



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Ringler et. al v. The Owners, Strata Plan LMS 4555*, 2018 BCCRT 396

B E T W E E N :

Milan Ringler, John Bjorknas, Walter Kwan, Christine Wilson, Kwai Mei Chiu, Janet Chiu, Wendy Kwan, and Eric Wilson

APPLICANTS

A N D :

The Owners, Strata Plan LMS 4555

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrew Pendray

INTRODUCTION

1. This dispute relates to the voting procedures used by the respondent, The Owners, Strata Plan LMS 4555 (strata), at annual and special general meetings.

2. The 8 applicants (owners) own 6 lots within the strata. The owners, who are self-represented, say that the strata has failed to adopt voting practices which comply with the *Strata Property Act* (SPA). The owners also say that, contrary to section 36 of the SPA, the strata has refused to provide them with the opportunity to review and obtain copies of records regarding votes that occurred at an April 5, 2017 annual general meeting. The owners seek an order allowing them to review and obtain copies of those voting records, an order allowing them to observe future voting processes without restriction, and an order that the strata adopt written voting procedures.
3. The strata, which is also self-represented, takes the position that it is in compliance with the SPA and asks that the owners' claim be dismissed.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing. I decided to hear this dispute through written submissions. I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Should the strata be ordered to make voting records and documents from the April 5, 2017 annual general meeting available to the owners?
 - b. Should the strata be ordered to adopt written voting procedures?
 - c. Should the owners be granted an order to observe all future strata votes without restriction?

BACKGROUND AND EVIDENCE

10. I have reviewed all of the material provided. The following is intended to provide context for my reasons.
11. The strata consists of approximately 400 strata lots. At a January 2017 special general meeting of the strata, a motion was passed which required that the voting ballots from the special general meeting be destroyed one week after the conclusion of the meeting.
12. The owners considered that motion to be unusual. The owners in fact had concerns regarding the strata voting procedures dating to a November 2016 special general meeting. The minutes of that November 2016 meeting identify what the owners have described as a discrepancy in the voting counts from the November 2016 special general meeting.
13. At the strata's April 5, 2017 annual general meeting, the owners' raised their concerns regarding the January 2017 motion to destroy the voting ballots.

14. The minutes of that April 5, 2017 annual general meeting indicate that a motion was put forward to keep the “proxies, ballots, and voting schedule tally sheets for Council for a minimum period of 6 months”. That motion carried.
15. Several votes were undertaken at the April 5, 2017 annual general meeting. These included a bylaw amendment regarding pets, a bylaw amendment regarding alterations to a strata lot, and a secret ballot vote undertaken pursuant to strata bylaw 28(6) for the election of 4 new council members. There were 9 candidates for the 4 available council positions. The ballots cast for council members were counted by 3 scrutineers.
16. After the April 5, 2017 annual general meeting, several owners (including a number of the applicants in this dispute) wrote to the strata in an undated letter (document request letter) and requested that they be provided with copies of the voter and proxy sign in registration sheets, copies of completed proxy forms, and copies of the official scrutineer election result tally sheets from the April 5, 2017 meeting. The document request letter further requested the opportunity to review, and perhaps obtain copies, of council election voting slips.
17. The signatories to the document request letter explained that their request for copies of voting documents and the opportunity to review council election voting slips were made with a view to addressing what they saw as “optics of possible voting irregularities”.
18. In response to the document request letter the strata provided the owners with an April 10, 2017 opinion letter from the strata’s law firm. In that letter the law firm indicated that it understood the strata manager’s procedure for voting registration was to sign in owners and proxy holders, and then to provide those owners and proxy holders with their appropriate voting ballots. The strata’s law firm indicated that it understood the strata manager to then return proxy forms to the proxy holder, although a “few” proxy forms appeared to have been left behind at the April 5, 2017 meeting.

19. In the April 10, 2017 letter the strata's law firm indicated that its opinion that the strata ought not to collect or retain proxy forms at general meetings, as proxy forms were not included in the records the strata was required to retain by section 35 of the SPA. The law firm further opined that none of the documents requested in the owners' undated letter fell within section 35 of the SPA, and as such, the owners had no entitlement to see any of those documents.
20. The owners responded, in a May 11, 2017 letter, again requesting a copy of the April 5, 2017 meeting voting records. The owners also indicated that they were requesting a meeting with the strata council to obtain a decision relating to their request for documents.
21. Also attached to the May 11, 2017 letter was a statement signed by one of the applicant owners in this dispute, Ms. K. Chiu. In her statement Ms. Chiu indicated that she was a first time scrutineer at the April 5, 2017 annual general meeting. Ms. Chiu wrote that she had not received any instruction other than being asked by the strata manager to collect a bundle of ballots, count and record the results of those ballots on the tally sheet bearing their name. Ms. Chiu indicated that after each scrutineer counted their bundle of ballots, they passed on their tally to the next scrutineer for verification of their count.
22. Ms. Chiu then described observing a "yellow sheet full of numbers on the table", which contained "names of all the nominees on the left and several columns all the way to the far right". Ms. Chiu indicated that she did not know who had filled in the numbers on the "yellow sheet", but that one of the other scrutineers began to add up the numbers on the sheet. Ms. Chiu indicated that as she understood it the first 3 columns on the yellow sheet reflected the ballots counted by the scrutineers (though she did not know who had put them on the sheet). She further indicated that there were "another four columns full of numbers" to the right of what she presumed to be the scrutineer counts. Ms. Chiu stated that she asked another scrutineer what those 4 columns were, and that the scrutineer had informed her that "those were from Proxy".

23. Ms. Chiu indicated in her statement that she queried who had written “Those numbers in the last 4 columns to the far right on the yellow sheet and where were the ballots for those numbers”.
24. Another of the applicant owners in this dispute, Ms. Kwan, personally wrote to the strata on May 15, 2017. In that letter Ms. Kwan indicated that when she arrived at the strata’s April 5, 2017 annual general meeting there were a number of owners lining up for registration of proxies. Ms. Kwan indicated that she observed the strata manager as being in charge of the proxy registration.
25. Ms. Kwan explained that when registering “my proxies” she found that an initial was already on the signature spot on the proxy registration for one of the proxies she believed she held on behalf of a Mr. GC. Ms. Kwan wrote that when she had raised this issue with the strata manager, the strata manager had first attempted to determine who had initialed as holding Mr. GC’s proxy. Ms. Kwan indicated that when the strata manager had not been able to do so, he had simply asked Ms. Kwan to place her initial next to Mr. GC’s strata lot address, and that he then provided her a set of voting ballots as the proxy holder for that strata lot. Ms. Kwan indicated that when expressed concern to the strata manager that given the other signature already present, there appeared to have been a set of “illegal ballots” issued, the strata manager had simply informed her that he was not concerned about a single set of extra ballots.
26. The strata did in fact allow the owners to review some of the documents requested at a June 28, 2017 strata council meeting. The strata indicated to the owners at that time that it did not retain the completed proxy forms, and that the strata management company did not have written procedures and protocols as requested. The strata did not provide the owners with copies of the documents provided for review.
27. The owners objected to the amount of time they were provided to review the documents. They indicated that the strata had given them only 30 minutes, and

that that time frame allowed the owners only to “figure out what the documents provided were”.

28. In a July 5, 2017 letter to the owners the strata noted that, in the spirit of cooperation it had made the voter and proxy sign in registration sheets, the official scrutineer’s elections results tally sheets, council election voting slips available for the owners to review at the June 26, 2017 meeting. The council indicated that it would not be providing copies of those items in order to preserve the secrecy of the secret ballot process.

ANALYSIS

Should the strata be ordered to make voting records and documents available to the owners?

29. In their submissions, the owners have taken the position that, pursuant to sections 35 and 36 of the SPA, the strata should be ordered to make voting records and documents from the April 5, 2017 annual general meeting available to them.
30. Section 35 of the SPA sets out the categories of records that a strata corporation must prepare, and the various records and documents it is required to keep copies of. Section 36 of the SPA requires that a strata, upon receiving a request from an owner, must make the records and documents referred to in section 35 available for inspection and provide copies of those records and documents within 2 weeks (1 week if the request is for bylaws or rules).
31. Here, the owners have requested copies of the following documents from the strata:
- Voter/proxy sign in registration sheets;
 - “Filled in” proxy forms;
 - Official scrutineer election results tally sheets;
 - Election voting slips; and

- The strata management company's procedures and protocols for annual general and special general meetings and voting.
32. I note that although the owners submit that in their view the documents requested are "within" the meaning of records as defined by section 35 of the SPA, they have not explained why that would be the case.
33. Section 35 of the SPA provides a detailed list of the records that a strata "must" prepare, and the records that a strata "must" maintain. I find that none of the documents requested by the owners is a record that the strata must maintain as described by section 35. Given that fact, and the fact that section 36 of the SPA requires only that the strata make records and documents referred to in section 35 available, I find that the owner's position that the strata must produce the documents that they have must be dismissed.

Should the strata be ordered to adopt written voting procedures?

Should the owners be granted an order to observe all future strata votes without restriction?

34. The owners have taken the position that the strata should be ordered to adopt written procedures for voter/proxy sign in sheets, proxy verification, voting, and scrutineer vote counting, as recommended by the Condominium Home Owners Association of B.C. They also say that they should be granted an order to observe all future strata votes without restriction
35. I do not find the owners are entitled to such orders.
36. First, I note that the strata already has a written procedure for voting, set out at bylaw 28. Bylaw 29 further contains a written requirement that the strata must certify proxies. In my view, those bylaws, provided they are followed, are sufficient to enable the strata to conduct votes at annual and special general meetings in an appropriate fashion such that the strata will meet its duties under the SPA.
37. If the owners wish for strata bylaws 28 and 29 to be amended to contain a different voting procedure than that which the strata currently operates under, they should

seek to bring forward a resolution for such an amendment. Section 46 of the SPA provides a mechanism for the owners to undertake such action.

38. Second, and similarly, I consider that if the owners wish for there to be some sort of “observer” role for votes of the strata, the proper forum is to bring forward a resolution for an amendment to bylaw 28.
39. The owners’ claim is dismissed on these issues.
40. Given the background facts of this case, I consider it to be worthwhile to generally note that strata corporations must ensure that their bylaws are complied with when conducting votes. Although the owners explicitly indicated in their submissions that they were not seeking to change the results of past votes of the strata, the statements of Ms. Chiu and Ms. Kwan both suggest that the strata could improve the level of care it takes when undertaking vote counts and proxy certification in the future.

DECISION

41. I order that the owners’ claim is dismissed.
42. 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 and reasonable dispute-related expenses. As the strata was the successful party and did not incur any tribunal fees or expenses, I make no order regarding such fees or expenses.

Andrew Pendray, Tribunal Member