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5. At the heart of this lawsuit is subsection 3 which provides that upon receiving "a written request" and "reasonable notice", the corporation shall permit an owner to inspect the records at a reasonable time for all purposes related to the purposes of the Condominium Act:

*(3) Upon receiving a written request and reasonable notice, 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 the records of the corporation, except those records described in subsection (4), at a reasonable time for all purposes reasonably related to the purposes of this Act*

6. The right to examine records does not extend to all records as provided in subsection 55(4):

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

*(a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;*

*(b) records relating to actual or pending litigation or insurance investigations involving*

*(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, or*

*(d) any prescribed records.*

7. The person examining the records may obtain copies provided the person requesting them pays a reasonable fee.

### The Claim

8. On January 8, 2015 the plaintiff sent a request to the corporation seeking to access the owners' addresses for service and the Board's minutes for some eight years from 2006 to 2014. The plaintiff gave the corporation until January 16 to produce the requested documents.

9. According to the plaintiff, counsel for the corporation wrote to her on January 15 and advised that the list of the names and address for service maintained by the corporation was available for and ready to be picked up. As for the other documents in light of their volume and the necessary redactions, counsel advised that they would not be available on the 16<sup>th</sup>, but would be ready in the coming days. (Ex. 1 Tab 11)

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10. The plaintiff was not satisfied as she only received the mailing addresses of the owners. The plaintiff wanted to have the owners' e mail addresses as well. The plaintiff also took issue with the fact that redactions would be made to the minutes. She sought \$500.00 penalty under s. 55(8) of the Condominium Act by January 30, 2015:

*8) A corporation that without reasonable excuse does not 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 to obtain copies of records under this section shall pay a sum determined in accordance with the regulations to the owner, purchaser or mortgagee on receiving a written request for payment from that person*

11. A second request for records came on January 19, 2015 at this time for records from 2013 to 2015 relating to i. service agreements with Bridgeport Realty Management; ii. employment agreements with all full and part time employees; iii. security service agreements; iv. service agreements relating to cleaning and maintenance; and v. legal accounting and consulting services agreements. This time the corporation was given until January 28 to provide the requested documentation.

12. The corporation produced some a great many but not all the documents (see: Exhibit 1 Tab 17). According to the plaintiff, missing were i. the service agreement with Bridgeport; ii. employment agreements and; iif. legal, accounting and engineering consulting service agreements.

13. In the result the plaintiff requested a second penalty payment under s. 55(8).

14. Without repeating the lengthy submissions of the plaintiff they may be summed up under the following headings: 1. the efforts of the corporation to provide her with the records requested in a timely fashion were inadequate; 2. the corporation's explanation for its failure to provide the minutes relating to 2006 and 2007 were inadequate; 3. the corporation had a duty to disclose the owners' e mail addresses; 4. inadequate employment and legal service contracts were provided.

### The Defendant's Response .

15. The defendant disagrees with the plaintiff's submission and says that it worked diligently to respond to the plaintiff's request for document.

16. In brief, the Corporation submits that 1. The e-mail addresses do not form part of the corporation records; 2. The corporation does not have the records relating to 2006 and January - September 2007. It had made efforts to recover these minutes however, it was not totally successful. What is has was delivered to then plaintiff; 3. The existing written employment contracts were provided to the plaintiff and 4. The Property Management Contract dated August 25, 2006 was provided to the plaintiff and it is simply renewed automatically on an annual basis.

### Discussion

17. The plaintiff gave evidence and her evidence essentially substantiates the course of events set out in her submission. In brief the corporation provided her with documentation but clearly they were not forthcoming as quickly as Ms. Wu would have wished. As well clearly she did not receive some of the documentation she requested.

18. There is no evidence however, that apart from the e mail addresses the corporation refused to provide the additional documents requested. I will deal with e mails under a separate heading.

19. Mr. Yawar Khan, the defendant's property manager gave evidence. He gave his evidence carefully and I have no hesitation in accepting it. Mr. Khan explained the efforts the corporation made to comply with the plaintiff's requests, and while it did not meet the plaintiff's full expectations, I am satisfied that the corporation, its board and the management company made reasonable efforts to meet the plaintiffs demands. In coming to this conclusion, I cannot ignore that the plaintiff requested mainly historical records going back some nine years. I accept that for logistical reasons not all documents became available but also conclude that the corporation made reasonable efforts to produce the requested documentation in a timely fashion. The Corporation did not produce documents that no longer existed. While the plaintiff may be suspicious, nonetheless I am satisfied that the corporation did all that it was required to do.

20. As noted by Mr. Justice Cavarzan in McKay v. Waterloo North Condominium Corp 11 O.R. (3d) 341 the purpose the Condominium Act is provide owners and open book to the affairs of the corporation.

20. In my view that purpose is met by s. 55 requires which requires the corporation to keep extensive records.

21. The defendant argues that implicitly the corporation has the right to redact the minutes. That right however is not untrammelled. It is carefully limited by s. 55(4) of the Act. Records relating to employees may not be examined, except for contracts of employment between the corporation and the employee, records pertaining to actual or pending litigation may not be examined and records relating to specific units or owners may not be examined (subject to 55(4)(5) which essentially relates to an owner examining his own records relating to him or herself).

22. The defendant referred me to jurisprudence (Middlesex Condominium Corp No. 643 v. Prosperity Holmes Ltd 2014 ONSC 1406 and Lahrkamp v. Metropolitan Toronto Condominium Corp No 932; 2012 ONSC 6326) standing for the proposition that under s. 55 of the Act the corporation may redact the minutes of the corporations meetings both for the purposes of s.55(4) and the privacy interest protected in section 55(4).

23. There is no evidence before the court that the redactions were not in accordance with the. It is well to keep in mind that according to Mr. Khan it is not the management that makes the reductions, but the Board who themselves are unit owners. As, I understand the sole purpose of the reductions was to protect the privacy interest of the owners while disclosing the substance of the decision. The plaintiff offered no evidence that any of the reductions were impermissible, rather her thesis was that there should be no reductions at all. I was not invited to examine the reductions and absent some evidence from the plaintiff I refuse to assume that then corporation was in violation of its statutory obligations when it made the necessary redactions.

23. I next turn to the question of the e mail addresses. Are they part of the records of the corporation subject to section 55.

24. Section 55 (1) 6 requires the corporation to produce the records kept under s. 47 (2) of the Act. (I heard no submission indication that s. 47(2) has been amended by proclamation)

25. In my opinion to understand the meaning of "address of service" one must have regard for both section 46.1 and section 47 of the Act. Section 46 anticipates that the corporations obligation to keep a record of the owner's address for service if the owner provides the owner's address for service in Ontario (my emphasis).

26. It would appear that the reference in section 47 (1) of the owner's "address for service" refers back to section 46 and it contemplates an address for service in Ontario. I read that as a postal address and not as an electronic address. It is that address that the corporation must record.

27. Section 47 (7) reinforces by my conclusion. It provides that service by facsimile or electronic mail is an alternative to service by prepaid mail addressed to "the owner at the address for service that appears in the record".

28. I also agree with York Condominium Corp. No 42 v. Hashmi et al, 2012 ONSC 4533 that releasing e mail addresses raises privacy concerns. However, I will not speculate as the Privacy Commissioner has (defendant's submissions para 27) as to what uses e mail address may be put to. There is no evidence before me on which I could conclude that the Privacy Commissioner's concerns have any merit in this particular case. Her fears may or may not materialize in this case but of course that does not mean that the fears are not well founded in the abstract. For me it is sufficient to resolve the issue based on the reading of section 55 of the Act applying the the modern rule of statutory interpretation was put succinctly by E. A. Driedger in *Construction of Statutes* (2nd ed. 1983), at p. 87:

*Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. .: Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII*


837 (SCC), [1998] 1 S.C.R. 27, at paras. 21 and 23.

29. I conclude that electronic addresses are not part of an address of service within the meaning of section 55.

**Conclusion**

30. The action of the plaintiff is dismissed.

31. The plaintiff may file and serve its submission on costs not exceeding two pages on or before May 10, 2016. The defendant may file and serve its submission on or before May 15, 2016 also limited to two pages.

  
I.G. Whitehall, Q.C.  
Deputy Judge

Released: SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

Released: April 20/16 