



Civil Resolution Tribunal

Date Issued: June 28, 2021

File: CS-2020-008833

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Pakhomov v. Granville Gardens Housing Co-operative*, 2021 BCCRT 715

B E T W E E N :

IGOR PAKHOMOV

APPLICANT

A N D :

GRANVILLE GARDENS HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a special resolution removing a director from office in the respondent co-operative association.

2. The applicant, Igor Pakhomov, is a member and former director of the respondent, Granville Gardens Housing Co-operative (co-op). Mr. Pakhomov says the co-op made false accusations about his conduct, provided false information to the co-op members, and misled the members, leading to Mr. Pakhomov's removal as a director at a November 21, 2018 special general meeting (SGM). Mr. Pakhomov also says the co-op did not follow the *Co-operative Associations Act (CAA)*, or its own rules, in calling and holding the November 21, 2018 SGM. Mr. Pakhomov asks that the results of the meeting be cancelled.
3. The co-op denies it contravened the CAA or its own rules. It says it correctly called the meeting to remove Mr. Pakhomov as director as his false claims of the co-op's financial situation prevented the directors from effectively working together. I infer the co-op asks that the claim be dismissed.
4. Mr. Pakhomov is self-represented. The co-op is represented by a director.
5. As explained below, I find the co-op did not comply with its own rules and the CAA in deciding to hold the November 21, 2018 SGM and find that the special resolution removing Mr. Pakhomov as director was not validly passed at the SGM. As that was the only issue addressed at the November 21, 2018 SGM, I order the co-op to cancel the meeting results.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain cooperative association claims under section 125 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email or a combination of these. I am satisfied an oral

hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 127 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

PRELIMINARY ISSUE

10. Mr. Pakhomov argues that the co-op's directors contravened the co-op's ethical and conduct guidelines because the text of the special resolution to remove him as director was disrespectful and included false accusations against him. He further argues that the initial proposed text included accusations against other directors, which were removed from the special resolution before it was sent to the membership. Although he did not use these words, I inferred that Mr. Pakhomov argued that the co-op had acted in an unfairly prejudicial manner toward him.
11. Section 156(1)(b) of the CAA allows a member to apply to the BC Supreme Court for an order on the ground that the co-op has acted in an unfairly prejudicial manner. Section 126(1)(c)(ii) says the CRT does not have jurisdiction, meaning legal authority, over claims for unfairly prejudicial actions under section 156(1)(b) of the CAA. However, section 127(2) of the CRTA allows the CRT to make an order in a co-op claim to prevent or remedy an unfairly prejudicial action. In order to decide whether the CRT has the jurisdiction to consider whether the co-op acted in an unfairly prejudicial way toward Mr. Pakhomov, I asked the parties for submissions on whether the CRT has jurisdiction over the co-op's allegedly unfairly prejudicial actions.
12. Mr. Pakhomov says the CRT has jurisdiction over this issue because his claim is in line with section 79(2) of the CAA. Section 79 addresses persons who are disqualified

as directors. Subsection 2 allows the co-op to identify certain qualifications or disqualifications for its directors in its rules. I infer Mr. Pakhomov argues that he was qualified to act as a co-op director and therefore should not have been removed. I note Mr. Pakhomov does not refer to the co-op's actions or the decision to remove him as director as unfairly prejudicial but, rather, he says the co-op breached the CAA, its own rules, and its code of conduct in how it called and held the meeting leading to his removal. I find the CRT has the jurisdiction to consider whether the co-op correctly called and held the November 21, 2018 SGM under section 125(1)(b) of the CRTA, which says the CRT has jurisdiction over a claim "in respect of" the CAA. I find Mr. Pakhomov's claim addresses directors' decisions under CAA section 77, plus removal of a director, under CAA section 82.

13. Given my findings that the November 21, 2018 was not validly called, and that the resulting removal of Mr. Pakhomov as a director was invalid under the CAA and the co-op's rules, I find I need not consider any potential argument about unfairly prejudicial actions. So, I will not address the parties' submissions on this point any further.

ISSUES

14. In both his Dispute Notice and submissions, Mr. Pakhomov says the co-op also contravened the CAA and the co-op's rules by failing to file with the Registrar of Companies (Registrar) resolutions approved by members at a February 26, 2020 general meeting (GM) and by incorrectly changing the text of a rule amendment after it was approved by the members at a September 22, 2020 GM. These resolutions both address how long a member can serve as director and how long a former director must wait before running for election as director again., Mr. Pakhomov does not seek any remedy for these alleged infractions. Rather, he says these are examples of other ways the co-op has misled its members. As Mr. Pakhomov seeks no remedy for the co-op's alleged contraventions about the February 26 and September 22, 2020 GM resolutions, I will not make any decisions about them in this dispute.

15. The issue in this dispute is whether the co-op breached the CAA or its rules in how it called or conducted the November 21, 2018 special meeting and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

16. In a civil claim such as this one Mr. Pakhomov, as the applicant, must prove his claim on a balance of probabilities. I have weighed the evidence and reviewed the submissions of both parties but only refer to that necessary to explain and give context to my decision.

17. The co-op is a not for profit housing cooperative that was incorporated in 1982. The co-op is managed by a Board of Directors (Board) that is elected from amongst the co-op membership.

18. Section 18 of the CAA says that the co-op's filed rules are binding on all members. The co-op filed an amended set of rules with the Registrar on September 29, 2020. However, as the events at issue in this dispute occurred in 2018, I find the co-op's former rules, which were filed in November 27, 2002, apply here. I will refer to the co-op's rules as they apply throughout this decision.

19. Mr. Pakhomov was elected to be 1 of 9 directors at the co-op's April 2018 GM. On June 30, 2018, Mr. Pakhomov was elected to act as chairperson for the co-op's finance committee. On November 21, 2018 the co-op held a SGM for members to vote on a resolution to remove Mr. Pakhomov as a director. None of this is disputed.

CAA and Rule Breach Allegations

20. Both section 82 of the CAA and co-op rule 18.12 say a director may be removed before the end of their term by special resolution. Rule 1.1 says a special resolution must pass by $\frac{3}{4}$ of the total votes cast by eligible voting members at a duly called general meeting which includes a special general meeting.

21. Co-op rule 14.5 allows the Board to call a SGM when the directors think fit. Rule 19.7 says that questions arising at any directors' meeting are to be decided by a majority

of votes. Section 77(3) of the CAA allows the directors to pass a resolution without a meeting, only if each of the directors entitled to vote on the resolution consents to the resolution in writing. Mr. Pakhomov says there was neither a majority vote by the Board, nor unanimous written consent, to hold a SGM to propose his removal as a director. The co-op says it decided at the October 28, 2018 Board meeting to hold the SGM. For the following reasons, I agree with Mr. Pakhomov.

22. First, I find the October 18, 2018 Board meeting minutes do not include any proposal, approval vote, or decision by the directors to hold a SGM to remove Mr. Pakhomov as a director. Item 5.2 in the minutes was a “special resolution meeting asking Igor to step down”. The next line in the minutes say the meeting was adjourned at 3:20 pm because Mr. Pakhomov turned on his recording device in spite of an earlier majority vote not to allow any recordings of Board or general meetings.
23. Second, the president sent an email to all directors at 4:08 pm on the day of the Board meeting. The president wrote that she would be sending out a notice for a GM with a special resolution notice, with support from 6 other directors. Although the president did not say that the special resolution would be about removing Mr. Pakhomov as director, I find it likely that is what she meant, given item 5.2 on the Board meeting agenda for that day. I find it unlikely that the president would announce her intention to hold an SGM if the Board had already decided to do so during the Board meeting. Rather, I find it more likely that the president decided on a course of action outside the Board meeting, contrary to co-op rule 19.7.
24. Section 77(3) of the CAA allows the Board to pass a resolution without meeting, if each of the directors entitled to vote on the resolution consents to the resolution in writing. There is no indication that happened here. So, I agree with Mr. Pakhomov that the co-op did not follow its own rules, or the CAA, in deciding to hold the SGM and propose a special resolution for his removal. I find the Board’s decision was therefore not valid.
25. It is undisputed that the co-op provided notice of the November 21, 2018 SGM 14 days in advance, as it is required to do under rule 14.8. It is also undisputed that the

co-op sent the members a meeting reminder and further documents supporting the resolution, on November 16, 2018. I disagree with Mr. Pakhomov that the supporting information should have been provided to the members with the special resolution notice, because there is no such requirement in the co-op's rules or the CAA. So, I find the co-op provided the required SGM notice to the members.

26. According to the November 21, 2018 SGM minutes, the special resolution was "passed by a majority vote by the General Membership" (reproduced as written). The minutes do not say that the special resolution required, or passed by, $\frac{3}{4}$ or more of the votes cast, as is required under rule 18.12. Nor do the minutes include the vote count, in order to determine whether the vote passed by a $\frac{3}{4}$ or more vote. Although the co-op says the special resolution passed by a $\frac{3}{4}$ vote, I find the SGM minutes do not show that. Rather, they show that the resolution passed by a majority vote which, I find, only indicates a vote of more than half, rather than $\frac{3}{4}$. On balance, I find the co-op has not proven that it validly passed the special resolution removing Mr. Pakhomov as director on November 21, 2018.

27. In his application for dispute resolution Mr. Pakhomov alleged the co-op incorrectly would not allow his observer into the room where the secret ballot box was kept. However, he provided no supporting evidence or further argument about this issue, so I find he has not proven this part of his claim.

28. Mr. Pakhomov also says the co-op was disrespectful, made false accusations, and presented false information in the supporting documents it sent to the membership on November 16, 2018. Given my findings about the Board's decision to hold the meeting, and the fact that the special resolution was passed only by a majority, rather than a $\frac{3}{4}$ vote, I find I need not decide whether Mr. Pakhomov's allegations about the special resolution itself are proven.

29. On balance, I find the Board, acting on behalf of the co-op, did not validly decide to hold the November 21, 2018 SGM and propose the special resolution. I also find the special resolution was not validly passed, as it passed only by a majority vote, rather

than the $\frac{3}{4}$ vote required under rule 18.12. So, I find the co-op's decision to remove Mr. Pakhomov as a director is invalid.

Remedy

30. The remaining question is what remedy is appropriate in the circumstances.

31. Former rule 18.8 says a director must be elected for a 1-year term. Former rule 18.9 says a director must not serve for more than 2 years continuously. As Mr. Pakhomov was elected as director in April 2018, I find he could only serve as director until approximately April 2020, under the co-op's former rules which were applicable at the time. So, I find that Mr. Pakhomov would no longer be a director at the time of this decision, even if he had not been removed from that position at the November 21, 2018 SGM. Further, it is undisputed that, since November 21, 2018, the co-op has elected new directors to fill Mr. Pakhomov's place. Lastly, Mr. Pakhomov has not specifically requested that the co-op be ordered to reinstate him as a director. For these reasons, I find it would not be appropriate to order the co-op to reinstate Mr. Pakhomov as a director at this time.

32. Under CAA section 18, the co-op's new rules came into effect on September 29, 2020, when they were filed with the Registrar. Under the co-op's new rule 18.11 a director who has been removed from office by the passing of a special resolution may not be appointed as a director or run for office in a director's election for 4 years. Under former co-op rule 18.9 any director could serve again after an absence of 2 years. There was no special rule for directors that had been removed by special resolution, such as was the case for Mr. Pakhomov.

33. In his submissions Mr. Pakhomov argues the special resolution results should be cancelled, so that he can again stand for election as a director. I find this is an appropriate remedy in these circumstances. I order the co-op to cancel the outcome of the November 21, 2018 SGM. I leave it to the co-op to decide how to communicate this to its members.

CRT FEES and EXPENSES

34. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the co-op to reimburse Mr. Pakhomov \$225 in CRT fees.

35. Mr. Pakhomov also claims \$192.22 in dispute related expenses for copying co-op documents and the cost of sending registered mail to the Registrar. I find Mr. Pakhomov paid the Registry \$176 to provide copies of co-op documents, which I find Mr. Pakhomov submitted as evidence in this dispute. Under sections 128, 129 and 130 of the CAA, Mr. Pakhomov is entitled to examine and copy the co-op's copy of those records, at no charge to him for the period of time he was a director. There is no indication that Mr. Pakhomov attempted to obtain the required records from the co-op, at no charge to him. So, I find Mr. Pakhomov's records expenses are not reasonable and so find he is not entitled to reimbursement of \$176 for record production. Mr. Pakhomov has not explained why he sent anything to the Registrar by registered mail and so I find that expense is also not reasonable and decline to order reimbursement. In summary, I find Mr. Pakhomov is not entitled to reimbursement of any dispute-related expenses because I find them not reasonable.

ORDERS

36. Within 7 days I order the co-op to:

- a. cancel the outcome of the November 21, 2018 special general meeting vote to remove Mr. Pakhomov as a director of the co-op, and
- b. pay Mr. Pakhomov \$225 in CRT fees.

37. Mr. Pakhomov is also entitled to post-judgment interest under the *Court Order Interest Act*.

38. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Sherelle Goodwin, Tribunal Member