CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 21, 2022
CASE: 2022-00143R
Citation: Kent v. Carleton Condominium Corporation No. 268, 2022 ONCAT 128

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

Member: Ian Darling, Chair

The Applicant,
Darryl Kent,
Self-Represented

The Respondent,
Carleton Condominium Corporation No. 268
Represented by Rory Gooderham, Agent.

Hearing: Written Online Hearing – May 15, 2022 to September 1, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] On January 17, 2022, the Respondent, Carleton Condominium Corporation No. 268, hosted an owner-requisitioned meeting. The purpose of the meeting was to remove the board of directors and to deal with concerns about spending irregularities.

[2] The online meeting used the Zoom video conferencing platform. The meeting was recorded to assist in creating minutes of the meeting. After the meeting, the Applicant requested the recording. The Respondent refused to provide it. This decision considers whether a video recording of an owners' meeting is a record under the Act that must be provided to an owner when they request it.

[3] A portion of the Applicant's submissions were dedicated to discussing problems with the administration of the meeting on the virtual platform. These submissions are not relevant to what I must decide. The Tribunal does not currently have jurisdiction to adjudicate disputes related to how meetings are conducted. I do, however, recommend that the Respondent consider these concerns, and identify solutions before it plans subsequent meetings.

Result

[4] I find that the recording is a record but find that the corporation is not required to

provide it to the Applicant because the request is not solely related to the Applicant's interests as an owner, having regard to the purposes of the Act.

B. ANALYSIS

Is a video recording of the January 17, 2022, owners' meeting a record under the Act that must be retained and produced on request?

[5] I will first provide some clarity on terminology. This decision refers to "recordings" and "records". "Recording," refers to the video recording of the meeting. References to "records" or a "record of the corporation" mean "records" as defined in section 55 of the *Condominium Act, 1998* (the "Act") and Ontario Regulation 48/01 (the "Regulations").

"Widely Circulated Advice"

[6] The Respondent refused to provide the recording, relying on what they referred to as "widely circulated professional advice that audio/video recordings of an Owners' meeting or board meeting (are) not a record that must be kept and disclosed." The Respondent included a blog post[1] that supported this assertion. Blog posts can provide useful commentary, but they are not legal advice in the ordinary sense of that term, nor do they constitute evidence in this case or have the authority of case law. I have reviewed the blog and gave it little weight in determining the case. Further, I note that the blog stated as its conclusion that:

> If the recording forms part of the records of the corporation, an owner may submit a records request and the determination is made similar to other record requests. If it is not part of the records, then NO, owners are not entitled to the recording.

Even if the blog post was to constitute some kind of an authority, ultimately it provides only commentary on standards for record keeping and does not decide the issue as to whether or not recordings constitute records. However, I note it suggests, contrary to the Respondent's position, that if they are records, they can be requested, and owners are entitled to them.

The Act, Regulations, and the Respondent's By-laws

[7] I heard from the parties on the significance of the Act, Regulations and the Respondent's by-laws (the "By-laws"). Each of the parties submitted that since the Act and Regulations do not explicitly refer to video recordings, it supports their respective positions. The Applicant asserts that they should be considered records of the corporation, that are subject to disclosure to owners. By contrast, the Respondent says this means that they do not need to be retained or provided to

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[1] https://www.lashcondolaw.com/virtual-meetings-the-recording/ (Accessed July, 2022).

owners.

[8] Recordings of online meetings are not specified in the Act as a record that corporations are required to keep; however, that does not immediately disqualify it as a record to which an owner is entitled. As the Tribunal noted in Sinclair v. Peel Condominium Corporation No. 3 2020 ONCAT 25, “an owner's entitlement to records is not restricted by whether or not the record is specifically identified in [s. 55(1) of the Act and s. 13.1(1) of the Regulation 48/01]… All records of the corporation may be subject to a request for disclosure under section 55(3) of the Act.” The lists of records contained in the Act and Regulations set out a minimum standard of adequate record keeping and should not be read as if they constitute an exhaustive list of everything that could form a record of the corporation

[9] The Applicant asserted that the recording was a record of the corporation because Article III of the Respondent’s By-Law 11 refers to standards for an electronic meeting. This article requires that owners’ meetings shall be conducted in accordance with Robert’s Rules of Order. The Applicant further asserts that since Robert’s Rules allow electronic meetings, the Respondent should follow these standards. The Applicant also stated that since pandemic-related amendments to the Act allow electronic meetings, it follows that the recording was a record. I have reviewed the By-law, the relevant section of Robert’s Rules, and pandemic-related amendments to the Act. I find that they permit electronic meetings, however, they do not contain any specific directions that stipulate that meeting recordings must be made or that, if made, they are records of the organization that makes them.

[10] The Applicant also provided the “Notice of Meeting” form and communication sent to owners before the meeting. He asserted that these support the requirement to keep the recording. These communications from the corporation inform owners of the date, electronic format, and intent of the meeting. They do not mention recording the meeting. I find that the “Notice of Meeting” is not relevant to whether the recording is a record.

Intent and Purpose of the Recording

[11] The Respondent submitted that they refused to provide the recording because it was never their intention that the recording would be treated as a record of the corporation. Participants were informed that the meeting was being recorded for minute-taking purposes only and the recording would not form a part of the corporation’s records. They further submit that if the corporation intended that the meeting recording become a record, they have the authority to designate additional categories of records through the corporation’s by-laws, which they did not do.

[12] Whether or not the recording constitutes a record of the corporation is not, however, determined by the intentions or announcements of the board at the meeting. A condominium would not have the right to "opt out" of the requirement to retain records, just because it had made that announcement. The effect of such an

approach would undermine the principle that condominium records are an “open book” for owners.

[13] The Respondent compared its recording of the meeting to a minute-taker's notes. They referenced Stewart[2] in which a minute-taker's personal notes were determined not to be records of the corporation. The Respondent asserts that since its recording was made with the intention of helping to prepare minutes, it is the same as the minute-taker's notes.

[14] The difference that the Respondent disregards, however, is that the minute-taker's notes in Stewart were made by the minute-taker and constituted their own reflections on the meeting for their personal use in preparing the minutes. By contrast, in this case, the condominium created the recording. It is not a working draft, or personal impressions - it is a record created and maintained by the Respondent for its purposes.

[15] I do find it relevant to consider the Respondent’s purpose in creating the recording. Based on the facts and arguments before me and the circumstances of this case, I conclude that the recording is a record of the corporation because it was created and maintained by the corporation, for a purpose that is related to the ongoing role of managing the corporation. While there is no requirement to create the recording, the corporation’s choice to create and retain the recording has the effect of making it a record that is subject to the right of owners to access and examine the records as established in section 55(3) of the Act.

Interest as an Owner

[16] After the hearing for this case closed, the CAT released a decision that also dealt with entitlement to recordings of owner meetings *(King)*[3]. Because similar issues were addressed in that case, I reopened the hearing and requested submissions from the parties on its relevance to this case. The parties both felt that the decision supported their respective positions – the Respondent submitted that King found that the recording was not a record, and the Applicant asserted that King supported the conclusion that recordings are records – even though in the specific circumstances the CAT found that King was not entitled to the recording. Neither of these characterizations accurately reflects the findings in King.

[17] In short, King leaves open the question of whether or not the recording in that case is a record, and suggests that such a recording could be found to be a record in another case. Finally, it determined that King's entitlement to the recording was prohibited because their requests were found not to be related to their interests as an owner.

[18] Based on the parties’ submissions in this case, it is clear that the Applicant’s

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[2] Stewart v. Toronto Standard Condominium Corporation No. 1591 2012 CarswellOnt 10003
[3] King v. York Region Condominium Corporation No. 692 - 2022 ONCAT 80

purpose in requesting the record extends beyond ensuring that the minutes are an accurate record of the corporation. The Applicant provided the following explanation for their request:

> The audio-visual record is important at a personal level to many owners at Marina Bay:
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> a) The Minutes of the Board Meeting held on January 10, 2022, contain the following item; "On a motion made by Linda Hall, [President], seconded by Angela Wylie, [Vice-President], it was resolved that the Board consult with Davidson Houle Allen LLP regarding Directors' proposed statements for the January 17, 2022, owners' meeting to ensure no risk or repercussions to the Corporation. Motion carried."
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> b) All owners of Marina Bay, in attendance, heard each Member of the Board of Directors defend his/her apparent lack of oversight on thirteen alleged breaches of the contracted spending authority and fifty-five allegations of spending irregularities, by the Condominium Manager of 20/20 Property Management Ltd., cited from the General ledger of the Corporation in the rationale of the Requisition. None of these explanations or the lack thereof, are included in the draft minutes.
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> c) No owner who was absent or who submitted proxies has any idea of what the explanations were.
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> d) Statements by at least two officers of the Corporation have been interpreted differently by different owners and need to be clarified. The scripted statements by Directors, vetted at the owners' cost do not appear in the written minutes.

Previous Tribunal decisions have established that "the Act does not impose a standard of perfection ... minutes are not required to be a verbatim account of a meeting[4]".

[19] I conclude that the Applicant in this case is acting in a manner consistent with the Tribunal's findings in King. The Applicant criticized the accuracy and completeness of the draft meeting minutes and seeks to use the meeting recording to rewrite them. Like King, the Applicant asserts that exchanges in the meetings were not written in a manner which he believes accurately reflect what was said. The Applicant expressed a desire that the minutes contain specific statements, and like King, the Applicant is promoting his personal interest in seeing his own preferred wording being reflected.

[20] The Applicant may disagree with the contents of the minutes – however, the appropriate approach would be to wait for the minutes to be prepared and reviewed by all owners. If they are substantially inaccurate, the owners can

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[4] *Rahman v. Peel Standard Condominium Corporation No. 779* (2021 ONCAT 32)

discuss and vote upon the changes to be made.

[21] I therefore conclude that the Applicant has not met the test that the request is "solely related to that person's interests as an owner, a purchaser or a mortgagee of a unit, as the case may be, having regard to the purposes of the Act." This request extends beyond a legitimate interest in the content of the record, and is focused on rewriting minutes to meet the Applicant's expectations. Therefore, I find that the Applicant is not entitled to the record.

Conclusion

[22] The COVID-19 pandemic caused condominium corporations to adapt how they conduct their meetings. The transition to online video meetings was rapid in response to the public health emergency. It is important that corporations are aware that the new technology provides an opportunity to create new and different forms of records. Fundamentally, this is also a question of fairness. If a record is created, corporations are expected to provide access to owners unless the record meets the exceptions as outlined in section 55(4) of the Act. When creating records, corporations should be mindful of the expectation that the corporation's records should be an open book.

C. ORDER

[23] The Tribunal orders the Application dismissed without costs.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: November 21, 2022