



Civil Resolution Tribunal

Date Issued: July 26, 2021

File: ST-2020-007278

Type: Strata

Civil Resolution Tribunal

Indexed as: *Laing v. The Owners, Strata Plan NW 3323*, 2021 BCCRT 809

BETWEEN:

Arlene Laing

APPLICANT

AND:

The Owners, Strata Plan NW 3323

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Arlene Laing, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 3323, (strata). Ms. Laing was an elected strata council member for some of the time leading up to this dispute.

2. Ms. Laing makes 4 claims against the strata. Her first claim is about the strata council's handling of bylaw complaints over a privacy fence that involved allegations against the council president "GG". Ms. Laing says GG failed to recuse himself during a March 24, 2020 council meeting and improperly participated in a decision about the complaints made against him. She seeks an order that the strata follow the *Strata Property Act* (SPA) "process when dealing with bylaw infractions against council members or owners". She also asks that I direct the strata to investigate the bylaw infraction complaints, review certain evidence, and document its meeting minutes.
3. Ms. Laing's next 3 claims are about voting at council meetings. Ms. Laing says the council voted on motions by email in 2019 and 2020 without properly ratifying its decisions or allowing council members to vote and debate each motion. Ms. Laing says council also allowed a new member to vote on decisions prior to ratifying their appointment and allowed the president to use a "tie-breaking vote" to approve 2 motions by email. She says this was not permitted under the bylaws.
4. Ms. Laing seeks broad orders requiring the strata ensure it properly ratifies decisions made by email vote, only permit duly elected council members to vote, and only allow tie-breaking votes as prescribed by the bylaws. She also asks that I direct the strata to develop and ratify policy and procedure around email voting.
5. In response to the first claim, the strata says it agrees GG should have recused himself from the meeting during the discussion about the bylaw complaints. It says after Ms. Laing commenced this dispute, it corrected its way of handling bylaw complaints against council members. As for the bylaw complaints themselves, it says its new council has since investigated and found no breach. It says nothing further is required of it.
6. In response to Ms. Laing's claims about voting, the strata says it is already following the SPA and bylaws and there is no basis to require it to develop new policy and procedure.
7. Ms. Laing is self-represented. The strata is represented by a council member.

8. For the reasons that follow, I dismiss Ms. Laing's claims and this dispute.

JURISDICTION AND PROCEDURE

9. 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.
10. 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.
11. 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.
12. 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

Standing

13. The strata says Ms. Laing has no standing, which means legal right, to bring a claim against the strata because she is not seeking redress for issues that relate directly to her. It says Ms. Laing is simply attempting to influence the strata's governance.
14. The strata relies on *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551. In *Wong*, Mr. Justice Jenkins held that there are only 2 situations when an owner can

sue a strata corporation under the SPA. These are where the strata corporation's actions were "significantly unfair" to the plaintiff owner or for the owner's proportionate share of common property when a third party causes injury (*Wong* at paragraph 35). The strata says Ms. Laing does not have standing because these 2 situations did not arise.

15. A CRT Vice Chair considered a similar question about standing in *Mitchinson v. The Owners, Strata Plan VR 1120*, 2020 BCCRT 1420. Although prior CRT decisions are not binding, I find the Vice Chair's reasons persuasive. The Vice Chair pointed out that the CRT was created after the *Wong* decision and the legislature later amended the SPA to add section 189.1(1). Section 189.1(1) gives owners and tenants a right to request the CRT resolve a dispute "concerning any strata property matter" over which the CRT has jurisdiction. The CRT's jurisdiction over strata disputes as set out in the CRTA at section 121(1) is over a claim, in respect of the SPA, concerning a list of matters. These matters include the interpretation or application of the SPA or a regulation, bylaw or rule, the common property or common assets of a strata corporation, and other matters.
16. I find Ms. Laing's claims are "concerning a strata property matter" and they fall under CRTA section 121(1) because they are in respect of the interpretation or application of the SPA and strata bylaws and about the common property. I find Ms. Laing has standing to bring her claims against the strata.

Guidance

17. In addition to the claims set out in the Dispute Notice, Ms. Laing asks the CRT to provide "guidance to council moving forward" and seeks answers to a series of questions. The CRT's statutory mandate is to provide parties with dispute resolution services. As a CRT member, I am not in an advisory role. My role is to resolve the dispute based on the evidence before me and I have made findings of fact and law as necessary to resolve the claims in this dispute. I decline to provide Ms. Laing with the requested general guidance as I find it is outside the CRT's role to do so.

Late evidence

18. The strata submitted a statement from a former council member after the CRT's evidence submission deadline. The strata says it was not able to obtain the evidence prior to the deadline because it had not anticipated needing it based on the claims as framed in the Dispute Notice. It says the statement is relevant and fairness requires that I allow it as evidence. Ms. Laing says I should not allow the statement because the strata failed to meet the CRT's deadlines to submit evidence, despite being granted several extensions.
19. I find Ms. Laing had a reasonable opportunity to respond to the late evidence in her submissions and there would be no actual prejudice to Ms. Laing in allowing this late evidence. Consistent with the CRT's mandate that includes flexibility and fairness, I have allowed the statement as late evidence in this proceeding.

Withdrawn Claims

20. Ms. Laing originally brought 12 claims against the strata over various alleged governance issues. She withdrew 8 of her claims during the CRT's facilitation stage, before this dispute was assigned to me for adjudication. In this decision, I have considered her 4 remaining claims, which I summarized in the introduction above.

ISSUES

21. The remaining issues in this dispute are:
 - a. Should the CRT order the strata to further investigate the bylaw complaints against the president or take any further action about it?
 - b. Did the council fail to follow the SPA and its bylaws when voting and ratifying decisions? If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

22. In this civil dispute, Ms. Laing, as the applicant, must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
23. The strata plan filed in the Land Title Office (LTO) shows the strata is comprised of several 2-strata lot buildings (duplexes). The land around the buildings is common property as defined in SPA section 1. Each strata lot has a backyard patio that shows on the strata plan as limited common property (LCP). LCP is common property that is designated for the exclusive use of the owners of 1 or more strata lots.
24. Section 72 of the SPA and the strata’s bylaw 12.01 require the strata to maintain and repair common property. Bylaw 12.01 also requires the strata to repair and maintain LCP when it occurs less than once a year, plus fences and structures that enclose patios.
25. I summarize additional background facts and the strata’s other bylaws as relevant when discussing the issues in each claim below.

Bylaw Complaints

26. Ms. Laing’s first claim relates to complaints over the installation of a common property fence behind the strata president GG’s strata lot.
27. According to the strata’s emails a hedge adjacent to the LCP patio behind GG’s strata lot was damaged during a snowstorm. In May 2019, GG’s wife emailed the strata property manager and asked the strata to replace the damaged hedge. The hedge was on common property and was the strata’s responsibility to repair and maintain. This is not disputed.
28. The council decided to remove the hedge and replace it with a privacy fence. The July 2019 emails between the council and the property manager show there was some disagreement over the appropriate length and position of the new fence. GG

and his wife wanted a 10-foot long fence as existed elsewhere in the strata complex. Ultimately, the strata purchased the fence materials for a 10-foot long privacy fence as shown by a receipt in evidence. On about August 16, 2019, the strata's contractor installed the fence on the common property behind GG's strata lot in a way that allowed a passthrough between the fence and GG's strata lot building. The fence extends about 2 feet past the length of the adjacent LCP patio.

29. As shown in the strata council's August 29, 2019 meeting minutes, the council voted on and retroactively approved the new fence.
30. In February 2020, 2 owners complained that GG contravened bylaw 9.01 by installing a fence without council's prior approval. Bylaw 9.01 says an owner must have the council's prior approval before altering common property. They also alleged that GG breached his duty of care as a council member by insisting the contractor install a "non-standard" fence that extended past the LCP patio.
31. At a March 24, 2020 council meeting, the council addressed the complaints about GG and the fence as recorded in the minutes. The council concluded that GG did not breach the bylaws and that the prior council had approved the new fence on August 29, 2019. The minutes further state the council concluded that "everything was in order", further discussions were not necessary, and the matter was closed. GG was undisputedly present at the meeting and participated in this decision.
32. As mentioned, the strata admits that its council erred by not requiring GG to recuse himself during the bylaw complaint matter as required under SPA section 32. It has agreed to change its practice going forward. Specifically, the strata says it will only discuss agenda items that may give rise to a conflict at the end of the meeting and require the conflicting member to leave before the discussion.
33. Ms. Laing argues that due to GG's interference the council never gave the complaints the "due process as required" by the SPA. She asks that I order the strata to reinvestigate the bylaw infraction complaints, consider the evidence that Ms. Laing says is relevant, and record in council meeting minutes that council made an error.

34. The strata says this is unnecessary. It says its new council already investigated the complaints about GG and the fence after Ms. Laing commenced this dispute. It says its new council considered all the evidence and concluded that GG did not breach the bylaws.
35. I agree with the strata that further investigation is not needed. I find bylaw 9.01 only applies to situations where an owner alters the common property and this is not what happened here. GG's wife asked the strata to replace the damaged hedge and it did so by replacing it with a fence. As GG did not alter the common property, I find bylaw 9.01 did not apply and there was no breach.
36. On my review of the evidence, I find the strata had no specific standard for its privacy fences. There are no rules or bylaws about it. The parties also agree other privacy fences extend past the patios and the new fence is the same length as other fences in the complex. So, I find no merit to the complaints that GG influenced the strata to install a non-standard fence.
37. Considering the strata already agreed to correct its practice when dealing with complaints against council members and my conclusions above, I find no basis for the CRT to intervene. I dismiss Ms. Laing's claim over this issue.

Council Meetings and Voting

38. Prior to discussing Ms. Laing's claims, I summarize the relevant bylaws about council meetings and voting.
39. Bylaw 13.08 says the council may meet together for the conduct of business, adjourn and otherwise regulate its meetings "as it thinks fit" subject to the SPA. A council member may call a council meeting by giving the other council members at least 1 weeks' notice and specifying the reason for calling the meeting.
40. Bylaw 13.11 says that council has the option to hold council meetings by electronic means so long as all council members and other participants can communicate with each other. If a council meeting is held by electronic means, council members are deemed to be present in person.

41. Bylaw 13.12 applies to voting and says all matters shall be determined by simple majority vote of council members present in person at the meeting. If there is a tie at council meetings, the president may break the tie by casting a second, deciding vote. The results of all votes at council meetings must be recorded in the council meeting minutes.
42. Bylaw 13.13 requires that council keep minutes of council meetings and make them available within 14 days of the meeting date. Section 35 of the SPA also requires the strata to prepare and retain minutes of council meetings, including the results of any votes.

Email Voting

43. Between July 11, 2019 and February 15, 2020, the council voted on 28 motions by email. According to the minutes of a February 21, 2020 council meeting, the council president created a spreadsheet describing all 28 motions with the vote results and presented them to council. The spreadsheet is attached to the February 21, 2020 meeting minutes.
44. The February 21, 2020 minutes state that most email decisions and approvals were already documented in meeting minutes. However, to ensure all email decisions were recorded, council passed a motion to “accept the spreadsheet of email decisions” in the minutes of the February 21, 2020 meeting for recording purposes. The motion passed 4 in favour and 1 opposed.
45. Ms. Laing says council is permitted to hold electronic meetings and vote by email but the prior email votes were not council meetings on their own. She says no email vote is valid until it is ratified at a properly constituted and minuted meeting. She argues that ratification means more than simply recording the vote and required a new vote at a formal council meeting.
46. Ms. Laing also says she was out of the country without internet access for a week and could not vote on some email motions in the February 21, 2020 spreadsheet. She expected to debate and vote on each motion council had voted on by email in

her absence and council did not permit her to do so. She says this was unfair and several observers did not have the benefit of hearing her concerns for each motion. She argues that transparency required debate of the email decisions at the meeting. Ms. Laing does not seek any specific remedy about the actual motions. Instead, she asks that I order the strata to create policy and procedure to clarify its future email voting practice.

47. The strata says it already follows a clear process that complies with the SPA and bylaws. It says the council votes on the motions by email and then records the votes in its minutes and this is all that is required under the SPA and bylaws. The strata says it is not necessary or more transparent to vote on an issue by email, vote on approving the minutes, and then “ratify” each issue again. It says the results of the votes are actually ratified when the council approves the minutes. It says there is no need for the CRT to intervene.
48. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 (*Kayne*), the BC Supreme Court considered a petitioner’s complaint that there were no meeting minutes of a council meeting. The evidence was that the meeting was not a council meeting but an “informal gathering of some council members at which no minutes were kept”. The court held that the SPA requires minutes of council meetings at which decisions are taken but it would be unrealistic to expect council to keep minutes of informal meetings. However, the court said that a decision made during an informal meeting is not valid unless, and until, it is taken or ratified by a property constituted and minuted meeting of the council.
49. In *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, the court held that the SPA does not specifically prevent email meetings but minutes must be provided for them.
50. In *Starr v. The Owners, Strata Plan EPS 59*, 2019 BCCRT 778 (*Starr*), a CRT Vice Chair considered both *Kayne* and *Yang* in a decision over an issue of email voting. Similar to here, the bylaws in *Starr* permitted electronic meetings, for the council to arrange its meetings “as it thinks fit”, and for observers. The Vice Chair held that

strata council had authority to conduct votes by email but that the email voting was not a council meeting and the decisions were not valid until the votes were ratified at a properly constituted and minuted meeting.

51. The Vice Chair discussed the issue of transparency. He cautioned that continual email voting may deprive owners the opportunity to observe the council meetings as permitted under the bylaws and may be subject to an owner's challenge as a significant unfair act. He held that if council makes a decision by email, it should produce minutes documenting the decision as quickly as possible in order to validate the decision and vote. While *Starr* is not binding on me, the facts are similar and I find the Vice Chair's reasons persuasive.
52. A formal council meeting must be properly constituted and have minutes. I find email votes on their own are not council meetings where they do not otherwise comply with the bylaw and SPA requirements for council meetings. When council voted by email outside its formal meetings, I find the council was required to ratify the votes at a properly constituted and minuted meeting as soon as possible.
53. I note the definition of the word "ratify" in Merriam-Webster.com is "to approve and sanction formally".
54. I find the council delayed ratifying some of the decisions made between July 11, 2019 and February 15, 2020. However, I find it cured the defect at the February 21, 2020 council meeting when it documented the decisions and votes as produced in its approved minutes.
55. I find it would be redundant and may lead to absurd and inconsistent results if the council had to reopen each motion voted by email for a new debate and revote to ratify it. I find the council was not required to have done so here.
56. I find the council was also not required to reopen the motions for a new vote because Ms. Laing was away on vacation or did not participate in the original vote. Unless the council lacks quorum or there is some other issue, council business does not

normally stop because a council member takes vacation, is unable to attend a meeting, or declines to vote.

57. I find Ms. Laing has not established a basis for the CRT to intervene or require the strata to create policy and procedure for email voting. I dismiss Ms. Laing's claim over this issue.

New Council Member Voting

58. Next, Ms. Laing says council gave a new council member who was elected mid-term "voting privileges" prior to council actually ratifying their appointment at the end of the next council meeting. Apart from describing this technicality, Ms. Laing does not show it adversely impacted the strata in any significant way nor argue that some decision be set aside. Rather, Ms. Laing seeks a broad order that the strata ensure it only permits duly elected council members to vote.
59. As it stands, the SPA and bylaws only permit elected council members to vote at council meetings and the strata is already required to follow the law. I find the requested order would have no practical purpose and is too broad to enforce. I dismiss Ms. Laing's claim about this issue.

Tie Votes

60. Ms. Laing alleges the president twice used a tie-breaking vote during email voting and says this was contrary to bylaw 13.12. She says the president can only cast a vote during an actual minuted council meeting and not by email.
61. I find it would be an overly narrow and impractical interpretation of bylaw 13.12 to interpret it to prevent the president from using a tie-breaking vote by email. As discussed, the strata bylaws permit electronic meetings and it is permitted to vote on motions by email. I find the bylaws do not prevent the president from casting a tie breaking vote by email. I also find Ms. Laing's requested remedy is too broad to be enforceable in any event. I dismiss Ms. Laing's claim about tie breaking votes.

CRT FEES AND EXPENSES

62. 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. As Ms. Laing was the unsuccessful party, I find she is not entitled to any reimbursement.

63. The strata did not pay CRT fees and did not claim any dispute-related expenses.

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

ORDER

65. I dismiss Ms. Laing's claims and this dispute.

Trisha Apland, Tribunal Member