ONTARIO
SUPERIOR COURT OF JUSTICE
TORONTO SMALL CLAIMS COURT

Court File No.: SC-13-31717-00
SC-14-9565-00
SC-15-10143-00

BETWEEN:

MICHAEL LAHRKAMP — **Plaintiff**

-and-

METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 932 — **Defendant**

J PRATTAS DJ

Heard: October 2, 2015, January 25, 26 and 27, 2016,
April 8, 2016, June 24, 2016, July 14, 15, 18 and 19, 2016,
August 11, 2016 and October 18, 2016.

Written closing submissions received February 3, 2017

Reasons Released: June 8, 2017

Persons appearing:
The plaintiff was self-represented
Jonathan H. Fine, Counsel for the defendant

REASONS FOR JUDGMENT

[1] **J PRATTAS DJ** – These three actions heard together over a 12-day trial are the latest chapter in a long, tortuous, labyrinthine and costly litigation saga between a condominium unit owner and the condominium corporation that began in 2007 and has continued to date.

Introduction

[2] The plaintiff unit owner is seeking production of records from the defendant condominium corporation. I appreciate the complexities of condominium living. I also recognize the competing interests and tensions between the collective and the individual.

[3] It is clear from the evidence in this trial that in making the overly broad document request, the plaintiff was not always pursuing a purpose reasonably related to the purposes of the *Condominium Act, 1998,* S.O. 1998, c. 19 (the "Act").

[4] The genesis of the protracted litigation between the parties and their ensuing animosity and antagonism can be traced back to 2006 when the board of directors proposed certain changes to the front lobby (the "Lobby Expenditures"), which the plaintiff ostensibly opposed. (see below)

[5] The parties delivered lengthy and voluminous closing submissions which I received February 3, 2017.

The plaintiff's claims

[6] The plaintiff Michael Lahrkamp (the "plaintiff") is a unit owner and resident of the defendant Metropolitan Toronto Condominium Corporation No. 932 (the "defendant" or the "condominium corporation" or the "condominium") located at 33 University Avenue, Toronto, Ontario which has 224 residential units.

[7] Pursuant to section 55 of the Act, the plaintiff is seeking the production to inspect various records of the defendant for the years 2007 to 2015, inclusive.

[8] In each of these three actions the plaintiff also seeks damages of $500 against the defendant pursuant to section 55(8) of the Act for failure to produce those records.

[9] These requested records include accounts receivable ledgers, general ledgers, bank statements, proxies, owner lists, board of directors meeting minutes, portfolio valuation summaries and details, and transaction summaries.

The defendant's position

[10] The defendant seeks to have these three actions dismissed for various reasons, including that:

a) The defendant has numerous reasonable excuses not to produce such records for inspection pursuant to section 55(10) of the Act;
b) Many of the requests are barred by the *Limitations Act, 2002*, S.O. 2002 c. 24, Sched. B (the "LA") and/or the doctrine of *res judicata* or issue estoppel;
c) The proceedings are vexatious and an abuse of process;
d) The plaintiff is on a fishing expedition;
e) The plaintiff is litigating for sport; and
f) The plaintiff is not exercising his statutory rights reasonably.

Chronology of litigation

[11] I think it is useful to briefly review the extended litigation history relating to the

plaintiff's repeated and relentless requests to inspect the defendant's records over the years.

[12] In 2007, Sabol DJ dismissed the plaintiff's claims to inspect various records of the defendant. He held that despite the plaintiff's assertion that the defendant failed to produce "all records", that the defendant had indeed produced all the records and that the plaintiff had six months to look at them.

[13] In April 2008 the defendant brought an application before Backhouse J against the plaintiff to enjoin the plaintiff from interfering with the lobby renovations (see below) and to stop harassing the defendant's staff (hereafter the "Backhouse Decision" - *Metropolitan Toronto Condominium Corp. No. 932 v. Lahrkamp,* [2008] O.J. No. 3885).

[14] The Backhouse Decision was appealed by the plaintiff to the Ontario Court of Appeal in 2009 (hereafter the "OCA Decision" - *Metropolitan Toronto Condominium Corp. No. 932 v. Lahrkamp*, [2009] O.J. No. 1785). The Appeal Court found no legal harassment and allowed the appeal in part while keeping the remaining part of the Backhouse J order in place including the findings of fact concerning the plaintiff's conduct. Though the plaintiff was entitled to examine records of the defendant, he was not entitled to abuse such right by pestering the board of directors or the staff and any copies of documents had to be paid in advance.

[15] Of significance to the proceedings at bar is paragraph 12 of the OCA Decision relating to requests by the plaintiff which must be exercised reasonably:

> We would leave in place the application judge's orders that the appellant make his requests to examine documents or for copies thereof in writing, that he not make more than one request with respect to the same record, and that he pay in advance the reasonable photocopying charges of any copies of records that he requests. As noted above, s. 55(3) requires that the appellant's statutory right must be exercised reasonably. In the first instance, it is for the respondent to decide what notice is reasonable and what is a reasonable time and place for the appellant to examine the records. [emphasis added]

[16] In an action instituted in this court by the plaintiff in 2010 (the "2010 Action"- *Lahrkamp v. Metropolitan Toronto Condominium Corp. No. 932*, [2010] O.J. No. 6113) Godfrey J:

a) dismissed the plaintiff's claim to inspect the front lobby expenditures (the "Lobby Expenditures"), letters of representation and the 2006 General Ledger, concluding that the defendant had a reasonable excuse not to provide such records, the plaintiff wanted to satisfy himself beyond standard auditing procedures and that the plaintiff was on a purely fishing expedition;
b) dismissed the plaintiff's claim to inspect the owners' list because the plaintiff's reasons were vague and infringed on the privacy rights of the other owners;
c) permitted the plaintiff to inspect redacted proxies and board of director minutes of meetings.

[17] While the redacted proxies and board of director minutes have been available for the plaintiff's inspection since 2012, the plaintiff has refused to pay copying charges or to pick them up for inspection.

[18] On a motion by the plaintiff in 2011in this court (the "2011 Motion") Godfrey J held that:

a) a verbal direction by an owner to add a candidate's name to a proxy does not invalidate the proxy;
b) the addition of a candidate's name by a third party does not contravene section 54(4) of the Act;
c) a third generation photocopy of the redacted documents can be provided to the plaintiff to protect the confidentiality of the redacted information;
d) the plaintiff is entitled to be satisfied that the third generation photocopies are in fact the same as the original documents, save and except for the redacted portions.

[19] In 2012, the Divisional Court dismissed the plaintiff's appeal of the 2011 Motion on the grounds that the decision appealed from was essentially a procedural matter meant to clarify the judgment of the 2010 Action and the Divisional Court had no jurisdiction to hear it.

[20] In a motion brought by the plaintiff on September 29, 2015, in this court Hunt DJ declined to take jurisdiction and dismissed it.

[21] On January 14, 2016 and while these three actions were being heard, the plaintiff brought the same September 29, 2015 motion before Godfrey J of this court (the "2016 Motion") seeking the following relief:

a) Disinterested third party examination of proxies, failing which alternatives to third party examination be permitted;
b) Confirmation that addition of names to submitted proxies is in conflict with and violates the *Criminal Code*.

[22] Godfrey J dismissed this motion essentially finding that the plaintiff was again on a fishing expedition.

The persons who testified at trial

[23] The plaintiff was the only person to testify for himself.

[24] The following persons testified for the defendant:

(a) Roy Hains ("Hains"), an owner and resident of the defendant condominium since 1991 and a director since 2000. He is an experienced chartered accountant, having worked in an international accounting firm, with several government branches and with Ontario's Auditor General to develop a new audit manual;
(b) Park Thompson ("Thompson") is a professional chartered account for 40 years. He has acted as the defendant's auditor since the condominium's inception in 1990;
(c) Wes Posthumus ("Posthumus") has been the defendant's property manager since 1990;

(d) Michael Clifton ("Clifton") is a lawyer specializing in condominium law. The defendant called him as an expert in condominium law.

Requests and examination of records

[25] The Act obliges a condominium corporation to keep adequate records (section 55(1)) to permit it to fulfil its duties and obligations imposed by the Act, the declaration, the bylaws, the rules and regulations.

[26] The crux of the dispute appears to be how section 55 of the Act should be interpreted, with particular emphasis on subsection 55(3), relating to requests and examination of those records. That subsection reads as follows:

> **Examination of records**
> (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.

[27] The defendant submits that every request for records must be accompanied with a reason which reasonably relates to the purposes of the Act. The plaintiff on the other hand submits that as an owner he is entitled to inspect every record of the defendant to satisfy himself that the condominium is operated to his satisfaction.

[28] To properly interpret section 55 it is necessary to view it in the context of the entire Act. The Act embodies a legislative scheme of individual rights and mutual obligations reflecting the separate and individual ownership of the condominium units and the communally owned common elements.

[29] Each owner is responsible for the maintenance of his own unit, and the corporation is responsible for the maintenance of the common elements and the repair of the entire property.

[30] The Act and the law in general also provide other forms of protection which are available to a unit owner.

[31] A fair reading of the Act would lead one to conclude that the statute seems generally worded in favour of transparency, openness and disclosure (collectively the "Transparency Principle") for the unit owner – except for enumerated exceptions and matters of privacy and confidentiality.

[32] A couple of those statutory exceptions include subsection 55(4) relating to records of employment, litigation or insurance investigations and subsections 55(8) and (10) which permit the refusal of records if a reasonable excuse exists for not providing those records which is not reasonably related to the purposes of the Act.

[33] The Transparency Principle is also supported in jurisprudence. See for example the cases of *McKay v. Waterloo North Condominium Corp. No 23*, 1992 CarswellOnt 622 (OCJ GD) and

National Trust Co. v. Grey Condominium Corp. No. 36, [1995] O.J. No. 2079 (OCJ GD). While these cases were decided prior to the current Act, I am not persuaded that their impact has been lessened by the current Act.

[34] However, it is equally clear that the Transparency Principle does not give an owner *carte blanche* to make unreasonable demands for records or to go on a crusade or to go on a fishing expedition as the plaintiff appears to be doing in this case. See *York Condominium Corporation No. 60 v. Brown*, 2001 CarswellOnt 3470 (OSCJ), which even though reversed by the Divisional Court in part, on other grounds, the prohibition of interrogatories seems to have been upheld. (See *York Condominium Corporation No. 60 v. Brown*, 2003 CarswellOnt 793 (Ont Div Crt)).

[35] According to the Act and as confirmed in the OCA Decision the gatekeeper of the corporation's documents and records is an elected Board of Directors (the "Board") drawn from the unit owners.

[36] In exercising that role the Board has been charged with the duty of balancing the private and communal interests between the unit owners and the corporation. It has also been authorized to make decisions on behalf of the collective, on the condition that the affairs and dealings of the corporation and its Board are equally transparent, open and accessible to the unit owners.

[37] In balancing these competing interests, generally speaking, the corporation may properly refuse a record if access infringes on issues of privacy, privilege or be of a strictly personal nature. It may also refuse a record if the burden and expense to the corporation is in issue or if the motivation or purpose of the request may not be reasonably related to the purposes of the Act.

Does an owner require a reason for every record?

[38] Is an owner required to give a reason for every record that he/she wishes to inspect?

[39] Subsection 55(3) provides that an owner shall be permitted to examine the condominium records "for all purposes reasonably related to the purposes of the Act".

[40] A reason reasonably related to the purposes of the Act may be self-evident in certain instances or reasonably inferred from the surrounding facts or the nature of the documents requested, in others. I agree with the following comments of Godfrey J in paragraph 3 of the 2010 Action:

> ... A reason reasonably related to the purpose of the Act for some requested documents may be self-evident from the surrounding facts, or may be reasonably inferred from the nature of the record requested. The right of a corporation to refuse records may be appropriate where the actual motivation behind the request is being challenged, or the burden and expense to the corporation is in issue. To create a universal rule to apply to every conceivable request is impossible. It is necessary to look at the facts surrounding each request to determine whether the condominium corporation had a reasonable excuse in not providing the records for examination.

[41] This would therefore indicate that a reason to inspect records is not always necessary. The legislation does not specifically require a reason for every request or a reason for every refusal of a record.

[42] Moreover, in deciding whether a certain request should be granted or not, the criteria to be used should necessarily be objectively applied: what does a reasonable owner require to inform him/herself about the proper functioning of his/her condominium corporation?

[43] I do not agree with the plaintiff's submission that such criteria should be subjective – based solely on what this particular plaintiff wishes by way of records to satisfy himself for his own personal reasons or edification.

[44] While I accept that there is a general openness and accessibility right to the corporation records by unit owners, such right must nevertheless be exercised reasonably, as confirmed in paragraph 12 of the OCA Decision.

[45] It is clear from the evidence in this case that on many occasions the plaintiff did not always act reasonably in making his requests for access to records.

[46] After not receiving a reply to his initial request within short order, the plaintiff would often send what he called "reminders".

[47] The Board, composed of volunteer owners, sits infrequently and on average once every six or eight weeks. If a request arrives just after their meeting, that request may not be reached until their next meeting which could be a couple of months from the request. If they need to obtain professional advice before responding, a reply may be delayed even longer.

[48] As to the plaintiff's penchant to communicate – and communicate often with persons involved with the defendant – Thompson, the auditor of the defendant, testified that it is indeed unusual to get eight emails from a unit owner – the plaintiff in this instance -- prior to an Annual General Meeting ("AGM") posing questions to the auditor in advance of the AGM.

[49] I also accept Posthumus' testimony that a significant amount of time – often one-third and sometimes up to 50% -- was spent by the Board dealing with the plaintiff's requests, who sent a "voluminous number of emails" to him and to the Board.

[50] In my view, the inevitable conclusion to be drawn from the plaintiff's conduct and dealings related to his requests for access to records over the years was that the plaintiff was not genuinely interested in looking into certain specific aspects of the financial operations of the defendant but was either oblivious to the fact that he was wasting other people's time and money or, more likely, that he took a certain delight in pestering the Board and others with his demands.

The plaintiff's testimony and requests

[51] From the Chronology of Litigation above it is indisputable that the plaintiff is a litigious person. He has commenced or has been involved in more than a dozen proceedings, including motions, against the defendant.

[52] The plaintiff also attempted, unsuccessfully, to lay perjury charges against Posthumus, the defendant's long-serving property manager and made an unsuccessful complaint to the Law Society of Upper Canada against the defendant's counsel.

[53] In word and deed the plaintiff demonstrates that he is not a quitter and that he pursues issues until he gets his way. In his resume he colourfully describes this trait saying that he is a "Graduate of the School of Hard Knocks… with a minor in No Quit".

[54] While such tenacity may be virtuous in some situations, the plaintiff's relentless pursuit in legal proceedings over the years against the defendant and the plaintiff's conduct and numerous record requests made is, in my view, in the context of condominium living, anything but virtuous.

[55] My overall impression regarding the plaintiff's record requests in this case is that the plaintiff seems to be mostly on a fishing expedition without a focus and without a rational reason as to the documents and why he is seeking them. He has not proffered any credible evidence that leads me to believe that access to the requested records would in fact enable him to assess whether the corporation was being run in a proper and efficient manner.

[56] The apparent disinterest, indifference and disregard to pick up the records available to him since 2012 casts a suspicious pale over the plaintiff's real motives in seeking these documents in the first place.

[57] This is not a case where there was some particular expenditure or accounting issue or alleged wrongdoing that can, rationally, be said to relate to the copious documents which the plaintiff requested -- and which spanned an eight or nine-year period.

[58] I think there may be some merit in defendant counsel's submission that the plaintiff's battle for access to the records may be purely for sport or maybe he simply enjoys litigating.

[59] The plaintiff has made it clear that he wishes to go behind the audited financial statements. His stated purpose: he is not satisfied with the statutory requirement of audited financial statements. Yet, on the evidence in this case I cannot ascertain any apparent or discernable reason for this position. The plaintiff presented no evidence of any impropriety or wrongdoing by the defendant in relation to any of the financial records of the corporation.

[60] The plaintiff testified that he is concerned about the materiality standard employed by the auditor even though it is only 10% of the recommended level and the audit was clear and it was carried out in accordance with "Canadian generally accepted accounting principles". In my view there is no reasonable justification for his concern.

[61] I accept the testimony from Thompson, the defendant's auditor since inception, who stated that the level of materiality that he uses is more onerous than that recommended by the Canadian Institute of Chartered Accountants of Ontario. He also testified that although the

materiality limit is $4,000, and is an acceptable level of investigation to detect fraud, if any disbursements below such limit peak his interest, he will review such disbursements.

[62] Despite the contrary assertions of the plaintiff, Thompson also testified that grouping, or rolling up, is a standard accounting practice and that he obtains third-party verification for bank balances and investments.

[63] Thompson further testified that he has no reason to suspect that there has ever been any collusion, kiting, kickbacks, false bank confirmations or fraud associated with the defendant and that, contrary to the plaintiff's assertions, Thompson, does not receive advice from counsel for the defendant regarding how to do his audits.

[64] To the extent of any discrepancy or conflict between the testimony of Thompson and the plaintiff, I prefer the testimony of Thompson over that of the plaintiff.

[65] Given the plaintiff's passion to get the records, the defendant raised a legitimate concern with what the plaintiff will do once he obtains all this massive documentation/information that he is seeking. Will the interests of the other owners be prejudiced or detrimentally affected?

[66] There was evidence that the plaintiff has been known to communicate with suppliers of goods and services of the condominium and haranguing them about their work and their invoices, and intimidating them so that they would want to stop servicing the condominium.

[67] Posthumus testified that he was informed by two auditors that they had been contacted by the plaintiff about tendering quotes to the defendant, even though the unit members at their AGM had re-appointed the same auditors that the defendant has had since its inception.

[68] I will now turn to examine the plaintiff's specific requests individually.

The Lobby Expenditures

[69] Since the Lobby Expenditures issue was addressed at trial and since it appears to have been the triggering event to the ensuing conflict and acrimony of the parties, it deserves some comment.

[70] Sometime in 2006 the Board decided to renovate the front lobby to accommodate access for disabled persons, the elderly and people with packages or bulky items. Though outwardly professing approval, the plaintiff attempted unsuccessfully to stop the renovation by seeking an injunction against the Board; it was dismissed.

[71] Posthumus testified that he met many times with the plaintiff to accommodate his requests for the Lobby Expenditures records. But when the plaintiff started demanding ever more voluminous documentation and law suits ensued, the meetings were suspended.

[72] In my view the Lobby Expenditures issue is *res judicata.* To the extent necessary, I adopt the reasons of Godfrey J in the 2010 Action who, in rejecting the plaintiff's request for inspection of the Lobby Expenditures records, said in paragraph 5 of the reported decision:

> The request for the above noted items clearly involve a significant burden and expense to the defendant. The plaintiff refused to provide a reason for these documents claiming that the Act did not require him to provide one. Despite the fact that the defendant followed proper accounting practices as set out in the Act, the evidence at trial showed that the plaintiff wanted to satisfy himself beyond standard auditing procedures that everything was in order. From that perspective the plaintiff was on a pure "fishing expedition" without a shred of evidence to support his suspicion of impropriety in regard to the front lobby expenditures, any other audited expenditure, or the letters of representation. The weak basis for the requested records together with the burden on the defendant, both in time and money, allows me to conclude that the defendant had reasonable excuse not to provide the aforementioned named records.

The Inspection of Proxies

[73] The plaintiff is requesting to inspect the proxies presented at the AGMs for the years 2012, 2013, 2014 and 2015, for the purpose of "validation of election results".

[74] Inasmuch as the defendant agreed at trial to allow the plaintiff to inspect redacted proxies for these years, I will restrict myself to a few brief comments on this request.

[75] I find that the inspection of the proxies serves no practical purpose at this stage because the meetings have been held and there is no practical way to change the election results.

[76] Whenever he stood for election to the Board the plaintiff only received very few votes – he was soundly defeated each time according to Posthumus. From 2008 to 2015, he has received from 0 to a maximum of 11 votes while other candidates received from 70 to over 100 votes. The plaintiff withdrew his name in 2011.

[77] As a general proposition proxies are presumed to be genuine unless evidence is presented to the contrary. The plaintiff did not present any cogent evidence to prove otherwise.

[78] In the 2011 Motion Godfrey J held that the condominium corporation was permitted to redact the names and other personal information from the proxies for privacy reasons and allowed the plaintiff to inspect third generation photocopies to ensure the protection of the privacy of the unit owners. I agree.

[79] In the 2016 Motion Godfrey J dismissed the plaintiff's request for third party verification of the redacted proxies. The plaintiff did not appeal this decision.

[80] Notwithstanding this ruling, the plaintiff is still not satisfied and raised this issue once again at trial to have even these third generation copies verified by third parties. I reject the plaintiff's request in this regard for the same reasons given by Godfrey J in the 2016 Motion.

[81] It should also be remembered that the plaintiff has still not picked up – or paid for – the redacted proxies that have been available to him since 2012.

[82] At trial, the plaintiff suggested that the reason that he has not picked up the redacted proxies granted under previous court proceedings was due to the costs of .25 cents per page for photocopying that the defendant has charged, notwithstanding that the other courts, including the Court of Appeal, have consistently held that the defendant could charge reasonable costs for these documents and that the plaintiff must pay in advance. I find the plaintiff's excuses unacceptable.

[83] Since the defendant has agreed at trial that it is prepared to produce these proxies, and in order to hopefully put this matter to rest, I therefore order that the defendant release redacted copies of the proxies for the years 2012, 2013, 2014 and 2015, subject to the following:

(a) All personal information shall be redacted so that the plaintiff is not able to determine who voted and how they voted, or any personal information about such proxy donors;
(b) The copies provided to be third generation photocopies to be certain that the redacted information is not able to be ascertained;
(c) The defendant can charge photocopying charges of $1.00 per page because in order to make third generation redactions, four photocopies at $.25 per page must be made of each proxy; and
(d) The defendant can charge $1.00 per proxy for such redaction.

[84] Prior to the release of these copies of the proxies the plaintiff shall meet the following conditions:

(a) he pay photocopying charges of $1.00 per third generation page (based on $.25 per page to obtain the third generation page), both charges of which I find reasonable;
(b) he pay $1.00 per proxy for labour charge for such redaction, which I find reasonable;
(c) he pay these charges in advance and prior to any inspection;
(d) the time and place of such inspection shall be mutually agreed between the parties within 20 days, failing which the defendant shall determine the time and place of such inspection on its own acting reasonably;
(e) he prepay the $174.02 for previous copying charges which remain outstanding.

[85] In the event that the plaintiff fails to meet any one of the above conditions or does not attend to inspect or pick up the proxies within 60 days after a time and place has been determined as above, then, the plaintiff shall forfeit all its rights to inspect the proxies. I leave it to the defendant to determine how to recover any charges incurred in this regard.

Owner Lists

[86] In rejecting the plaintiff's request for the Owner Lists in the 2010 Action, Godfrey J held

that the plaintiff's reason for wishing to inspect the Owner Lists was vague and infringed the privacy rights of owners pursuant to s. 55(4) of the Act.

[87] In this case, the plaintiff's reason for wanting to inspect the Owner Lists was "to allow communication with owners concerning matters of our condominium corporation and its operation".

[88] In my view, the reason put forward by the plaintiff continues to be vague and infringes on the privacy rights of the communal owners.

[89] Given the history of litigation between the plaintiff and the defendant and the election results whenever the plaintiff has placed his name on the ballot – where he has received very few votes -- I am rather sceptical that the other unit owners have any interest or would want to communicate with the plaintiff, except maybe to have him sell his unit and leave the condominium altogether.

[90] I reject the plaintiff's request to inspect or access the Owner Lists.

Board of Directors meeting minutes

[91] Although it appears at first glance that the plaintiff may be requesting Board meeting minutes ("Board Minutes") only for the years 2012 to 2015, he is effectively requesting production of all Board Minutes since 1990.

[92] Regarding the availability of Board Minutes I adopt the words of Godfrey J in the 2010 Action where he said the following at paragraph 12:

> The availability of minutes of the Board meetings seems so fundamental to the rights of the individual unit owners, that I see no basis initially that a reason should be provided. If the corporation claims to have a reasonable excuse not to provide these records then they must establish a foundation to refuse the request (e.g. communal rights are being infringed, or a statutory exemption applies). The evidence does not disclose that the defendant had a reasonable excuse to refuse the plaintiff's request for the minutes in question.

[93] The evidence in this trial did not disclose that the defendant had a reasonable excuse to refuse the production of the Board Minutes as requested by the plaintiff.

[94] However, I would agree with the submissions of defendant's counsel that personal, confidential, privileged and other private information should be redacted before being released.

[95] I would further agree that the condominium be entitled to receive reasonable charges for photocopying and redacting the Board Minutes.

[96] In the circumstances of this case I am not prepared to have the defendant rummage through to 1990 to produce all the Board Minutes from then. The plaintiff has not provided any persuasive evidence why this should be so.

[97] Since the defendant has agreed at trial that it is prepared to produce Board Minutes to the plaintiff for the years requested, I therefore order that the defendant release redacted copies of the Board Minutes for the years 2012, 2013, 2014 and 2015, subject to the following:

(a) All personal, confidential, privileged and other private information shall be redacted;
(b) The copies provided to be third generation photocopies to be certain that the redacted information is not able to be ascertained;
(c) The defendant can charge photocopying charges of $1.00 per redacted page because in order to make third generation redactions, four photocopies at $.25 per page must be made of each proxy plus $.25 per unredacted page;
(d) The defendant can charge $1.00 per set of minutes for labour for such redaction.

[98] Prior to the release of these copies of the Board Minutes the plaintiff shall meet the following conditions:

(a) he pay photocopying charges of $1.00 per redacted page and $.25 per unredacted page, both charges of which I find reasonable;
(b) he pay $1.00 per set of minutes for labour charge for such redaction, which I find reasonable;
(c) he pay these charges in advance and prior to any inspection;
(d) he prepay the $88.98 for previous copying charges which remain outstanding.

[99] In the event that the plaintiff fails to meet any one of the above conditions or he fails to pick up such copies of the minutes within 60 days after he has been advised by the defendant that the copies of the minutes are available, then, the plaintiff shall forfeit all its rights to those Board Minutes. I leave it to the defendant to determine how to collect any charges incurred in this regard.

The General Ledgers

[100] The plaintiff has requested certain General Ledgers ("GLs") from 2007 to 2014. Because the defendant has raised limitation issues regarding some of the years I will set out the timelines when the plaintiff made those requests in the three proceedings:

(a) In the 2013 proceedings the plaintiff requested the 2007, 2011 and 2012 GLs;
(b) In the 2014 proceedings the plaintiff requested the 2008 and 2013 GLs;
(c) In the 2015 proceedings the plaintiff requested the "Cumulative" GL for 2014.

[101] The plaintiff has put forward the following reasons for wishing to inspect the General Ledgers for the several years:

(a) "to see how money is and was being spent in our condo corp.", for the 2007 GL;

(b) "to become enlightened on how our money is being spent prior to the upcoming AGM", for the 2011 GL;

(c) "to understand how my money is being managed and spent as well as allowing me to participate at the AGM with better knowledge" and to "see how money is and was being spent in our condo corp.", for the 2012 GL;

(d) "so that I can understand how my money is being managed and spent as well as allowing me to participate at the AGM with better knowledge for the 2013 GL;

(e) is "to verify that the duties and obligations of the Corporation are being met with appropriate and proper disposition of owners' money", for the 2008 GL;

(f) "to be better prepared for the May, 2015 AGM", for the 2014 GL.

[102] Though there may be occasion for the GLs to be inspected by the unit owners, such as in the case of fraud or other similar and serious financial impropriety or wrongdoing, for the reasons that follow below, I reject the plaintiff's requests for the GLs in the circumstances of this case.

[103] The plaintiff has provided no credible evidence as to what specific information may be contained in the GLs that would be of interest to him, nor any credible evidence that access to the GLs (which I understand contain summaries of transactions) would permit him to ascertain whether the Board or property manager had properly discharged their obligations

[104] In my view, the defendant followed proper accounting practices as set out in the Act and the plaintiff has received in each instance audited financial statements prepared by a chartered accountant/auditor which report how money is being spent.

[105] In addition, unit owners, including the plaintiff, have had the opportunity to ask questions of the auditor about the audited statements and the financial status of the defendant at the AGMs, something which the plaintiff has taken advantage whenever he attended those meetings.

[106] From the evidence the defendant has had a clean bill of health for its financial picture over the past twenty years and not a shred of evidence was produced by the plaintiff that there may have been some alleged impropriety.

[107] In my view the plaintiff is on a pure fishing expedition regarding the GLs. He did not present a shred of credible evidence to support any of his alleged suspicions of any impropriety in the financial status or financial transactions of the defendant or that the audited statements did not reflect the true financial position of the defendant or that they were improperly done. Nor did the plaintiff present any reason reasonably related to the purposes of the Act.

[108] Insofar as the GLs contain confidential and sensitive information about unit owners and suppliers which may require redaction, I find that the plaintiff's request would involve a significant burden in time and expense to the defendant which, based on the evidence, is not warranted for any of the requested years.

[109] I further find that the requests for the 2007 and 2008 GLs are statute barred as the proceedings have been commenced more than two years beyond the limitation period in accordance with the LA.

[110] For the remaining years, I also find that the requests are moot at this time since the AGMs have already been held, especially in view of the plaintiff's reasons given that he required them to "participate at the AGM with better knowledge" or "to become enlightened on how our money is being spent prior to the upcoming AGM".

[111] For all these reasons I reject the plaintiff's requests for the production of GLs.

Accounts Receivable Ledger

[112] The plaintiff has requested the 2013 and 2014 Accounts Receivable Ledgers ("ARLs").

[113] A typical reason for such request is similar to the one he set out in an email dated April 14, 2014 where he said that he wanted to examine the 2013 ARL "so that I can understand how my money is being managed and spent as well as allowing me to participate at the AGM with better knowledge".

[114] Once again this is a situation where in my view the plaintiff has no valid reason to be given access to these documents. The ARLs would contain information of a confidential nature related to the corporation's receivables, including any monies which might be owed by other unit owners. In considering this specific document request, I view the testimony of Mr. Hains of particular importance. He testified that the defendant "in its history has never written off a dollar".

[115] Other than that he wanted to satisfy himself that the defendant was being properly run, the plaintiff did not produce any cogent reason as to why he wanted to inspect the ARLs. In making this request the plaintiff seemed to ignore the fact that audited financial statements are presented at the AGMs and the unit owners have the opportunity to ask questions and satisfy themselves on these financial issues.

[116] As previously stated, the Board is properly concerned that the plaintiff may contact and inconvenience – or even discourage -- suppliers who may become reluctant or refuse to continue serving the defendant.

[117] In addition to being onerous to produce all those records, in my view the plaintiff is on a purely fishing expedition in this regard and I reject his request to inspect the ARLs.

2008 and 2014 Bank Statements and 2008 and 2014 Portfolio Valuation Summary Details, Transaction Summary Details

[118] The plaintiff requested to inspect the 2008 and 2014 Bank statements and the 2008 and 2014 Portfolio Valuation Summary Details, and Transaction Summary Detail "to verify that the

duties and obligations of the Corporation are being met with appropriate and proper disposition of owners' money".

[119] As I understand it, the bank statements of the defendant (like other bank statements) contain a bunch of numbers and no description of transactions. The plaintiff has not given any credible evidence as to what information he might find in any such bank statements that would permit him to fulfill his stated purpose.

[120] The bank statements would definitely not permit the plaintiff to ascertain anything about the proper functioning of the condominium corporation or the proper discharge by the directors or others of their duties and obligations.

[121] The portfolio summaries may *prima facie* permit a unit owner to glean information about how the reserve fund is being invested. However, the plaintiff failed to put forward a cogent reason for wanting access to this information other than lumping it as part of his general request to get as much paper as possible from the defendant.

[122] In the context of this case, I am not persuaded that the plaintiff's reasons for production of bank statements and the portfolio evaluation details are a reason reasonably related to the purposes of the Act; it would be much too onerous to produce all these records; and the plaintiff is on a purely fishing expedition wishing to cause maximum annoyance to the Board.

[123] Regarding the production of the 2008 documents, they would be statute barred by the two-year limitation of the LA since the proceedings were not commenced until November 17, 2014, being almost six years after the end of the fiscal year 2008.

[124] For these reasons I would reject the plaintiff's requests for these documents.

The Rhonda Mauer Statement

[125] The plaintiff sought production of a prepared statement made by Rhonda Mauer a onetime director of the defendant (the "Mauer Statement") prior to the 2012 AGM.

[126] It is evident that this item was first requested by the plaintiff through his lawyer on May 30, 2012, alleging that it was "making false, misleading and defamatory comments" about the plaintiff. The request was denied by the defendant's lawyer on June 14, 2012.
[127] According to counsel for the defendant, the Mauer Statement was never a record of the defendant, but notes that belonged to Ms. Mauer. In any event, a summary of the Mauer Statement was contained in the 2012 AGM minutes.

[128] As these proceedings were commenced on November 17, 2014, being more than two years since the request and rejection, the defendant relies on the limitation period pursuant to the LA that it is statute barred. The plaintiff had more than two years to follow up following the rejection.

[129] I find that the request is statute barred by the LA. I therefore reject the plaintiff's request for the Mauer Statement.

Disposition

[130] Other than for the conditional production of the proxies and Board Minutes that I have ordered above, the balance of the plaintiff's claims are dismissed.

[131] I am not prepared to award the $500 pursuant to section 55(8) for these three actions since the defendant has already produced proxies and Board Minutes for previous years, which the plaintiff has still not picked up. And, in any event, the defendant has agreed to produce copies of the requested proxies and the Board Minutes in these actions.

[132] Had the plaintiff picked up and examined the previous documents already granted to him by the courts, perhaps these actions may not have been necessary.

[133] Given the entire history of the parties, in my view, the defendant was justified to wait the outcome of these proceedings to determine which records were to be produced to the plaintiff.

[134] Finally, this lengthy trial and the voluminous material generated could have been avoided if the parties could have seen their way clear heeding past suggestions to simply have engaged in a reasonable, rational, open and sympathetic dialogue. In this connection I would like to echo and wholeheartedly endorse the words of Godfrey J in paragraph 13 of the 2010 Action:

> The present action could have been avoided had the plaintiff and defendant been able to communicate with each other in a manner which would have allowed them to appreciate each other's concerns, and the basis for the position they were taking. The legislation does not specifically require a reason for every request, nor a reason for every refusal of a record. Suffice it to say, that in order to avoid a judicial determination under subsections 55(8) and 55(10), each side must be prepared to have a rational, open and sympathetic dialogue of their respective potential competing interests. Without such a dialogue, avoidance of a court application is likely to be remote.

Costs

[135] The parties wished to make costs submissions following the release of my Judgment. I would urge the parties to agree on costs. If unable to agree, the parties may make written submissions to the court to my attention on costs, including any offers to settle pursuant to Rule 14, as follows: by the plaintiff within fifteen days from the release of these reasons; by the defendant within fifteen days after receipt of the plaintiff's costs submissions; and any reply by the plaintiff within seven days of receipt of the defendant's costs submissions.

J PRATTAS DJ