024, that this transition would happen at a date to be determined and that the 'transition is already underway'. No other information was provided on that point until the submissions of YRSCC 1175 in this case which indicate that the transition was effective June 1, 2024. In any case, that argument does not hold much water since YRSCC 1175 also takes the position that it had directed a law firm to contact the contractors. There is no indication of any role being played by the condominium management provider. This is supported by the fact that in her email response to the Applicant on June 20, 2024, YRSCC 1175's condominium manager wrote that she would 'touch base with the lawyer who was involved with this CAT case' before responding further.
- [15] In regard to the law firm, it is also noteworthy that the same memo of April 4, 2024 (being only a few days before the completion of the SA on April 9, 2024), refers to a change of law firm by YRSCC 1175 and that the new law firm would be handling all legal matters and new issues going forward. In my view, that information weakens YRSCC 1175's claim that its law firm needed time to familiarize itself with the matter before contacting the contractors. True enough, the law firm which contacted the contractors is not the same one as the new law firm indicated in the memo of April 4, 2024. However, the SA (which was finalized five days after the memo announcing the new law firm) does not mention that YRSCC 1175 would need extra time to deal with or pivot to another law firm. It also strikes me that YRSCC 1175 could have contacted the contractors directly, without the intervention of a lawyer. In the alternative, YRSCC 1175 should have at least contacted the Applicant to request an extension of the 30-day deadline, which was not done.
- [16] In addition, YRSCC 1175 is not in compliance with subsection 4(2) of the SA because of the wording of the letters sent to the contractors by YRSCC 1175's law firm on May 21, 2024. These letters were purportedly sent to comply with that subsection of the SA but unfortunately, they contain no reference whatsoever to all or at least parts of the key component of that subsection, i.e. 'a copy of any engineer materials that the contractors may have received from the engineer with respect to the bidding process'. I therefore find that those letters do not meet the requirements of that part of the SA.

[17] At all times, YRSCC 1175 had a responsibility to comply with the SA in a timely and thorough manner. As a result of the above, I find YRSCC 1175 to be non-compliant in regard to subsection 4(2) of the SA and I order it to initiate new communications with the contractors within 30 days of this decision, as per the wording of that subsection.

Alleged Breach of clauses (a) and (b) of subsection 4(2) of the SA (“clauses (a) and (b)”)

[18] Those clauses provide as follows:

- a. Within 60 days of the release of the Settlement Agreement by CAT, if no response is made by the contractors to the Respondent’s request for engineer materials for the Project, then the Respondent will provide notice to the Applicant in writing that the Respondent received no response from the contractors; and,
- b. Within 60 days of the release of the Settlement Agreement by CAT, if engineer materials are provided and/or a response is made by the contractors to the Respondent’s request relating to the Project, the Respondent will provide the Applicant a copy of the engineering materials or, in the alternative, will provide the Applicant a detailed explanation as to why its contractors could not provide the requested materials;

[19] By its own admission, YRSCC 1175 did not communicate with the Applicant on or before the respective 60-day deadlines provided for in clauses (a) and (b). Nor did its law firm.

[20] In my view, a plain reading and interpretation of all relevant terms found in clauses (a) and (b) impose a clear requirement on YRSCC 1175 to complete specific action items on or before a set deadline. The onus was on YRSCC 1175 to meet the requirements of those clauses and to communicate with the Applicant about those action items, in accordance with the wording of the relevant provisions of the SA. Not the other way around.

[21] Notwithstanding the above, the Applicant waited ten days after the expiry of the deadlines in clauses (a) and (b) before reaching out to YRSCC 1175, which she did on June 19, 2024, by way of her email message of that date with the subject line reading as ‘CAT settlement agreement breach’.

[22] The relevant portion of the email response of June 20, 2024, sent by YRSCC 1175’s condominium manager to the Applicant reads as follows: “Let me touch base with the lawyer who was involved with this CAT case and I will get back to you shortly”.

- [23] YRSCC 1175 did not get back to the Applicant 'shortly' thereafter and YRSCC 1175 received the application in this matter on July 4, 2024. YRSCC 1175 argues that the Applicant should have allowed more time for its response to her email of June 19, 2024, and that the application to the CAT was filed too quickly.
- [24] YRSCC 1175 adds that between June 20 and July 4, 2024, the record shows that there was other correspondence between the Applicant and the condominium manager, mostly in regard to a request by the Applicant in May 2024 for access to minutes of board meetings held during the period of September 1, 2023, to May 21, 2024. YRSCC 1175 therefore submits that its responses to other correspondence with the Applicant shows that it did respond to the Applicant when contacted by her and that its response record to all requests by the Applicant should be assessed on that basis.
- [25] In the circumstances of this case, I reject YRSCC 1175's arguments. There can be no doubt that YRSCC 1175 was fully aware of the SA and of its requirements since at least April 9, 2024, when the SA was finalized. At minimum, it should have contacted the Applicant to request an extension to provide her the required information in compliance with clauses (a) and (b).
- [26] The onus was on YRSCC 1175 to comply with all relevant deadlines and requirements of the SA. YRSCC 1175 should have been ready on or before June 9, 2024, to provide the information provided for in clauses (a) and (b) to the Applicant. It did not do so, except for two engineering diagrams dated March 2022 which YRSCC 1175's counsel filed in this case in August 2024, without further explanation as to their current value or what they actually represent.
- [27] I therefore find YRSCC 1175 to be non-compliant with those two clauses and I order it to communicate to the Applicant the results of its inquiries to the contractors about the 'engineer materials' within 45 days of this decision, in accordance with the wording of clauses (a) and (b) of the SA.

Alleged Breach of clause (c) of subsection 4(2) of the SA ("clause (c)")

- [28] Clause (c) reads as follows:

- a. Within 90 days of the release of the Settlement Agreement by CAT, the board of directors for the Respondent will hold a board meeting to discuss the status of the engineer materials and the contractors' response to the Respondent's request for engineer materials relating to the Project to confirm the request was made by the Respondent to its contractors and acknowledge whether the engineer materials have been received and/or are not available to the Respondent, which discussion by the board of

directors will be included in the board's meeting minutes for access by the unit owners of Respondent upon request.

- [29] That clause provided for a 90-day deadline for the board of YRSCC 1175 to discuss in a board meeting the results of its inquiry and of what was reported to the Applicant in accordance with the SA's other requirements. That 90-day deadline expired on July 9, 2024.
- [30] This application was received by YRSCC 1175 on July 4, 2024, and in her initial messages to the Tribunal, the Applicant referred to subsections 4(2)(a) and (b) of the SA but did not specifically refer to subsection 4(2)(c). I note however that her email message of June 19, 2024, to YRSCC 1175 referred to the general term "CAT settlement agreement breach".
- [31] My clear impression from the evidence is that the Applicant overlooked the fact that the deadline in clause (c) was different from the other deadlines in the SA. In view of the circumstances, I allowed the Applicant to include clause (c) as part of her application. YRSCC 1175 did not oppose adding clause (c) to the proceeding and given that it was specifically invoked after the start of the application, I allowed YRSCC 1175 additional time to file evidence on that point.
- [32] On September 4, 2024, counsel for YRSCC 1175 wrote to advise that no further evidence would be filed.
- [33] Notwithstanding the above and during the cross-examination of the witnesses held on October 4, 2024, counsel for YRSCC 1175 advised that it would possibly have further evidence in regard to clause (c) of the SA. As a result, an addendum to the minutes of the YRSCC 1175 board meeting held on June 3, 2024 was eventually filed by YRSCC 1175 on November 27, 2024.
- [34] I turn now to the minutes of the YRSCC 1175 board meeting held on June 3, 2024. In that regard, YRSCC 1175 is in partial compliance with clause (c) of the SA because it did hold a board meeting within the 90-day period provided for in that clause. On the other hand, the minutes of that meeting make no mention of the Project nor of the status of the engineer materials. In addition, they do not acknowledge what was reported to the Applicant in regard to those materials.
- [35] As for the addendum to the minutes of the YRSCC 1175 board meeting held on June 3, 2024, that document is divided in sections titled as follows:

## 6. Management Report

### 6.1 Items Required for Ratification

## 6.2 Items for Discussion\Approval

### 7. New\Other Business.

- [36] The entire content of that addendum (a little more than two pages) has however been redacted on the basis of subsection 55(4) of the Act, save for the titles mentioned above and two lines which I will discuss below.
- [37] In sum, the board of YRSCC 1175 did meet before the expiry of the 90-day deadline provided for in clause (c). On the other hand, we have no way of knowing if it discussed the Project or the status of the 'engineer materials'. In addition, they do not acknowledge what was reported to the Applicant in regard to those materials.
- [38] The only unredacted portion of the addendum is found under the title '6.2 Items for Discussion\Approval' and reads as follows: "(o) Board directed the Litigation Lawyer to contact the contractors for the riser project correspondence was sent via email."
- [39] That brief unredacted snippet of the minutes does contain the wording 'riser project' which is likely meant to refer to the Project as described in the SA. However, the clarity of that segment of the addendum to the minutes of the board meeting of June 3, 2024, leaves to be desired in that it reads as an action item that could or should have been adopted before YRSCC 1175 or its lawyers wrote to the contractors. In any event, that language does not track the wording of the requirement which is set out in clause (c) of the SA and provides no information whatsoever to allow the Applicant, or this Tribunal, to know whether or not the board of YRSCC 1175 held a discussion (i) as required by clause (c) or (ii) to acknowledge what was reported to the Applicant in regard to the 'engineer materials'.
- [40] As a result, I find that YRSCC 1175 was compliant with clause (c) in that it did hold a board meeting as required by the SA but there is no evidence that it complied with the other portions of that clause. I therefore order YRSCC to fully comply with the entire wording of clause (c) within 60 days of this decision, which includes the requirement to document in the board meeting minutes the information items which are mentioned in that clause. Of course, some or all of that information may be privileged due to a claim under one of the clauses of subsection 55(4) of the Act.
- [41] As a final point in regard to clause (c), YRSCC 1175 argues that the Applicant did not make a formal request for the minutes of the board meeting of June 3, 2024, as provided for in clause (c). The Applicant admits that she did not make such a



request either before or after the expiration of the 90-day deadline provided for in clause (c).

- [42] Be that as it may, I am of the view that the absence of a formal request on her part is a moot point in the circumstances of this case. This is due to the fact that in its memo of April 4, 2024, to all owners, YRSCC 1175 advised that the minutes of all future board meetings would be posted on the portal, which is available to all owners, except for private and confidential matters protected by law. As was confirmed by the parties, this was in fact done for the minutes of the board meetings of June 3, 2024, and of July 8, 2024, albeit without the addendum to the minutes of the board meeting of June 3, 2024.
- [43] In regard to the Applicant's request that I should order the board of YRSCC 1175 to send a letter to all owners to clarify all details which led to the Project, including all options that were considered, the Tribunal does not have jurisdiction to wade into condominium governance matters.
- [44] Regarding YRSCC 1175's request for a ruling that any order made by the Tribunal in this case, as well as any unproven allegations made by the Applicant against YRSCC 1175 or its agents, will remain confidential and/or be restricted from public access, such a ruling will not be granted.
- [45] Administrative tribunals such as this Tribunal manage their cases and decisions in accordance with the 'open court' principle, which is understood to have been constitutionalized by the Supreme Court of Canada. I also note that in the very few cases where the Tribunal has issued a Confidentiality Order under Rule 21 of the CAT Rules, those cases related to personal medical information or other similar personal information of a very sensitive nature. That is not the case here.

### **Costs and Penalties**

- [46] The Applicant seeks an order requiring the Respondent to reimburse her for the fee (\$125) that she paid to file this application.
- [47] 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.
- [48] I find that the Applicant was largely successful in this matter and as such, I order YRSCC 1175 to reimburse her the cost that she incurred to file this application. In

the circumstances of this case, I make no other order as to costs.

[49] In regard to the Applicant's request for an order that YRSCC 1175 should pay penalties in the total amount of \$10,000 for non-compliance with the SA, this Tribunal does not have jurisdiction under the Act to impose any penalties of that nature and that request is therefore denied.

**C. ORDER**

[50] The Tribunal orders YRSCC 1175 to:

1. Initiate new communications with the contractors in regard to 'engineer materials' within 30 days of this decision, as per the wording of subsection 4(2) of the SA;
2. Communicate to the Applicant the results of its inquiries to the contractors about the 'engineer materials' within 45 days of this decision, in accordance with the wording of clauses (a) and (b) of the SA;
3. Fully comply with the entire wording of clause (c) within 60 days of this decision, including the requirement to document in the board meeting minutes the information items which are mentioned in that clause, albeit with redaction for appropriate parts of the minutes, on the basis of one or more of the applicable provisions of subsection 55(4);
4. To reimburse to the Applicant within 30 days of this decision the amount of \$125 that she paid to file this application.

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Roger Bilodeau  
Member, Condominium Authority Tribunal

Released on: December 24, 2024