



Civil Resolution Tribunal

Date of Original Decision: June 21, 2021
Date of Amended Decision: June 25, 2021

File: ST-2020-008942

Type: Strata

Civil Resolution Tribunal

Indexed as: *Raitt v. The Owners, Strata Plan LMS 1087*, 2021 BCCRT 683

B E T W E E N :

SHERLE RAITT

APPLICANT

A N D :

The Owners, Strata Plan LMS 1087

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about procedures used and votes conducted at general meetings during the COVID-19 pandemic.

2. The applicant, Sherle Raitt, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1087 (strata). Ms. Raitt says that the strata did not comply with the requirements of the *Strata Property Act* (SPA) or the bylaws when conducting a May 2020 annual general meeting (AGM) and an October 2020 special general meeting (SGM). In addition to her concerns about procedures and the validity of votes taken at these meetings, Ms. Raitt also says that the strata council issued inaccurate minutes. Ms. Raitt asks for orders that the strata comply with the SPA and bylaws about meetings and strata council membership, amend and re-distribute the AGM and SGM minutes, and that some votes conducted at the October SGM are invalid.
3. The strata denies that it contravened the SPA or the bylaws, and asks that Ms. Raitt's claims be dismissed.
4. Ms. Raitt is self-represented. A member of the strata council represents the strata.

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.
9. Some of the remedies Ms. Raitt requested were not included in her Dispute Notice but were raised during the CRT's facilitation phase. As these issues were included in the CRT's online portal, the strata had a full opportunity to respond to them. In the circumstances, I find that there is no prejudice or procedural fairness issue arising from the inclusion of the additional remedies.

ISSUES

10. One of the remedies Ms. Raitt requested was that a surveillance camera be removed from the garbage room and the associated recordings be deleted. The parties say in their submissions that the camera has been removed and the strata confirms that the recordings have been deleted. Accordingly, I will not address this issue further.
11. The remaining issues in this dispute are:
 - a. Whether the 2020 AGM or SGM contravened the SPA or the strata's bylaws,
 - b. If so, what are the appropriate remedies,
 - c. Whether the strata should amend the minutes of the AGM or SGM, and
 - d. Whether the strata should be ordered to ensure that all strata council members be "duly elected or ratified".

EVIDENCE AND ANALYSIS

12. In a civil dispute like this, an applicant must prove their claims on a balance of probabilities. The parties provided evidence and detailed submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is relevant and necessary to provide context to my decision.

13. The strata had planned an in-person AGM in March of 2020, but this meeting was cancelled due to the COVID-19 pandemic and the March 16, 2020 Order of the Provincial Health Officer prohibiting gatherings in excess of 50 people.
14. Given that the strata is comprised of 130 residential strata lots, the strata council considered various options about how to conduct the AGM in a way that would be safe and compliant with the Provincial Health Officer's order. The strata's bylaw 33 permits general meetings to be held by telephone or electronic means, so long as the method used permits all participants to communicate with each other during the meeting. This is consistent with the April 17, 2020 Ministerial Order 114 (M114) issued under the *Emergency Program Act* allows a strata corporation to hold meetings during the pandemic-related state of emergency 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".
15. As noted in an April 28, 2020 letter to owners, the strata determined that it would not conduct the AGM electronically due to the potential for technical challenges and the large number of owners. The strata council decided that it would be more practical and fair to conduct the meeting by proxy only. The strata council decided that the AGM would deal with the most urgent matters, with the less urgent matters being deferred to an SGM later in the year when it was hoped that an in-person meeting could take place.
16. The AGM occurred on May 19, 2020. Ms. Raitt says that a number of owners attempted to attend the meeting, but were asked to leave. Ms. Raitt declined to leave the meeting and remained as an observer.
17. A number of owners expressed their concern to the strata council about how the AGM had been conducted. At the June 16, 2020 strata council meeting, the council discussed how the SGM would proceed. It decided to conduct a survey of the owners to determine the preferred format for the meeting. A questionnaire was distributed with the minutes from the June and July strata council meetings. About two-thirds of the owners who responded indicated a preference for a meeting by proxy.

18. The SGM was held on October 20, 2020. As in-person meetings still were not permitted, the strata used the same proxy procedure as was in place for the AGM and owners were given a form for electing strata council members. Ms. Raitt says she attended part of the October 20 SGM but left as “it wasn’t an SGM but just another counting session” with proxies. The minutes show that 3 other owners attended but also left early, and 1 owner acted as a scrutineer.
19. Ms. Raitt requested a hearing to discuss the manner in which the AGM and SGM were conducted. The hearing was held on November 12, 2020. In a November 17, 2020 letter, the strata’s property manager advised Ms. Raitt of the strata’s view that “concern for avoiding infection outweighs any perceived loss because procedures must be changed”.
20. Ms. Raitt commenced this dispute as she believes that the strata has a “pattern” of not complying with the SPA and the bylaws. She says that this is intentional rather than an issue of occasional procedural errors or inexperience. Ms. Raitt says that the strata is ignoring “compliance requests” from owners, but cannot ignore orders from the CRT to “fully adhere to strata legislation and to respect the rights” of all owners. The strata denies that it disregards the SPA or the bylaws and submits that Ms. Raitt has not proven any of her claims.
21. The remedies Ms. Raitt requests include orders for the strata to comply with the SPA and its bylaws in various contexts. I decline to make such an order, as the strata is already required to follow the SPA and the bylaws. However, I will consider the SPA and the bylaws in the context of the issues before me.
22. The parties’ submissions refer to the strata’s 2021 AGM being scheduled for March of 2021. It is not clear whether this meeting occurred, or in what form.

Did the 2020 AGM or SGM contravene the SPA or the bylaws?

23. Ms. Raitt raises concerns about the adequacy of notice for the AGM, the restricted proxies at the AGM and SGM, and the fact that owners could not participate in the AGM or SGM. I will address each item in turn.

Notice

24. Section 45(1) of the SPA requires that a strata corporation give at least 2 weeks' notice of an AGM or SGM. In the April 28, 2020 AGM notice package, the cover sheet mistakenly identified the date as May 20 rather than May 19, and the accompanying letter showed that the meeting would take place at the property manager's office, when it actually took place in the strata's amenity room.
25. Ms. Raitt's position is that the April 28 package did not meet the notice requirement as the errors could have resulted in owners missing the deadline to submit their proxies and "losing their democratic right to vote". The strata says that it issued updated notices with the correct date, and says the AGM notice complied with the requirements for giving notice and providing information set out in section 61 of the SPA.
26. Although the incorrect date appeared on the notice package cover sheet, I find that the correct date appeared on the enclosed letter, agenda, and proxy form. The letter indicated that, at the time of writing, the strata had not determined whether the strata council members and property manager would meet in-person or electronically. In these circumstances of a proxy-based meeting, I do not find that the change in location or date error on the cover sheet rendered the AGM notice ineffective. I find that the strata gave adequate notice of the AGM.

Proxies and Meeting Conduct

27. Section 56 of the SPA allows eligible voters to vote at general meetings by proxy. Section 56(2)(a) sets out that a proxy appointment must be in writing, and must be signed by a person appointing the proxy. According to section 56(3), a person may appoint any proxy other than an employee of the strata corporation or a person who provides management services to the strata corporation.
28. The AGM and SGM packages included a proxy form that instructed each owner to identify their first and second choice for proxy holders from 5 strata council members. There was no option to appoint a different proxy. Owners were asked to complete

these forms along with a resolution form on which they marked their position on various resolutions.

29. Ms. Raitt submits that the strata violated section 56(3) of the SPA by not allowing owners to assign their proxy to the eligible person of their choice. The strata says that section 56(3) does not say that the owner alone can determine the proxy holder, but merely says that anyone can be a proxy. The strata also submitted that the proxy had no discretion over any vote, and the proxy form functioned as a “mail-in ballot”.
30. I note that neither the SPA nor the bylaws permit mail-in ballots for general meetings. Aside from the limitations set out in section 56(3), nothing in the SPA gives a strata corporation the power to restrict a person’s choice of proxy.
31. According to section 56(4) of the SPA, a proxy stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and second motions and participate in the discussion, unless limited in the appointment document. I find that the strata’s proxy form was, in effect, a ballot and did not allow for participation or for the proxy to do everything the appointing person could do. The ability to limit a proxy’s power is not at the discretion of a strata corporation, but rather the person appointing the proxy under section 56 of the SPA. I find the strata’s form of proxy did not allow voters the choice of proxy or the ability to grant full proxy power. Therefore, the strata did not comply with section 56 of the SPA at either the 2020 AGM or SGM.
32. In *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157, another tribunal member determined that the purpose of M114 was to accommodate the Provincial Health Officer’s 50-person limit on gatherings and allow general meeting attendance by all eligible owners and proxies. In that case, the tribunal member found that a strata corporation’s failure to allow an alternative method of attendance that would allow all eligible voters and proxies to participate in person and communicate with each other amounted to a breach of section 56 of the SPA, with the effect that the associated SGM was not valid.

33. Ms. Raitt says that *Shen* applies to this dispute. The strata submits that the reasoning in *Shen* is incorrect, and that the concept of a proxy-only meeting does not offend the intentions of the SPA or the M114. The strata also noted that it would not have been possible to comply with all of the requirements of the bylaws, such as issuing voting cards, if the meetings had been held by telephone.
34. Although bylaw 33 and M114 provide flexibility in terms of the method used to conduct meetings, this flexibility is limited to methods that permit “all persons participating in the meeting to communicate with each other during the meeting”. M114 does not alter any of the strata’s other obligations under the SPA. There is nothing in the SPA that permits a strata corporation to prevent owners from participating in general meetings. I find that the proxy-only meeting prevented the owners from participating and communicating with each other as required by the SPA, the bylaws, and M114. The fact that some owners indicated a preference for a proxy-based meeting does not alter my conclusion.
35. I conclude that the strata did not meet its obligations under the SPA when holding the AGM or SGM in 2020. I also find that it did not comply with bylaws 26 to 30 governing the conduct of meetings. Despite any impracticalities created by distancing requirements or electronic attendance, these bylaws contain mandatory provisions that were not impacted by M114.
36. The strata must ensure that owners are able to participate in future meetings in-person or through their proxies of choice, while using the order of business and voting procedures set out in the bylaws. This is so whether or not M114 or any other form of emergency order remains in place.

What remedies, if any, are appropriate?

37. As Ms. Raitt has not asked for orders invalidating the entirety of the business at the AGM or SGM, I will not consider these remedies. She asks for orders that the votes on resolutions D1 and K at the October 20, 2020 SGM are invalid. Both of these resolutions concerned approval for expenditures related to the security system.

38. In 2018, the owners approved an expenditure of \$7,500 to replace security cameras and equipment. The strata purchased and installed the hardware and incurred a cost overrun of \$679.76. The strata paid the entire bill from the contingency reserve fund (CRF), and resolution K was to approve the expenditure for the cost overrun.
39. Resolution D1 sought approval from the owners to install an additional security camera in each lobby at a cost of up to \$3,000. I will address each resolution in turn.
40. Section 96 of the SPA says that expenditures from the CRF must be approved at an AGM or SGM unless the expenditure is authorized under section 98, which permits expenditures that are necessary to ensure safety or prevent significant loss or damage. The strata's bylaw 22 permits unapproved expenditures out of the operating fund in limited circumstances, but does not allow the strata to pay unapproved expenses from the CRF.
41. Ms. Raitt says that the cost overrun for the security cameras was not an expense made to ensure safety or prevent loss or damage. The strata did not comment on this particular point. The wording of resolution K indicates that the strata decided to proceed with a security package that was over the approved expenditure "[d]ue to the number of break-ins that were occurring". Based on the evidence before me, I am unable to conclude that the break-ins were causing a safety issue or property damage that would have permitted an immediate expenditure from the CRF under section 98 of the SPA.
42. I find that the expenditure from the CRF was not made in compliance with sections 96 and 98 of the SPA, and the strata should have received approval from the owners before making the expenditure from the CRF. Although the strata did not follow the correct procedure around this expense, I find that it would not serve a practical purpose to invalidate the vote on resolution K. The invoice for the security hardware has been paid already and invalidating the vote would not prevent the strata from acting on the results. Despite my finding that the SGM did not comply with the SPA or the bylaws, I decline to make the order Ms. Raitt requests about resolution K.

43. My finding is different for resolution D1, as I find that this resolution was not consistent with the strata's bylaws.
44. The strata's bylaw 44 addresses the security camera system and permits cameras to be installed at only specified locations: the community room, the courtyard entrances, and the main garage gate. As noted above, a camera previously installed in the garbage room has been removed.
45. Resolution D1 asked for approval to install additional security cameras in the lobbies, which are not locations where cameras are permitted by bylaw 44. Although the owners passed the resolution, the cameras have not been purchased. Minutes from the December 2, 2020 strata council meeting noted that the current wording of bylaw 44 did not allow surveillance cameras in the lobby. So, the strata council decided not to purchase or install the extra surveillance cameras until the bylaw was amended.
46. Quite apart from the lack of compliance with the SPA and the bylaws at the SGM, the strata has acknowledged that resolution D1 was in violation of its bylaws. Therefore, I order the strata not to act or rely on the results of the vote for resolution D1. Should the strata amend its bylaws in the future to permit security cameras in additional locations, it will need to present a new resolution to the owners for the associated funding approval.

Should the minutes be amended?

47. Ms. Raitt submits that both the AGM and SGM minutes are "false" and contain inaccuracies that mislead the owners and impact their ability to make "fully informed decisions in the future". Ms. Raitt suggests that the strata council did not follow the order of business set out in bylaw 30, and says that the minutes reflect information that was in the meeting notice packages or addressed outside the meeting rather than discussions that took place at the meeting. She also suggests that the minutes do not accurately reflect the results of all votes.
48. Ms. Raitt produced her own "corrected" version of the AGM minutes that include her commentary about events at the meeting and her views about content that should not

be included in minutes. Ms. Raitt submits that similar issues occurred at the SGM, although she did not attend that entire meeting or produce corrected minutes. The strata disagrees that the minutes are false, and says that any “rearrangement” of the order of business was not prejudicial.

49. Section 35 of the SPA requires that a strata corporation prepare minutes of general meetings, including the results of any votes. The SPA does not include any other requirements for the contents of meeting minutes.
50. Other tribunal members have found that meeting minutes must be reasonably accurate so as not to mislead the owners (see, for example, *Claridge v. The Owners, Strata Plan LMS 223*, 2020 BCCRT 161 and *The Owners, Strata Plan 1769 v. Dagenais*, 2020 BCCRT 957). Although these decisions are not binding upon me, I agree with this reasoning.
51. Ms. Raitt noted that, in a May 29, 2020 email message, a member of the strata council, CG, offered his view that the AGM minutes were “not factual or complete” and that some of Ms. Raitt’s corrections were “factual”. CG did not identify the items with which he agreed or disagreed.
52. The strata admits that there were some procedural adjustments that it attributes to the pandemic-related restrictions at the AGM and SGM. Based on the evidence before me, I am unable to determine whether there are procedural matters documented in the minutes that are inaccurate or misleading for owners.
53. However, I find that Ms. Raitt is correct that the AGM minutes contain an error in vote results. Resolution H is shown as being carried with 86 votes in favour, 1 opposed, and 2 abstentions, for a total of 89 votes. This is not consistent with the 88 owners participating in the meeting. While the result of the vote would not be affected in the circumstances, I find that section 35 requires the strata to accurately record the results of votes, and that the incorrect vote total does not meet this requirement.
54. The AGM minutes indicate that the vote results and proxies would be kept for 2 years. I order the strata to review the vote results for resolution H and issue revised minutes

with the correct totals. If the results of the votes were not retained and cannot be located, I order the strata to issue revised minutes indicating that the vote result is inaccurate but cannot be determined.

Strata council

55. According to section 25 of the SPA, eligible votes must elect a strata council at each AGM. As noted, this election was deferred until the October 2020 SGM. Between the AGM and SGM, it appears that the strata council appointed new members as permitted by bylaw 13. It is not clear whether the March 2021 AGM occurred as anticipated or whether a new strata council has been elected.
56. Ms. Raitt questions the manner in which the strata council was elected as she says the strata did not comply with her request for a secret ballot under bylaw 29(6). However, she did not ask for a new election of the strata council or any remedies relating to this alleged lack of compliance. Ms. Raitt says that her request for an order that the strata council members be “duly elected or ratified” is related to her view that the strata council does not comply with the SPA or respect owners’ rights. Ms. Raitt expressed concern that some of the current strata council members would be re-elected at the March 2021 AGM and that the ongoing pandemic-related restrictions would make it difficult to remove them using the procedures set out in the strata’s bylaw 12.
57. The strata’s obligation to comply with the SPA and the bylaws, as discussed above, also extends to the strata council. The British Columbia Supreme Court has held that, within reason, some latitude is justified when scrutinizing the conduct of a volunteer strata council (see *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 at paragraph 50). The SPA does not impose a standard of perfection. The documents in evidence show that strata council members had different views on how to approach various matters and that their chosen path sometimes did not align with the preference of all owners. However, this does not establish a clear pattern of violating the bylaws or the SPA as Ms. Raitt suggests.

58. Further, given that it is likely that the 2021 AGM has happened already, a new strata council may be in place. The evidence and submissions before me do not address the conduct of the current strata council. I find that it would be speculative to presume that the current strata council will not comply with the SPA or bylaws. Accordingly, I will not make the order Ms. Raitt requests.

CRT FEES AND EXPENSES

59. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Raitt was partially successful, I order the strata to reimburse her for half of her CRT fees, or \$112.50. Ms. Raitt did not make a claim for dispute-related expenses.

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

ORDERS

61. I order that:

- a. The strata must ensure that, at future general meetings, owners can participate in-person or through a proxy of their choice, while using the order of business and voting procedures set out in the bylaws,
- b. The strata must not act or rely on the results of the vote for resolution D1 from the October 20, 2020 SGM,
- c. The strata must revise the May 19, 2020 AGM minutes to reflect the correct vote results for resolution H, or the fact that the correct vote results are not available, and
- d. Within 30 days of the date of this decision, the strata must pay Ms. Raitt \$112.50 as reimbursement of CRT fees.

62. 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.

Lynn Scrivener, Tribunal Member

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ⁱ Amendments made to correct inadvertent errors in paragraphs 14, 34 and 56 as permitted by section 64 of the CRTA.