



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Preshaw v. The Owners, Strata Plan VIS5792*, 2021 BCCRT 384

BETWEEN:

ROY PRESHAW

APPLICANT

AND:

The Owners, Strata Plan VIS5792

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about proxies and strata governance. The applicant, Roy Preshaw, is an owner of 2 strata lots in the respondent strata corporation, The Owners, Strata Plan VIS5792 (strata). Mr. Preshaw says that the strata inappropriately refused to

accept proxies at the 2020 annual general meeting (AGM) and treated him in a significantly unfair manner. Mr. Preshaw asks for an order recognizing the significant unfairness, and that the minutes be corrected to recognize the owners who were “disenfranchised” or that the votes conducted at the 2020 AGM be “rescinded and revoked”. The strata denies that it acted in a significantly unfair manner and says that it followed its usual practice of requiring proxies to be submitted at least 48 hours before meetings.

2. Mr. Preshaw is self-represented. The strata is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

ISSUES

7. The issues in this dispute are:
 - a. Whether the strata's bylaws or the *Strata Property Act* (SPA) permit it to require the submission of proxies prior to a general meeting and allow it to reject proxies presented at a general meeting,
 - b. Whether the 2020 vote to waive the depreciation report was valid and, if not, what remedies are appropriate, and
 - c. Whether the strata treated Mr. Preshaw in a significantly unfair manner.

EVIDENCE AND ANALYSIS

8. The strata is a bare land strata development. Some owners use their strata lots on a part-time basis and live elsewhere in the province or in other jurisdictions.
9. Mr. Preshaw owns strata lots 4 and 5 as a joint tenant with another individual who is not a party to this dispute.
10. As far back as 2006, the strata has included a proxy form in the AGM notice packages and asked owners to return their completed forms at least 48 hours prior to the scheduled AGM if they intend to use a proxy. The proxy form provides postal and email addresses for this purpose.
11. Mr. Preshaw says that he presented proxies at the beginning of the 2019 AGM which were accepted. He was issued voting cards and voted on his own behalf and for the owners whose proxies he held. Mr. Preshaw says that in 2019 he voted against a $\frac{3}{4}$ vote resolution to waive the requirement for a depreciation report on behalf of his own 2 strata lots and on behalf of the proxies he held.
12. A September 30, 2019 email message from a strata council member to the owners discussed the "late" proxies and stated that the requirement that proxies be submitted by a particular deadline was in compliance with the *Business Corporations Act*. The strata's view was that the late proxies were invalid, and should not have been

accepted. The strata revised the minutes of the 2019 AGM to remove the votes from the proxies. This did not alter the result of the vote on the resolution.

13. In advance of the June 26, 2020 AGM, Mr. Preshaw obtained 3 proxies from the owners of strata lots 3, 6, and 13. He did not submit the proxies in advance, but instead presented them at the AGM. Mr. Preshaw says the strata did not accept these proxies and refused to discuss the motion he made about whether the strata could accept proxies at general meetings. The AGM proceeded with 15 owners represented. The owners passed another $\frac{3}{4}$ vote resolution to waive the requirement for a depreciation report with 13 voting in favour and 2 against. Mr. Preshaw was concerned that the outcome of this vote would have been different had the votes from the proxies been permitted given that these 3 votes would have been against the resolution.
14. Mr. Preshaw disagreed with the strata's position that proxies could not be presented at general meetings. His view was that, as the 3 proxies were not accepted, the vote to waive the depreciation report was not valid and the strata did not meet the requirement for an annual waiver of the depreciation report. In a June 29, 2020 letter, Mr. Preshaw requested a hearing before the strata council about proxies and his view that the strata should immediately request a depreciation report. He attached a document setting out his position in detail.
15. The strata council was not holding in-person meetings in 2020 due to the pandemic, but it discussed Mr. Preshaw's concerns at a strata council meeting. In a July 13, 2020 email, the strata council advised Mr. Preshaw that it had confirmed the previous position that the proxies were invalid. The council explained that it follows a "long-lived, consistent procedure" that requires proxies to be submitted in advance so that the secretary can certify the proxies before the meeting. This allows for the meeting to be rescheduled if no quorum is achieved, which is a particular concern due to the number of non-resident owners. In addition, the strata said that early proxy submission allows the secretary to determine the amount of supplies and chairs that will be required. The strata council stated that it considered the information in the

email to be “sufficient to alleviate the need to meet”. Mr. Preshaw reiterated his wish to speak to the council in person in a July 14, 2020 email, but this did not occur.

16. Mr. Preshaw’s reasons for requesting a hearing were, in effect, asking the strata council to reverse the results of the $\frac{3}{4}$ resolution vote. However, his request was not made as a demand for reconsideration of a $\frac{3}{4}$ vote resolution under section 51 of the SPA. There is no indication that any other owner made such a demand.
17. Mr. Preshaw says that the strata does not have the authority to reject proxies that are presented at meetings. His position is that the strata has acted in a significantly unfair manner by revising the results of the $\frac{3}{4}$ vote resolution at the 2019 AGM, refusing to entertain his motion about proxies at the 2020 AGM, and denying him a hearing. The strata says that it has been using the same procedure for proxies since 2006, and that it does not “prohibit or unfairly limit persons eligible to vote from doing so by proxy”. Further, the strata denies that it acted in a significantly unfair manner.
18. In his Dispute Notice, Mr. Preshaw suggested that the strata acted in a significantly unfair manner to him and the 3 owners who were “disenfranchised” by not having their proxies recognized at the 2020 AGM. However, in his submissions, Mr. Preshaw discussed only allegations of significant unfairness towards himself. I note that the CRT has decided that a party does not have standing to make a claim relating to the interests of a non-party (see *Action Rooter Ltd. v. Alice Chen (dba Beaconsfield Inn)*, 2020 BCCRT 135 at para. 15). In the absence of specific arguments about the 3 other owners who are not parties to this dispute, I find that it is not necessary for me to consider whether Mr. Preshaw has standing to make a claim on their behalf.
19. The parties provided evidence and detailed submissions in support of their positions. While I have considered all of this information, I will refer to only what I find to be relevant and necessary to provide context to my decision.

Do the bylaws or SPA allow the strata to reject proxies presented at meetings?

20. As noted above, the strata cited the requirements of the *Business Corporations Act* in correspondence to owners about the timing of proxies. In its submissions, the strata

suggests that this reference was an analogy that, where time limits are placed on proxies, the proxies must comply in order to be valid for fairness reasons. Whatever the intention, the procedures in the *Business Corporations Act* do not apply to a strata corporation's meetings. Rather, strata meeting procedures are governed by the SPA and the strata's bylaws.

21. Mr. Preshaw's position is that the SPA and the bylaws do not authorize the early submission of proxies. He submits that knowing the owners' intentions in advance could allow for the secretary of the strata council to "consider the likelihood of a voting result, and to solicit extra proxy forms by email or telephone". Mr. Preshaw says that other strata corporations have a 15-minute registration session prior to meetings, and wonders how there could be any objection to this practice.
22. The strata submits that it can specify particulars for proxies, such as when they must be received, and this does not contravene the SPA or the bylaws. The strata council's July 13, 2020 email to Mr. Preshaw stated that it had "determined that it is not unusual for Strata corporations to use a form of proxy that requires specific timing and method of filing in order to be valid". The strata also refers to an email from a lawyer who says that a lot of strata corporations are setting deadlines by which proxies have to be submitted. Neither this statement nor the fact that the strata used the same process for many years are determinative of whether the bylaws or the SPA allow the strata to restrict proxies to those submitted in advance of a general meeting.
23. The strata's bylaws, which were filed at the Land Title Office in June of 2005, do not contain a specific provision about proxies. Bylaw 4 in Article IV sets out the order of business at AGMs and special general meetings (SGMs). The first item is "certify proxies and corporate representatives and issue voting cards", followed by "determine that there is a quorum".
24. The evidence indicates that the strata's practice is to have the strata council secretary certify the proxies and determine the quorum in advance of the meetings, rather than at the meetings. The key consideration is whether this is permitted by the strata's bylaws or the SPA.

25. In *Strata Plan VIS4663 v. Little*, 2001 BCCA 337, the BC Court of Appeal warned against highly technical and literal interpretations of strata bylaws (see paragraph 22). Instead, the Court stated that strata bylaws should be interpreted purposively, so that they accomplish the community's goals (see paragraph 21).
26. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the British Columbia Supreme Court found that the basic rules of statutory interpretation should be used when interpreting strata bylaws (see paragraph 18). The Supreme Court of Canada has held that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament" (see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at paragraph 21).
27. The order of business set out in bylaw 4 of Article IV is mandatory. I find that the ordinary sense of the words of bylaw 4 require that these items of business be performed and completed at, not before, a general meeting. Therefore, the business of certifying proxies and determining that there is a quorum cannot be completed ahead of time and the results announced at the general meeting.
28. There is nothing to prevent the strata from asking for proxies to be submitted early for organizational purposes. However, I find that the strata's bylaws do not permit it to refuse proxies that are presented at the beginning of an AGM or SGM as certification of proxies is business that must be conducted at the meetings. While knowing the precise number of attendees in advance may be convenient, it is not clear to me how it would be unfair to other owners for the strata to accept and certify proxies at the beginning of a general meeting.
29. More significantly, I also find that the practice of submitting proxies in advance is not consistent with the SPA. The SPA does not require that proxies be made with a particular form, nor does it specify when proxies must be submitted. Section 56(4) of the SPA states that a proxy stands in the place of the person appointing the proxy and, unless limited in the proxy document, can do anything that person can do, including vote, propose and second motions, and participate in discussions. An owner

can attend and participate in a general meeting without the need to register in advance. I find that, under section 56(4), an owner who appoints a proxy must also be able to participate without the need for pre-registration. Although the submission of proxies in advance was something the strata required for many years, I find that this practice is not consistent with the SPA.

30. Based on the bylaws and section 56(4) of the SPA, I find that the strata does not have the authority to reject proxies that are presented in-person. Accordingly, it must accept such proxies for possible certification and inclusion in the determination of quorum at general meetings.

Was the 2020 vote to waive the depreciation report valid?

31. There is no dispute that the $\frac{3}{4}$ vote resolution about the depreciation report would not have passed at the 2019 AGM even if the votes from the proxies had been included. Mr. Preshaw did not ask for a remedy for this vote. Mr. Preshaw's position is that, had the strata accepted the 3 proxies at the 2020 AGM, the resolution would not have had the necessary $\frac{3}{4}$ vote in favour and would have failed, resulting in the need for the strata to obtain a depreciation report. He asks for an order that this vote was invalid, while the strata says the vote was valid and should not be disturbed.
32. Declaring the vote or $\frac{3}{4}$ vote resolution on the depreciation report invalid would be a declaratory order the CRT does not have jurisdiction to make (see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at paragraph 67). However, under section 123(1) of the CRTA, the CRT does have jurisdiction to order a strata corporation to do or stop doing something, which could include ordering the strata corporation to stop acting on the results of the vote. For the reasons below, I find that it is not necessary for me to make this order.
33. My conclusion above was that the strata should have accepted the 3 proxies for possible certification. However, this does not establish that any or all of the proxies would have been certified and voting cards issued.

34. The evidence contains a list of the strata's owners. The names for 2 of the 3 strata lots match those listed on the proxies. However, the third strata lot is listed as being owned by a corporate entity. The associated proxy is signed by 2 individuals, but it is not clear whether these 2 individuals are authorized signatories for the corporate entity. It is also not clear whether there would have been any concern about the signatures on the proxy forms being consistent with other signatures from those owners. There are no other signatures for comparison, and no statements from the owners of the strata lots who provided Mr. Preshaw with proxies to confirm the ownership arrangements.
35. Based on the limited information before me, I am unable to conclude that the proxies would have been certified and the associated votes cast or counted. Therefore, I cannot determine that the results of the $\frac{3}{4}$ vote would have been different had the proxies been accepted at the AGM.
36. In these circumstances, I find that the vote on the $\frac{3}{4}$ vote resolution to waive the depreciation report was valid. Although I will not order the strata to stop acting on the resolution, I will point out that the issue of the depreciation report is not settled. Under section 94 of the SPA and section 6.2(7) of the *Strata Property Regulation*, a strata corporation may waive the requirement to obtain a depreciation report for 18 months through a $\frac{3}{4}$ vote at an AGM or SGM. Here, the strata must obtain a depreciation report unless the owners continue to vote for a waiver at least every 18 months. Further, if owners who hold at least 20% of the strata's votes wish to obtain a depreciation report earlier, they may call an SGM and propose a resolution for consideration under sections 43 and 46 of the SPA.

Significant Unfairness

37. Mr. Preshaw submits that the strata treated him in a significantly unfair manner by altering the vote results from the 2019 AGM, refusing to allow a discussion on his motion about proxies at the 2020 AGM, and denying his request for a hearing. The strata denies that there was any significant unfairness.

38. Mr. Preshaw states that he could have included the 3 owners for whom he held proxies in his claim, but says that the strata's actions against him are sufficient to trigger a claim for significant unfairness. I will not consider the other 3 owners in my analysis.
39. The courts have interpreted "significantly unfair" to mean conduct that is oppressive or unfairly prejudicial. "Oppressive" conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith. "Prejudicial" conduct means conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126).
40. Section 164 of the SPA sets out the authority of the British Columbia Supreme Court to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under section 123(2) of the CRTA, which involves the same legal test as cases under SPA section 164. I find that the circumstances of this claim fall within sections 121(1)(a) and (f) of the CRTA, as they involve the application of the SPA and a decision of a strata corporation in relation to an owner.
41. The test for significant unfairness was summarized by a CRT Vice Chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?
42. The British Columbia Court of Appeal recently confirmed that consideration of the reasonable expectations of a party is "simply one relevant factor to be taken into account" (see *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at paragraph 89).
43. Mr. Preshaw expected that the strata would act in a fair manner consistent with the SPA and bylaws, but is of the view that the strata's actions of revising the 2019 AGM minutes, refusing to allow discussion on his motion about proxies at the 2020 AGM, and denying his request for a hearing were "erroneous" and had "egregious intent". It

is reasonable for an owner to expect a strata corporation to follow the SPA and bylaws. However, the fact that an owner disagrees with a strata's actions or decisions does not necessarily mean that they are significantly unfair.

44. The alteration of the vote results in the 2019 AGM minutes did not impact Mr. Preshaw's own vote or the outcome of the $\frac{3}{4}$ vote resolution. I find that there was no prejudice to Mr. Preshaw from this action.
45. At the 2020 AGM, the denial of the proxies did not impact Mr. Preshaw's ability to cast his own votes. Although a member of the strata council may well have declined to discuss the matter in response to Mr. Preshaw's motion, there is no indication in the evidence that the motion was seconded. There is also no evidence to suggest that other owners were able to present topics for discussion without a seconded motion. I find that prejudice or differential treatment has not been established.
46. Although the strata's actions and decisions about the 2019 and 2020 AGMs resulted from an interpretation of the bylaws and the SPA that I have found to be incorrect, I find that its conduct did not involve bad faith or inequitable treatment. I find that these actions were not significantly unfair to Mr. Preshaw.
47. My conclusion is different about the hearing Mr. Preshaw requested under section 34.1 of the SPA. This section says that an owner may request a hearing at a strata council meeting and, after such a request, the council must hold the hearing within 4 weeks. Section 4.01 of the *Strata Property Regulation* defines "hearing" as an opportunity to be heard in person at a council meeting.
48. The strata says it did not hold any in-person meetings in the summer of 2020 due to pandemic-related concerns and that it was not "feasible or advisable" to hold a meeting in response to Mr. Preshaw's request. The strata did not comment on Mr. Preshaw's report that 3 members of the strata council were living in their strata lots during that time and could have constituted a quorum.
49. Although the requirement to hold a hearing requested under section 34.1 is mandatory, a previous CRT decision has held that, in particular circumstances, a

strata corporation may justify a refusal to hold a hearing (see *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11 at paragraph 91).

50. I find that the circumstances of *McDowell* are distinguishable as there is no suggestion that the strata considered any factor other than the pandemic. While there is no dispute that pandemic-related restrictions would have impacted the conduct of a hearing, I find that it was not reasonable for the strata council to deny Mr. Preshaw a hearing in a distanced fashion with the 3 resident strata council members, or by telephone or other electronic means (as authorized by Ministerial Order M114). This is particularly so as Mr. Preshaw reiterated his request for a hearing after receiving the strata council's July 13, 2020 email response to his request and written submissions.

51. I find that the strata's refusal to hold the hearing requested by Mr. Preshaw was unreasonable and violated section 34.1 of the SPA. I also find that this was significantly unfair as Mr. Preshaw had an objectively reasonable expectation that the strata would comply with the requirement for the hearing set out in the SPA.

52. Mr. Preshaw indicated in his submissions that he is not making a new request for a hearing, so I will not order that the strata hold one. However, the strata must ensure that it complies with the requirements of the SPA for any future requests for hearings.

CRT FEES AND EXPENSES

53. 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. As Mr. Preshaw was partially successful, I order the strata to reimburse him for half of the CRT fees he paid, or \$112.50.

54. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Preshaw.

ORDERS

55. I order that:

- a. The strata must accept any proxies submitted in-person for possible certification and inclusion in the determination of quorum at general meetings,
- b. The strata must ensure that it complies with the requirements of the SPA for any future requests for hearings, and
- c. Within 30 days of the date of this order, the strata must reimburse Mr. Preshaw \$112.50 for CRT fees.

56. The remainder of Mr. Preshaw's claims are dismissed.

57. 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.

Lynn Scrivener, Tribunal Member