



# Civil Resolution Tribunal

Date Issued: March 12, 2018

File: ST-2017-00261

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lam v. The Owners, Strata Plan EPS 2328*, 2018 BCCRT 73

**B E T W E E N :**

Ray Lam

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS 2328

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. The applicant, Ray Lam, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 2328 (strata).

2. This dispute concerns the strata's removal of the applicant from the strata council and the alleged publication of misleading or false information by other council members.
3. The applicant seeks the following orders:
  - That a strata council election result be declared void with the elected council members being barred from future election to the strata council;
  - That the strata council members be held responsible for various strata expenses;
  - That the previous council members be reinstated to the council;
  - That the strata review or revise its bylaws;
  - That the strata pursue legal action against its strata management company;
  - That certain strata council members pay \$33,000 in estimated expenses to the strata to cover the costs of the applicant's requested remedies; and
  - Reimbursement of \$225 in tribunal fees paid.
4. The strata requests the applicant's claims be dismissed and that the applicant pay the respondent's dispute-related expenses of \$17,552.80 plus an unspecified amount for punitive damages.
5. The applicant is self-represented. The respondent is represented by a strata council member.
6. For the reasons that follow, I dismiss the applicant's dispute. I also decline the strata's request for dispute-related expenses and punitive damages.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the

*Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.
11. Only the strata is a respondent in this dispute and I have discussed below the applicant's requests for orders affecting non-parties, including individual strata council members.

## **ISSUES**

12. The issues in this dispute are:
  - a. Was the special general meeting (SGM) held September 21, 2016 valid? If not, should election results be declared void and previously elected strata council members reinstated? Who should pay related expenses, if any?
  - b. Should certain owners be barred from serving on future strata councils?
  - c. Should the strata be ordered to review or revise its bylaws? If so, who should

- pay related expenses?
- d. Should the strata be ordered to pursue legal action against its strata management company for publishing alleged misleading or false information?
  - e. Should the applicant be ordered to reimburse the strata \$17,552.80 for dispute-related expenses and punitive damages?

## **BACKGROUND AND EVIDENCE**

- 13. Though I have read all of the evidence provided, I refer only to evidence I find relevant to provide context for my decision.
- 14. The strata's bylaws allow for 5 to 7 members to be elected to the strata council.
- 15. The strata's bylaws also allow for removal of council members by majority vote resolution at an annual general meeting or SGM and permit the strata council to appoint replacement members for the remainder of the term.
- 16. The strata contracted with a management company for strata management services and, under separate contract, a related company for caretaker services.
- 17. In early 2016, while the applicant served as strata council president, he began to have disagreements with other strata council members about the operation of the strata. In particular, disagreements surrounding the strata management company and the strata's concierge hired by the related company appear to be the catalyst for this dispute.
- 18. In July 2016, the applicant, in his capacity as strata council president, terminated the caretaker contract and hired a new caretaker, which the strata says was outside his authority.
- 19. At an August 30, 2016 strata council meeting, the applicant declined to voluntarily resign as president from the council, and so was removed as president by a majority vote resolution. He continued to serve on the strata council .The minutes reflect that the council elected a new president and vice president with other officer

positions unchanged. The minutes also reflect council acknowledgment that its members were divided on a number of important issues and strategies. At that meeting, it was resolved to call an SGM to “determine whether each of the current Council should be removed from Council” under the bylaws.

20. The strata held an SGM on September 21, 2016 (2016 SGM). The minutes reflect separate majority vote resolutions were proposed to remove individual strata council members. Two members of the council resigned during the meeting. The applicant was the only council member that was removed from the strata council. At the same meeting, an election was held to fill the 3 vacant council member positions.
21. Affidavits from 2 owners who served as strata council members in 2016 and the managing broker of the strata’s management firm at the time, who attended and chaired the 2016 SGM, were provided as evidence.
22. On August 21, 2017, the strata’s lawyer wrote to the strata stating the total legal fees, disbursements and taxes relating to this dispute were \$17,552.80. Copies of legal invoices were not provided and the strata did not file a counterclaim to recover these expenses.

## **POSITION OF THE PARTIES**

23. The applicant argues that:
  - The 2016 SGM is invalid as a result of bylaw and SPA violations, and cites bylaw 30.
  - The strata’s management company and certain strata council members violated the bylaws and SPA and are publishing misleading, false or fraudulent information to the strata’s owners to obscure personal financial interests.
24. The applicant requests that I:
  - Order the 2016 SGM declared void.

- Order certain strata council members be held liable for expenses of \$3,000 relating to the 2016 SGM.
  - Reinstate the strata council member that was removed (the applicant) at the 2016 SGM.
  - Bar certain strata council members and other owners from serving on future councils of the strata.
  - Order the strata to review or revise its bylaws policies and procedures at an estimated expense of \$15,000 to be paid by certain strata council members and owners.
  - Order the strata to pursue legal action against its strata management company for its role in allegedly misleading and defrauding owners, at an estimated cost of \$15,000 to be paid by certain strata council members.
25. The strata argues that the dispute amounts to a disagreement between the applicant and other council members over the operation of the strata. The strata also says that that the September 21, 2016 SGM was held in accordance with the SPA and bylaws.
26. The strata requests that I dismiss the applicant's claims and order the applicant to pay \$17,552.80 for its legal costs to defend this dispute, plus punitive damages.

## **ANALYSIS**

### **Was the 2016 SGM valid?**

27. I will first address the applicant's claim that he was improperly removed as strata council president. Although the applicant's reasoning is not clear, he suggests his improper removal as strata council president is a factor in the 2016 SGM being invalid.

28. The parties provided considerable submissions addressing events leading up to and including the applicant's removal as strata council president at the August 30, 2016 strata council meeting.
29. The disagreements between the applicant and other strata council members were primarily with respect to the caretaker contract, retention of legal counsel and alleged misleading information. Allegations made by other council members included that the applicant, without authority of the strata council,
  - Cancelled the caretaker contract and hired a new caretaker known to him without completing due diligence,
  - Retained legal counsel to investigate certain matters, and
  - Wrongfully accused certain strata council members and owners of distributing false and misleading information.
30. I have not referenced these disagreements in detail and comment only on those relating to the applicant's requested remedies in this dispute. The disagreements reached their peak in August 2016.
31. On August 27, 2016, while still strata council president, the applicant wrote to the strata council advising that he would exercise his authority under section 43(4) of the SPA to call an SGM without holding a strata council meeting. In the letter, he made reference to an August 24 meeting saying "certain members of the strata council, made numerous allegations and encouraged Owners to make defamatory comments." He also put forward a motion to the council he says was intended to limit the strata's liability by suspending the individual council members, investigating possible human rights code issues and charging the individual strata council members with associated investigation costs.
32. The applicant provided an SGM notice dated August 29, 2016 that included a  $\frac{3}{4}$  vote resolution to remove 3 strata council members and authorize the chargeback of certain legal expenses to the 3 named individuals.

33. Following an exchange of emails, the strata council conducted a meeting on August 30, 2016. Notice requirements for calling the meeting and quorum requirements for holding the meeting are undisputed. The minutes reflect approval of minutes of the July 28, 2016 council meeting followed by discussions on strata council positions.
34. The minutes show the applicant was requested to resign as president, to which he declined. A motion to remove the applicant as president was carried by a vote of 4 in favour and 3 opposed. The resolution quoted bylaw 17.4. The council then elected a new president and vice-president. The applicant remained a member of the strata council but was not elected to officer's position.
35. Bylaw 17.4 says the strata council may vote to remove an officer.
36. Bylaw 22.1 says that strata council decisions must be made by a majority of council members present in person at the meeting.
37. The SPA and bylaws do not require the council to provide reasons for removing an officer.
38. The applicant objects to another strata council member calling the August 30, 2016 council meeting to order. However, the bylaws do not require that the council president to chair strata council meetings. Given the circumstances, I find it was reasonable for the council to agree another strata council call the meeting to order and chair it.
39. Based on the August 30, 2016 strata council meeting minutes and the bylaws, I find the applicant was properly removed from his position of president of the strata council.
40. I turn now to the 2016 SGM.
41. The August 30, 2016 council meeting minutes do not show the applicant's proposed motion was considered by the council. At the same meeting, however,



the council resolved to call an SGM to consider the removal of current council members.

42. The SGM notice distributed by the strata was not the notice prepared by the applicant but rather a different notice that proposed separate majority vote resolutions to remove each individual strata council member by name. I accept the respondent's submission that strata council determined an SGM was necessary to allow the strata owners to confirm who they wanted to serve on the strata council for the remainder of the term, given the inability of the strata to govern itself. I conclude that the strata council at its August 30, 2016 meeting resolved to send out an SGM notice that was different than the one proposed by the applicant. This is supported by the resolution passed at the same council meeting to call an SGM to have the strata "determine whether each of the current Council should be removed from Council...". A resolution that was passed unanimously by all council members, including the applicant.
43. Under the SPA, a strata corporation must give a minimum of 2 weeks written notice of a general meeting. After factoring in notice requirements under the SPA and the *Interpretation Act*, the advance notice period is extended to 20 days.
44. Fiona Therrien, a managing broker of the strata's management company at the time of the 2016 SGM, states in her affidavit, that notice requirements of the SPA for the 2016 SGM were met. Bearing in mind the applicant did not dispute Ms. Therrien's sworn statement, I accept that the 2016 SGM was properly called.
45. As noted earlier, the strata's bylaws allow for removing council members by majority vote resolution at an annual general meeting or SGM and permit the strata council to appoint replacement members for the remainder of the term.
46. The 2016 SGM minutes clearly show that several majority vote resolutions were put forward to remove each strata council member by name. That is, one resolution per council member. The results of the vote for the applicant were 72 votes in favour, 5 opposed and 1 abstention resulting in his removal. Two strata council members resigned during the course of the meeting and the resolutions

pertaining to those members were not considered. As a result of the outcome of the resolution to remove the applicant from the council and the resignation of the 2 strata council members, 3 new members were elected to the council by majority vote.

47. The applicant says that general meetings of the strata have been historically chaired by the president of the strata council but in the case of the 2016 SGM, the meeting was chaired by Ms. Therrien, who represented the strata's management firm. Ms. Therrien confirms she chaired the meeting. The applicant suggests this is contrary to bylaw 30 which invalidates the SGM. The strata says bylaw 30 permits someone other than the strata council president to chair a general meeting.
48. Bylaw 30 says that a general meeting must be chaired by the council president or vice-president. It also says that if neither the president nor vice-president chairs the meeting, a chair must be elected by the eligible voters present in person or by proxy "from among those persons, eligible to vote, who are present at the meeting."
49. Under section 54 of the SPA, the only people entitled to vote at general meetings are owners, tenants (who have been assigned a right to vote), and mortgagees (but only with respect to certain matters and only if advance notice is given), or their proxies.
50. Although not specifically argued by either party, I infer Ms. Therrien was not considered an owner, tenant or mortgagee under the SPA. In order to be eligible to chair the 2016 SGM, Ms. Therrien must be eligible to vote under bylaw 30. I find she was not.
51. The term "eligible voter" is defined under section 1(1) of the SPA as a person who may vote under section 53 to 58 of the SPA.
52. Section 56 of the SPA addresses proxies. A person who provides strata management services to the strata is not permitted to hold a proxy unless permitted by regulation. No such regulation exists.

53. “Strata management services” is not a defined term under the SPA. It is a defined term under the *Real Estate Services Act* (RESA) which governs the licencing of strata managers and strata management companies. The definition of “strata management services” under RESA includes services normally provided by strata managers and strata management companies which I find helpful in determining the meaning of the phrase “strata management services” under section 56 of the SPA. A protracted analysis of the phrase is not warranted here nor was it argued. I conclude that Ms. Therrien, on a balance of probabilities, was providing strata management services to the strata at the time of the 2016 SGM as contemplated by section 56 of the SPA.
54. Based on the foregoing analysis, I find that Ms. Therrien was not eligible to vote under bylaw 30 and was not entitled to chair the 2016 SGM.
55. Therefore, I agree with the applicant and find that strata contravened bylaw 30 when it permitted Ms. Therrien to chair the 2016 SGM.
56. The applicant says the breach of bylaw 30 is grounds to invalidate the SGM. I disagree.
57. The evidence suggests that Ms. Therrien was requested to chair the 2016 SGM as an independent third party participant. The 2016 SGM minutes show she was asked by the new strata council president to “facilitate” the meeting. The minutes do not show any owner, including the applicant, objected to Ms. Therrien chairing the meeting. There is no evidence before me to suggest the strata intentionally contravened bylaw 30.
58. The respondent relies on *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 where the court found that strata councils consist of volunteers who will make mistakes, and within reason, some latitude is justified when scrutinizing their conduct. I agree that *Mitchell* applies to the circumstances here which resulted in Ms. Therrien chairing the 2016 SGM contrary to bylaw 30 and that the strata council made a mistake in allowing her to do so.

59. Even if the strata council was aware of the bylaw contravention, the breach was not significant. I accept there was discord among the strata council members and the very governance of the strata was at issue. I find it was reasonable for the strata to want an independent person to chair the 2016 SGM. Moreover, given the applicant was a member of the strata council at the commencement of the 2016 SGM when Ms. Therrien was permitted to chair the meeting, he is as responsible as the other strata council members for allowing it to happen.
60. For these reasons, I find the applicant's removal from the strata council at the 2016 SGM was conducted in accordance with the strata's bylaws. As previously noted, the applicant was the only council member removed from the strata council by majority vote resolution of the strata. Two other members resigned during the course of the meeting.
61. I conclude that the 2016 AGM, resulting in the removal of the applicant from the strata council, was valid.
62. Given this conclusion, I need not consider if the applicant need be reinstated nor who should pay the costs of the SGM.
63. The applicant requested an alternate remedy that the strata be directed to call a new SGM to "properly" notify the owners of the purpose of the SGM. I find that the 2016 SGM notice properly disclosed the purpose of the meeting which was to consider removing members from the strata council. I therefore decline the applicant's alternate request.

### **Should certain owners be barred from serving on future strata councils?**

64. As noted earlier, the applicant submits that the 3 individual members with whom he had disagreements, as well as their "cohorts", should be barred from serving on future strata councils. I infer the "cohorts" are other owners in the strata but only 1 other owner is identified by the applicant.

65. I note that the 3 individual council members and other owners are not parties to this dispute and, therefore, have not had the opportunity to respond to the applicant's allegations. However, as described below, I have reviewed the evidence provided and find the applicant has failed to prove any of his allegations.
66. The reasons the applicant requests these owners be barred from serving on the strata council are based on;
- Allegations of fraud charges against the new caretaker hired by the applicant purportedly with approval of the strata council,
  - Lack of consideration of the applicant's motion to hold the 3 council members financially responsible for development of policies necessary to prevent alleged misconduct from recurring,
  - Providing misleading emails to owners,
  - Allegations that strata council minutes were changed without authority, and
  - Defamatory notices being posted in the building.
67. Regarding the fraud concerns, the email exchanges show the strata council members were asking that the new caretaker undergo a criminal record check. Allegations of fraud were alluded to at an informal meeting of the strata council and other owners. The evidence does not show that such allegations were made by strata council members as alleged by the applicant.
68. Regarding the applicant's motion to hold 3 council members financially responsible, the evidence shows that the strata council met to discuss calling an SGM and that the resolutions put forward to the owners were not those requested by the applicant. I infer that, as a result of discussion, the strata council did not agree to put the applicant's proposed resolution forward to the owners, which is completely within the council's authority. The fact that the applicant did not agree does not make the strata council's actions wrong.

69. For the purposes of this strata property decision I find there is no evidence to suggest that the 3 council members or any owner provided misleading emails to owners.
70. The July 28, 2016 strata council meeting minutes were provided to strata owners, and later a revised version of the minutes was distributed. A covering note from the strata's manager stated that the council agreed that the July 28, 2016 minutes as originally circulated did not accurately reflect the business transacted at the meeting. Further, the August 30, 2016 strata council meeting minutes show approval of the July 28, 2016 minutes. I find that the council agreed that the minutes be amended. There is nothing in the evidence provided that indicates otherwise.
71. Copies of notices posted in the building were provided as evidence. However, the evidence did not show who posted the notices. I cannot find that any particular council member or owner was responsible for posting notices in the building.
72. For the foregoing reasons, I find the applicant has failed to prove any of his allegations with respect to misconduct of certain strata council members or owners. As a result, quite apart from the challenge posed by the fact the applicant named only the strata as a respondent, I dismiss the applicant's request that certain owners be barred from serving on future strata councils.

**Should the strata be ordered to review or revise its bylaws? If so, who should pay such cost?**

73. The applicant submits that the strata should be ordered to review or revise its bylaws in order that the alleged misconduct of certain strata council members is avoided in future. I have earlier found that the applicant failed to prove any alleged misconduct by strata council members. Accordingly, I decline to order the strata to review or revise its bylaws.
74. Additionally, the applicant did not provide any specific requests for bylaw amendments and I leave it to the strata owners to determine what, if any, future bylaw amendments might be necessary.

**Should the strata be ordered to pursue legal action against its strata management company for its role in allegedly publishing misleading or false information?**

75. The applicant asserts that the strata's management company, along with certain strata council members, published misleading or false information. I have earlier found that the 3 individual council members alleged to have published misleading or false information did not do so. Similarly, based on the evidence provided, I cannot agree that the strata management company acted in the manner alleged by the applicant.
76. Further, I agree with the strata that any legal action must first be approved by a  $\frac{3}{4}$  vote of the strata owners under sections 171 and 172 of the SPA. Even if I was persuaded that the strata management company published misleading or false information, I would be reluctant to order the strata pursue legal action against it without a  $\frac{3}{4}$  vote resolution of the strata owners first being approved.

**Should the applicant be ordered to reimburse the strata \$17,552.80 for dispute-related expenses and punitive damages?**

77. The strata submits that the applicant's claims are completely baseless and without merit amounting to an attack on individuals tasked with the obligations of strata council members.
78. The strata further submits that the applicant should be ordered to reimburse it \$17,552.80, which, according to the letter from the strata's lawyer, is the total legal fees, disbursements and taxes billed to the strata to defend the applicant's claims in this dispute.
79. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees paid and reasonable dispute-related expenses. However, section 189.4(b) of the SPA expressly states that an owner who brings a claim against a strata corporation is not required to contribute to the expense of defending the claim.

80. Here, the expense amount claimed by the strata is the total amount of its legal cost to defend the applicant's claims. Barring exceptional circumstances, which are not present here, I find to order reimbursement would be contrary to section 189.4(b) of the SPA. Additionally, given the tribunal's general rule that parties are self-represented, reimbursement of legal fees is not ordinarily ordered. I see no reason in this case to deviate from the general rule. I dismiss the strata's request for reimbursement of expenses. The strata did not request reimbursement of tribunal fees paid.
81. The Act is silent with respect to punitive damages. However, as noted earlier, the Act permits the tribunal to order a party to pay money which I find includes punitive damages. Therefore, I find the ability of the tribunal to order payment of punitive damages is within its jurisdiction.
82. However, punitive damages would require malicious, oppressive and high-handed conduct of the applicant of which there is no evidence here. I do not agree that the applicant's claim to be reinstated to the strata council amounts to malicious, oppressive or high-handed conduct. While the applicant's remaining claims may appear on their face to be baseless, as argued by the strata, the evidence before me does not permit me to reach that conclusion. Regardless, a baseless claim, if one occurred, does not mean that any misconduct was malicious, oppressive or high-handed.
83. Further, the strata did not file a counterclaim. Rather, the strata's claim for punitive damages was made in its response. I am not prepared to consider punitive damages in these circumstances. I dismiss the strata's request for punitive damages.
84. As the applicant was unsuccessful, I find he is not entitled to reimbursement of tribunal fees paid.

## **DECISION AND ORDERS**

85. I order the applicant's dispute is dismissed.



86. Further, I decline to order the applicant pay the strata it's claimed dispute-related expenses and punitive damages.
87. As noted earlier, under section 189.4(b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim be allocated to the owner.

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J. Garth Cambrey, Vice Chair