



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Balayewich v. The Owners, Strata Plan LMS317*, 2021 BCCRT 110

B E T W E E N :

CYNTHIA MARGARET BALAYEWICH

APPLICANT

A N D :

The Owners, Strata Plan LMS317

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about voting and participation in a strata corporation's special general meeting (SGM).

2. The applicant, Cynthia Margaret Balayewich, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS317 (strata). She says the strata prevented her from selecting her own proxy and from participating in an August 6, 2020 SGM. At that SGM, the owners approved a resolution that the strata cancel its contract with its management company, Pacific Quorum Properties Inc. (PQ).
3. Ms. Balayewich seeks orders that a) all owners can attend all meetings either virtually or in person, and b) all owners can vote independently or choose a proxy. She also asks for an order that the strata council apologize to all owners and confirm in writing to owners that it will, essentially, comply with (a) and (b) above.
4. The strata says the owners agreed to conduct the SGM by “restricted proxy” due to the COVID-19 pandemic situation. It says it acted on the advice of PQ and believed that conducting the SGM by restricted proxy was lawful.
5. The applicant is self-represented. The strata is represented by a person I infer is a strata council member.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 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, 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 123 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.

ISSUE

10. The issues in this dispute are:
 - a. Can the strata prevent a person from attending an SGM?
 - b. Can the strata restrict a person from selecting a proxy of their choosing?
 - c. If not, what remedies are appropriate?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil dispute, Ms. Balayewich must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
12. The strata was created in 1992 and includes 40 strata lots in 5 low-rise buildings.
13. On July 16, 2020, PQ distributed a notice to owners setting out the agenda for the August 6, 2020 SGM. Item F was a resolution to cancel the strata's management services contract with PQ.
14. Under section 39(1)(a) of the *Strata Property Act* (SPA), a strata corporation may cancel its management services contract without penalty by providing 2 months' notice if the cancellation is first approved by a resolution passed by a $\frac{3}{4}$ vote at an annual general meeting (AGM) or SGM.
15. The SGM notice said that due to "Covid-19 isolation requirements," the meeting was being conducted by "restricted proxy". A proxy is a person appointed to stand in the

place of a person otherwise able to vote and participate in discussions at AGMs and SGMs.

16. PQ encouraged each owner to read the resolution to terminate the strata's contract with PQ and to complete the "restricted proxy form". The restricted proxy form did not give owners the option to select a proxy. Instead, it appointed the strata council president as the proxy if the owner signed and submitted the form.
17. The August 6, 2020 SGM minutes record that in addition to the PQ representative there was 1 owner (the strata council president) present by teleconference, and 35 strata lots by proxy out of a possible 40. Quorum was therefore established under section 48 of the SPA, which requires at least 1/3 of eligible voters present in person or by proxy.
18. The resolution to cancel the management services contract was approved with 33 in favour and 3 opposed.

Can the strata prevent a person from attending an SGM or restrict a person's proxy selection?

19. Section 54 of the SPA sets out a person's right to vote at an AGM or SGM. Generally, all owners, and in some cases tenants and others, can vote. The strata's bylaw 4.B.1 says occupants may attend AGMs and SGMs, whether or not they are eligible to vote.
20. Section 49(1) of the SPA says a strata may, by bylaw, provide for attendance at an AGM or SGM by telephone or any other method, if the method permits all persons participating to communicate with each other.
21. The strata does not have a bylaw providing for telephone or electronic attendance. However, on April 15, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. M114 under the *Emergency Program Act*. That order enables strata corporations to conduct meetings, including SGMs and AGMs, electronically (by telephone or other electronic methods), during the provincial state of emergency. The only requirement is that all persons can communicate with each other. The order

applies to all strata corporations whether or not they have a bylaw allowing general meetings to be held electronically.

22. The *COVID-19 Related Measures Act* (CRMA) extends the ability of strata corporations to hold electronic meetings for 90 days after the date on which the last extension of the declaration of a state of emergency expires or is cancelled.
23. Although Ministerial Order No. M114 is permissive, there is nothing in the SPA that allows the strata corporation to prevent people from participating in AGMs or SGMs. The result is that if the strata corporation conducts an AGM or SGM and cannot safely accommodate participants in a physical meeting space, it must provide for electronic attendance and voting.
24. Section 56 says a person who may vote under section 54 may vote in person or by proxy. Nothing in the SPA gives a strata corporation the power to restrict a person's choice of proxy. Under section 56, a person may appoint any proxy other than an employee of the strata or a person who provides management services to the strata.
25. In *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157, a CRT member found a $\frac{3}{4}$ resolution vote invalid where the strata did not allow all eligible voters and proxies to attend, and restricted the voters' ability to choose a proxy, among other irregularities. The CRT member ordered the strata not to act on the vote results.
26. However, Ms. Balayewich does not challenge the $\frac{3}{4}$ vote outcome or seek an order that the strata not act on the vote results or reverse its management contract cancellation. I find what she seeks is orders that the strata refrain from restricting participation and proxy selection, in contravention of the SPA, when holding future SGMs and AGMs.
27. Based on the analysis above, I order the strata, at future SGMs and AGMs, to allow electronic attendance and voting so long as the CRMA permits it. I also order the strata to permit proxy selection without restriction in accordance with the SPA.
28. Turning to Ms. Balayewich's other requested remedies, I see little utility in ordering the strata to apologize to the owners. An ordered or forced apology is unlikely to have

meaning to the owners. There is no evidence the strata intended to deceive the owners. The proxy forms confirm that the votes were properly counted. I also accept that the strata council acted on the advice of PQ, which said it was not conducting in-person meetings due to the COVID-19 pandemic. I decline to order the strata to apologize.

29. I also decline to order the strata to confirm to the owners that it will allow them to participate in meetings and vote or select their own proxies in the future. I find there would be no point in making that order, since the strata is already required to comply with the SPA and these orders.

CRT FEES AND EXPENSES

30. 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. Ms. Balayewich was largely successful, so I order the strata to reimburse her \$225 in CRT fees. She did not claim any dispute-related expenses.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Balayewich.

ORDERS

32. I order the strata to:
- a. Allow electronic attendance and voting at AGMs and SGMs as long as Ministerial Order No. M114 and the CRMA permit.
 - b. Allow proxy selection for voting at AGMs and SGMs without restriction, in accordance with the SPA.
 - c. Within 30 days of the date of this order, pay Ms. Balayewich \$225.00 for CRT fees.

33. I dismiss Ms. Balayewich's remaining claims.

34. 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.

Micah Carmody, Tribunal Member