

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 15, 2023

**CASE:** 2022-00707R

**Citation:** Sharma v. Toronto Standard Condominium Corporation No. 2510, 2023 ONCAT 39

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Dawn Wickett, Member

**The Applicant,**  
Rajat Sharma  
Self-Represented

**The Respondent,**  
Toronto Standard Condominium Corporation No. 2510  
Represented by Natalia Polis, Counsel

Submissions received between January 28, 2023, and February 17, 2023.

### **DISMISSAL ORDER**

#### **A. INTRODUCTION**

- [1] The Applicant filed an application with the Condominium Authority Tribunal ("CAT"). The case proceeded to Stage 3 - Tribunal Decision ("Stage 3") on January 18, 2023.
- [2] The Applicant is a unit owner and a director of Toronto Standard Condominium Corporation No. 2510 ("TSCC 2510"). The Applicant was elected as a director in September 2022.
- [3] On October 14, 2022, the Applicant sent a request for records to TSCC 2510. The request for records was extensive. On November 11, 2022, TSCC 2510 responded to the Applicant's record request. They provided three separate response forms. The response forms indicate the only records not provided to the Applicant were those records for which TSCC 2510 stated the Applicant was not entitled pursuant to section 55 (4)(c) of the *Condominium Act, 1998* (the "Act") being records relating to specific unit owners, and records requested that do not exist. Further, TSCC 2510 indicated in the response forms, that some records would be provided with a fee for the cost of labour involved in providing access to the records.

- [4] The Applicant disputes having to pay a fee to obtain records and states that he is entitled to records pertaining to other unit owners given his position as a director. In response to being denied these records, the Applicant filed his application with the Tribunal.
- [5] In his application, the Applicant indicated that he was seeking an order from the Tribunal granting him access to the records of TSCC 2510, required to fulfill his duties as director under section 37 of the Act.
- [6] The CAT's Stage 2-Summary and Order identifies six issues to be determined in Stage 3. The identified issues are:
1. Should a single director have access to records to which owners do not have access, so that director may fulfill their duties under section 37 of the Act?
  2. Should a single director be able to instruct a condominium to create documents that do not exist?
  3. Is correspondence with a condominium's lawyer a record of the corporation, and if so, should a single director have access to those records so that director may fulfill their duties under section 37 of the Act?
  4. Should access to records, including those in points 1, 2 and 3 be without charge because the requestor of the records is a director?
  5. What remedy should the Tribunal Order?
  6. Should there be an award of costs?
- [7] I note that the first four issues identified are specifically related to the Applicant's position as a director, and what he needs or wants access to, to fulfill his duties under section 37 of the Act.
- [8] It is clear from the materials filed by both parties, that there is a lengthy acrimonious relationship involving previous litigation at this Tribunal and the Ontario Superior Court. The crux of the discord appears to stem from the Applicant's belief that TSCC 2510's board of directors (excluding himself) is incompetent and untrustworthy.
- [9] Prior to the commencement of the Stage 3 proceedings, I raised a preliminary issue with the parties for which I requested their written submissions. The preliminary issue is whether the Tribunal has the jurisdiction to decide this dispute, given the Applicant's request for records appears to relate to his duties under section 37 of the Act. I also requested the parties make submissions on costs.
- [10] Both parties provided written submission on the preliminary issue and costs.
- [11] Having reviewed the submissions, I am satisfied that the Tribunal does not have

jurisdiction in this matter, and the application must be dismissed. I am also satisfied that no costs should be awarded.

## **B. ISSUES AND ANALYSIS**

### **Does the Tribunal have jurisdiction?**

[12] Ontario Regulation 179/17 prescribes the types of disputes for which the Tribunal has jurisdiction. Section 55 of the Act speaks to records to be kept by a condominium corporation and records which unit owners are entitled to examine and/or receive a copy. Section 13.3 of Ontario Regulation 48/01 sets out who may request examination of records and for what purpose. Section 13.3 of Ontario Regulation 48/01 reads as follows:

(1) The right to examine or obtain a copy of a record under subsection 55 (3) of the Act does not apply unless,

(a) an owner, a purchaser or a mortgagee of a unit requests to examine or obtain the copy and the request is solely related to that person's interests as an owner [*emphasis added*], a purchaser or a mortgagee of a unit, as the case may be, having regard to the purposes of the Act; or

[13] The Act and Ontario Regulation 179/17 does not give jurisdiction for the Tribunal to hear applications made by a director of a condominium corporation who seeks access to records to fulfill their duties pursuant to section 37 of the Act. Rather, the Tribunal's jurisdiction in matters related to records is limited to unit owners seeking access to their condominium corporation's records solely related to their interest as a unit owner.

[14] In his application, the Applicant stated the following:

I am a [sic] owner as well as a Director on the Board of TSCC 2510. The condominium corporation's other directors have not disclosed key documents. These documents and records are required by me to fulfill my duties as required under section 37 of the Condominium Act.

The corporation, its management and the directors are well aware of my requests as a Director of the corporation, yet they are replying to my request for records and treating my requests at par with that of any other owner of the corporation.

I had a previous case that had a ruling by the Tribunal. However at that time I was only an owner in the Condominium Corporation.

This case is different, as now I am a [sic] elected director in TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2510, and the other directors of the corporation are denying me access to the records that I need to do my job as a Director and apply a standard of care as per section 37 of the Condominium Act.

[15] Further, in his opening submissions, the Applicant stated:

The applicant has clarified to the Tribunal that this case is different from a previous case they had filed with the Tribunal (Case number: 2020-00409R) where they had filed as an owner, while in this case the applicant is a Director of the corporation.

In summary, the applicant, as a Director of the corporation, is seeking an order from the Tribunal for continuous access to all records of the corporation, past and ongoing, at no cost to the applicant, in order to fulfill their duty of care as outlined in the Condominium Act, 1998. The applicant argues that access to complete, truthful, and verifiable information is necessary to make well-informed decisions and that access to past records is also important for monitoring, verification, and continuous improvement. The applicant also requests that access to such records be equitable and not prejudicial, and that the information be provided in a timely manner when needed.

[16] Once I raised the preliminary issue of the Tribunal's jurisdiction, in his submissions the Applicant stated that he made his application in the capacity of a unit owner and as a director. The Applicant submitted that he accepts that the Tribunal does not have jurisdiction for issues related to section 37 of the Act, and that he wanted to proceed with his application on the basis of his interests as a unit owner. I further note, that the Applicant provided several submissions which included exhibits. Several of the Applicant's submissions and exhibits spoke to his opinion that TSCC 2510's board of directors (excluding himself) is incompetent and untrustworthy and did not speak directly to the preliminary issue I raised. As such the submissions not related to the preliminary issue were not considered in making my decision. I only considered the portions of the Applicant's submissions which spoke directly to the preliminary issue.

[17] The Respondent submitted the Tribunal does not have jurisdiction to hear the application given the Applicant's request for records was made in the capacity of a director and not solely for his interests as a unit owner. The Respondent further submitted that while the Applicant alleges to have changed his position that his request for records is now made as a unit owner, his submissions assert that his request for records continue to be in the capacity of a director to fulfill his duties pursuant to section 37 of the Act. Additionally, the Respondent asserts that the

Applicant is trying to “circumvent the statutory exemptions outlined in section 55 (4) of the Act”, and as such the application should be dismissed.

[18] The interest of a director and a unit owner may at times overlap with respect to request for records. To parse out the issues in this application, I must consider the real substance of the Applicant’s application and submissions. In doing so, I note that the Applicant has repeatedly made a broad request for access to all of TSCC 2510’s records, as well as an ongoing order for unfettered access to the records to facilitate his ability to fulfill his duties under section 37 of the Act.

[19] Having considered the submissions of both parties, I find that the Applicant filed his application with the Tribunal in order to fulfill his duties as a director, and not solely related to his interest as a unit owner. Despite the Applicant having changed his position and submitting that he wanted to proceed with his application as a unit owner, his submissions strongly indicate differently. I say this because of the following statements made in the Applicant’s submissions, which in my view clearly articulates the Applicant’s ongoing desire to access the records to fulfill his duties as a director, and not solely related to his interest as a unit owner:

This pattern of denial supports the argument for granting full access to the corporation’s records, both from the pas [sic] and on an ongoing basis, in order for the applicant to fulfill their duties as required by section 37 of the Condominium Act. (p.1 and 2-Submission 1)

This is yet another situation which strongly justifies the need for the applicant to have access to all legal correspondence, financial records etc [sic] of the corporation in order for the applicant to fulfill his duties and responsibilities expected of every director of the corporation as per the provisions of section 37 of the condominium act. (p.2-Submission 2)

Furthermore, there is no available form on the CAO website for the applicant to request records as a Director of the Corporation. These records have been previously requested during informal meetings and board meeting prior to the formal request being submitted. (p.1-Submission 4)

This supports the applicant’s request to have access to all the financial records of the corporation, including ongoing online access to view the bank accounts and ledger statements of all contractors and unit holders in order for the applicant to complete his due diligence towards fulfilling his duties as required under section 37 of the condominium act. (p.1-Submission 5)

[20] Further in support of my finding, is the CAT’s Stage 2 - Summary and Order. In this order four issues sent to Stage 3 for determination were specifically related to the Applicant’s position as a director, and what he needs or wants access to, to

fulfill his duties under section 37 of the Act, and not solely related to his interest as a unit owner. The other two identified issues in the Stage 2 order were standard issues to be determined in Stage 3, being what remedies should be ordered by the Tribunal and if an order for costs should be awarded.

[21] Given I have found that the Applicant requested the records in order to satisfy his obligations/duties as a director under section 37 of the Act, and not solely related to his interest as a unit owner, this application must be dismissed. The Tribunal is not permitted to hear matters beyond the scope of its jurisdiction as set out in the Act, Ontario Regulation 48/01, and Ontario Regulation 179/17. Any issues under section 37 of the Act are outside the scope of the Tribunal's jurisdiction. If the Applicant is not receiving documents or records which he believes he requires to fulfill his duties as a director, his legal recourse is elsewhere, and not with this Tribunal.

[22] I note the Applicant takes issue with the fact the Tribunal allowed him to file his application based on being a director seeking access to records to fulfill his duties, and the fact that this jurisdictional issue was not raised in Stage 2. While this may be frustrating for the Applicant, ultimately, anyone can file an application with the Tribunal and it can be dismissed at any point in the process, including in Stage 3, should, as in this case, a finding be made that the Tribunal does not have jurisdiction. In other words, just because the issue of jurisdiction was not brought to the Applicant's attention prior to Stage 3, that does not mean the Tribunal can hear an application outside the scope of its jurisdiction. The scope of the Tribunal's jurisdiction does not change just because the issue was not raised prior to Stage 3.

### **Should costs be awarded?**

[23] The Applicant submitted that in addition to the cost of filing this application (\$200), he incurred an additional cost (\$3,390) for consulting with a lawyer. The Applicant also wants an order reimbursing his cost (\$6,250) for personal time spent bringing this application to the Tribunal.

[24] Since the Applicant was unsuccessful, under Rule 48.1 of the Tribunal's Rules of Practice, he is not entitled to reimbursement of his cost (\$200) for filing the application.

[25] With respect to his claim for costs for having consulted a lawyer and for his personal time spent bringing this matter to the Tribunal, the Applicant failed to demonstrate how he is entitled to these costs as per Rule 48.2 of the Tribunal's Rule of Practice and its Practice Direction - "Approach to Ordering Costs". As

such, I find it appropriate to deny the Applicant's request for legal cost (\$3,390) and personal time (\$6,250) spent bringing this matter to the Tribunal.

[26] The Respondent has requested reimbursement of their legal fees (\$4,342.03). The Respondent provided a detailed invoice outlining the cost incurred. The outline indicates that the legal fees started to be incurred when the Respondent joined the case on November 17, 2022. It is the Respondent's position that the Applicant should be ordered to reimburse the legal costs pursuant to Rule 48.2 of the Tribunal's Rules of Practice and the Tribunal's Practice Direction on costs, given the Applicant brought this application for an improper purpose. The Respondent submitted that the Applicant, in his role of director, ought to have known that the Tribunal does not have jurisdiction over disputes pertaining to a director's entitlement of records to fulfill their duties under section 37 of the Act.

[27] While I understand the Respondent's position on costs, I am cognizant that the Applicant is self-represented and may not have understood that the jurisdictional issue given it was not raised prior to Stage 3. The jurisdictional issue was brought forward on the Tribunal's own motion. In considering these factors, I find it appropriate to deny the Respondent's request that the Applicant reimburse TSCC 2510's legal costs.

**C. ORDER**

[28] The Tribunal orders that:

1. The application is dismissed without costs.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: March 15, 2023