



Civil Resolution Tribunal

Date Issued: May 12, 2021

File: ST-2020-008409

Type: Strata

Civil Resolution Tribunal

Indexed as: *Curll v. The Owners, Strata Plan NW2926*, 2021 BCCRT 504

B E T W E E N :

DAVID CURLL

APPLICANT

A N D :

The Owners, Strata Plan NW2926

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about strata meeting procedures during the COVID-19 pandemic.
2. The applicant, David Curll, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW2926 (strata). Mr. Curll says the strata failed to hold an annual general meeting (AGM) for the fiscal period ending March 31, 2020. He seeks

an order that the strata conduct a virtual AGM for that period and conduct new voting, including voting for a new council.

3. The strata says it conducted its 2020 AGM by “restricted proxy” due to the COVID-19 pandemic and related restrictions on public gatherings. It says owners had ample time to discuss concerns and to submit their proxy forms. The strata says the owners properly elected the strata council.
4. Mr. Curll represents himself. A strata council member represents the strata. For the reasons that follow, I find the 2020 AGM did not comply with the *Strata Property Act* (SPA) or the strata’s bylaws, but I decline to make Mr. Curll’s requested orders.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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

9. The issues in this dispute are:
 - a. Did the strata's 2020 AGM contravene the SPA or the strata's bylaws?
 - b. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Mr. Curll must prove his 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.

Background

11. The strata was created in 1989 and includes 45 residential strata lots in a 3-storey building. The strata is managed by a property management company (strata manager).
12. The strata's bylaws are the SPA's standard bylaws and additional bylaws filed with the Land Title Office that are not relevant to this dispute.
13. The strata's fiscal year end is March 31. Section 40(2) of the SPA requires strata corporations to hold AGMs no later than 2 months after the strata corporation's fiscal year end, so May 31. The strata postponed the 2020 AGM due to the COVID-19 pandemic. Section 17.23 of the *Strata Property Regulation* (Regulation) extends meeting deadlines by 2 months during a state of emergency. On March 18, 2020 the BC government declared a state of emergency in response to the COVID-19 pandemic. The state of emergency remains in effect. Thus, the strata had until July 31, 2020 to hold its 2020 AGM.
14. On July 7, 2020 the strata told owners that the 2020 AGM would take place by "restricted proxy (form A) in accordance with" section 56 of the SPA. The strata called for volunteers to run for strata council election.

15. On a date that is not clear from the evidence, the strata provided notice of the 2020 AGM, to be held on July 30, 2020. The notice package included an agenda, a financial statement for 2019-20, the proposed operating budget for 2020-21, a “restricted proxy form”, and other documents. The strata asked owners to email their completed restricted proxy forms to the strata manager by July 29, 2020.
16. The restricted proxy forms asked owners to cast a vote in favour or opposed, or to abstain from voting, on each of these 5 motions:
 - Approval of the agenda
 - Approval of the 2019 AGM minutes (majority vote)
 - Approval of financial statement for fiscal year ending March 31, 2020 (majority vote)
 - Approval of 2020-2021 operating budget (majority vote)
 - Transfer of operating fund surplus to the contingency reserve fund (CRF) (3/4 vote)
17. The restricted proxy form also listed 8 candidates for election to strata council and asked owners to vote for up to 7 of the candidates.
18. On July 16, 2020, Mr. Curll submitted his proxy form to the strata manager. The evidence shows that 27 strata lots submitted proxy forms, meeting the 1/3 requirement for quorum at the AGM.
19. The 2020 AGM minutes show that all the resolutions that required a simple majority vote passed. The transfer of the operating fund surplus to the CRF did not achieve the required $\frac{3}{4}$ vote. Four of the 8 council candidates were elected to the strata council, an issue I return to below.
20. In October 2020, Mr. Curll informed the strata by email of his position that the strata did not hold an AGM. He reiterates that position in this dispute. I find the question is

not whether the strata held an AGM but whether the strata held an AGM that complied with the SPA and its bylaws, and if not, what are the appropriate remedies, if any.

Did the strata's 2020 AGM contravene the SPA or the strata's bylaws?

21. The strata says because of the March 16, 2020 BC public health order limiting gatherings to 50 people, it decided to convene the 2020 AGM using a “restricted proxy method”. The strata says owners were able to pose questions and raise concerns about the process to the strata manager or council.
22. The 2020 AGM minutes do not document a meeting location or attendees, other than the strata manager. The minutes say that council election ballots were counted by the strata manager and an unidentified owner.
23. Section 49(1) of the SPA says a strata may, by bylaw, provide for attendance at an AGM or special general meeting (SGM) by telephone or any other method, if the method permits all persons participating to communicate with each other. It is undisputed that the strata does not have such a bylaw.
24. However, on April 15, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. M114 under the *Emergency Program Act* (M114). 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.
25. M114 became a provision of the *COVID-19 Related Measures Act* (CRMA) on July 8, 2020. Under section 3(5)(a) and Schedule 1 of the CRMA, the electronic attendance provision remains in effect until 90 days after the state of emergency ends.
26. Thus, under M114 and the CRMA, the strata was allowed to offer electronic attendance at the July 30, 2020 AGM, despite not having the authority under a bylaw. It remains able to hold electronic meetings until 90 days after the state of emergency ends.

27. In contrast, there is nothing in the SPA that allows the strata to prevent owners from participating in an AGM. Therefore, if a 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.
28. 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. 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.
29. The strata's "restricted proxy form" did not ask the owner to name a proxy, as implicitly required by section 56, and as set out in Form A in the *Strata Property Regulation*. The proxy form restricted proxy participation to voting only, with a series of voting tick boxes beside each resolution. In this respect, the restricted proxy form was more ballot than proxy form.
30. As the strata failed to allow for in person or electronic attendance for voters and proxies at the 2020 AGM, I find it did not allow a proxy to stand in the place of the person appointing them, contrary to SPA section 56(4). Specifically, owners and proxies were prevented from proposing and seconding motions, including amending resolutions, or participating in discussions, as any owner and proxy should be able to do at an AGM.
31. Although SPA section 56(4) says that a proxy appointment document may limit the proxy's powers, those limits are at the proxy appointer's discretion. I find the strata's proxy form did not allow voters the choice to grant full proxy power, contrary to SPA section 56(4).
32. The restricted proxy form instructed voters to submit the form to an email address for the strata manager. To the extent that a proxy is identified in the form, it is the strata manager. This is contrary to section 56(3)(b), which says a person who provides strata management services to the strata cannot be a proxy unless permitted by

regulation. There is no regulation under the SPA permitting strata managers to act as proxies.

33. The strata argues that restricted proxy forms ensure that the owners' votes are followed and accounted for better than having regular proxies attend in-person, because proxies may vote differently from the owner's instructions. I find this argument unsupported by evidence or common sense. When owners are free to choose their proxy, there is little concern about the proxy voting against the owner's wishes.
34. I find that in addition to contravening the SPA, the 2020 AGM contravened at least 2 strata bylaws. Bylaw 26 says occupants may attend AGMs and SGMs, even if they are not eligible to vote. None of the strata's occupants, save perhaps 1 unidentified owner, were allowed to attend the AGM. Bylaw 27 says voting cards must be issued to eligible voters, and sets out voting procedures. There is no evidence that voting cards were issued or the procedures were followed.
35. In summary, I find that the 2020 AGM did not comply with SPA section 56 and the strata's bylaws 26 and 27. Because Mr. Curll specifically asked for a new election of strata council, I consider how council was elected at the 2020 AGM.

Strata council election

36. SPA section 25 says at each AGM, the eligible voters present in person or by proxy must elect a council. The SPA is silent on precisely how the strata council is elected.
37. Under bylaw 9, the strata council must have at least 3 and no more than 7 members. There is no mechanism in the SPA or the bylaws for determining the number of council members within that range, particularly where there are more than 7 candidates.

38. The evidence includes a tally sheet the strata manager used to determine the results of voting on the resolutions and council election. The strata appears to have taken the approach that each candidate required majority support to be elected, although this means 5 candidates should have been elected, and the strata has not explained how it arrived at 4. In any event, the strata did not explain in the AGM notice package that each candidate required a majority vote to be elected. An alternative may have been to simply elect the 7 candidates with the most votes.
39. In *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, affirmed 2017 BCCA 341, the court rejected the argument that the SPA requires strata council members to be elected by a majority vote. The court noted that “election” is not defined in the Act, but as defined in dictionaries, an election may be carried out by acclamation without a vote.
40. Voters were given the option to abstain from voting or to vote for or opposed to each council candidate. The strata appears to have counted abstentions and votes against as the same thing, which effectively meant each member needed more than a majority. The strata did not explain the election procedure to the voters either on the restricted proxy form or in the AGM package. Voters familiar with the SPA’s definition of a majority vote may therefore have believed that abstentions would be excluded from the count.
41. All of this serves to underscore the importance of establishing a transparent election process in advance of the vote. The Continuing Legal Education Society of BC’s *Strata Property Practice Manual* suggests either a resolution addressing the election procedure for adoption by majority vote, or a bylaw mandating the procedure (see chapter 7.29). Because voters were prevented from attending the 2020 AGM in person or by unrestricted proxy, they were also prevented from proposing motions to amend resolutions about the council election procedure. This highlights the shortcomings of the strata’s restricted proxy approach.

42. The outcome of the strata council election may or may not have been different had the strata followed the SPA and its bylaws. There is insufficient evidence before me to determine that. I next consider what remedies, if any, are appropriate.

What remedies, if any, are appropriate?

43. As noted above, Mr. Curll seeks 2 related orders. As he worded his request, 1 order would require the strata to hold another AGM covering the same resolutions as the 2020 AGM. The other order would require the strata to hold “new restrictive proxy voting... after the AGM is held. Including voting for a new council.” As I found the strata’s restricted proxy approach contravened the SPA and its bylaws, I will not order the strata to hold new restricted proxy voting.

44. I find that Mr. Curll essentially asks that the strata conduct the 2020 AGM again and vote again on the resolutions, this time following the SPA’s requirements and the strata’s bylaws.

45. I acknowledge that other tribunal decisions, such as *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463, have sought to remedy AGM irregularities by ordering the strata to hold an SGM to allow owners to vote on the resolutions, retroactive to the date of the previous AGM. However, I decline to grant these orders because I find they would serve no practical purpose in this dispute.

46. This dispute is different from others, such as *Hodgson*, where the resolutions at the challenged AGM involved bylaw amendments. In such cases the CRT has appropriately ordered the strata not to enforce the bylaw amendments until formally approved. There were no bylaw amendments considered at the 2020 AGM, and Mr. Curll does not seek an order preventing the strata from acting on any resolution.

47. Mr. Curll also wanted a new strata council election. The strata says its 2021 AGM is scheduled for May 2021 and will be conducted electronically, allowing owners to participate online or by phone. The 2020-21 strata council members' terms end at the 2021 AGM. A 2021-22 strata council will be elected in the same month as this decision, in all likelihood before the strata could convene a meeting to retroactively elect a 2020-21 strata council. Ordering an election of a 2020-21 strata council would serve no purpose and possibly confuse the voters.
48. For the above reasons, despite finding that the 2020 AGM did not comply with the SPA and the strata's bylaws, I decline to order the strata to do anything. The strata is already required to comply with the SPA and its bylaws for future meetings, so I do not need to make that order.

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. Although I declined to grant the remedies Mr. Curll requested, I found his position correct. His claims revealed the strata's significant non-compliance with the SPA and the strata's bylaws. I therefore order the strata to reimburse Mr. Curll his \$225 in CRT fees.
50. The strata must also comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Curll.

ORDERS

51. I order that, within 30 days of the date of this decision, the strata pay Mr. Curll \$225.00 as reimbursement of his CRT fees.
52. Mr. Curll is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

53. 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