

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 10, 2025

CASE: 2024-00141R

Citation: Rourke v. Peel Standard Condominium Corporation No. 886, 2025 ONCAT 22

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

Member: Elisha Turney Foss

The Applicant,

Amanda Rourke

Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 886

Represented by Angad Singh, Counsel

Hearing: Written Online Hearing – June 12, 2024, to January 10, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in the Respondent, Peel Standard Condominium Corporation No. 886 (“PSCC 886” or the “Respondent”). On January 2, 2024, the Applicant submitted a Request for Records to PSCC 886 in which she requested multiple records.

[2] The Applicant’s request for records sought to examine the following:

Core records:

- a. Record of notices relating to leases of units under s. 83 of the Condominium Act, 1998
- b. Board meeting minutes from October 1, 2023 - January 2, 2024

Non-core records:

- a. Minutes of meetings from January 1, 2019 - January 1, 2022

- b. All detailed invoices from National Mechanical paid and outstanding from January 1, 2020 - January 2, 2024
 - c. All invoices that were allocated to \$2,226 for “pool and fountain” on the 2022 financial statement
 - d. Detailed invoices from Harbarran Construction from January 1, 2022 - January 2, 2024
 - e. Detailed invoices from Workrite Construction from January 1, 2022 - January 2, 2024
- [3] The Applicant alleges that PSCC 886 failed to provide all the records she is entitled to receive in relation to her January 2, 2024, request. The Applicant further alleges that she was charged an inappropriate fee for the core records received and some non-core records were inadequate pursuant to subsection 55(1) of the *Condominium Act, 1998* (the “Act”).
- [4] The Applicant submits that because she did not receive all the records to which she is entitled, a penalty should be ordered against PSCC 886. The Applicant also seeks an order requiring PSCC 886 to reimburse her the cost for filing this application.
- [5] Regarding the Applicant’s allegations that PSCC 886 did not provide the requested records that the Applicant was entitled to, it submits that some meeting minute records were inadvertently missed but the records have subsequently been found and available for the Applicant. Additionally, regarding the charging of fees for core records, PSCC 886 acknowledged its error and is willing to reimburse the Applicant.
- [6] For the issue regarding the allegations that PSCC 886’s records are not adequate, PSCC 886 submits that the records provided are adequate pursuant to subsection 55(1) of the Act.
- [7] For the reasons below, I find that the Applicant did not receive the records for which she was entitled. I also find that the Respondent inappropriately requested a fee for core records for which a penalty should be assigned. However, I find that the records PSCC 886 provided are adequate pursuant to subsection 55(1) of the Act.

B. ISSUES & ANALYSIS

- [8] In addition to the issues above, the Applicant raised issues involving the conduct of the condominium manager. I explained that these issues were not issues that would be addressed they fall outside of the Tribunal’s jurisdiction. Some of the submissions about this issue were provided to me. Though I have reviewed all the submissions and evidence provided to me, I only address those that are relevant to the issues

properly before me.

Issue No.1: Did the Applicant receive the records for which she is entitled?

- [9] There is no dispute between the parties that the Respondent did not provide the Applicant with the June 24, 2021, and July 11, 2021, board meeting minutes when originally requested. PSCC 886 has since provided that the missing meeting minutes were not accounted for; PSCC 886 submits that the June 24, 2021, and July 11, 2021, board meeting minutes were not transferred from PSCC 886's former condominium management services provider. PSCC 886 further submits that this delay was beyond their control and was promptly rectified.
- [10] Ultimately, it is the condominium corporation's obligation to ensure that their records are well kept and easy to locate. While, in this case, the condominium management service provider may act on the condominium corporation's behalf, the condominium corporation still maintains its obligation to promptly provide the requesters their requested records. In this case, the Applicant had to go through the tribunal process in order to secure the records that she was entitled.
- [11] Additionally, the applicant raised the issue that she was provided with recreated notices of leased units. The Applicant alleges that failure to provide the true copy of the original notice received by the Corporation should be considered as not receiving the records. PSCC 886 confirms that they did provide recreated notices as they were having difficulty redacting the notices. However, the Act does not require the corporation to provide a true copy of the notices but instead provide a listing of leases.
- [12] Under section 83(1) of the Act, unit owners who lease their units must notify the condominium corporation. Section 83(3) of the Act requires that the condominium corporation keep a record of the notices it has received. This record of notices is actually a listing of leases. There is no requirement for condominium corporation to provide copies of the notice provided by the unit owners.
- [13] In *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2022, ONCAT 142 ("Chai") the Tribunal considered record of notices. In Chai, the Adjudicator explains the requirements for notices of lease:

Based on the plain language of the requirements of s. 83, I conclude that an adequate record of notices of leased units should include the following information, at a minimum:

1. A List of each unit in the corporation for which one or more notices under s. 83 has been received.
2. For each unit in that list, an indication of:
 - I. The type of each notice received (i.e. a notice of lease, of renewal, or termination), and
 - II. The date on which each notice was received.¹

[14] While Chai is explaining the adequacy of a record, I believe that there is value in this explanation as it shows what is meant by a notice of record. In this case, PSCC 886 provided recreated notices which included the type of notice received and the date which the notice was received. As this is what is required under the Act, I find that PSCC 886 provided the Applicant with the requested notice of leases.

[15] Given the above, I find that the Applicant did not receive the meeting minute records for which she was entitled, however, she did receive the requested notice of lease records.

Issue No. 2: Did the Respondent refuse to provide records without a reasonable excuse and, if so, should a penalty be ordered against the Respondent?

[16] Section 1.44(1) 6 of the Act permits the Tribunal to impose a penalty, when appropriate, in cases where the condominium corporation has, without reasonable excuse, refused to permit a person to examine or obtain records.

[17] As stated above, I have found that the Applicant did not receive all the records that were requested until Stage 3 – Tribunal Decision of this application.

[18] The Tribunal has previously dealt with the issue of delay in providing records. In *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45, the Tribunal noted that: “One of the purposes of assessing a penalty is to deter future similar action. O. Reg. 48/01 sets out specific time frames for the provision of records in response to Requests for Records. It should not be without consequence if a corporation fails to meet these time frames without the provision of valid reasons.”² The Tribunal ordered a penalty of \$200 in that case where the records were provided at the mediation stage. In this case, the requested records

¹ *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2022 ONCAT 142

² *Chai v. Toronto Standard Condominium Corporation No. No. 2431*, 2019 ONCAT 45

were not provided until the adjudication stage.

- [19] It is the board's responsibility to oversee the condominium manager and ensure that the board's obligations are fulfilled through their representative. In this case, PSCC 886 is citing the change over from the property company as a reasonable excuse that the meeting minutes were misplaced, and it took only the tribunal proceedings to realize that these meeting minutes were no longer in the control of the current property manager. I do not accept this argument. It is clear that the Respondent did not fulfill its obligations to provide the records in accordance with the Act.
- [20] For the reasons above, I find that the PSCC 886 refused to permit a person to examine records without reasonable excuse and a penalty of \$400 should be imposed.

Issue No. 3: Is the Respondent entitled to charge a fee to produce the requested records?

- [21] The requested core and non-core records are set out above. The Applicant disputes the issuance of a fee for the requested core records. The Respondent acknowledges that they erroneously imposed a fee for core records for the Applicant.
- [22] Sections 13.3(8) and 13.3(9) of Ontario Regulation 48/01 (the "Regulations") establish when a condominium corporation can charge a fee to produce records. A condominium can charge a fee if the requested records is a non-core record. There is no fee allowed to be charged for core records.
- [23] As defined, under section 1(1) of the Regulations, the record of notices relating to leases of units under s. 83 of the Act and the Board meeting minutes from October 1, 2023-January 2, 2024, requested by the Applicant are considered core records and no fee is to be charged.
- [24] When reviewing the Board's Response to Request for Records, it shows that the Applicant was charged \$132.80 for the Notice of Leases and \$174.80 for October 1, 2023, to January 2024 Meeting Minutes.
- [25] Given the above, I find that PSCC 886 was not entitled to charge the Applicant \$307.60 for core records, I will order that Respondent reimburse the Applicant for the \$307.60 it charged her to produce core records.

Issue No. 4: Are the requested records adequate?

[26] Section 55(1) of the Act requires a condominium corporation to keep adequate records. There is no definition of “adequate” in the Act, however, *McKay v. Waterloo North Condominium Corp. No 23*, 1992 CanLII (ONSC) (“McKay”) has provided some guidance on this topic:

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.³

[27] The principles from *McKay* are that the records of a corporation must fulfil two basics purposes: to assist the corporation in fulfilling its duties and to provide information for unit owners who wish to confirm that those duties are met.

[28] In this case, the Applicant is alleging that the requested records were inadequate as they did not provide detail of the task completed and itemized cost; therefore, the Applicant found these records to be incomplete and inadequate according to the Act.

[29] In reviewing the requested invoices regarding the work done by National Mechanical, Harbarran Construction, and Workrite Construction, I do note that there are not itemized costs in all the records. The Respondent provided that it is not their practice to modify or recreate invoices issued by their contractors. Instead, it is their position that this is the practice of the contractors and not an omission on the part of the PSCC 886.

[30] For invoice records, the purpose of those records is to provide some association to the work that was completed and the amounts charged for that work. The invoice records provided do have that level of detail. I believe that from these records the *McKay* principles of assisting the corporation in fulfilling its obligations to conduct the work needed and ensuring they are billed for that work is being fulfilled. I also agree that the condominium should not be modifying records received from third

³ *McKay v. Waterloo North Condominium Corp. No 23*, 1992 CanLII (ONSC)

parties. The condominium's obligation is to maintain the records that were received.

- [31] Given the above, the invoice records are adequate for the purpose of s. 55(1) of the Act.

Issue No. 5: Should costs be awarded?

- [32] The Applicant requests costs in the amount of \$4000 be awarded. The Respondent submits that no costs should be awarded.
- [33] The Applicant has provided that she used a significant amount of time in order to deal with this case, she submits that this time could have been allocated to other things such as additional employment and as such should be reimbursed for the time spent to deal with this case. The Applicant provided an itemized list of time spent dealing with this matter as evidence.
- [34] With respect to costs, the Tribunal does not compensate for time. The CAT's Rules of Practice, provides guidance regarding when costs may be ordered. In Rule 49.1 it states, "The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding."
- [35] Additionally, the Applicant further stated that the Respondent unreasonably caused the delays in the hearing process of this case which would warrant the issuance of costs.
- [36] Rule 48.2 states, "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".
- [37] There were delays in this case, however they were not substantial in length. In contrast, I found that new issues were raised by the Applicant during the hearing which caused the case to be lengthier, which was no Parties' fault. I also did not find that the parties failed to communicate or attempted to delay the proceedings, which would have caused me to believe that there were unreasonable delays.

[38] Given the above, the Applicant's request for costs totalling \$4000, are not warranted in this case. The Applicant, however, was successful in this case and shall recover her \$200 filing fees.

C. ORDER

[39] The Tribunal Orders that:

1. The Respondent is to pay the Applicant a penalty in the amount of \$400 under s. 1. 44(1) 6 of the Act within 30 days of the date of this decision.
2. The Respondent shall reimburse the Applicant for the fees charged for core records, totalling \$307.60, within 30 days of this decision.
3. The Respondent shall reimburse the Applicant \$200 for the CAT fees within 30 days of this decision.

Elisha Turney Foss
Member, Condominium Authority Tribunal

Released on: February 10, 2025