



Civil Resolution Tribunal

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Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Yan v. Andras Place Housing Co-operative*, 2023 BCCRT 858

B E T W E E N :

XIAO HUAN YAN

APPLICANT

A N D :

ANDRAS PLACE HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Xiao Huan Yan, is a member of the respondent housing cooperative, the Andras Place Housing Co-Operative (Andras). Mrs. Yan says Andras unjustifiably refused her request to inspect its members list. She also says that Andras treated her in a significantly unfair or unfairly prejudicial manner by failing to recognize a special

general meeting (SGM) held by the requisitioning members on April 9, 2022. I will refer to it as an SGM though the parties disagree on whether it was valid.

2. Mrs. Yan seeks orders for Andras to provide her a member list, notify members that the April SGM was valid and approve the minutes for it, and pay her \$1,000. She also says Andras overcharged her for housing charges by increasing them without proper member approval. She seeks reimbursement of \$835.
3. Andras disagrees. It says Mrs. Yan's claims are outside the CRT's jurisdiction. It also says that the SGM was invalid, while the housing charges and increases to them were valid.
4. Mrs. Yan represents herself. A board member represents Andras.
5. For the reasons that follow, I find Mrs. Yan has partially proven her claims.

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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be

admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under CRTA section 127, 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.

The CRT's Jurisdiction

10. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. Andras says the CRT lacks jurisdiction over this dispute. Mrs. Yan disagrees and says this claim falls within the CRT's jurisdiction over cooperative claims to prevent or remedy an unfairly prejudicial action.
11. CRTA sections 125 and 127 allow the CRT to make orders to prevent or remedy an unfairly prejudicial action or decision by a cooperative association like Andras. This mirrors the language in section 156(1)(b) of the *Cooperative Association Act* (CAA), which gives the BC Supreme Court (BCSC) the power to make orders to remedy actions or threatened actions that are unfairly prejudicial to a member.
12. Andras relies on CRTA section 126(1)(c)(ii). It specifically excludes from the CRT's jurisdiction those claims that may be dealt with by the BCSC under section 156 of the CAA. Mrs. Yan did not directly address this argument in submissions.
13. In *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103, the CRT noted that CRTA section 127(2) specifically allows the CRT to make an order in a cooperative association claim to prevent or remedy an unfairly prejudicial action. The CRT held that it had jurisdiction over allegedly unfairly prejudicial actions in co-op disputes, as a narrow exception to the general rule that excludes other claims that would fall under CAA section 156. See *Harding* at paragraph 17. I agree with this reasoning. As Mrs. Yan alleges that she was treated in an unfairly prejudicial manner, I find I have jurisdiction over this dispute and consider its merits below.

Claims about Housing Charge Increases from 2015 to 2019

14. Mrs. Yan say that for the financial years of 2015 to 2019, Andras improperly imposed housing charge increases. She alleges that members voted to approve the yearly budgets as a whole but did not approve the housing charge increases separately as they should have for those years.
15. I decline to make any findings about these allegations for 3 reasons. First, Mrs. Yan did claim any remedy in connection with these allegations. So, I do not find these are claims that I must resolve. Second, I find they have minimal relevance about the issues in this dispute. Third, on its face these allegations are about claims that are mostly or entirely out of time under the 2-year limitation period that applies to most claims under the *Limitation Act*. This is because Mrs. Yan applied for dispute resolution on July 25, 2022, and these allegations are largely about events from 2015 to 2019, and perhaps some part of 2020. I note that Andras also says these claims are out of time in submissions.
16. For all those reasons, I make no findings about the housing charge increases for the above-noted years.

ISSUES

17. The remaining issues in this dispute are as follows:
 - a. Should I order Andras to provide Mrs. Yan a member list?
 - b. Did Andras treat Mrs. Yan in an unfairly prejudicial manner by failing to recognize the April 2022 SGM?
 - c. Should I order Andras to refund Mrs. Yan any housing charges?

BACKGROUND, EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, Mrs. Yan as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties'

submissions and evidence, including cited case law, but refer only to the evidence and argument that I find relevant to provide context for my decision.

19. As background, a certificate of incorporation shows Andras was incorporated in January 1984. According to its memorandum of association its objects include providing housing accommodation for its members.
20. Section 13 of the CAA says cooperative associations like Andras must have rules. CAA section 18 says that rules generally bind the cooperative association, each member, and each investment shareholder. Andras provided a copy of its rules filed on September 26, 2014. They include an attached and binding occupancy agreement (OA) labelled Schedule A. I will refer to the relevant rules and OA sections below.

Issue #1. Should I order Andras to provide Mrs. Yan a member list?

21. On June 20, 2022, Mrs. Yan emailed Andras to request a list of members, including the date they became members. Andras never provided the requested record.
22. Mrs. Yan says she is entitled to the member list under CAA section 128(1), which she cited in her written request. Andras acknowledges receiving the request. It says its prior property manager did not deal with the request or forward it. It says its current manager is “currently...responding” to the request.
23. CAA section 128(1) says that an association like Andras must keep certain records at its registered office. The association must also make the records available at the office for inspection during the association’s normal business hours by any person. This is subject to the exceptions listed under CAA section 141, which I find inapplicable here. CAA section 128(1)(d) says the records include the register of members. CAA section 124(1) says that the register of members must include the date on which the name of any person was entered in the register as a member or the date on which any person ceased to be a member.
24. Similarly, rule 13.1 says that Andras must keep and maintain a register of members. The information in the register must include the members’ names and addresses,

cooperative shares held by each member, the amount paid for each share, and the date on which any person became or ceased being a member.

25. In terms of access, CAA section 130(2) says every member may examine and take extracts from the association's records referred to in CAA section 128 without charge. Section 132 says that every person entitled to examine a record or document under section 130 is entitled to a copy of the record on payment of a reasonable charge that does not exceed a prescribed amount.
26. Mrs. Yan is undisputedly an Andras member. So, I find she is entitled to inspect the register of members, which I find is also a member list, under the above-noted provisions. Given the delay and to expedite the matter, I order Andras to provide Mrs. Yan a copy of the register of members within 15 days. I also order that Andras must not charge any fee for providing this record to Mrs. Yan.

Issue #2. Did Andras treat Mrs. Yan in an unfairly prejudicial manner by failing to recognize the April 2022 SGM?

27. Mrs. Yan says that she and other members followed the appropriate procedures under the CAA to requisition and hold an SGM on April 9, 2022. She says that Andras must recognize it as valid and tell its members this is the case. She also seeks \$1,000 as compensation.
28. Andras disagrees and says it appropriately refused to call the SGM under CAA 151(2)(b)(iii), which says that it must refuse to call an SGM if it is about matters outside the power of the members. It also says that recognizing the results of the SGM "would create a financial disaster" for Andras, forcing it to run a negative financial balance and return \$45,000 to its members. It says that, in any event, it held an SGM in May 2022 to address the issues in the April 2022 SGM.
29. Rule 14.5 says that the directors may call an SGM when they think fit. They must also call an SGM when requisitioned to do so in accordance with the CAA.

30. Section 150(2) of the CAA says the board of directors must call an SGM when it receives a written requisition signed by the appropriate number of members, depending on the co-op's size.
31. Section 151(1) says the requisition has certain requirements. In particular, section 151(1)(d) says that the requisition must be served on the association. Section 151(2) says that if the directors receive a requisition that complies with all the requirements of section 151(1), the directors must, within 7 days of service, call the requisitioned general meeting or refuse to call the meeting on certain grounds. CAA section 152(1) says directors must give to the representative of the requisitioning members prompt notice of a decision under section 151 to call or refuse to call the requisitioned SGM. If the directors refuse to call the meeting, they must include in the notice their reasons for the refusal.
32. I turn to the chronology. Between February 19 and 20, 2022, Mrs. Yan and another member, TG, collected 22 member signatures to requisition a meeting under CAA section 150. It is undisputed that this was enough to pass the threshold under CAA section 150(2). The correspondence shows they each took turns as representatives for the requisitioning members.
33. The requisition alleged the following. Andras had failed to call general meetings in 2020 and 2021 for members to approve housing charge increases of 2% and 3% for the fiscal years of 2021-2022 and 2022-2023, respectively. At the SGM, members would vote on the following:
- a. to approve the 2% housing charge increase for the fiscal year of 2021-2022,
 - b. to approve the 3% housing charge increase for the fiscal year of 2022-2023,
 - c. to approve housing charge reductions to the amounts charged in the fiscal year of 2020-2021 if the first 2 measures failed,
 - d. to approve housing charge reductions to the amounts charged in the fiscal year of 2021-2022 if the first measure passes but the second fails, and

- e. to approve a refund of housing charges in connection with the third and fourth measures.
34. TG emailed the requisition to Andras on February 25, 2022. In a March 8, 2022 email, TG also asserted that the requisitioning members could hold the meeting themselves if Andras did not call an SGM within 14 days of the February 25, 2022 request. I note that section 152(4) specifies the conditions under which the requisitioning members can call the general meeting. Section 152(4)(a) says that the requisitioning members may do so if the directors do not give to the requisitioning members' representative prompt notice of a decision under CAA section 151 to call or refuse to call the requisitioned SGM within 14 days after delivery of the requisition under CAA section 151(1)(d).
35. I find this background is sufficient to conclude that the April 2022 SGM was not valid. As noted earlier, CAA section 151(1)(d) requires the requisitioning members to serve the requisition on Andras. CAA section 28 says that a document may be served on an association by leaving it at, or mailing it by registered mail to, the association's registered office under the CAA or personally serving a director or officer of the association.
36. Here, there is no indication TG or Mrs. Yan complied with CAA sections 151(1)(d) or 28 by leaving it at or mailing it by registered mail to Andras' registered office, or by personally serving a director or officer of Andras. The evidence shows that Mrs. Yan and TG emailed the requisition but that is not a permitted method of service. So, I find Andras was never properly served.
37. Courts have held that proper service is fundamental and imperative to a court's jurisdiction over the subject of the litigation. See *Smith v VM Agritech Limited*, 2023 BCSC 729 at paragraph 22. I find similar reasoning applies here, in particular because Mrs. Yan relies on compliance with the CAA to argue that the April 2022 SGM was valid, without having complied with CAA section 28 herself. It follows that Mrs. Yan cannot rely on CAA section 152(4)(a) to call a meeting, as it requires the

cooperative to be served first. I find this is sufficient to dismiss the claim, but I would dismiss it on an alternative ground that I discuss next.

38. I return to the chronology. On March 24, 2022, Andras' property manager emailed TG and Mrs. Yan. It said the Board met and denied their request to call the SGM. On March 31, 2022, Andras also sent a notice to its members advising that the SGM planned by TG and Mrs. Yan was unapproved and unsanctioned by Andras.
39. On April 3, 2022, Mrs. Yan and TG sent an email notice to the members that they intended to change the SGM motions. First, members would vote to approve a change in the agenda. Then, the members would only vote to approve or deny the housing charges of 3% and 2% for the fiscal years of 2021-2022 and 2020-2021, respectively.
40. On April 9, 2022, the requisitioning members held the SGM. According to the draft minutes, the members approved the change in agenda. They also voted against approving the housing charge increases for the following fiscal years: 3% for 2022-2023, 3% for year 2021-2022, and 2% for year 2020-2021. I note this was a change from both the suggested agenda and motions of April 2022 and the motions on the requisition itself from February 2023.
41. On May 26, 2022, Andras called its own SGM to vote on approving housing charge increases of 2% for 2020-2021, 2% for 2021-2022, and 3% for 2022-2023. The membership approved each of the Board's proposed resolutions.
42. I find from the above that the requisition did not comply with CAA section 151(1)(c). That section says the requisition must set out the resolution to be submitted to the meeting. Here, the final resolutions vote on in April 2022 were not in the requisition. I find the April 2022 SGM was not valid or binding for this alternative reason. So, I would dismiss Mrs. Yan's claim for this reason as well.
43. In summary, I dismiss Mrs. Yan's request for orders that Andras notify all members that the April 2022 SGM and its resolutions were valid and for compensation of

\$1,000. Given my decision, I need not consider whether the directors were obligated to refuse the meeting under CAA section 151(2)(b).

Issue #3. Should I order Andras to refund Mrs. Yan any housing charges?

44. Mrs. Yan emailed Andras on June 9, 2022. She requested a refund of \$835 for housing charges for the past 23 months from July 1, 2020 to May 1, 2022. She noted that this was equivalent to the sum of a 2% housing charge increase for the financial year of July 1, 2020 to June 30, 2021 and a 3% housing charge increase for July 1, 2021 to June 30, 2022. Andras ultimately refused.
45. Mrs. Yan says that Andras and its members did not approve these charges in advance and at the appropriate time. She says she is entitled to a refund for this reason. Mrs. Yan did not claim a remedy for any other members.
46. Andras disputes this. It says that members approved the housing charge increases at the May 2022 SGM, as noted above.
47. I first turn to the relevant OA sections. Section 40.2 that members shall pay the housing charge in the form and manner determined by the directors with no right of setoff or abatement under any circumstances.
48. OA section 40.3 says that the directors shall recommend to the members, at a general meeting, the monthly housing charge payable, which shall be approved by an ordinary resolution of the members.
49. I agree that the OA normally requires directors to present their recommendations about the monthly housing charge payable. It is up to the members to approve such charges, or increases to them, at a general meeting. Here, I find the directors breached OA section 40.3. The evidence shows that at board meetings on May 14 and June 2020, Andras approved a 2% increase to the housing charge for the “2021 budget”. I find this process clearly fell short of the requirements of member approval at a general meeting.

50. Andras said it did not follow proper procedures because it was prevented from doing so because of the pandemic caused by COVID-19. I find this unpersuasive as Andras held the May 2022 SGM, apparently in response to Mrs. Yan's actions. It did not provide any evidence to show that it could not hold the meeting earlier.
51. With that in mind, I turn to the legal test. Previous CRT decisions have held that the test to prove a co-op acted in an unfairly prejudicial manner is the same as the test for unfairly prejudicial conduct under the *Societies Act* and for significant unfairness under the *Strata Property Act*. See, for example, *Harding* at paragraph 47. I agree with this reasoning. To be successful in this claim, I find Mrs. Yan must show that Andras failed to meet her reasonable expectations and that, on an objective basis, that failure involved prejudicial consequences. See *Dalpadado v. North Bend Land Society*, 2018 BCSC 835 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44.
52. The focus of the test for whether conduct is unfairly prejudicial is on the effect of the allegedly unfairly prejudicial conduct on the co-op member, rather than on the intention of the co-op in its conduct. See *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2018 BCSC 1748, citing *Nystad v. Harcrest Apt. Ltd.*, 1986 CanLII 999 (BCSC)). As noted in *Dalpadado*, there must also be an element of inequity or unfairness to the conduct's effect.
53. I find that Mrs. Yan's expectation is that Andras would determine housing charges in compliance with the OA. I find that this expectation is reasonable. However, I find it did not involve prejudicial consequences for the reasons that follow.
54. First, I find Andras substantially cured the defect in the increased housing charges by holding the May 2022 SGM to vote on the charges applicable for 2020-2021, 2021-2022, and 2022-2023 fiscal years. I say this in large part because, as a general principle, the CRT should be slow to interfere with the collective wishes of the members of a cooperative. See, for example, *Kelly v. 115 Place Co-operative Housing Association*, 2009 BCCA 213 at paragraph 5. I find that imposing a resolution

here would unjustifiably take control of the matter from the members, the majority of whom support the past housing charges.

55. Second, I find that ordering a refund in these circumstances would likely create a serious financial liability for Andras. As noted above, Mrs. Yan only claimed a remedy for herself. However, I find that ordering a refund would cause other members to reasonably expect a similar refund. Andras planned its finances around receiving funding increases for the years of 2020-2021 and 2021-2022. It says that the adjustment to the housing charges for those years would result in Andras owing \$45,000 to its members and running a “negative balance” in its accounts.
56. Mrs. Yan says that there is enough money in Andras’ accounts for the refund to apply to all members/ While this may be the case, I find that I should not second-guess Andras’ decision making with respect to its finances. As stated in *Kelly* at paragraph 6, it is not the role of the court to review the merits of the decisions taken by the Board and the members. The Board and the members of the cooperative are entitled to be wrong. I find this reasoning applies to the CRT and this dispute as well.
57. Third, I find that in any event, Andras’ failure to refund the money did not lead to prejudicial consequences, or inequity or unfairness. While members like Mrs. Yan paid a higher housing charge, they retain an indirect benefit from the funds as it is available to Andras to carry out tasks that benefit the cooperative as a whole.
58. Mrs. Yan questions the validity of the May 2022 SGM. She points out that the May 2022 SGM minutes do not record the total number of attending members or record the number of opposing votes.
59. CAA section 137(1) says that the directors must cause minutes to be made for all resolutions and proceedings at all meetings of the association, the directors or any committee of directors.
60. Rule 15.3 says that normally every motion for a resolution put to a vote at a general meeting is to be decided by a show of hands unless a secret ballot is either designated by the chair or requested by any members. Rule 15.4 says that the chair

must declare to the general meeting the decision on every motion in accordance with the result of the show of hands or the secret ballot, and that decision must be entered in the minutes of the meeting. Rule 15.5 says that unless a secret ballot is required or demanded, a declaration by the chair of the decision on a motion and an entry in the minutes to that effect, in the absence of evidence to the contrary, shall be conclusive evidence of the result.

61. While Mrs. Yan has raised some issues with the minutes, I find she has not raised “evidence to the contrary” as required by rule 15.5. I find the minutes are therefore sufficient to show that the members passed the resolutions.
62. For those reasons, I dismiss this claim.

CRT FEES AND EXPENSES

63. 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 find Mrs. Yan was partially successful. This is because I have concluded that at least some of Mrs. Yan’s claims had merit and necessitated starting this proceeding. Mrs. Yan paid \$225 in CRT fees and Andras paid \$25 in CRT fees to file a paper Dispute Response. So, I find both parties are entitled to reimburse of half their CRT fees from the other party. In sum, this means I order Andras to pay Mrs. Yan \$100 in CRT fees.

ORDERS

64. Within 15 days of the date of this order, I order Andras to provide Mrs. Yan a copy of the register of members.
65. I order that Andras must not charge any fee for providing the above-mentioned record to Mrs. Yan.
66. Within 30 days of the date of this order, I order Andras to pay Mrs. Yan a total of \$100 in CRT fees.

67. Mrs. Yan is entitled to post-judgment interest as applicable.

68. I dismiss the balance of Mrs. Yan's claims.

69. 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.

David Jiang, Tribunal Member