



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

TREVOR HODGSON, ROBERT REID, PRADEEP PHADKAR, ALLAN
BARNETT, DANNA LOGAN, and JOHN WILLIAMSON

APPLICANTS

A N D :

The Owners, Strata Plan LMS 908

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about strata corporation meeting procedures during the COVID-19 pandemic.

2. The applicants, Trevor Hodgson, Robert Reid, Pradeep Phadkar, Allan Barnett, Danna Logan, and John Williamson, own or co-own strata lots in the respondent strata corporation, The Owners, Strata Plan LMS 908 (strata).
3. The applicants say the way in which the strata held a July 30, 2020 special general meeting (SGM) and the December 1, 2020 annual general meeting (AGM) was not authorized under the *Strata Property Act* (SPA) or *Ministerial Order 114* (M114). The applicants allege the meetings did not allow for in person attendance, unrestricted proxies, or secret ballot voting. The applicants also say the strata council incorrectly decided to rescind its September 1, 2020 decision agreeing to the applicants' terms for the 2020 AGM. The applicants ask that the October 6, 2020 rescission decision and both general meetings be declared invalid. They also ask that the decisions made at the AGM be voided and replaced with the 2019 AGM decisions where applicable.
4. The strata denies that the 2020 AGM process was flawed but does not address the applicants' claims about the SGM. The strata says it rescinded its September 1, 2020 decision about the upcoming AGM process based on feedback and a petition from around 70 owners. It asks that the dispute be dismissed.
5. The applicants are represented by Mr. Hodgson. The strata is represented by a strata council member.
6. As explained below, I refuse to resolve the applicant's late claim that the July 30, 2020 SGM was invalid. I dismiss the applicants' claim the October 6, 2020 rescission decision was incorrect. Finally, I find the December 1, 2020 AGM was invalid and order the strata to hold another AGM or SGM in accordance with the SPA and the strata's bylaws, to consider the items from the December 1, 2020 AGM agenda.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. 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.

PRELIMINARY ISSUES

Order allowing applicants to attend 2020 AGM

11. The applicants applied to the CRT on October 7, 2020. In their Dispute Notice, they sought an order that the strata not deny them certain rights at the upcoming 2020 AGM, including the right to attend, amend resolutions, and vote by secret ballot. It is undisputed that the AGM was held on December 1, 2020. As the 2020 AGM has already happened, I find the applicants' requested remedy is moot (of no practical significance). I will consider the remaining live issue as to whether the strata's AGM processes were authorized under the SPA when I address the applicants' second claim that the 2020 AGM decisions are null and void.
12. Because I find it is moot, I dismiss the applicants' claim for an order that the strata allow the applicants to attend, amend resolutions, and vote by secret ballot at the 2020 AGM.

Order declaring July 30, 2020 SGM invalid

13. In their submissions, the applicants ask for a declaration that the July 30, 2020 SGM is invalid and an order that the strata withdraw the SGM meeting minutes. The applicants did not originally seek this remedy in their Dispute Notice or amend the Dispute Notice to include this requested remedy. Rather, the applicants requested only remedies relating to the AGM. Although the applicants explained why they believed the July 30, 2020 SGM process was flawed in the Dispute Notice, they did so in anticipation of the strata using the same process for the 2020 AGM. In other words, the applicants' claims were entirely focussed on the upcoming AGM and not the SGM.
14. I find it would be procedurally unfair for me to address the July 30, 2020 SGM in this dispute. I find the strata did not have fair notice of the requested remedy or a sufficient opportunity to respond to it. Even though the strata had the opportunity to respond to the applicants' arguments, both parties had already filed their evidence, as required by the CRT. The strata's evidence, and its submissions, focussed entirely on the AGM and not the SGM.
15. On balance, I find the strata was not given a full opportunity to respond to the applicants' request for a remedy relating to the SGM. For this reason, I refuse to resolve the applicants' late claim that the July 30, 2020 SGM was invalid.

Late Evidence

16. The applicants submitted copies of completed 2020 AGM proxy forms as late evidence in this dispute. The strata objects, saying the applicants could have submitted the forms in time, had they asked the strata to produce them earlier.
17. Since the late evidence originated from the strata and since the strata had the opportunity to respond to the late evidence, I find it was not prejudiced by it. Under the CRTA I have the discretion to accept late evidence. Given the CRT's flexible mandate, and the lack of prejudice to the strata, I will allow the late evidence. In any event, I find nothing turns on the completed proxy forms.

ISSUES

18. The remaining issues in this dispute are:
- a. Whether the strata incorrectly rescinded its October 6, 2020 rescission decision and, if so, what is the appropriate remedy, and
 - b. whether the strata's 2020 AGM process contravened the SPA, M114, or the strata's bylaws and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

Background

19. In a civil claim such as this one the applicants must prove their claims on a balance of probabilities. I have reviewed all the submissions and weighed all the evidence submitted by the parties, but only refer to that necessary to explain and give context to my decision.
20. The strata was created in 1993 under the *Condominium Act*, which is the predecessor to the *Strata Property Act* (SPA). The strata consists of 187 residential strata lots. The strata is managed by a property management company.
21. The strata filed an amended package of bylaws in the Land Title Office on May 26, 2015. I find these bylaws apply to this dispute. I will refer to the applicable bylaws in my analysis below. The strata's bylaws do not allow for a general meeting to be held by electronic means.
22. 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, which is still in effect. On March 18, 2020 the BC government declared a state of emergency in response to the COVID-19 pandemic. The extended state of emergency remains in effect.
23. On April 17, 2020 the government issued Ministerial Order 114 (M114) under the *Emergency Program Act*. Section 2(2) of M114 says a strata may hold a strata

meeting by telephone, or by any other electronic method, “if the method permits all persons participating in the meeting to communicate with each other during the meeting”. M114 became a provision of the *COVID-19 Related Measures Act (CRMA)* on CRMA’s enactment on July 8, 2020. Under section 3(5)(a) and Schedule 1 of the CRMA, the electronic attendance at strata property meetings provision remains in effect until 90 days after the state of emergency ends.

The October 6, 2020 Rescission Decision

24. It is undisputed that the July 30, 2020 SGM did not allow for electronic or in person attendance. Instead, the meeting was held solely by proxy vote, with a restricted group of strata council members acting as proxy holders. The applicants say that, following the SGM, they were concerned that the strata planned to hold the 2020 AGM in the same manner, which the applicants believed contravened the SPA.
25. On August 2, 2020 the applicants requested a strata council hearing to address whether the strata would protect the owners’ rights under the SPA. The hearing was held on August 27, 2020. On August 28, 2020 the applicants provided the strata council with their proposed electronic meeting process, contained in a handbook. None of this is disputed.
26. Following the hearing the strata read the handbook, discussed the matter and “decided unanimously to agree to all terms as requested and set the AGM up accordingly”, as stated in the manager’s August 28, 2020 email to Mr. Hodgson and Mr. Reid. The strata included the same decision in the September 1, 2020 strata council meeting minutes. According to the October 6, 2020 strata council meeting minutes, the strata council rescinded its September 1, 2020 decision to hold the AGM according to the process outlined in the applicants’ handbook.
27. The applicants ask that the CRT cancel the strata’s October 6, 2020 rescission decision and amend the council meeting minutes accordingly. They say the rescission decision does not accurately reflect the original decision made and that the strata council failed to meet its statutory standard of care in making the decision.

28. The applicants did not seek this remedy in their Dispute Notice or originally argue that the strata incorrectly rescinded the September 6, 2020 decision. However, the strata addressed the issue in both its Dispute Response and its submissions, so I find the strata was aware of the applicants' arguments and had the opportunity to address them. Further, I find the strata council decisions are sufficiently related to the ultimate issue of whether the 2020 AGM was held in accordance with the SPA, strata bylaws, and CRMA, that it can be considered the same issue as that raised by the applicants in the Dispute Notice. So, I will consider it.
29. The applicants say the strata's rescission decision is incorrect because the original decision was not about the handbook procedure, but about the strata agreeing to protect the owner's AGM rights under the SPA. I disagree. In the October 6, 2020 meeting minutes, the strata council specifically rescinded "the previously approved decision to hold the AGM as per the handbook presented at the last hearing". The same strata council members were present at the September 1 and October 6, 2020 meetings and so I find they would know best what decision they made originally and then overturned. Further, I find the strata's reference to the applicants' handbook in its correspondence to the applicants, as well as the September 1, 2020 meeting minutes, indicates that the strata accepted the applicants' proposed electronic AGM process, but did not make a decision about owners' AGM rights generally. On balance, I find the strata rescinded the actual decision it made, that is to hold the 2020 AGM according to the applicants' proposed electronic meeting process.
30. Section 31 of the SPA says that each council member must act honestly and in good faith with a view to the best interests of the strata corporation by exercising the care, diligence and skill of a reasonably prudent person in comparable circumstances. The applicants say the strata council failed to meet this standard of care in making the rescission decision because it relied on the inexperienced advice of other owners and inaccurate information.
31. The duties of strata council members under SPA section 31 are due to the strata corporation, and not to individual strata lot owners (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, paragraph 267). I find this means

that a strata lot owner does not have the standing to bring a claim for a breach of SPA section 31.

32. Even if the applicants had the standing to bring a claim for breach of section 31, I would have found there is no such breach. As noted by the court in *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753, some latitude is justified when scrutinizing the strata council's conduct, within reason. It is important to remember that strata councils are made up of volunteers and mistakes will be made.
33. In this case, the strata's documents show that it received several emails from owners expressing concern with the electronic AGM process set out in the applicants' handbook. The strata also received a petition with approximately 70 signatures asking the strata to rescind its decision to use the handbook procedures at the 2020 AGM. The strata says that, relying on these emails and this petition, it concluded that the processes were too confusing, expensive, or questionable for a significant number of owners. I find the strata's decision not to use the handbook's process was reasonable in the circumstances.
34. I disagree with the applicants that the strata was obliged to investigate each owners' claim about the potential expense or confusion over the process. The strata is entitled to accept that the owners were concerned about, and confused by, the handbook process. The strata is entitled to make a decision based on what it believes is in the best interests of the owners as a whole. In the absence of any evidence to the contrary, I find the strata council made the rescission decision in good faith. In other words, I would have found that the strata council members did not breach their section 31 duty to the strata in making the decision rescission, had I found the applicants had the standing to bring the claim.
35. I dismiss the applicants' claim to cancel the strata's October 6, 2020 rescission decision.

The December 1, 2020 AGM

36. The strata says the AGM was a 2-stage process. They held a pre-AGM virtual Townhall meeting, electronically, on November 4, 2020 followed by a “formal proxy meeting” AGM on December 1, 2020. In the November 4, 2020 Townhall meeting notice, the strata said that the AGM would be held by “limited attendance of the appointed members and by proxy” without saying where the meeting would be held. The strata encouraged owners to submit proxies, because it could not accommodate all owners for a live meeting. The notice also said that there were no tools available to run an electronic meeting effectively and accommodate all owners so there would be no electronic attendance at the AGM.
37. Section 56(1) of the SPA says that any eligible voter may vote in person, or by proxy, at a general meeting. M114 allows an eligible person to attend a general meeting “in person” by electronic means. It is undisputed that the December 1, 2020 AGM did not allow for electronic “in person” attendance. The strata says that the AGM allowed for physical in person attendance and so complied with section 56(1) of the SPA. The applicants disagree. They say the strata actively discouraged physical attendance, and that such attendance breached the applicable public health orders in effect at the time.
38. Based on the November 4, 2020 Townhall notice and the November 10, 2020 AGM notice, I find the strata intended the Townhall meeting to allow for owners to ask questions, speak to proposed resolutions, and nominate future strata council members. Following the information meeting owners were invited to complete the proxy notice included with the AGM notice or “attend at the AGM”. The November 10, 2020 AGM notice said the AGM would be held in the strata’s meeting room, would strictly adhere to government distancing regulations but that “**owners do not need to attend in person**” (reproduced as written). It is undisputed that the strata’s social room has a maximum capacity of 60 people, before considering physical distancing requirements.
39. Based on these documents, I agree with the applicants that the strata actively discouraged owners from attending the AGM in person. Although technically the AGM

allowed for in person attendance, I find the strata would have been unable to accommodate all owners and proxies arriving in person due to the size of the location and the ongoing public health order in effect which limited gatherings to 50 people. Although only strata council members and the manager actually attended the December 1, 2020 AGM in person, that does not negate the strata's SPA obligations. In other words, the strata must allow for all owners and proxies to attend the AGM "in person" electronically where it is unable to do so physically. I find the strata failed to do so for the December 1, 2020 AGM.

40. Section 50 (2) of the SPA allows for a resolution to be amended during an AGM by $\frac{3}{4}$ vote and on certain conditions. I agree with the applicants that, by limiting or not allowing in person or electronic attendance at the AGM, the strata has effectively prevented the owners, or their proxies, from proposing any resolution amendments.
41. Section 56(3) of the SPA allows any person to be a proxy, other than the strata's employee or property manager. I disagree with the applicants that the strata restricted who could act as proxy. Although the November 10, 2020 AGM notice and included proxy form listed 4 strata council members who could be appointed by proxy, it also stated that any other person could act as proxy and the proxy form included a space to write in a name.
42. However, as the strata failed to allow for in person or electronic attendance for voters and proxies at the AGM, I find it did not allow a proxy to stand in the place of the person appointing them, contrary to section 56(4). Specifically, because in person attendance was limited, the strata could not allow all proxies to propose and second motions, including amending resolutions, or participate in discussions, as any owner should be able to do at an AGM. Further, the proxy form provided by the strata restricted proxy participation to voting only, with a series of voting tick boxes set beside each resolution.
43. While I acknowledge that section 56(4) of the SPA says that a proxy appointment document may limit the proxy's powers, I find the strata's provided proxy form only allowed for restricted powers. In other words, it did not allow an owner the choice to

grant full proxy power. I find the strata only allowed for restricted proxies, contrary to SPA section 56(4).

44. Bylaw 29 requires that voting cards be issued to eligible voters at an AGM and says that a vote is decided by a show of voting cards, or a precise count where requested. There is no indication that voting cards were issued for the 4 people who attended the 2020 AGM in person. As the proxy forms included the owners' specific vote on each resolution, it is possible to accept those as voting cards. However, bylaw 30 says that, at an AGM, the strata first certifies proxies then issues voting cards. Even if I were to find that the strata's proxy forms were voting cards, I would find the proxy form voting cards were issued with the November 10, 2020 AGM notice, before any proxies could be certified. So, I find the strata has contravened either bylaw 29, bylaw 30, or both.
45. Bylaw 29(6) says that any vote must be held by secret ballot, if requested by an eligible voter. I agree with the applicants that, by not providing sufficient in person or electronic attendance for owners and proxies, the strata did not allow for any owner or proxy to call for a secret ballot vote. Further, I find the strata's AGM process did not allow for secret ballot voting, even if it had been requested. The strata's property manager acknowledged this in a November 10, 2020 email to an owner who is not party to this dispute. Further, by naming strata council members as proxies, submitting proxy forms with votes on them to strata council members, and requesting that the votes be submitted to the strata in advance of the December 1, 2020 AGM, the strata made it impossible to hold a vote by way of secret ballot. I find the strata contravened bylaw 29(5).
46. Overall, I find the strata's 2020 AGM process failed to allow for the participation and discussion of owners and proxies contemplated by sections 50, 54, and 56 of the SPA, bylaws 29 and 30, and M114. I accept that the strata attempted to replicate that information and discussion part of the AGM in a townhall meeting prior to the AGM. However, I find such a process is not authorized under the SPA, and neither is advance ballot voting. In other words, the discussions and potential amendments of resolutions are intended to occur at the same time, and by the same owners and

proxies, who vote on the proposed resolutions and council nominations at the AGM, by proxy, in person, or electronically during the state of emergency.

47. Contrary to the applicants' submissions, I do not find that the strata chose the 2-stage process in bad faith or with any nefarious purpose. Rather, I find the strata was attempting to find a simple solution for a large meeting during restrictions on large meetings. However, I find the AGM process contravened the SPA and the strata's bylaws and so I find the December 1, 2020 AGM was not a valid AGM.

Remedy

48. The applicants ask that I declare all decisions made at the December 1, 2020 null and void. It asks that the CRT:

- c. reinstate the 2019 AGM approved budget and 2019 AGM elected council,
- d. order all increases in strata fees or user fees collected under the 2020 budget be refunded,
- e. report all expenditures incurred on 2020 resolutions as unapproved expenditures,
- f. withdraw any LTO filings for new bylaws passed at the 2020 AGM, and
- g. endorse the published Rules with "to be ratified at the next AGM".

49. Essentially, the applicants ask that the 2020 AGM decisions be unwound and the 2019 AGM decisions be reinstated. I find such an approach would be impractical, given that the strata has been operated by the 2020 strata council, under the 2020 budget and with the 2020 approved resolutions for nearly half the year already. Further, the owners approved a resolution to install courtyard drainage at the 2020 AGM. To declare the resolution null and void would impact not just the recording of the expenditure, but also remove the strata's authority to carry out the project when there is no evidence whether the project has been completed or is currently underway. The same is true of the approved resolution to update the strata's

depreciation report. For these reasons I decline to order the strata to return its budget, bylaws, resolutions and strata council authorized at the 2019 AGM.

50. However, I do find the 2020 AGM was invalid and must be remedied. I order the strata to hold an SGM within 45 days for the purpose of allowing the owners to vote, either “in person” or by unrestricted proxy, on the 2020 AGM agenda items, retroactive to the December 1, 2020 AGM. The upcoming SGM must comply with the SPA and the strata’s bylaws. Given the current public health order restricting physical meetings to less than 50 persons, I find the strata must accommodate all owners by allowing owners or proxies to attend “in person” by telephone or other electronic means, to comply with SPA section 56.
51. Neither party has provided any information about the status of the 2020 bylaw amendments. If the strata has filed the bylaws in the LTO, I order the strata not to enforce amended bylaw 35(3) (increased move in fee) or bylaw 40(6) (owner responsibility for damage and insurance) unless, and until, the bylaw amendments are approved by a $\frac{3}{4}$ vote at the upcoming SGM and subsequently filed in the LTO.
52. For clarity, I find the 2020 AGM approved strata fees, budget, and council, remain in effect until the upcoming SGM.

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 the applicants were partially successful, I find they are entitled to reimbursement of \$112.50, or half their paid CRT fees. Neither party claimed dispute-related expenses so I make no order for those.
54. The strata must comply with sections 167 and 189.4 of the SPA, which means the applicants are not required to contribute to the strata’s cost of defending this dispute.

ORDERS

55. Within 45 days of the date of this order I order the strata to hold an SGM in accordance with the SPA and the strata's bylaws for the purpose of allowing the owners to vote, in person, electronically, or by unrestricted proxy, on the 2020 AGM agenda items, retroactive to December 1, 2020.
56. I order the strata not to enforce amended bylaw 35(3) or amended bylaw 40(6), until the bylaw amendments are approved by a $\frac{3}{4}$ vote at the upcoming SGM and filed in the LTO.
57. Within 7 days of the date of this order I order the strata to reimburse the applicants \$112.50 for half their CRT filing fees.
58. The applicants are also entitled to post-judgment interest under the *Court Order Interest Act*.
59. I dismiss the applicants' claim to attend, amend resolutions, and vote by secret ballot at the 2020 AGM, because it is moot.
60. I refuse to resolve the applicants' claim that the July 30, 2020 SGM was invalid.
61. 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.

Sherelle Goodwin, Tribunal Member