



Civil Resolution Tribunal

Date Issued: November 5, 2021

File: ST-2021-001973

Type: Strata

Civil Resolution Tribunal

Indexed as: *Heidary v. The Owners, Strata Plan BCS 2143*, 2021 BCCRT 1176

B E T W E E N :

AZAM HEIDARY also known as RACHEL HEIDARY

APPLICANT

A N D :

The Owners, Strata Plan BCS 2143

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about the validity of an annual general meeting (AGM).
2. This is 1 of 2 disputes I considered together because both disputes are about the validity of the same AGM. I have written a separate decision for each dispute given the applicants are different. The other dispute is file ST-2021-002626 and my reasons

for decision in that dispute are indexed as *Karmali v. The Owners, Strata Plan BCS 2143*, 2021 BCCRT 1177 (related proceeding).

3. Here, the applicant, Azam Heidary, aka Rachel Heidary, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2143 (strata).
4. Ms. Heidary says the strata's January 26, 2021 AGM (2021 AGM) was unlawful because the strata restricted owners from voting and who they could select as their proxy. She says this is contrary to the sections 54 and 56 of the *Strata Property Act* (SPA), section 2(2) of Provincial Government Ministerial Order M114 (Ministerial Order), and the strata's bylaw 25(4) that addresses quorum requirements. Ms. Heidary seeks the following orders:
 - a. That the 2021 AGM and all resolutions passed at the meeting be set aside,
 - b. That the strata hold an AGM in compliance with SPA sections 54 and 56 and Ministerial Order section 2(2),
 - c. That as set out in bylaw 25(4), the strata must adjourn an AGM for a further 15 minutes if a quorum is not established within 15 minutes from the appointed time of the meeting, and
 - d. that the strata not restrict the appointment of a proxy to only strata council members.
5. The strata denies Ms. Heidary's allegations and says it relied on its property manager, who advised a such a "restricted proxy" vote at a virtual AGM held during COVID-19 was an approved, best-practice method of voting in the circumstances. I infer the strata says it did not act contrary to the SPA or Ministerial Order. The strata expressly says it acted in compliance with its bylaw 25(4).
6. Ms. Heidary is a lawyer and is self-represented. The strata is represented by a strata council member.
7. For the reasons that follow, I generally find in favour of Ms. Heidary, but grant orders different than those she requests as set out below. My decision in this dispute is consistent with my decision in the related proceeding.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.
11. 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 Issue – Remedies Added in Submissions

12. In submissions, Ms. Heidary added the following requested remedies to her claims:
 - a. a financial audit,
 - b. that the strata advise strata owners that information provided in the 2021 AGM minutes was "wrong" and to provide the "correct" information,
 - c. that 2 owners who are not strata council members supervise "the process" of the requested upcoming meeting, and

- d. that the strata refund all special levy installments received from owners concerning $\frac{3}{4}$ vote resolution B about the building envelope repairs, that was considered at the 2021 AGM, discussed further below.
13. The strata did not address Ms. Heidary's additional remedies in its submissions. The CRTA and CRT rules permit an applicant to request to amend the Dispute Notice to add new claims or remedies. Although this process was available to Ms. Heidary, the Dispute Notice was not amended. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them and the remedies sought. CRT rule 1.19 says that the Dispute Notice will not be amended after the dispute has entered the CRT decision process except where exceptional circumstances apply. I find no exceptional circumstances here that would allow adding new remedies at this late stage in the CRT process. Therefore, I find Ms. Heidary's added remedies set out above are not before me. To the extent an added remedy does not flow from Ms. Heidary's claims as set out in the Dispute Notice, I decline to address it.

ISSUES

14. The issues in this dispute are:
- a. Was the 2021 AGM held in compliance with bylaw 25(4)?
 - b. Was the 2021 AGM held in compliance with the Ministerial Order and SPA?
 - c. If the answer to either question is "no", what is an appropriate remedy?

BACKGROUND

15. In a civil proceeding such as this, as applicant, Ms. Heidary must prove her claims on a balance of probabilities. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision. As in the related proceeding, I note the strata's submissions are largely a recount of the events surrounding the 2021 AGM.

16. The strata is mixed-use strata corporation consisting of 272 strata lots (270 residential and 2 non-residential) in a single 30-storey building. It was created in December 2006 under the SPA. Separate sections permitted under the SPA have not been created.
17. The owner developer filed bylaws that amended the Schedule of Standard Bylaws with the Land Title Office (LTO) at the time the strata was created. Several other bylaw amendments were filed with the LTO, including on October 28, 2016, when bylaw 25 was amended to add subsection (4) to the Standard Bylaws to amend quorum requirements set out in the SPA. I discuss bylaw 25(4) further below.
18. I find the owner developer bylaws and the bylaw 25(4) amendment filed October 28, 2016 apply to this dispute. Other bylaw amendments filed with the LTO are not relevant.
19. On March 18, 2020 the BC government declared a state of emergency in response to the COVID-19 pandemic. The extended state of emergency ended on July 6, 2021.
20. On April 17, 2020 the government issued the Ministerial Order under the *Emergency Program Act*. Section 2(2) of the Ministerial Order allowed a strata corporation to hold a strata meeting by electronic means even if the strata corporation did not have a bylaw permitting electronic attendance at its meetings, as usually required under SPA section 49. The Ministerial Order became a provision of the *COVID-19 Related Measures Act* (CRMA) on the CRMA's enactment on July 8, 2020. Under section 3(5)(a) and Schedule 1 of the CRMA, the electronic attendance at strata property meetings provision remains in effect until December 31, 2021: see B.C. Reg. 181/2021.

EVIDENCE AND ANALYSIS

Was the 2021 AGM held in compliance with bylaw 25(4)?

21. The 2021 AGM notice says the meeting was scheduled for January 26, 2021 at 6:30 pm. This is not disputed.
22. Bylaw 25(4) says that if quorum has not been met for a general meeting within 15 minutes from the appointed time, the meeting stands adjourned for a further 15

minutes on the same day at the same place. It also says that if within that further 15 minutes quorum is not present, the eligible voters present in person or by proxy constitute a quorum. In other words, a general meeting cannot begin unless quorum is established within 30 minutes of the time set for the meeting.

23. I take from Ms. Heidary's submissions that she says quorum was not present at 6:30 pm, the appointed time of the meeting, nor at 6:45 pm, 15 minutes later. Therefore, her understanding is the AGM should have been adjourned until 7:00 pm under the provisions of bylaw 25(4). She submits the meeting started after the initial 15 minute adjournment and the strata failed to adjourn the meeting for a further 15 minutes to 7:00 pm.
24. The strata disagrees and said it waited the required time under the bylaw.
25. The 2021 AGM minutes state the meeting was called to order at 6:30 pm. The minutes also state quorum was not present at 6:45 pm and that bylaw 25(4) permits "the meeting to proceed following a 15-minute adjournment delay". I find a plain reading of the minutes suggests quorum was not present at 6:45 pm so a 15 minute adjournment occurred. I find this is consistent with bylaw 25(4).
26. To the extent Ms. Heidary says the bylaw was breached because the meeting was called to order before quorum was established, I disagree. I say this because the definition of "adjourn" is "to suspend indefinitely or to a later time": see the on-line version of the Merriam-Webster dictionary (www.merriam-webster.com/dictionary). I find calling the meeting to order before establishing quorum does not offend bylaw 25(4). I also note that bylaw 28 establishes the order of business for general meetings and does not specify a general meeting must be called to order after quorum is determined.
27. For these reasons, I find the strata complied with bylaw 25(4) and I decline to order it to do so as Ms. Heidary requests.

Was the 2021 AGM held in compliance with the SPA and Ministerial Order?

28. There is no dispute that the 2021 AGM notice complied with the timelines of the SPA, or that the notice package itself contained the information required by the SPA.

Rather, Ms. Heidary's claims arise from her allegations that the method used by the strata for owners attending and voting at the 2021 AGM contravene the Ministerial Order and the SPA sections 54 and 56.

29. Section 54 of the SPA sets out a person's right to vote at a general meeting. Generally, all owners, and in some cases tenants and others, have a right to vote at the general meeting.
30. Section 49(1) of the SPA says a strata corporation may, by bylaw, provide for attendance at a general meeting by telephone or any other method, if the method permits all persons participating to communicate with each other. The strata does not have a bylaw providing for telephone or electronic attendance.
31. The CRT has decided several disputes about general meeting voting rights during the COVID-19 pandemic and clearly found that strata corporations must hold general meetings in a manner that permits owner attendance and participation, and that any restrictions placed on proxy voting are not permitted under the SPA. Some examples are *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157, *Balayewich v. The Owners, Strata Plan LMS317*, 2021 BCCRT 110, and *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463.

The Ministerial Order

32. Although section 2(2) of the Ministerial Order is permissive, there is nothing in the SPA that allows the strata to prevent people from participating in general meetings and eligible voters from voting or choosing their proxies. The result is that if the strata conducts a general meeting and cannot safely accommodate participants in a physical meeting space, it must provide for electronic attendance and voting. This was the CRT decision reached in *Balayewich* at paragraph 23. Although not binding on me, I find the decision persuasive and rely on it here.

33. As discussed below, I find the strata did not permit its owners, including Ms. Heidary, to participate and vote at the 2021 AGM, contrary to the Ministerial Order.

The SPA

34. Ms. Heidary says the SPA entitles every owner to vote at a general meeting either in person or by proxy, and that nothing in the SPA permits the strata to deprive an owner of their statutory rights under SPA sections 54 and 56. I agree.

35. The strata issued notice of the 2021 AGM on December 29, 2020. A copy of the notice package was provided in evidence. The first page of the notice package says the 2021 AGM would be held “by proxy” and also gave notice of an “informal/townhall meeting” to be held about 2 weeks prior to the 2021 AGM on January 13, 2021. The notice provided that both the townhall meeting and the 2021 AGM meeting would be held via Zoom and gave details of the meeting particulars including Zoom meeting IDs, passcodes, and dial in telephone numbers.

36. The 2021 AGM agenda included a $\frac{3}{4}$ vote resolution (resolution B) to consider approving an expense of \$3,345,000 to repair the building envelope as recommended by RDH Engineering Ltd (RDH). Funding of the expense was proposed by way of a special levy of \$3,045,000 and an expense from the contingency reserve fund (CRF) of \$300,000.

37. The second and third pages of the notice gave detailed instruction on how owners could attend the virtual townhall meeting, where a representative of RDH would be “in attendance” to discuss the “Building Envelope Project” and answer questions. The notice stated that there would be no minutes prepared for the townhall meeting because it was informal, and therefore no votes would be taken.

38. The AGM notice also explained how owners could cast their votes at the 2021 AGM held via Zoom. Although owners were permitted to attend the Zoom meeting, they were not permitted to attend the meeting in person, participate in the discussion, or amend any proposed resolutions. In order to exercise their votes, the strata required an owner give their proxy vote to a current strata council member and not to anyone else. It also required owners to provide their signed proxy forms to the strata property

manager by January 25, 2021, in advance of the meeting, and stated "... most decisions will be decided before the meeting starts and attending the meeting in person will therefore not change the outcome of the vote".

39. The 2021 AGM minutes confirm the voting method used stating the following:

At this meeting all votes were received by proxy, counted and verified in advance of the meeting by the Strata Manager.... The deadline to submit proxies was January 25, 2021 by 4:00 PM either by email to the Strata Manager or dropped off at the Building Office....

40. In a sworn affidavit, the applicant in the related proceeding, who owns a different strata lot in the strata, confirmed the manner in which owner participation and voting occurred at the 2021 AGM, which was substantially as stated in the 2021 AGM notice and minutes. The strata did not dispute this other than to deny it acted contrary to the legislation.

41. In support of her argument, Ms. Heidary cites *Shen*, where she says the CRT held that an owner cannot be forced to exercise their voting rights through a restricted proxy. I agree.

42. As in *Hodgson*, I find the strata intended the townhall meeting to allow owners to ask questions, speak to proposed resolutions, including to RDH about the proposed building envelope repairs, and nominate future strata council members. In addition, owners were clearly discouraged from attending the 2021 AGM and advised they could only attend "as observers", given strata council members would hold all the owners' proxies. I note, the strata did not provide the meeting location in the event owners wanted to attend in person.

43. SPA section 56(1) says a person who may vote under section 54 may vote in person or by proxy. Under section 56(3), a person may appoint any person as their proxy, other than an employee of the strata or a person who provides management services to the strata. The evidence is clear that the strata's voting method denied persons entitled to vote at the 2021 AGM from both participating in discussion on the proposed resolutions and strata council elections, as well as choosing their proxy, as proxies

were required in advance of the AGM and restricted to the elected strata council members at the time.

44. I acknowledge the strata relied on its property manager for advice about holding the 2021 AGM in the manner it did, and provided copies of other general meeting notices held by other strata corporations that contained similar participation and voting information. However, I find just because other strata corporations used the same or similar methods does not mean those methods complied with the legislation.
45. For these reasons, I find the participation and voting process used by the strata for conducting the 2021 AGM was contrary to the Ministerial Order and SPA sections 54 and 56.

What is an appropriate remedy?

46. The main remedy sought by Ms. Heidary is that the 2021 AGM and all resolutions passed at the 2021 AGM, be set aside and a new AGM be held. For the reasons that follow, I order resolution B about the building envelope is invalid and order the strata not to act on it. I also order that all special levies collected under resolution B be refunded as there is no evidence any special levy funds have been spent.
47. Aside from procedural resolutions, the resolutions passed at the 2021 AGM include majority vote resolutions to approve the 2020-2021 budget and elect strata council members for the current fiscal year, and $\frac{3}{4}$ vote resolutions to approve a transfer from the CRF to the operating fund to eliminate an operating fund deficit, the funding of the building envelope repair discussed above, and approving a loan from the CRF to the operating fund to cover the strata's insurance premium payments to be repaid by January 23, 2021.
48. There is no evidence the strata has called another general meeting to correct the procedural irregularities it followed for the 2021 AGM. However, I decline to invalidate the entire 2021 AGM.
49. I do not invalidate the strata's approval to move funds from the CRF to cover the operating deficit as, although no submissions were provided, it is possible the funds have been spent. Therefore, if I ordered the funds returned to the CRF it could create

additional issues not contemplated by the parties. I see no reason not to allow this relatively routine resolution to stand. I find the same applies to the CRF loan for the insurance premium and find that approval of the $\frac{3}{4}$ vote resolution for the CRF loan can stand.

50. I also decline to set aside the election of the strata council members because I find it is more than likely the newly elected strata council held meetings and made decisions on behalf of the strata between the 2021 AGM date and the date of this decision. Neither party made submissions on the decisions made by the strata council and there are no strata council meeting minutes before me, but I find it would likely cause more harm than good to set aside the election of the strata council and potentially reverse the decisions it made. I also find such a decision would go against the CRT's mandate to provide dispute resolution services in a speedy, economical and flexible manner, given additional submissions would likely be required.
51. However, I find the most substantive resolution considered at the 2021 AGM, resolution B to approve the building envelope repair, cannot stand. There is some evidence the vote count on this resolution was flawed such that the resolution did not pass as Ms. Heidary submits in her support of her additional remedies I discussed earlier. However, I find I do not need to consider if resolution B received the required 75% approval, given the 2021 AGM was not properly called. Having said that, I note that voting sheets and "sign in" information provided by the strata do not support the number of votes shown as present at the meeting.
52. I find resolution B invalid and order the strata not to act on resolution B. It follows that any special levy funds collected by the strata that relate to the building envelope repair under resolution B must be returned to the people that paid them and I so order. The strata must refund any special levy payments collected based on resolution B within 30 days of the date of this decision.
53. Ms. Heidary requested a new AGM be held to consider the same resolutions. However, given my conclusion that only resolution B is invalid, I order the strata to hold a special general meeting to consider resolution B within 90 days of the date of

this decision. The strata must follow SPA sections 54 and 56 about attendance and voting methods, and allow eligible voters to appoint a proxy of their choosing.

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 not to follow this general rule. I find Ms. Heidary was largely successful in this dispute, so I order the strata to reimburse her \$225 for CRT fees. Ms. Heidary did not claim dispute-related expenses, so I make no order for that.

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

ORDERS

56. I order the strata:

- a. Not to act on resolution B for the building envelope repair, allegedly passed at the 2021 AGM,
- b. Within 30 days of the date of this decision, to refund any special levies collected that relate to resolution B,
- c. Within 90 days of the date of this decision, to hold a special general meeting to consider resolution B by properly following the SPA and other legislation that affects calling and holding general meetings, in particular SPA sections 54 and 56.
- d. Within 30 days of this decision, to pay Ms. Heidary \$225 for CRT fees.

57. Ms. Heidary is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

58. I dismiss Ms. Heidary's remaining claims.

59. 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.

J. Garth Cambrey, Vice Chair