



Civil Resolution Tribunal

Date Issued: June 9, 2021

File: ST-2020-007332

Type: Strata

Civil Resolution Tribunal

Indexed as: *Biel v. The Owners, Strata Plan VR1960*, 2021 BCCRT 635

B E T W E E N :

KIM BIEL

APPLICANT

A N D :

The Owners, Strata Plan VR1960

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicant, Kim Biel (owner), is the co-owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan VR1960 (strata). The owner claims that strata bylaw 16.1 improperly restricts the number of strata council positions to specific types

of strata lots. The owner also claims that the strata improperly conducted a strata council election. The owner asks for orders to stop the strata from enforcing the bylaw and to amend the voting bylaws. The owner also asks for orders requiring the strata to disclose a legal opinion, report the vote counts at strata council meetings, provide reasons for strata hearing decisions and require strata council members to undergo strata council training.

2. The strata denies the owner's claims. The strata says the amendment to bylaw 16.1 was properly approved by the owners and was appropriately applied. The strata also says that recording vote counts, providing reasons for decisions and training are not required.
3. The owner is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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.

Claims under Sections 31 and 32 of the SPA

9. The owner argues that bylaw 16.1 contravenes section 31 and 32 of the SPA by creating a bias and a conflict of interest between the strata council and the owners. Bylaw 16.1 says the strata may have 7 members, of which 3 members will be elected from the townhouse strata lots and 4 members will be elected from the apartment strata lots.
10. SPA section 31 requires strata council members to act honestly and in good faith with a view to the best interests of the strata corporation, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. However, only a strata corporation, not an individual owner, can bring a claim against a strata council member for breaching SPA section 31 (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32). So, I dismiss the owners' claim that the strata breached section 31 of the SPA.
11. SPA section 32 addresses conflict of interest by strata council members. It says that when a strata council member has a direct or indirect interest in a contract or transaction with the strata, or a decision before the strata council, that council member must disclose their interest, abstain from voting, and leave the strata council meeting during the discussion and vote.
12. In *Dockside Brewing Company Ltd. v. The Owners, Strata Plan LMS 38371*, 2007 BCCA 183, the BC Court of Appeal said that all remedies for breaches of SPA section 32 are set out in SPA section 33. CRTA section 122(1) specifically says the CRT has no jurisdiction in relation to a claim under section 33. Such claims may only be dealt with by the Supreme Court. CRTA section 10(1) says the CRT must refuse to resolve

a claim over which it has no jurisdiction. For these reasons, I refuse to resolve the owner's claims arising under SPA section 32.

ISSUES

13. The issues in this dispute are:

- a. Is bylaw 16.1 unenforceable because it contravenes the SPA or is significantly unfair to the owner?
- b. Was the strata council's election at the August 20, 2020 annual general meeting (AGM) significantly unfair?
- c. Must the strata propose bylaw amendments with new voting procedures for strata council elections?
- d. Must the strata send the applicant's lawyer's legal opinions to the rest of the owners?
- e. Must the strata council attend remedial training in strata governance?
- f. Has the strata contravened SPA section 34.1 by failing to provide written reasons for strata council hearing decisions?
- g. Has the strata contravened bylaw 26.3 by failing to record the precise vote counts at strata council meetings?

EVIDENCE AND ANALYSIS

14. In a civil proceeding such as this, the owner, as applicant, must prove his claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

15. The strata was created in 1987 and consists of 188 strata lots, including 68 townhouse strata lots and 120 apartment strata lots.

16. On July 16, 2019, the strata amended its bylaws by filing an entire new set of amended bylaws at the Land Title Office (LTO). The bylaws relevant to the dispute are the following:
- a. Bylaw 16.1 says the strata may have 7 members, of which 3 members will be elected from townhouse strata lots and 4 members will be elected from the apartment strata lots.
 - b. Bylaw 16.2 says that at each AGM, the eligible voters, present in person or by proxy, must elect a strata council.
 - c. Bylaw 26.3 says that the results of council meeting votes must be recorded in the council meeting minutes.
 - d. Bylaw 46 designates strata lots 1 to 68, which includes the owner's strata lot, as townhouse-type strata lots and strata lots 69 to 188 as apartment-type strata lots.
17. The strata does not have any sections as defined in the *Strata Property Act* (SPA) sections 190 to 198.

Does bylaw 16.1 contravene the SPA or is it significantly unfair to the owner?

18. The owner has made 2 separate claims arguing that bylaw 16.1 contravenes SPA sections 25, 28, 50, 53 and 54. Since I find these claims raise the same issues, I will consider them together.
19. The owner argues that bylaw 16.1 breaches the SPA because the SPA permits any owner not subject to lien registration to run for, and be elected, to strata council positions. Further, the owner argues that, by limiting the number of strata council positions allocated to different types of strata lots, bylaw 16.1 prevents owners from electing their choice of strata council candidates.
20. The strata argues that bylaw 16.1 was properly approved by a 3/4 vote of the owners at the April 29, 2019 AGM. This is confirmed by the AGM minutes and is not disputed

by the owner. However, even if bylaw amendments are properly approved by the owners, bylaws must comply with the SPA. The strata also argues that bylaw 16.1 appropriately ensures proportionate representation of townhouse and apartment strata lots.

21. SPA section 119(2) says that bylaws may provide for the administration of the strata corporation and SPA section 121(1) says bylaws must comply with the SPA. So, does bylaw 16.1 contravene the SPA?
22. SPA section 25 says that owners must elect the council and SPA section 28 says that only owners, corporate representatives and tenants can be council members. SPA section 53 says each strata lot gets one vote unless other voting rights are set out in a Schedule of Voting Rights. However, the strata has not filed such a schedule at the LTO. SPA section 53 also says that the strata can enact bylaws preventing owners subject to lien registration from voting.
23. I find that the SPA does not specifically say that the strata must allow any owner to be elected to strata council or prohibit the allotment of council member positions by strata lot type. However, the owner argues that the BC Court of Appeals (BCCA) has interpreted the SPA to say this in its decision in *Jiwan Dhillon & Co. Inc. v. Gosal*, 2010 BCCA 324. In *Jiwan*, the BCCA considered whether an owner who previously mismanaged strata council affairs could be prohibited from standing for strata council election. The BCCA's binding decision says the SPA permits any owner to stand for election, and owners to vote, presumably for a person of their choice.
24. However, I find that the *Jiwan* decision does not apply here because this dispute relates to significantly different issues. In *Jiwan*, the court considered whether a particular owner should be barred from strata council due to their past conduct. I find that the *Jiwan* decision does not address bylaw 16.1's allotment of council positions by strata lot types. So, I find that the decision in *Jiwan* is not applicable to this dispute.
25. Since I find that there are no provisions in the SPA prohibiting bylaw 16.1's allotment of council member positions, I find that this bylaw does not contravene the SPA.

26. The owner also argues that bylaw 16.1 is significantly unfair. CRTA section 123(2) gives the CRT authority to issue orders preventing a strata corporation from performing a significantly unfair action in limited circumstances, as set out in CRTA sections 121(1)(e)-(g). This includes circumstances where a strata corporation takes an action relating to an owner, a decision of the strata corporation relating to an owner, and the exercise of voting rights by a person holding more than 50% of the voting rights. I find that bylaw 16.1's allotment of strata council positions constitutes an action in relation to the owner's ability to vote and run for strata council positions. So, I find that the CRT has jurisdiction to determine whether bylaw 16.1 treated the owner significantly unfairly under CRTA section 123(2).
27. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.
28. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, as follows:
- a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
29. I accept that the owner had an expectation that strata council positions would not be allotted by strata lot type. However, I find that bylaw 16.1 did not significantly unfairly violate that expectation. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the court found that the passage of new bylaws by the majority of owners was not significantly unfair. Similarly, in this dispute bylaw 16.1 was amended by a 3/4 vote of the owners and, as stated above, I find that the bylaw does not contravene the SPA. I find that the owner has not proved that the strata acted oppressively or was unfairly prejudicial in amending bylaw 16.1. So, I dismiss this claim.

Was the August 20, 2020 AGM significantly unfair?

30. The owner argues that the strata's voting procedure for strata council membership at the August 20, 2020 AGM was significantly unfair, in violation of SPA sections 164(1)(a) and 165(b). The CRT does not have jurisdiction to consider claims under these sections of the SPA. However, as stated above, section 123(2) of the CRTA gives the CRT authority to issue orders preventing a strata corporation from performing a significantly unfair action, as set out in CRTA sections 121(1)(e)-(g). In this dispute, it is undisputed that the strata cancelled the owner's ballot for the August 20, 2020 strata council election because it allegedly breached bylaw 16.1. I find that the strata council's cancellation of the owner's ballot was a strata action against an owner within the scope of CRTA section 121(1)(e). So, I find that the CRT has jurisdiction to determine whether the strata treated the owner significantly unfairly under CRTA section 123(2).
31. The owner provided a copy of his proxy ballot for the August 20, 2020 AGM. The ballot listed 6 candidates for the strata council positions, including the owner. There were 4 candidates from townhouse strata lots, including the owner, and 2 candidates from the apartment strata lots. The ballot form instructions say to place a check mark beside each name the owners wants to elect, with a maximum of 7 check marks. Under this, the form says that bylaw 16.1 says that 3 members can be elected from the townhouse strata lots and 4 members can be elected from the apartment strata lots. The AGM's minutes say that 17 ballots were rejected, including the owner's, because these ballots showed votes for all 6 candidates. The minutes say these ballots were improperly filled in because the bylaws only allow 3 council members from the townhouse strata lots. The strata does not dispute this.
32. I find that the owner had a reasonable expectation that the strata would comply with the SPA and let him vote for the strata council candidates of his choice. Further, I find that the owner had a reasonable expectation that ballot instructions would be accurate and that his votes would be counted in the results. I find that the strata has violated these expectations by acting significantly unfairly for the following reasons.

33. I find the ballot instructions are inconsistent with the strata's voting procedure. The strata's instructions say to elect up to 7 candidates, but the strata cancelled the owner's ballot because he selected 6 candidates, which I find complies with the strata's instructions. Further, even if council membership was limited to 3 townhouses members, the instructions do not say that the owner cannot vote for more than 3 candidates. For the above reasons, I find that the strata treated the owner significantly unfairly by cancelling his ballot.
34. I order the strata to cease disqualifying eligible voters' ballots for voting for more than 3 members from the townhouse strata lots or 4 members from the apartment strata lots. The owner has not requested an order changing the result of the election or requiring a new election so I do not make any findings about the validity of the election results. Rather, the owner asks for an order declaring that his vote was valid. However, I find that I do not have authority to provide declaratory relief, except in the narrow circumstances where it is incidental to another claim for relief based on the non-binding but persuasive decision in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. I find that such circumstances do not exist here so I decline to make a declaration about the validity of the owner's rejected ballot.
35. The owner also asks for an order requiring the strata to send election information and documents to the CRT for its review. I find that the CRT can order the pre-hearing disclosure of relevant documents under CRTA section 61. However, I find that ordering the disclosure of this information at this late stage would not be reasonable. Further, I find that the disclosure of these documents here is unnecessary because it would not change this decision as I have already found above that the strata's election balloting procedure was significantly unfair based on the evidence already submitted. So, I decline to grant this relief.

Request for orders requiring the strata to propose bylaw amendments with new voting procedure for strata council elections

36. The owner has made 3 separate claims requesting orders requiring the strata to propose bylaw amendments with new voting procedures for strata council elections. These claims include the following:

- a. The owner requests an order requiring the strata to propose a bylaw amendment containing voting provisions approved by the CRT.
 - b. The owner requests an order requiring the strata to propose a bylaw amendment prescribing the format and content of AGM notices, including a summary of key election rules and information.
 - c. The owner requests an order requiring the strata to propose a bylaw amendment clarifying eligibility for strata council, the nomination process, and what resume information each nominee can provide.
37. I find that these claims seek substantially the same remedy and I will consider them together. I find that I have the authority under section 123 of the CRTA to order the strata to “do something” to resolve this dispute, as I consider appropriate which could include ordering the strata to propose bylaw amendments. However, I decline to grant this relief for the following reasons.
38. The owner asks for an order requiring the strata to propose bylaw amendments changing the owners’ voting rights and voting procedures. However, I find the owner has not provided sufficient evidence to show that such an order is needed. Many BC Supreme Court decisions state that a court should not interfere with the democratic governance of a strata unless absolutely necessary: *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700; *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493; and *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. Having found that bylaw 16.1 not contravene the SPA, I do not find it necessary to also order the strata to propose voting specific bylaw amendments. Rather, I find it more appropriate to leave the bylaw amendment process in the strata’s discretion, subject to the owners’ 3/4 approval.

Requests for orders requiring the strata to inform the rest of the owners of the applicant’s lawyer’s legal opinions

39. The owner has made 2 separate claims requesting orders requiring the strata to disclose his lawyer’s legal opinions to the rest of the owners. These claims include the following:

- a. The owner requests an order requiring the strata to tell the rest of the owners that his lawyer advised the strata that bylaw 16.1 was unenforceable.
 - b. The owner requests an order requiring the strata to tell the rest of the owners that his lawyer advised the strata that bylaw 16.1 violated owners' voting rights.
40. I find that these claims seek substantially the same relief and I will consider them together.
41. It is undisputed that the owner sent the strata a May 2, 2019 email from his lawyer. This email said that, in the owner's lawyer's opinion, bylaw 16.1 contravened the SPA.
42. The owner claims that the strata acted in bad faith by failing to rely on his lawyer's opinion and by not notifying the other owners of the risks that bylaw 16.1 was allegedly invalid. For the reasons stated above, I find that the owner does not have standing to make a claim that the strata council members acted in bad faith.
43. Further, I find that there is no provision in the SPA or the bylaws requiring the strata to consider, or act on, the owner's lawyer's legal advice. I find that the strata's only obligations relating to lawyer's email is to store the document as required by SPA section 35(2) and provide a copy to the owners upon request under SPA section 36(1). As there is no evidence before me that the strata has breached SPA section 35 or 36, I dismiss these claims.

Remedial training in strata governance

44. The owner asks for an order requiring strata governance training for the present strata council members and future strata council members. The owner refers to the CRT decision in *Craig v. The Owners, Strata Plan 1526*, 2018 BCCRT 310. In *Craig*, a Vice Chair found that the strata corporation had committed multiple, significant violations of the SPA which indicated that the strata council did not have a good understanding of its duties and obligations and that it would be beneficial for its strata council members to improve their knowledge about strata governance. Though the decision in *Craig* is non-binding, I find the reasoning persuasive and apply it here.

45. The strata says the strata council already participates in training sessions and will continue to do so as needed. However, the strata argues that there is no basis to order training because there has not been a significant history of non-compliance with the SPA. I agree. I find that the strata's contraventions of the SPA above do not rise to the level found in *Craig*. Further, I find that the owner has not proved the strata council does not have a good understanding of its duties. In the absence of such proof, I find that the decision of whether training is a reasonable expense and use of the council member's time is best left to the strata's discretion. So, I dismiss this claim.

Strata council hearing's written reasons

46. The owner claims that the strata has contravened SPA section 34.1 by failing to provide written reasons for its decisions. The strata does not dispute that it does not provide reasons. However, the strata says the SPA does not require this.

47. The owner relies on the CRT decision in *Doig et al v. The Owners, Strata Plan VR1712*, 2017 BCCRT 36. In *Doig*, a tribunal member found that procedural fairness requires courts to provide sufficient reasons for parties to understand the outcome and why the decision was reached. The tribunal member applied this standard to strata corporations and found that strata hearing decisions must provide sufficient reasons so that the parties understand the reasoning in reaching its decision.

48. However, the decision in *Doig* is non-binding and I decline to apply it to this dispute because there is no provision in the SPA or the bylaws requiring strata corporations to provide reasons for their decisions. SPA section 34.1(3) only requires the strata to provide a written decision, not reasons. Rather, I find that strata must act reasonably in fulfilling its duties under the SPA, including its duties SPA section 34.1 and, I find that the strata has not acted unreasonably by not providing reasons with its written council hearing decisions. So, I dismiss this claim.

Council meeting voting records

49. The owner claims that the strata is contravening bylaw 26.3 by failing to record the vote totals at council meetings. Bylaw 26.3 says that the results of council meeting

votes must be recorded in the minutes. The strata says it only records the precise vote count if needed such as when a council member is not participating in the vote. However, the strata says that precise vote counts are generally not needed.

50. The owner referred to the BC Supreme Court decision in *Yang v. Re/Max Commercial Realty Associates* (482258 BC Ltd.), 2016 BCSC 2147 (CanLII). In *Yang*, the court considered a similar bylaw to bylaw 26.3 that says the “results” of the votes must be recorded in the council minutes. The court held that the transparency, accountability and disclosure which council meeting minutes provide favour a broader interpretation of the word “results” to include a record of the votes for and against the matter and a records of abstentions.
51. Since the decision in *Yang* is binding on me, and the bylaw considered by the court in *Yang* is almost identical to bylaw 26.3, I find that bylaw 26.3 requires the strata to record the precise vote counts at council meetings. So, I order the strata to record in its minutes a record of the votes for, the votes against and the abstentions to decisions at strata council meetings.
52. The owner requests an order requiring the strata to propose a bylaw amendment requiring the strata to record the vote counts. I find this order unnecessary since I have already found that the existing bylaw 26.3 requires this.
53. The owner also asks for an order requiring the strata to proposes a bylaw amendment that permits council members to provide dissents and reasons that are recorded in the minutes. I find that neither the SPA nor the bylaws require the strata to record reasons for its council meeting votes. So, I dismiss this request.

CRT FEES AND EXPENSES

54. 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. Since the owner was partially successful, I order the strata to reimburse the owner

for one-half of the CRT fees, being \$112.50. The owner did not claim and dispute-related expenses so none are ordered.

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

ORDERS

56. I order that:

- a. Within 30 days, the strata will pay the owner \$112.50 in reimbursement of CRT fees.
- b. I order the strata to cease disqualifying eligible voters' ballots for voting for more than 3 members from the townhouse strata lots or 4 members from the apartment strata lots.
- c. The strata must the record in its minutes a record of the votes for, the votes against and the abstentions to decisions at strata council meetings.

57. The owner is also entitled to post-judgement interest under the *Court Order Interest Act*.

58. I refuse to resolve the owner's claims arising under SPA section 32.

59. I dismiss the rest of the owner's claims.

60. 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.

Richard McAndrew, Tribunal Member