



# Civil Resolution Tribunal

Date Issued: May 28, 2021

File: ST-2020-008306

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hearn v. The Owners, Strata Plan NWS 3411*, 2021 BCCRT 576

**B E T W E E N :**

EVA HEARN

**APPLICANT**

**A N D :**

The Owners, Strata Plan NWS 3411

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Roy Ho

### **INTRODUCTION**

1. This dispute is about strata a corporation meeting procedure during the COVID-19 pandemic.
2. The applicant, Eva Hearn, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NWS 3411 (strata).

3. Ms. Hearn says the way the strata held an October 15, 2020 annual general meeting (AGM) was not authorized under the *Strata Property Act* (SPA). Ms. Hearn says the October 15, 2020 AGM did not allow for in-person attendance or unrestricted proxies and did not give owners an opportunity to vote or be heard. Ms. Hearn first asks for an order for the strata to hold another AGM according to the SPA, and second, asks for an order that the resolutions approved on October 15, 2020 be cancelled. In addition, Ms. Hearn asks for an order that the new AGM be set sometime in the evening when owners are not at work.
4. The strata disagrees and says it conducted the October 15, 2020 AGM by “restricted proxy” due to the pandemic and related public gathering restrictions. The strata says this is common industry practice.
5. Ms. Hearn represents herself. The strata council president represents the strata.
6. As explained below, I find the October 15, 2020 AGM was invalid and order the strata to hold another meeting in accordance with the SPA and the strata’s bylaws.

## **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.

## **ISSUE**

11. The issue in this dispute is whether the strata's October 15, 2020 AGM process contravened the SPA or the strata's bylaws, and if so, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

12. In this civil dispute, the applicant Ms. Hearn must prove her claim on a balance of probabilities. I have reviewed all the submission and weighed all the evidence submitted by the parties, but only refer to that necessary to explain and give context to my decision.

### ***Background Facts***

13. The strata was created in 1990 under the *Condominium Act*, which is the predecessor to the SPA. The strata consists of 40 residential strata lots.
14. The strata filed an amended package of bylaws in the Land Title Office (LTO) on December 17, 2001. I find these bylaws apply to this dispute. I will refer to the applicable bylaws in my analysis below. The strata also filed further bylaw amendments in the LTO but I find those amendments are not relevant to this dispute.
15. 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 (PHO). The PHO permitted 50 people or less gatherings so long as it followed the social distancing guidelines. 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.

16. On September 10, 2020, the strata sent to the owners a “2020 Annual General Meeting – COVID-19 RESPONSE PLAN” letter. The letter notified the owners that the AGM would be by Zoom video conferencing and by restricted proxy.
17. On September 25, 2020, the strata sent to the owners notice of the AGM to be held on October 15, 2020 at 11:00 a.m. The AGM notice package included an agenda, 2020-21 proposed budget, a restricted proxy form, and other documents. The AGM notice stated the October 15, 2020 AGM’s purpose was to “Discuss / Vote” on the operating budget and resolutions #1 and #3 and to elect strata council for the following year. Based on the September 25, 2020 AGM notice, I find the strata intended the October 15, 2020 AGM to allow for owners to ask questions and speak to proposed resolutions.
18. The restricted proxy form asked owners to cast a vote in favor or opposed, or to abstain from voting, on each of the 4 items:
  - a. Approval of 2020/2021 Operating Budget
  - b. Approval of Resolution #1: Rental Bylaw (by  $\frac{3}{4}$  vote)
  - c. Approval of Resolution #2: Prohibit Short Term Rentals (by  $\frac{3}{4}$  vote)
  - d. Approval of Resolution #3: Special Levy (by  $\frac{3}{4}$  vote)
19. The restricted proxy form says that “The proxy will be represented by the designated council member, each instruction will be voted as restricted, no amendments will be permitted...” The restricted proxy form appointed council member JB as proxy for all the owners.
20. The restricted proxy form also contained strata council member nominations. Ms. Hearn did not challenge the council member nominations. Ms. Hearn also does not challenge the 2020-21 operating budget. Ms. Hearn only challenges the validity of the resolutions’ results. The evidence shows that all 3 resolutions failed ratification.

***Did the strata's October 15, 2020 AGM contravene the SPA or the strata bylaws?***

21. Ms. Hearn says the October 15, 2020 AGM violated the SPA because it did not allow for in-person attendance or unrestricted proxies, and owners to vote or be heard. Ms. Hearn seeks an order for a new AGM and for the October 15, 2020 AGM resolutions be cancelled. She further seeks an order for the new AGM to be held in the evening when owners are not at work. Below, I address each of Ms. Hearn's submissions.

***In-person attendance***

22. The strata says that the October 15, 2020 Zoom AGM was necessary for the safety and concerns of participants due to the pandemic. I find the strata is entitled to decide based on what it believes is in the best interests of the owners as a whole so long as it complies with the SPA and its bylaws. SPA section 49(1) says a strata may, by bylaw, provide for attendance at an AGM 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 have such a bylaw (bylaw 34.1), which allows an eligible person to attend the AGM "in person" by electronic means. Further, 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. I find that the strata did comply with the SPA and its bylaws by holding a Zoom AGM.

***Unrestricted proxy***

23. The strata says that the restricted proxy forms were created according to industry standards. However, industry standards must still comply with the SPA, and I find that the restricted proxy forms did not comply with the SPA. SPA section 54 sets out a person's right to vote at an AGM. 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 and can appoint any proxy other than an employee of the

strata or a person who provides management services to the strata. Yet, nothing in the SPA gives a strata corporation the power to restrict a person's choice of proxy. This is the choice of the voting person.

24. 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* (Regulation). Instead, the restricted proxy form unilaterally preselected for the owners a designated council member as the proxy. This took away the owner's proxy choice. I find that the strata violated the SPA in appointing a person as the "proxy" for voting, rather than allowing owner's to freely choose a proxy. These instructions are contrary to SPA section 56(3), which allows nearly anyone to be a proxy, subject to the Regulation. The proxy form also 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. Although section 56(4) of the SPA says that a proxy appointment document may limit the proxy's powers, those limits are at the proxy appointer's discretion and not the strata's. So, I also find the strata's restricted proxy form did not allow voters the choice to grant full proxy power, contrary to SPA section 56(4). For these reasons I conclude that the strata violated SPA section 56.

### ***Physical voting***

25. The strata says that physical voting was not provided at the October 15, 2020 AGM due to owners' in-person safety concerns. However, I do not accept this explanation because I find that the strata could have still provided for physical voting electronically as per its bylaws. I find that the strata failure to provide for physical voting is in violation of SPA section 54. The strata further says that it did not organize and structure the October 15, 2020 AGM but relied on the property manager to do so. However, relying on the property manager does not negate the strata's SPA obligations. The strata owes a duty to the strata owners under SPA section 3, not the property manager. For these reasons, I find the strata's October 15, 2020 AGM contravened the SPA.
26. I find that in addition to contravening the SPA, the October 15, 2020 AGM contravened at least 2 strata bylaws. Bylaw 31 says that the AGM must be chaired

by the president or vice president, or if by neither, eligible voters must elect an eligible voter present at the AGM to chair the AGM. The evidence shows that AGM chair was neither the president nor vice-president. Yet, there is no evidence that the chair was elected by eligible voters at the October 15, 2020 AGM. Next, bylaw 33 says that voting cards must 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 evidence that voting cards were issued at the October 15, 2020 AGM, which is consistent with Ms. Hearn's allegation that voting was not permitted by the owners.

### ***Opportunity to be heard***

27. Ms. Hearn says the October 15, 2020 AGM contravened the SPA because it did not permit for discussion on the resolutions. I agree. There is nothing in the SPA that allows the strata to prevent owners from participating in an AGM and the restricted proxy form in effect denied participation by not permitting owners, or their proxies, to propose amendments to the resolutions. 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. For these reasons, I find that the strata violated the SPA by not permitting owners questioning and discussions about the October 15, 2020 AGM agenda items.
28. In summary, I find that the strata did not have to hold an in-person AGM, but the October 15, 2020 Zoom AGM did not comply with SPA sections 54 and 56 and the strata's bylaws 31, 33 and 35. The strata's October 15, 2020 AGM process failed to allow for the participation and discussion by owners and proxies. The discussions and potential amendments of resolutions are intended to occur at some time during an AGM, and the owners are intended to vote on the proposed resolutions in person, by proxy, or electronically. So, I agree with Ms. Hearn and find the October 15, 2020 AGM was not valid and must be remedied.
29. Ms. Hearn's first requested remedy is an order for a new AGM. So, I order the strata to hold a Special General Meeting (SGM) within 60 days for the purpose of allowing the owners to vote, either "in person" electronically or by unrestricted proxy, on the October 15, 2020 AGM agenda items, retroactive to the October 15, 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.

### ***Canceling the October 15, 2020 AGM resolutions***

30. Ms. Hearn second requested remedy is to have the October 15, 2020 AGM resolutions cancelled. As mentioned, the evidence shows that the October 15, 2020 AGM resolutions #1, #2, and #3 all failed to pass. For this reason, I decline to make such an order as I find it redundant and unnecessary.

### ***SGM start time***

31. Ms. Hearn also seeks an order to have the new meeting begin after work hours. SPA Division 4 governs how AGM's are held. However, there is no SPA provision or strata bylaws that requires the AGM to commence at any particular time. I have no evidence that any other owners have an issue with meeting times. I also find Ms. Hearn's requested order is too vague to be enforceable. Ms. Hearn does not propose a time, and even if she did, I have no evidence before me how a different time may affect the other owners, such as what constitutes as "work hours" for the owners. For these reasons, I find that the new meeting start time remains at the discretion of the strata and so I decline to order a designated SGM start time.

### **CRT FEES and EXPENSES**

32. Under CRTA section 49, 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. As Ms. Hearn was successful, I therefore order the strata to reimburse Ms. Hearn for CRT fees of \$225.00. Ms. Hearn did not claim dispute-related expenses so I make no order for those.



33. The strata must comply with SPA sections 167 and 189.4, which means Ms. Hearn is not required to contribute to the strata's cost of defending this dispute.

## **ORDERS**

34. Within 60 days of the date of this order, I order the strata to hold a SGM in accordance with the SPA and the strata's bylaws for the purpose of allowing the owners to vote and discuss "in person" by telephone or electronically, or by unrestricted proxy, on the October 15, 2020 AGM agenda items, retroactive to October 15, 2020.

35. Within 7 days of the date of this order, I order the strata to reimburse Ms. Hearn \$225.00 for CRT filing fees.

36. Ms. Hearn is also entitled to post-judgment interest under *Court Order Interest Act*.

37. Ms. Hearn's remaining claims are dismissed.

38. 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.

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Roy Ho, Tribunal Member