



Civil Resolution Tribunal

Date Issued: April 21, 2021

Date of Amended Decision: April 27, 2021

File: ST-2020-005844

Type: Strata

Civil Resolution Tribunal

Indexed as: *Canadian Regal Education Corporation v. Section 2 of The Owners, Strata Plan EPS1069*, 2021 BCCRT 411

B E T W E E N :

CANADIAN REGAL EDUCATION CORPORATION

APPLICANT

A N D :

SECTION 2 OF THE OWNERS, STRATA PLAN EPS1069

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about governance of a section of a strata corporation and production of documents. The applicant, Canadian Regal Education Corporation (CREC), is a tenant in a strata lot in the strata corporation called The Owners, Strata Plan EPS1069 (strata). The respondent, Section 2 of The Owners, Strata Plan EPS1069 (office section), is a section in the strata. The strata itself is not a party to this dispute.
2. CREC says the office section breached its obligations under the *Strata Property Act* (SPA) to hold an annual general meeting (AGM) by December 31, 2019. This is 2 months after the office section's 2018/2019 fiscal year ended on October 31, 2019. CREC says that the office section also breached its obligation to hold the next 2019/2020 fiscal year AGM by December 31, 2020. The CREC seeks orders for the office section to hold AGMs for both years as soon as possible. CREC also says the office section failed to comply with CREC's request to release 3 emails exchanges without redactions. It seeks an order for the office section to provide completed copies.
3. The office section says it originally intended to hold its AGM for the 2018/2019 fiscal year in March 2020. However, it says it reasonably delayed the AGM because of the COVID-19 pandemic. It says it will hold the AGMs for the fiscal years of 2018/2019 and 2019/2020 simultaneously at some point after February 28, 2021, or when BC's restrictions on gatherings due to COVID-19 are lifted. The office says that in response to CREC's email request, the office section disclosed 1 of the 3 requested documents to CREC. The office section says the 2 other emails contain legal advice and are protected on the grounds of solicitor-client privilege.
4. CREC is represented by an employee or principal. The office section is represented by an executive member.
5. For the reasons that follow, I find that the office sectionⁱ has breached its obligation to hold AGMs for the 2018/2019 and 2019/2020 fiscal years. As a remedy, I order the office section to hold a special general meeting (SGM) in the terms set out below. I

dismiss CREC's claim for disclosure of documents because it is not entitled to request them under the SPA.

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.

CREC's Standing under the SPA

10. The parties in this dispute and the strata were in a previous dispute indexed as *Canadian Regal Education Corporation v. Section 2 of The Owners, Strata Plan EPS1069*, 2020 BCCRT 1022. In that decision the CRT ordered the office section to approve CREC's request to remove a wall between CREC's strata lot and a neighboring one it was renting. The CRT noted at the time that CREC was an owner of a strata lot in the strata.

11. In contrast, in this dispute the parties agree that CREC is a tenant and not an owner. They agree that the “applicant’s wife” owns a neighboring strata lot, but she is not a party to this dispute. I infer the parties mean CREC’s representative is married rather than CREC itself.
12. Given the parties’ explicit agreement, I find CREC is in fact a tenant and not an owner. SPA section 189.1(1) says a tenant may request that the CRT resolve a dispute “concerning any strata property matter over which the civil resolution tribunal has jurisdiction.” CREC therefore has standing to bring its claims. However, as discussed below, CREC’s status as a tenant affects its ability to claim disclosure of documents under the SPA.

ISSUES

13. The issues in this dispute are as follows:
 - a. Did the office section fail to hold the 2019 and 2020 AGMs on time, and if so, what is the appropriate remedy?
 - b. Must the office section disclose the requested documents to CREC?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, CREC must prove its claims on a balance of probabilities. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
15. The background facts are undisputed. The strata is an air space strata corporation that operates a commercial shopping center. The center has 6 levels and contains over 300 strata lots. CREC is a tenant in the strata lot known as unit 5080.
16. As noted earlier, the office section is a section in the strata. Under SPA section 191, a strata corporation may have sections for the purposes of representing the different interests of owners of residential strata lots, different types of residential strata lots, and non-residential strata lots. A section is essentially a “mini-strata corporation”: see

Lim v. The Owners, Strata Plan Vr2654, 2001 BCSC 1386 at paragraph 48. SPA section 196 says an executive administers each section, much like a strata council administers the strata.

17. In this case, the owners in the strata created sections through strata bylaws, as permitted under SPA section 193. The strata registered a complete set of bylaws in June 2013. There have been several subsequent amendments that are not relevant to this dispute.
18. Bylaw 2.1 created 3 sections in the strata. One of these is the office section. Under the bylaws, the office section's members are the owners of the strata lots located on levels 4 to 6 of the building. The parties agree that CREC is a tenant of a strata lot owned by a member of the office section, on level 5.
19. As discussed below, the strata argues that it cannot hold an AGM by electronic means because it would be unable to conduct a secret ballot under its bylaws. Bylaw 33.7 says, "Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter." I will discuss this further below.

Issue #1. Did the office section fail to hold the AGMs for the 2018/2019 and 2019/2020 fiscal years on time, and if so, what is the appropriate remedy?

20. Section 40(2) of the SPA says that an AGM must be held no later than 2 months after the strata's fiscal year end. Section 40(2) does not explicitly state that it applies to sections, but I find that it does when reading the SPA as a whole. For example, part 11 of the SPA refers to sections holding annual and special general meetings. SPA sections 194(2) and 196(2) outline a section's duties. These include budgeting and electing an executive, which are normally dealt with by a strata corporation at an AGM. In any event, the parties do not dispute that SPA section 40(2) applies to the office section.
21. It is undisputed that the office section's fiscal year end is October 31, so I find it must hold its AGMs by December 31. The office section says that, historically, it held its AGMs in March. For example, it says it held its last AGM on March 11, 2019, for the

fiscal year end of October 31, 2018. The office section explains that it does this because owners and tenants in the office section are typically “busy with holidays in December and with Lunar New Years in January and early February.” While that may be so, I nevertheless find that the office section breached SPA section 40(2) with this past practice.

22. Under the SPA, the office section was also obligated hold AGMs for the fiscal years of 2018/2019 and 2019/2020, ending on October 31, 2019 and October 31, 2020, respectively. I find that the office section had until December 31, 2019 and December 31, 2020 to hold its AGMs for these 2 fiscal years. The office section admits it did not hold either of these required AGMs, either late or at all.
23. I note that under SPA section 41, the strata or section may waive an AGM with the written consent of all eligible voters. However, that did not happen in this case.
24. There is no provision in the SPA that allows the office section to delay an AGM. Under section 17.23 of the *Strata Property Regulation* (SPR), the office section has 2 additional months to hold its AGM during a state of emergency. The Province of British Columbia declared a state of emergency due to the COVID-19 pandemic on March 18, 2020 under the *Emergency Program Act* and it has not been lifted. However, section 17.23 does not assist the office section given how late its AGMs are. Section 17.23 was also added to the SPR in May 2020, after the office sections’ AGMs were already late.
25. Given the above, I find it clear that the strata breached its obligation to hold AGMs for the 2018/2019 and 2019/2020 fiscal years. The question is what remedy is appropriate.
26. The office section’s main argument is that it is still impractical to hold the AGMs. To consider this argument, some background is necessary.
27. On March 16, 2020, the BC Provincial Health Officer issued an order under the *Public Health Act* to prohibit gatherings of more than 50 people. The Provincial Health Officer issued the order in response to the COVID-19 pandemic.

28. On April 17, 2020, the government issued Ministerial Order M114 under the *Emergency Program Act*. In general terms, the order permits all strata corporations to hold council meetings and general meetings by electronic methods, such as telephone, until the state of emergency caused by the COVID-19 pandemic ends. The Ministerial Order applies to all strata corporations, whether or not they have bylaws that allow for meetings to be held electronically, if the method permits all persons participating in the meeting to communicate with each other during the meeting.
29. It is undisputed that the Order applies to the office section's meetings, and I find that it does.
30. The office section says it cannot hold in-person AGMs because it would create a gathering of more than 50 people. It also says that it cannot hold a meeting by electronic methods because bylaw 33.7, quoted above, requires votes to be by secret ballot if a secret ballot is requested. The office section says videoconferencing programs such as Zoom do not allow for secret ballots.
31. The strata plan indicates that the office section is composed of approximately 100 strata lots. Given this number, and the ongoing pandemic, I find that an in-person AGM would be impractical for the office section. However, I disagree that the office section cannot hold its AGMs through electronic methods.
32. Section 2(2) of Ministerial Order M114 order says the following:
- 2(2) Despite anything in a strata property enactment, a strata corporation may provide for attendance, or voting in person or by proxy, at a strata property meeting by telephone or any other electronic method, if the method permits all persons participating in the meeting to communicate with each other during the meeting. [Emphasis added.]
33. The Order defines an enactment to include the SPA, regulations made under the SPA, and a strata's bylaws. Given the emphasized portion above, I find that section 2(2) permits the strata to hold an AGM by electronic methods, despite the wording of

bylaw 33.7. Moreover, bylaw 33.7 only requires a vote to be held by secret ballot if “requested by an eligible voter”. I do not find the possibility of such a request permits the office section to hold the 2 AGMs late.

34. In addition to the above, the office section did not provide any evidence to show that videoconferencing programs were incapable of accommodating secret ballots. While CREC has the burden to prove its claims, I find that the office section has the burden to show why its ongoing breach of the SPA is justified. The office section is in the best position to show that no software solution is available, and I find it has not done so.
35. The office section provided a copy of its proposed budget for the fiscal year of November 1, 2020 to October 31, 2021. I find the owners in the office section never approved such a budget at an AGM, as required under SPA section 103. I find that budget approval is one of the issues before me, as it is a key part of an AGM.
36. Given the above, I order that, within 60 days of this decision, the office section hold an SGM to address its AGM obligations for the fiscal years of 2018/2019 and 2019/2020, including electing a new office section executive and approving budgets under SPA section 103 for the 2020/2021 fiscal year.
37. I order that the office section provide information required under SPR section 6.6 and SPA section 103 for review at the SGM, along with the written notice for the SGM as required under SPA section 45(1).
38. I considered ordering the office section to comply with SPA section 40(2) for future AGMs, but CREC limited its request to the 2 AGMs at issue.

Issue #2. Must the office section disclose the requested documents to CREC?

39. CREC provided email chains labelled in evidence as R13, R16, and R17. The office section provided these emails chains in the 2020 dispute with portions redacted. CREC now requests unredacted copies.

40. In this dispute, the office section says it provided an unredacted copy of R17. Contrary to this, I find the office section provided the CRT a copy of R17 that also contains redactions. The office section says the redacted portions of R13 and R16 contain legal advice and asserts solicitor-client privilege over them. CREC disagrees. It says that any solicitor-client privilege over R13 and R16 ended once the CRT decided the dispute.
41. As discussed below, I find CREC is not entitled to request documents as a tenant.
42. SPA section 35 and *Strata Property Regulation* section 4.1 set out the records that the strata must prepare and retain. SPA section 35(2)(h) says this includes any decision of an arbitrator or judge, or of the CRT, in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation.
43. CREC specifically requests documents under SPA section 36(1). It says that on receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to
- a. an owner,
 - b. a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or
 - c. a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).
44. In the non-binding decision of *Smiley v. The Residential Section of the The Owners, Strata Plan VIS 1921*, 2017 BCCRT 75, the CRT decided that SPA section 35 and 36 applied to a residential section in the strata corporation.
45. Under SPA sections 147(1), a landlord may assign to a tenant certain powers and duties of a landlord that arise under the SPA. However, SPA section 147(2) says the assignment is not effective until the landlord give the strata corporation a written notice of the assignment that contains certain information. SPA section 148 is not relevant as it concerns long-term leases of residential strata lots.

46. As stated earlier, CREC is a tenant in a commercial strata lot. It therefore cannot request documents under the SPA as an owner. There is no submission or evidence that CREC's landlord has assigned it any right to inspect and obtain copies of records and documents. There is no evidence CREC provided the required notice of the assignment to the strata. Finally, there is no submission or evidence that anyone, such as the strata lot owner, has authorized CREC in writing to request such documents.

47. As CREC is not entitled to request documents under SPA section 36, I decline to order the strata to provide the requested documents. Given my finding, I do not find it necessary to determine whether the requested documents are protected by solicitor-client privilege.

48. I dismiss this claim.

CRT FEES AND EXPENSES

49. 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.

50. CREC has proven 1 of its 2 claims. I find it has been partially successful. As such, I order the office section to reimburse CREC for half its CRT fees. This equals \$112.50. The parties did not claim reimbursement for any dispute-related expenses, so I order none.

ORDERS

51. I order that, within 60 days of this decision, the office section hold an SGM to address its AGM obligations for the fiscal years of 2018/2019 and 2019/2020, including electing a new office section executive and approving budgets under SPA section 103 for the 2020/2021 fiscal year.

52. I order that the office section provide information required under SPR section 6.6 and SPA section 103 for review at the SGM, along with the written notice for the SGM as required under SPA section 45(1).
53. I order the office section to pay CREC \$112.50 in CRT fees.
54. I dismiss CREC's remaining claims.
55. 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

Amendment Notes

ⁱ Paragraph 5 has been amended to correct an inadvertent error under section 64 of the *Civil Resolution Tribunal Act*.