



Civil Resolution Tribunal

Date Issued: September 23, 2021

File: ST-2021-001651

Type: Strata

Civil Resolution Tribunal

Indexed as: *Xue v. The Owners, Strata Plan LMS4467*, 2021 BCCRT 1027

B E T W E E N :

KANG XUE

APPLICANT

A N D :

The Owners, Strata Plan LMS 4467

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about the validity of a special general meeting (SGM). The applicant, Kang Xue, is a strata lot owner and former strata council member in the respondent strata corporation, The Owners, Strata Plan LMS 4467 (strata). Mr. Xue says that a March 4, 2021 SGM, which was called for the purpose of removing him from the strata council, did not comply with the *Strata Property Act* (SPA). He asks for orders that

the results of the SGM be declared invalid and that he be reinstated as a strata council member. The strata says that the SGM was called and conducted in accordance with the SPA.

2. Mr. Xue is self-represented. The president of the strata council represents the strata.

JURISDICTION AND PROCEDURE

3. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
5. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under CRTA section 123, 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.

7. Mr. Xue has commenced a separate dispute (ST-2021-000186) against the strata and another party about his entitlement to a storage locker. I have issued a separate decision for that linked dispute.

ISSUES

8. The issues in this dispute are:
 - a. Whether the strata followed the procedural requirements in the SPA before the SGM,
 - b. Whether the strata followed the procedural requirements in the SPA when holding the SGM, and
 - c. If the SGM did not meet the SPA's requirements, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what I find to be relevant and necessary to provide context to my decision.
10. Mr. Xue says he was elected to the strata council in November of 2019 and re-elected in November of 2020. Mr. Xue described himself as an active participant in council business.
11. The strata advised the owners of an upcoming March 4, 2021 SGM in a February 12, 2021 notice. The notice stated that the purpose of the meeting was to “approve the removal of Kang Xue as a Member of the Strata Council. and to elect a replacement Council Member” (reproduced as written). Mr. Xue says he received this notice on February 16, 2021.
12. Mr. Xue emailed the strata council members on February 24, 2021 to express concern about the “negative impact” that his proposed removal from the strata council

would have on his reputation. Mr. Xue stated that the proposed SGM did not comply with section 46 of the SPA, which says that a strata council must determine the agenda of an SGM. Mr. Xue asked the strata council to cancel the proposed SGM as there had been no strata council meeting to discuss it. Mr. Xue also requested a hearing to discuss the matter by March 1, 2021.

13. On February 25, 2021, Mr. Xue submitted an application for dispute resolution to the CRT. He asked the CRT for an order that the SGM be cancelled. The Dispute Notice was issued by the CRT on March 1, 2021.
14. On March 1, 2021, Mr. Xue emailed the strata's property manager to request copies of the strata council's "memo and voting record" about the decision to hold the SGM. The property manager replied that there was "no official Council Meeting held for this matter" as one was not required under section 43(4) of the SPA.
15. Mr. Xue exchanged emails with the strata's property manager on March 1, 2021 about the scheduling of hearings for the storage locker issue and the SGM issue. Although initially it wanted to address only the storage locker issue at the March 2, 2021 hearing, the strata council later instructed the property manager that it wished to address both matters at the same time. Mr. Xue wanted 2 separate hearings, but the property manager advised that this would not occur.
16. According to the minutes of the March 2, 2021 strata council meeting, the meeting's agenda consisted of Mr. Xue's requested hearings about the storage locker and the SGM. As Mr. Xue did not attend, the strata council decided to proceed with the SGM and its work on Mr. Xue's CRT dispute about the storage locker.
17. Mr. Xue sent an email to the strata council members on March 4, 2021 asking that the SGM be cancelled based on what he said was a lack of compliance with the SPA. However, the SGM proceeded as scheduled.
18. The minutes of the March 4, 2021 SGM show that owners holding 18.5 votes were in attendance, both in person and by proxy, which exceeded the 15.57 votes required for quorum. After approving the minutes of the November 2, 2020 AGM, the owners

considered the resolution to remove Mr. Xue as a strata council member. The owners voted 15.5 in favour and 2 against, with 1 abstention. This met the threshold for a majority vote to remove a strata council member as set out in bylaw 18.1. The owners then voted to elect a replacement strata council member as required by bylaw 18.2.

Procedures before the SGM

19. Section 42 of the SPA states that a strata corporation may hold an SGM at any time after giving notice in accordance with section 45, which requires 2 weeks' written notice. In addition to the strata's ability to call an SGM, section 43 of the SPA allows persons holding at least 20% of a strata corporation's votes to make a written demand for an SGM to consider a specified resolution.
20. Mr. Xue does not dispute that the proper notice of the AGM was provided as set out in section 45 of the SPA. Instead, he submits that, in the absence of a "petition" for an SGM by voters, the strata council needed to hold a council meeting to make the decision to hold the SGM and set its agenda as required by section 46(1) of the SPA.
21. The strata submits that the effect of section 43(4) of the SPA is that it did not need to have a strata council meeting before calling the SGM. I disagree. Section 43 of the SPA does not address SGMs generally, but rather SGMs called by voters. Section 43(4) states that the president of a strata council "may call the [SGM] without holding a council meeting". I find that this section refers to only those SGMs called by voters, and does not allow a strata council president to call SGMs in other circumstances without holding a meeting.
22. However, although the property manager confirmed that there was no "official" strata council meeting about the SGM, it is apparent from the strata's submissions that there was a form of meeting at which the strata council members discussed Mr. Xue's removal from council. The strata council president submits that he "consulted" with the other strata council members about the SGM and that the strata council determined the SGM's agenda. The president says that they did not include Mr. Xue in the discussion due to what he called "an evident conflict of interest".

23. While the participants may have considered their interaction to be unofficial or informal, this did not remove the requirements in section 35(1)(a) of the SPA and bylaw 25.3 to document this meeting in minutes. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 23, the British Columbia Supreme Court held that no decision taken at an informal gathering of a strata council has any validity unless it is ratified at a properly constituted and minuted meeting of the council.
24. The evidence before me contains minutes from the March 2 strata council meeting and the March 4 SGM. It is not clear whether there was another strata council meeting at which the decision to hold the SGM was ratified and documented in the minutes. I find that the existence of such minutes is not determinative in the circumstances of this case.
25. The decision in *Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428*, 2009 BCSC 506, affirmed 2010 BCCA 474, considered a situation where minutes were not prepared following a strata council meeting that decided on the agenda for an annual general meeting (AGM). The court agreed with *Kayne* and found that the failure to produce minutes meant that the owners had to wait for the AGM notice before knowing what would be on the agenda. While the court stated that the strata council's conduct was worthy of criticism, it established only "an isolated instance of easily rectifiable procedural irregularity" (paragraph 34).
26. I find that the situation here is analogous. As noted in *Kayne* at paragraph 8, the purpose of the requirement for minutes in the SPA is to ensure that owners are kept informed of the decisions taken by the strata council. Although the strata council did not produce minutes to notify the owners of its decision (seemingly due to the misunderstanding about the effect of section 43(4) of the SPA), it informed the owners of the decision to hold the SGM in the notice package. Therefore, the owners were aware of the strata council's decision before the SGM and there was no impact on the owners' ability to make decisions about, or vote on, the resolution at the SGM. I am satisfied that the procedural irregularity associated with the lack of minutes from the informal council meeting was rectified by communicating the council's decision in

the SGM notice package. I find that the meeting to set the SGM met the requirements of the SPA.

27. The next consideration is Mr. Xue's request for a hearing. Although he did not cite a specific section of the SPA, I infer that Mr. Xue's request was made under section 34.1, which says that if a hearing with the strata council is requested, the council must hold a meeting to hear the applicant within 4 weeks of the request. In this case, Mr. Xue requested that the hearing occur before the SGM. According to the strata's submissions, some council members re-arranged their schedules to accommodate this request.
28. Although Mr. Xue says that he received "confusing" emails from the strata's property manager and there "was no clear intention that the Strata Council would cover the topic [he] requested for the hearing", I find that the email exchange made it clear that the strata council intended to hold a hearing to discuss both the SGM and the storage locker issue. Section 34.1 does not require that a hearing be held on a date or in a manner determined by the person who requests it. Further, I find that there is nothing in the SPA or the bylaws that would require the strata council to cancel a proposed SGM on the basis that an owner had requested a hearing on the matter.
29. Based on the available information, I find that the procedures the strata used to call and give notice of the March 4, 2021 SGM complied with the SPA. The strata will need to ensure that all future strata council meetings are documented in minutes as required by the SPA and the bylaws.

Procedures at the SGM

30. Mr. Xue also questions whether the SGM was held properly. He submits that there was a power outage on the day of the SGM that impacted the "participation rate and effectiveness". Mr. Xue also says that there was "no justified and valid reason" to remove him from the strata council and that he did not receive an explanation for his proposed removal. According to Mr. Xue, this meant that SGM participants did not have access to all the information to "make their own judgment" before the vote.

31. While there may have been a power outage on the day of the SGM, the available evidence does not establish that any owners who wished to attend in person or vote by proxy were prevented from doing so. In any event, there were enough owners participating to meet the required quorum.
32. Mr. Xue says he has had no communication about the reason for his removal from the strata council, but suspects that it is retaliation for raising the issue about his entitlement to a storage locker. I note that, in addition to sending a letter to strata lot owners about his proposed removal from council, Mr. Xue confirmed that he was able to attend the SGM and voice his objections.
33. Although Mr. Xue wished to know the reasons behind his removal from the strata council, the SPA and the bylaws do not require that the strata council identify a reason for bringing such a resolution. Further, individual voters are not required to disclose the reasons for their decisions.
34. I find that Mr. Xue has not proved the way the SGM was called or conducted did not meet the requirements of the SPA. I dismiss his claim for an order invalidating the voting results at the March 4, 2021 SGM. Although I also dismiss Mr. Xue's claim for an order reinstating him as a strata council member, nothing in my decision would prevent him from running for strata council membership in the future.

CRT FEES AND EXPENSES

35. 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. As Mr. Xue was not successful, I dismiss his claim for reimbursement of the \$225 he paid in CRT fees. I also dismiss Mr. Xue's claim for reimbursement of \$70.28 in postal costs.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Xue.

ORDER

37. I dismiss Mr. Xue's claims and this dispute.

Lynn Scrivener, Tribunal Member