

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 18, 2024

CASE: 2024-00196R

Citation: Taylor v. London Condominium Corporation no. 51, 2024 ONCAT 190

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

Member: Nicole Aylwin, Member

The Applicant,

Jack Taylor

Self-Represented

The Respondent,

London Condominium Corporation No. 51

Represented by Megan Alexander, Counsel

Hearing: Written Online Hearing – August 16, 2024, to December 12, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Jack Taylor, is the owner of a unit of London Condominium Corporation No. 51 (“LCC 51”). Mr. Taylor alleges that LCC 51 has refused to provide him records without a reasonable excuse and has asked the Tribunal to order that LCC 51 pay a penalty pursuant to s. 1.44(1)6 of the *Condominium Act, 1998* (the “Act”). He has also requested an order for costs.
- [2] LCC 51 submits that Mr. Taylor’s application should be dismissed on the basis that at no time did it refuse to provide the requested records. Rather, its position is that the records Mr. Taylor seeks are exempt from examination under s. 55(4)(b) and s. 55(4)(c) of the Act and cannot be provided.
- [3] For the reasons set out below, I find that LCC 51 has not refused to provide records without a reasonable excuse as the records Mr. Taylor seeks are exempt from examination under the Act. As such, there is no basis to award a penalty. I award no costs in this matter.

B. BACKGROUND

- [4] Some background is helpful for understanding this dispute. In 2020 LCC 51 experienced a roof leak that caused water damage in a unit of the condominium (the “affected unit”). There was substantial and structural damage to both the interior and exterior of the affected unit, that according to LCC 51, they were required to repair. The costs of these repairs have been significant and two special assessments totalling upwards of \$150,000 have been levied.
- [5] After the leak, LCC 51 engaged in litigation with its own insurance company to recover the cost of some of the damage. It also settled a claim brought forward by the affected unit owners regarding damages to their unit.
- [6] As the evidence demonstrates, Mr. Taylor is skeptical of the way in which the board of directors managed the leak, the repairs to the affected unit and the decisions they made in relation to them. He strongly disagrees with the costs of the repairs and what LCC 51 agreed to pay for. He alleges that LCC 51 refuses to provide the records at issue in this application because they would reveal that LCC 51 acted in a way that is contrary to the Act. Mr. Taylor is also very unhappy with the owners of the affected unit, whom he feels, to put it mildly, have taken advantage of the situation.
- [7] The evidence also indicates that this issue is a highly contentious one within the condominium community itself. There have been owners’ meetings devoted to it and LCC 51 has faced many questions and accusations from the community about the repairs. Many of those questions and accusations relate to the insurance claim and litigation between LCC 51 and Gore Mutual Insurance and a confidential settlement that was reached between LCC 51 and the owners of the affected unit. However, the evidence also shows that unit owners have been provided with significant disclosure about this issue. Unit owners are aware of the cause of the damage, the reasons for why LCC 51 determined that it was responsible for the repairs. Owners have also provided with audited financial statements that clearly addresses the financial information related to repairs, the settlement, and the special assessments.
- [8] The hostility around the repairs has not been exclusively aimed at LCC 51. The evidence indicates that the unit owners of the affected unit have also faced the ire of the community. In July of 2023, all owners received correspondence from the lawyers for the owners of the affected unit instructing all unit owners to cease and desist harassing the owners of the affected unit. It also directs them to cease and desist spreading false information about the unit owners of the affected unit. The letter threatens legal action should the alleged harassment not cease.
- [9] It is against this backdrop that Mr. Taylor made his request for records. As detailed

below, all the records requested relate in some way or another to the repair and maintenance of the affected unit.

[10] Before setting out the issues, it may be helpful to explain what this case is not about. This case is not about issues of governance, i.e. the decisions made by the board in relation to repairs to the affected unit (financial or otherwise), why they made them, and whether those decisions are justifiable. These are not matters that fall within the Tribunal's jurisdiction and I make no findings on the merits of any of the governance decisions made by the board. The only issues to be dealt with in this hearing are as follows:

1. Has the Respondent refused to provide records to which the Applicant is entitled to without a reasonable excuse?
2. If so, should a penalty be assessed against the Respondent and in what amount?
3. Is any party entitled to costs?

[11] Despite confirming these issues and the limits of the Tribunal's jurisdiction at several points in the hearing, considerable evidence was provided regarding issues of governance. While I have reviewed all the evidence and submissions before me, I refer only to that which is relevant.

C. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent refused to provide records to which the Applicant is entitled without a reasonable excuse?

[12] This case deals with four separate records requests: September 6, 2023, November 30, 2023, February 28, 2024, and April 18, 2024. At the outset of the proceeding Mr. Taylor confirmed the records that he considered outstanding and still in dispute. These records, as set out in the language used by Mr. Taylor are as follows:

1. Documentation with past board members over concern over damage to roof.
2. Documents regarding concerns over costs from Durmus roofing, Winmar Restoration, engineers to Thorne Property Management and Laura Gurr.
3. Record of payment of \$26,427 where located/reserve fund.
4. Records showing where \$17,224 as part of \$85,124 special assessment

designated for.

5. Records showing why the \$17,476 in upgrades were ignored by the board of directors.
 6. Bid summary and analysis for repairs to roof of – unit number removed by Tribunal. Includes all pictures of roof, structure, before and after repair, repair report or any damage to roof of – unit number removed by the Tribunal – and explanation for counsel, roof damage.
 7. Pictures before repair and reports from Durmus Group Inc, Excel Ltd. Weathertech Restorative and Restorex. All pictures and contract bids, explanation for why need of repair.
 8. Invoices showing amount paid by LCC 51 for repair of – unit number removed by the Tribunal - to Reno One.
 9. Invoices showing what was paid by owners of - unit number removed by Tribunal - ex. receipts showing owners paying for electrical upgrades, repairs, updates and appliances, pump system, windows.
 10. Signed contract with Winmar Restoration relating to gutting of - unit number removed by Tribunal. Pictures showing justification for total gutting of interior.
 11. Receipts from owners of - unit number removed by the Tribunal - indicating what owners of LCC 51 are paying them \$1500/month, what expenses are being covered and are they justified.
 12. All unredacted invoices and billings to LCC 51 from Laura Gurr.
- [13] LCC 51 maintains that it has provided all owners with as much disclosure as possible under the circumstances. LCC 51 submits that many of the records and the information Mr. Taylor wants them to provide relate specifically to the affected unit and unit owners and given the threat of legal action from the owners of affected unit, they cannot disclose anything further.

Records 1 - 5

[14] According to Mr. Taylor, records 1 - 5 were requested in his November and December 2023 requests and never provided.

[15] Section 55(3) of the Act provides that the corporation shall permit an owner to examine or obtain copies of the records of the corporation, barring some

exceptions as set out in s. 55(4). Mr. Taylor has framed the requests for records number 1 – 5 as a request for documents. However, based on the evidence, these requests are for information about board decisions, not records. Unspecified documents regarding “concerns” are not records.

[16] When describing the documents he sought in his records request, the email Mr. Taylor attached to his request indicated that what he was seeking was

“[d]etailed account of what the \$17 724 in the special assessment is paying for and to whom does it benefit. All names of those involved in the decision”;

“why the \$17 476 in upgrades were ignored in the contract to Reno One for repair of unit”; and;

“a detailed account of where the \$26 427 settlement from Gore Mutual Insurance Co. was designated for...All names of those involved in the decision.”

[17] In his request, he did not identify any specific record(s) of the corporation that he was seeking but rather identified that he was seeking specific information about how decisions were made (e.g. how money was being allocated, who made the decisions, etc.). Mr. Taylor’s submissions as well as his questioning of LCC 51’s witness also make it clear that what he is seeking is not a specific record, but more information about how the board made its decisions. This desire is perhaps understandable given the significant costs associated with this repair, however, the requests above cannot be categorized as a request for records of the corporation, but rather as information

[18] It is worth noting that regarding the financial statements related to these repairs and the special assessment, LCC 51 has not been silent. They have provided to Mr. Taylor and other unit owners with the relevant audited financial statements which provide detailed financial notes on the special assessments and the legal settlement related to the affected unit. Whether or not the board has provided information sufficient to meet the level of transparency desired by Mr. Taylor is not an issue before me. Section 55 of the Act applies only to requests for records, not to requests for information, which I find these to be.

Records 6 – 10

[19] According to Mr. Taylor, records 6 - 10 were requested in his February and April 2024 records requests and never provided.

[20] I note that several of these requests as framed by Mr. Taylor go beyond a request

for records and veer into a request for information and explanations. As explained previously, s. 55 of the Act does not entitle the requestor to information, thus I only address the request for records, not information.

[21] Regarding the records requested. It is LCC 51's position that these records are exempt from examination under s. 55(4)(b) and (c) of the Act, which reads in part:

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;

(c) subject to subsection (5), records relating to specific units or owners;

[22] The evidence indicates that prior to 2023, LCC 51 was engaged in actual litigation related to the damage to the affected unit. They were in litigation with both insurers and the affected unit owners themselves. The evidence also shows that both claims have been settled. Nonetheless, LCC 51 asserts these records continue to be exempt from examination due to contemplated litigation, as defined in Ontario Regulation 48/01 s. 1 (1) as "any matter that might reasonably be expected to become actual litigation based on information that is within a corporation's knowledge or control".

[23] LCC 51 submits that the affected unit owners' threats to sue any owner of the corporation who does not cease "harassing" them (as per the July 2023) letter is a matter of contemplated litigation; they also assert that there could be further insurance litigation involving this unit. I do not find these arguments and the evidence to support them persuasive. While the letter sent to all unit owners in July of 2023 does suggest contemplated litigation, litigation is threatened not against LCC 51, but rather against individual unit owners. I do not find that the exception as outlined in 55(4) (b) extends to contemplated litigation between unit owners (even if it may indirectly involve LCC 51).

[24] Regarding the claim that there is contemplated litigation involving LCC 51's insurance company, in her testimony, Lisa Skirten, LCC 51's condominium manager, testified that LCC 51 had been "put on notice" of additional potential insurance litigation. When questioned by me on this point, Ms. Skirten clarified that it was her understanding that LCC 51's insurer had been put on notice on or about July 15, 2020, about claims related to the affected unit. No other specifics regarding this notice or any other insurance claims or litigation were provided by

LCC 51, despite its insistence that these records were exempt based on contemplated litigation. I am not persuaded based on the age of the 'notice' from the insurance company, and the vagueness of the claim that there are other insurance matters that may be considered contemplated as matters that "might reasonably be expected to become actual litigation" and would exempt these records from examination under s. 55(4)(b).

[25] However, s. 55(4)(c) is another matter. As noted above, 55(4)(c) exempts records from examination when they relate to specific units or unit owners. Based on the evidence before me, these records pertain to the repairs done within the interior of the affected unit and contain information about a specific unit and/or unit owners. Mr. Taylor argues that some of the repairs were to parts of the affected unit that are common elements. That may be true, nonetheless the records still pertain to a specific unit or unit owner. As such, they are exempt from examination under s. 55(4)(c), thus LCC 51 had a valid reason for refusing them. Finally, Mr. Taylor argues that if the owners of the affected units sell their unit (which he alleges they have, although no evidence to support this claim was provided), these records would no longer be exempt as per s. 55(4). At the time Mr. Taylor requested the records, and at the time they were refused, the unit was owned by the affected unit owners. Thus, the records were exempt from examination as per. 55(4) and it was a valid reason not to provide the records. I do not find that LCC 51 has refused to allow Mr. Taylor to obtain or examine any of these records without a reasonable excuse.

Record 11

[26] Mr. Taylor has also requested that LCC 51 provide him with copies of receipts from the affected unit owners that show what expenses are being covered by the \$1,500 payment being made by LCC 51 to the affected unit owners each month.

[27] For context, LCC 51 settled a claim that was brought by the affected unit owners against the LCC 51 for the damages to their unit. Part of that settlement involved LCC 51 agreeing to pay the affected unit owners \$1,500/month. The audited financial statements provided to all owners make note of this agreement and discloses the monthly payment. Mr. Taylor appears to be requesting additional records related to this \$1,500 a month, namely "receipts" from the affected unit owners. There is no evidence before me that any such records do or ought to exist. LCC 51 cannot provide records that do not exist, and I also question whether these would be records of the corporation in any event. Moreover, even if such receipts did exist and were records of the corporation, they would relate to specific unit owners, they would be exempt from examination under s. 55(4)(c).

Record 12

- [28] Finally, Mr. Taylor has requested that LCC 51 provide him with all unredacted invoices and billings from Laura Gurr, who acted as legal counsel on behalf of LCC 51 on matters related to the damage to the affected unit. In his submissions, Mr. Taylor explains his reasons for wanting these invoices. He submits he wants Ms. Gurr to “prove” her billings are justified. I note that the evidence shows that Mr. Taylor already knows the number of hours Mr. Gurr billed and her hourly rate – both of which were provided to him by LCC 51. What he appears to be seeking by requesting unredacted invoices is information about how these hours were allocated, what specific work was done, and why the number of hours billed were required.
- [29] The Tribunal has consistently found that the content of legal invoices which relate to actual and contemplated litigation as defined by s. 55(4)(b), as well as content that is protected by solicitor/client privilege need not be disclosed to owners. It is exempt from examination under the Act. There is no evidence before me to persuade me to deviate from these conclusions. By Mr. Taylor’s own admission, the content he seeks to access relates directly to actual litigation between LCC 51 and other parties (with either the affected unit owners or the insurance company) and likely contains information related to solicitor client privilege. Therefore, Mr. Taylor is not entitled to unredacted copies of these invoices.

Issue No. 2: Should a penalty be assessed against the Respondent and in what amount?

- [30] Section 1.44(6) of the Act allows the Tribunal to award a penalty if the Tribunal finds that a corporation has, without reasonable excuse, refused to permit a person to examine or obtain copies of records to which they are entitled. In this case, I have not found that LCC 51 has refused to provide Mr. Taylor with any records without a reasonable excuse so there is no basis on which to award a penalty.

Issue No. 3: Is any party entitled to costs?

- [31] Section 1.44(1)4 of the Act states that the Tribunal may make “an order directing another party to the proceeding to pay the costs of another party to the proceeding.”
- [32] Section 1.44(2) of the Act states that an order for costs “shall be determined ...in accordance with the rules of the Tribunal”.

[33] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 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.

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

[34] The Tribunal's "Practice Direction: Approach to Ordering Costs" provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties.

[35] Both parties requested costs. Mr. Taylor requested that LCC 51 be ordered to pay him costs in an unspecified amount. LCC 51 also requested costs in an unspecified amount.

[36] Mr. Taylor was not successful in his claims and thus not entitled to costs.

[37] LCC 51 argues that it would be unfair for unit owners to have to bear the cost of responding to these claims. They assert that in pursuing this claim for records, Mr. Taylor has submitted multiple records requests for the same records despite being aware of LCC 51's position on providing said records. They argue he is using these records requests and this application to pursue governance issues not properly within the jurisdiction of the Tribunal. In doing so, LCC 51 claims he has harassed the board, staff and other unit owners.

[38] The evidence clearly demonstrates that Mr. Taylor has significant concerns with the way in which LCC 51's board is managing or has managed the affairs of the corporation, and he did attempt at times to use this process to garner such information, despite being advised on several occasions that the Tribunal did not have the jurisdiction to address governance matters. The evidence also shows that Mr. Taylor has pursued his concerns with LCC 51's board persistently, to put it mildly. However, issues of alleged harassment and/or Mr. Taylor's conduct in his dealings with the board and management are not properly before me and have not

been considered.

[39] To a certain extent, Mr. Taylor's desire to understand the reasoning behind the board's decisions regarding the affected unit is understandable as these have had a direct financial impact on all unit owners. However, using the records request process to pursue such an agenda is not appropriate.

[40] Nonetheless, this is also a case where the prolonged conflict between the parties, Mr. Taylor's obvious distrust of LCC 51, and a fundamental disagreement about what records Mr. Taylor is entitled to, likely required a binding decision from an adjudicator to settle some of the question of entitlement. And, while Mr. Taylor's may have been mistaken in his belief that he was entitled to these records, that is not grounds in this case for an award of costs.

[41] For these reasons, I will exercise my discretion and not order costs against Mr. Taylor. However, I do issue a caution to Mr. Taylor: using records requests (and Tribunal resources) as a tool to pursue issues of governance and/or management practices is not appropriate and could potentially lead to liability for costs orders in the future. This decision will hopefully provide guidance to the parties on requirements of the Act in relation records requests so that further cases might be avoided.

D. ORDER

[42] The Tribunal Orders that:

1. This case be dismissed without costs to any party.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: December 18, 2024