

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 31, 2025

CASE: 2024-00528R

Citation: Boulos v. Toronto Standard Condominium Corporation No. 1997, 2025
ONCAT 16

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

Member: Eleanor White

The Applicant,
Fred Boulos
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 1997
Represented by Sienna Molu, Counsel, and Victor Yee, Counsel

Hearing: Written Online Hearing – September 17, 2024 to November 28, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] This file deals with a records request made by Fred Boulos (the “Applicant”) to Toronto Standard Condominium Corporation No. 1997 (“TSCC 1997”). The request was made for two records, one of which is the subject of this application.
- [2] The record in dispute is the contract between TSCC 1997 and CDC Plumbing for a Kitec piping replacement project. The request was worded to include related information for the various suite-type designs as well as common area design work for “replacement efforts”.
- [3] In the Board Response form, TSCC 1997 divided the Applicant’s request into two components: it agreed to provide the contract but denied access to the suite-type designs. The contract provided to the Applicant was significantly redacted. Other information specifically requested by the Applicant was not addressed.

- [4] Although Respondent counsel offered the un-redacted document within the course of the hearing, this decision finds the Respondent to be incorrect in its reasoning for the redactions of the record and in part, the accompanying information, and that it effectively refused the full record. The decision orders a full provision of the unredacted CDC contract including designs and related material (appended or attached) for the Kitec replacement project (including individual suite type designs and common area design work for “replacement effort”). The decision orders reimbursement of the Applicant’s Tribunal fees and imposes a penalty of \$500.

B. BACKGROUND

- [5] TSCC 1997 notified the owners/occupants of the building on June 20, 2024, that it had recently been made aware of plastic Kitec piping in the plumbing within the units of the building. The notice advised them of a Zoom meeting to be held on June 26, 2024, providing an opportunity for owners to be informed by the board and their consultant engineering firm, about the project to date and the costs facing the owners for the replacement of the piping. The owners were advised that a contractor had been retained and cost estimates for the owners had been established at \$6600 to \$7900, depending upon the layout of the units (the contract used the term ‘suites’ and ‘suite-type’ throughout). The contract included costing and designs for six basic suite-types in the condominium. Owners were advised they would have the option to either use the contractor retained by the corporation or, subject to certain conditions, a contractor of their choosing.
- [6] The Zoom meeting was attended by TSCC 1997’s board of directors, legal counsel, condominium management, the consultant (Trace Consulting Group) and the contractor (CDC Plumbing) as well as owners of the units, including the Applicant. Opt-in and opt-out contracts were to be provided and unless signed and returned to TSCC 1997 by August 16, 2024, would automatically be deemed as opting in to the contract with CDC Plumbing. A second deadline of October 1, 2024, was set for the payment of the appropriate contracted amount for their suite-type. Owners who chose to use a contractor of their own choosing would be afforded the opportunity to purchase the consultant’s designs for a fee.
- [7] The Applicant’s submissions included parts of the transcript of the meeting including questions posed by members about access to more information. The board and its counsel responded at that time that the request should be made through the proper process of submitting a Request for Records form to management.
- [8] Accordingly, the Applicant in his Request for Records dated July 21, 2024, asked for two records, one of which is the subject of this application: the request was for

“the CDC contract including designs and related information for Kitec replacement project including individual suite-type designs and common area design work for replacement efforts”.

- [9] Of note, the Applicant subsequently returned his notarized Opt-in Contract to the corporation by email on July 26, 2024, indicating his preference to use the contractor retained by the corporation.
- [10] On July 29, 2024, the Respondent responded by dividing the Applicant’s Request for Records into two separate components on the response form, firstly agreeing to provide the CDC contract and an accompanying document to the Applicant but then separately denying access to individual suite-type designs included in the Kitec replacement project. The reasons offered for the denial were twofold: first, that the individual suite-type designs (drawings) still had commercial value and that provision of them would disadvantage those who were choosing to opt-in; and second, the Respondent cited section 55 (4) (c) of the *Condominium Act, 1998* (the Act”), alleging the information regarding suite-types was exempt from entitlement to examination by the Applicant.
- [11] The Applicant sent an email in response, setting out his disagreement with the board. The Respondent then replied that they would reconsider the request at the August 14, 2024, board meeting.
- [12] The Respondent offered to consider a fresh Request for Records of suite-type information upon the Applicant’s full payment for the contracted work, prior to the renewed request.
- [13] In the copy of the CDC contract provided to the Applicant, 21 of 27-line items under Article A-4 *Contract Price* were redacted. Item #16 was not redacted, showing the piping replacement for the suite-type consistent with the Applicant’s unit. Item #24 revealed a cost of \$0.00 for Common Elements and an item titled ‘contingency allowance for miscellaneous repairs for common areas’ was recorded as \$10,000. No further information as requested by the Applicant regarding common areas was provided.
- [14] After reconsideration at the August 14, 2024, board meeting, the Respondent’s position remained unchanged. The Applicant then filed an application with the Tribunal on August 16, 2024.

C. ISSUES & ANALYSIS

Is the Applicant entitled to the requested record, including an unredacted Contract and Accompanying Documents and designs, as well as related information for common area work for replacement efforts?

- [15] Firstly, the Respondent has relied upon section 55 (4) (c) in its redactions of the record and its denials of other related information under the umbrella of the Contract between the corporation and CDC Plumbing for the Kitec replacement project. Sections 55 (3) and 55 (4) (c) state as follows:

Examination of Records

(3) The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).

Exception

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

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

- [16] It is clear and has been the position of this Tribunal that entitlement to the examination of a specific record that does not reveal either an owner's name or unit number or any other information that would relate to or identify a specific unit, is not exempted from section 55 (3). The term 'suite-type' was applied to six different types of layouts of the piping in the plumbing design. Each suite-type would represent multiple units throughout the building. The differentiation was made on the layout of the plumbing, not the number of bedrooms or layout of the rooms within any suite. The reliance of the Respondent on section 55 (4) (c) was, on these facts, incorrect. Both the contract and the Accompanying Documents were redacted for any information pertaining to any other than his own suite-type, without any accompanying notation of an adequate or reasonable excuse.

- [17] The Applicant is entitled under section 55 (3) of the Act to request specific records, however, is not entitled to request 'information'. The Applicant requested "the CDC contract including designs and related *information* for Kitec replacement project including individual suite-type designs and common area design work for replacement efforts". The Applicant was entitled to receive the CDC contract and designs within or appended to it, but the request for "related information" was perhaps not clearly interpreted as a related record or part of a record.

- [18] When the representation from the corporation's consultant legal firm changed, the Respondent offered to provide the unredacted contract between TSCC 1997 and CDC Plumbing for the replacement of plastic Kitec piping in the suites including individual suite-type designs and common area design work for replacement efforts as requested by the Applicant. The Respondent's submissions were offered as a witness statement from the president of TSCC 1997's board, Daniel Lerner. In the statement, Mr. Lerner stated that the board had been incorrect in their interpretation of section 55 (4) (c), thus in the redactions of the contract provided to the Applicant. Mr. Lerner also stated that neither he nor the board had sought a legal opinion on this matter.

D. PENALTIES AND COSTS

- [19] Under section 1.44 (1) 6 of the Act, the Tribunal is empowered to award a penalty to an applicant if a condominium corporation has without reasonable excuse refused to permit an applicant to examine or obtain copies of records to which they are entitled.
- [20] In this case, as in *Martynenko v. Peel Standard Condominium Corporation No. 935* (2021 ONCAT 125) the condominium corporation did not refuse to permit the Applicant to access the record (the contract between TSCC 1997 and CDC Plumbing), but instead incorrectly redacted specific components of the contract based on an incorrect interpretation of section 55 (4) (c) of the Act. This is a case of effective refusal.
- [21] The Applicant's Request for Records specified the "CDC contract including designs and *related information* for Kitec replacement project (including individual suite type designs and common area design work for replacement effort)". The *related information*, within this context clearly can be interpreted as 'related records' as he specified the design documents. The Board's response and provision of documents were incorrectly redacted of the requested information based on its incorrect reliance on section 55 (4) (c) of the Act.
- [22] The Respondent argues that they should not be penalized for making a genuine mistake in their interpretation of section 55 of the Act, nor for eschewing the resource of legal advice; however, the age-old maxim of 'ignorance of the law is not a defense' comes to mind. Subsequent language in the Respondent's statement is disparaging to the Applicant and label him as a 'dissident', or part of a 'group of dissidents'. The wording does not support an attitude of diligence in the efforts to respond appropriately to a request for records properly submitted by the Applicant. Awarding a penalty should serve the purpose of reminding the condominium corporation of their legal obligations and responsibilities under the

Act and to take them seriously.

[23] I find the Respondent was incorrect in its reasoning and its interpretation of the Act and careless in its neglect of seeking legal advice in the matter until the issues were brought to adjudication. The Respondent did effectively refuse to provide the complete records requested by the Applicant.

[24] A penalty is appropriate in this adjudication, and I set the penalty at \$500.

[25] The Tribunal's Rules of Practice (Rule 48 and 49) allow the reimbursement of Tribunal fees, in the event that a Case is not resolved by Settlement Agreement or Consent Order and the Tribunal Member makes a final decision, wherein the unsuccessful Pary will be required to pay the successful Pary's Tribunal fees. This decision will also order that the Respondent will reimburse the Applicant's Tribunal fees in the amount of \$200. No other costs were requested by the Parties.

E. ORDER

[26] The Tribunal Orders that:

1. The Respondent provide, within 15 days of the date of this decision, to the Applicant the unredacted and complete CDC Contract for Kitec Piping Replacement Project for Toronto Standard Condominium Contract – Unit Price Contract including all designs for Suite-Types.
2. Pursuant to section 1.44 (1) 4 of the Act, within thirty (30) days of the date of this order, Toronto Standard Condominium Corporation No. 1997 shall pay to the Applicant, a total of \$700 for both the cost of filing this application and the penalty.

Eleanor White
Member, Condominium Authority Tribunal

Released on: January 31, 2025