



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Babchuk v. The Owners, Strata Plan VR 255*, 2022 BCCRT 63

B E T W E E N :

WILLIAM BABCHUK

APPLICANT

A N D :

The Owners, Strata Plan VR 255

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about strata corporation meeting procedures during the COVID-19 pandemic.

2. The applicant, William Babchuk, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 255 (strata). Mr. Babchuk says the strata did not comply with the *Strata Property Act* (SPA) and its own bylaws in the way it held the 2021 Annual General Meeting (AGM). He asks for a declaration that the 2021 AGM is invalid.
3. The strata denies any wrongdoing and says it complied with the SPA and its bylaws in holding the 2021 AGM. It further says that it rectified any potential technical errors in the 2021 AGM process by allowing owners to re-vote on most of the AGM issues at a September 2021 special general meeting (SGM). So, the strata says, this dispute is moot.
4. Mr. Babchuk represents himself. A strata council member represents the strata.
5. As explained below, I find the 2021 AGM did not comply with the SPA or the strata's bylaws. However, I dismiss Mr. Babchuk's claims because I find the CRT has no authority to grant declaratory relief absent any other remedy, in these circumstances.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

PRELIMINARY ISSUES

8. In his final submission, Mr. Babchuk claimed the strata attempted to bully and shame him by 3 times telling the other owners of the dispute's negative consequences to the strata as a whole. Mr. Babchuk did not amend his Dispute Response to include this further claim or ask for any related remedy and so I find the strata did not receive proper notice of this claim. I find it would be procedurally unfair to consider the merits of this claim in this dispute.
9. In any event, I find Mr. Babchuk's claim of bullying and shaming is a claim that the strata council members failed to meet the standard of care required under section 31 of the SPA, to act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. Strata council members owe these duties to the strata as a whole and not to individual owners. So, a strata lot owner cannot be successful in a claim against a strata for duties owed by its strata council members under section 31 (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32). So, even if I had considered Mr. Babchuk's claim of bullying and shaming, it would not have been successful.
10. The strata asked to submit a reply to Mr. Babchuk's final submission. Generally speaking, the respondent is not entitled to submit a further response to the applicant's final submission, unless procedural fairness requires it, such as when an applicant submits new evidence or a new argument that the respondent could not have reasonably anticipated. I find the only new argument Mr. Babchuk submitted in his final submission was the allegation of bullying and shaming, which I found would not be successful, even if I did consider it. So, I find the strata has not been prejudiced and procedural fairness does not require me to allow the strata a final reply.

ISSUES

11. The issues in this dispute are:
 - a. Is this dispute moot, given the September 2021 SGM?

- b. If not, did the April 2021 AGM contravene the SPA or the strata's bylaws?
- c. If so, what is the appropriate remedy, if any?

EVIDENCE AND ANALYSIS

12. In a civil dispute like this one the applicant, Mr. Babchuk, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.

Background

- 13. The background facts are largely undisputed.
- 14. The strata was created in 1975 and consists of 52 residential strata lots.
- 15. The strata filed a set of amended bylaws at the Land Title Office on March 3, 2015, which I find apply to this dispute. Although the strata filed further bylaw amendments in 2018 and 2019, I find they are not relevant to this dispute.
- 16. The strata's April 7, 2021 AGM notice sets out a multi-stage process. First, an online townhall meeting was held on April 20, 2021, so owners could ask questions about agenda items. The strata accepted approximately 78 questions in advance of the townhall meeting and provided written answers to the owners. Second, owners were asked to appoint 1 of 2 named strata council members as proxy and use the included proxy form to vote on the AGM agenda items. Proxy forms were to be submitted by noon on April 27, 2021. Third, the AGM was held by video conference, starting at 6 pm on April 27, 2021.
- 17. According to the AGM minutes, only 2 owners attended the meeting in person, with 42 owners attending by proxy. In other words, no owners attended by video.
- 18. The strata held an in person, outdoor, SGM on September 21, 2021. The August 30, 2021 notice package explained the purpose of the SGM was to re-vote on the motions and resolutions made at the 2021 AGM meeting, excluding the operating budget,

elevator modernization project and council elections. I note that owners were provided with the option of attending the SGM in person or appointing a proxy to attend and vote on their behalf. Mr. Babchuk takes no issue with the 2021 SGM process in this dispute.

Is this dispute moot?

19. The strata says this dispute is moot (meaning no longer legally relevant), because the owners have now re-voted on the 2021 AGM agenda items.

20. In *Binnersley v. BCSPCA*, 2016 BCCA 259, the BC Court of Appeal described the legal principle of mootness, as follows:

... if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot...

21. Having reviewed both the AGM and SGM agendas and minutes, I find most of the April AGM motions and resolution results were ratified by the owners revotes at the September SGM. However, the 2021 operating budget approval, strata council elections and elevator project were not put to the owners for re-voting at the September SGM. Given that the strata's fiscal year end is December 30th, I find the 2021 operating budget is now moot. I also find it would be impractical, and serve little purpose, to re-elect the 2021 strata council members given they have completed most of their terms.

22. However, as acknowledged by the strata in its submissions, the April AGM vote to approve removing over \$200,000 from the contingency reserve fund (CRF) to modernize the strata's elevator, was not ratified at the September SGM. Although I accept that the project has already begun, there is no indication and all the money has been spent. So, I find that, at the very least, the validity of the elevator modernization resolution vote remains a live issue. So, I find this dispute is not entirely moot.

Did the April 2021 AGM contravene the SPA or the strata's bylaws?

23. Section 54 of the SPA sets out an owner's right to vote at an AGM or SGM. It is undisputed that the 2021 AGM could not accommodate all owners in person, due to the BC Provincial Health Officer's order prohibiting gatherings of 50 people.
24. It is undisputed that the strata does not have a bylaw allowing general meeting attendance by electronic method, as allowed under section 49 of the SPA. However, under section 2(2) of the April 17, 2020 Ministerial Order issued under the *Emergency Program Act* (M114), a strata corporation may still hold a meeting by electronic means, even without such a bylaw, so long as the method used allows all participants to communicate during the meeting. Under (M114). M114 was adopted into the *COVID-19 Related Measures Act* (CRMA) in July 2020. Section 3(5)(a) and Schedule 1 of the CRMA extended the electronic attendance at strata property meetings provision and I find it was in effect at the time of the strata's April 2021 AGM.
25. I find the April 2021 AGM did not allow for the participants to communicate with each other during the meeting and so did not comply with the CRMA. The AGM notice specifically says that there would be no virtual AGM and that owners could only view the meeting which, I infer, means view the vote counting.
26. To the extent that the strata argues participants could have communicated with each other via the online chat function while viewing the April 2021 AGM, I find any such communication would have been meaningless, given the advanced voting process established by the strata. It did not allow owners, or their proxy, to amend resolutions or vote on those amended resolutions as required under SPA section 50(2). As I discussed in *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463, I find the pre-AGM townhall meeting does not replace discussions and potential resolution amendments which are intended to occur at the same time, and by the same owners and proxies, who vote on the resolutions. On balance, I find the April 2021 AGM contravened the CRMA as it did not allow participants to meaningfully communicate during the meeting.

27. I further find the AGM proxy form contravened section 56 of the SPA because it did not allow owners to appoint their own proxy. Further I find the process did not allow the proxy holder to “stand in place of the owner” as required under section SPA 56(4), as only 2 proxy holders could not reasonably represent the interests of 52 strata lot owners and meaningfully discuss motions or propose amendments to the motions or resolutions.
28. I also find the AGM process did not allow for the issuance of voter cards or for secret ballot if requested, as required under the strata’s bylaw 30.
29. Overall, I find the April 2021 AGM process failed to allow for the participation and discussion of owners and proxies contemplated by sections 50, 54 and 56 of the SPA, and bylaw 30.

Remedy

30. Mr. Babchuk does not ask that the strata re-do the AGM and have owners re-vote on the April 2021 AGM agenda items. If Mr. Babchuk had asked for an order that the strata re-do the April 2021 AGM, I would likely only have contemplated such an order about the elevator modernization project resolution, given my above findings that the strata held revotes on most of the April 2021 AGM motions and resolutions.
31. As his only remedy, Mr. Babchuk asks the CRT to declare the April 2021 AGM invalid. As explained in the non-binding but persuasive decision of *Fisher v. The Owners, Strata Plan, VR 1420*, 2019 BCCRT 1379, the CRT does not have authority to make a declaratory order under its strata jurisdiction, unless the declaration is incidental to another claim for relief, which is not the case here given Mr. Babchuk has requested no other remedy.
32. Overall, even though I find the strata’s April 2021 AGM contravened the CRMA, the SPA and the strata’s bylaws, I find I do not have the legal authority to grant Mr. Babchuk’s requested remedy. So, I dismiss his claim.

CRT FEES and EXPENSES

33. 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. In this case, I find Mr. Babchuk was only partially successful in his claim because he received no remedy and because the strata rectified most of the invalid 2021 AGM results before this dispute reached adjudication. In these circumstances I find Mr. Babchuk is not entitled to reimbursement of his claimed CRT fees.
34. The strata seeks reimbursement of its dispute-related expenses, including legal fees. Although I find the strata was partially successful in this dispute, I find its success was partly due to steps it only took after Mr. Babchuk filed his CRT dispute. So, I find the strata is not entitled to reimbursement of its claimed disbursements.
35. Even if I had found the respondent strata entitled to its claimed expenses, I would not have allowed its claim for legal fees. This is because CRT rule 9.5(3) says the CRT will not order reimbursement of lawyer's fees in a strata dispute unless there are extraordinary circumstances. Applying the factors set out in CRT rule 9.5(4), I find no extraordinary circumstances because this dispute was not complex, neither party was represented by a lawyer, and neither party's conduct caused unnecessary delay or expense in the dispute process.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Babchuk.

ORDERS

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

Sherelle Goodwin, Tribunal Member