



Civil Resolution Tribunal

Date Issued: November 5, 2021

File: ST-2021-002626

Type: Strata

Civil Resolution Tribunal

Indexed as: *Karmali v. The Owners, Strata Plan BCS 2143*, 2021 BCCRT 1177

B E T W E E N :

MEHMUD KARMALI

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-2021-001973 and my reasons

for decision in that dispute are indexed as *Heidary v. The Owners, Strata Plan BCS 2143*, 2021 BCCRT 1176 (related proceeding).

3. Here, the applicant, Mehmud Karmali, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2143 (strata).
4. Mr. Karmali says the strata's January 26, 2021 AGM (2021 AGM) did not meet procedural requirements of the *Strata Property Act* (SPA), Provincial Government Ministerial Order M114 (Ministerial Order), and the strata's bylaws. As a result, Mr. Karmali says certain meeting activities are invalid and the meeting should be "nullified".
5. In submissions, Mr. Karmali says in order to correct the procedural deficiencies, the invalid voting at the 2021 AGM should be set aside and the AGM should be reconvened in compliance with legal requirements. I infer Mr. Karmali seeks an order for these things.
6. The strata denies Mr. Karmali's allegations and says at the 2021 AGM, owners were able to communicate freely "with the use of voice and texting". I infer the strata says it did not act contrary to any legislation or its bylaws.
7. Mr. Karmali is self-represented. The strata is represented by a strata council member.
8. For the reasons that follow, I generally find in favour of Mr. Karmali, but grant orders different than those he requests as set out below. My decision in this dispute is consistent with my decision in the related proceeding.

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). 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.

10. 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.
11. 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.
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.

ISSUES

13. The issues in this dispute are:
 - a. Was the 2021 AGM held in compliance with legislation and strata bylaws in effect at the time?
 - b. If not, what is an appropriate remedy?

BACKGROUND

14. In a civil proceeding such as this, as applicant, Mr. Karmali must prove his 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.
15. 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.

16. 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. I find the Standard Bylaws, as amended by the owner developer, are applicable to this dispute. Several other bylaw amendments were filed with the LTO that are not relevant.
17. 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.
18. On April 17, 2020 the government issued the Ministerial Order under the *Emergency Program Act*. Section 2(2) of 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 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 remained in effect until December 31, 2021: see B.C. Reg. 181/2021.
19. On May 29, 2020, section 17.23 of the *Strata Property Regulation* (regulation) was amended to permit, among other things, a strata corporation to hold its AGM up to 2 months after the last day the meeting must be held under SPA section 40(2) if a state of emergency is declared under the *Emergency Program Act*.

EVIDENCE AND ANALYSIS

Was the 2021 AGM held in compliance with legislation and strata bylaws in effect at the time?

20. There is no allegation that the 2021 AGM notice was provided contrary to the timelines of the SPA, or that the notice package itself otherwise contravened the SPA. Rather, Mr. Karmali's claims arise from his allegations that the method used by the strata for owners participating and voting at the 2021 AGM contravene the Ministerial Order, SPA sections 51 and 56, and strata bylaw 27.
21. 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.

22. 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.
23. 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 and regulation

24. 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, such as during COVID-19, 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.
25. I agree with Mr. Karmali that the Ministerial Order and amended regulation 17.23 discussed above provide the strata with relief from some specific requirements of the SPA during times when a state of emergency exists, but otherwise do not affect any other SPA requirements.
26. I accept that the strata failed to call its AGM within the time permitted under section 17.23 as Mr. Karmali suggests, because the strata did not dispute his assertion. However, I do not find that calling an AGM 1-month late is sufficient reason on its own to invalidate the AGM. Depending on the circumstances, there may be valid reasons why an AGM is delayed. The reasons why the AGM was delayed are not in evidence, nor were any detailed submissions made.

27. However, as discussed below, I find the strata did not permit its owners, including Mr. Karmali, to participate and vote at the 2021 AGM, contrary to the Ministerial Order and SPA.

The SPA

28. Mr. Karmali says the 2021 AGM did not allow owners to actively participate in the meeting, make motions, or cast votes during the meeting, and that there was no registration process to issue voting cards. He says these actions of the strata are contrary to the SPA or the strata's bylaws. I agree.

29. 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.

30. 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.

31. 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.

32. The AGM notice also explained how owners could cast their votes at the 2021 AGM. 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".

33. 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....

34. In a sworn affidavit, Mr. Karmali 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. He also confirmed his and other owners' objections to the process at the 2021 AGM and at a February 18, 2021 hearing. The strata did not object to Mr. Karmali's statements, other than to provide a blanket denial that it acted contrary to the legislation.

35. 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.

36. 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, given proxies were required in advance of the AGM and restricted to the elected strata council

members at the time. It is also plausible that the outcome of the votes at the 2021 AGM could have been different if voters who did not submit a proxy in advance of the meeting because they were “disenfranchised” by the strata’s procedures, were permitted to cast their vote, as suggested by Mr. Karmali.

37. I acknowledge the strata relied on its property manager for advice about holding the 2021 AGM in the manner it did, and provided copies from 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.
38. 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.
39. Mr. Karmali also says that the strata acted contrary to SPA section 51 by failing to wait 1 week before taking action to implement resolution B, because the $\frac{3}{4}$ vote was passed by less than 50% of the strata’s votes. According to the strata’s evidence, resolution B passed with 57 votes in favour. Given 57 votes is about 21% of the strata’s total possible votes of 272, section 51 required the strata not to take action on resolution B for 1 week unless there was reasonable grounds for the strata to believe imposing the special levies was necessary to ensure safety or prevent significant damage or loss as set out in section 51(2). The strata did not address Mr. Karmali’s argument. Mr. Karmali provided an accounting statement for his strata lot that shows the special levy instalments associated with resolution B were added to his account on January 27, 2021, 1 day after the 2021 AGM. Based on the accounting statement, and that I find there was no reasonable grounds for the strata to believe imposing the special levies was necessary to ensure safety or prevent significant damage or loss, I find the strata acted contrary to SPA section 51.
40. However, I find the purpose of section 51 is to allow owners 1 week to petition the strata to demand it reconsider the $\frac{3}{4}$ vote. Given there is no evidence of any such demand, I find nothing turns on the strata’s breach of SPA section 51.

41. Finally, Mr. Karmali says the strata did not issue voting cards to eligible voters nor allow voters to use their voting cards during the meeting or request a precise count of the votes as required under bylaw 27. I agree. While I accept issuing voting cards for a virtual meeting may be difficult, that does not mean the strata can ignore its bylaw.
42. For all of these reasons, I find the strata acted contrary to the legislation and strata corporation bylaws.

What is an appropriate remedy?

43. The main remedy sought by Mr. Karmali 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 find 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, given there is no evidence the special levies collected have been spent.
44. Aside from procedural resolutions, the resolutions passed at the 2021 AGM include majority vote resolutions to approve the 2020-2021 budget and election of 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.
45. There is no evidence the strata has called another general meeting to correct the procedures it followed for the 2021 AGM. For the reasons that follow, I find it is appropriate to grant modified orders requested by Mr. Karmali.
46. 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 CRF 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.

47. 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.
48. However, I find the most substantive resolution considered at the 2021 AGM, resolution B to approve the building envelope repair, cannot stand. As I noted above and in the related proceeding, there is some evidence the vote count on this resolution was flawed such that the resolution did not pass. However, I find I do not need to decide if resolution B received the required 75% approval, given the 2021 AGM was not properly called.
49. 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.
50. Mr. Karmali 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. The strata must also follow bylaw 27 by distributing voting cards and giving voters an opportunity to request a precise vote count.

CRT FEES AND EXPENSES

51. 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 Mr. Karmali was largely successful in this dispute, so I order the strata to reimburse him \$225 for CRT fees. Mr. Karmali did not claim dispute-related expenses, so I make no order for them.
52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Karmali.

ORDERS

53. I order the strata:
- a. Not to act on resolution B for the building envelope repair, allegedly passed at the 2021 AGM, as I find the resolution invalid,
 - b. Within 30 days of the date of this decision, to refund any special levy payments 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 51, 54 and 56, and bylaw 27.
 - d. Within 30 days of this decision, to pay Mr. Karmali \$225 for CRT fees.
54. Mr. Karmali is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
55. I dismiss Mr. Karmali's remaining claims.
56. 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