



Civil Resolution Tribunal

Date of Original Decision: April 4, 2022

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File: ST-2021-003705

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dettmers v. The Owners, Strata Plan LMS 3903*, 2022 BCCRT 375

B E T W E E N :

VENERANDA DETTMERS, CHRISTA KIRSTE, WOLFGANG DETTMERS,
DIETER KIRSTE, CLARA LAU, and MILICA JONE

APPLICANTS

A N D :

The Owners, Strata Plan LMS 3903

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about the validity of voting on a resolution at a strata corporation's annual general meeting (AGM).

2. The applicants, Veneranda Dettmers, Christa Kirste, Wolfgang Dettmers, Dieter Kirste, Clara Lau, and Milica Jone, each own or co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 3903 (strata).
3. The strata's April 1, 2021 AGM was held electronically. During the AGM, the owners participated in a 3/4 vote on "Resolution A". Resolution A was initially defeated. The strata allowed a revote, which then passed by 1 vote. The applicants say the strata should not have held the revote, and that the revote's results are invalid. As remedy in this dispute, the applicants request an order that strata stop acting on the results of the revote.
4. The strata says the applicants' claim should be dismissed. The strata says it held the revote because during the first vote, some owners were not able to cast their votes using the electronic voting platform. The strata says it conducted the AGM in a reasonable, democratic, and fair manner, and that the revote complied with the *Strata Property Act* (SPA). The strata requests reimbursement of its dispute-related legal fees.
5. The applicants are represented in this dispute by Veneranda Dettmers. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss the applicants' claims. I also dismiss the strata's claim for reimbursement of legal fees.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. 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.

ISSUES

11. The issues in this dispute are:
 - a. Was the revote invalid, and if so, what remedies are appropriate?
 - b. Is the strata entitled to reimbursement of its dispute-related legal fees?

REASONS AND ANALYSIS

12. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
13. The purpose of Resolution A was to approve renewal work in the interior common property (CP) hallways of the strata buildings, including replacing the carpets, painting the walls, and installing new wall coverings, baseboards, and light fixtures. Resolution A included approval of the project as a significant change to CP, to be

funded by 2 instalments from the contingency reserve fund up to \$666,000, and by 2 special levies totaling up to \$1,334,000 payable by instalments..

14. Resolution A was a $\frac{3}{4}$ vote resolution because it was about approving significant changes to CP under SPA section 71, and approving special levies under SPA section 108, it.
15. There was a second resolution (Resolution B) also voted on at the AGM. However, there is no dispute about the validity of that vote, so I do not address it in this decision.
16. It is undisputed that due to the COVID-19 pandemic, the AGM was held electronically, via Zoom, and that all voting was conducted using an online platform called Meeting Pulse (the platform). The parties agree that at the AGM, there was an initial practice vote using the platform, before voting on several issues that required majority votes. The parties agree there were no technical or procedural problems with the platform for any of these votes.
17. Then, the vote was held on Resolution A. The minutes show that for the initial vote on the resolution, there were 101 votes in favour, 34 opposed, and 21 abstentions, so the resolution failed.
18. The strata says that after the initial vote on the resolution, at least one attendee communicated via the platform's chat function that they were unable to record their vote before the voting platform closed. The strata says the AGM moderator, facilitator and chair decided to conduct a revote on the resolution to allow all attendees sufficient time to cast their votes.
19. The minutes show that in the revote, there were 107 votes in favour, 35 opposed, and 20 abstentions, and the resolution passed.
20. The applicants do not argue that the Resolution A revote did not achieve the necessary $\frac{3}{4}$ vote support in order to pass. I have not considered whether the revote met the required threshold for a $\frac{3}{4}$ vote under SPA section 1(1), as that issue is not before me to decide in this dispute. Instead, since the applicants did not dispute it, I accept the vote calculations set out in the minutes.

21. Instead, the applicants argue the strata acted inappropriately by holding the revote on Resolution A. They dispute whether anyone was unable to vote and say the strata should not have unilaterally decided to allow the revote. Rather, they say the meeting chair (council president) should have held a majority vote on whether to allow the revote on Resolution A. The applicants also say that funding a project for cosmetic improvement of CP is expensive and will be a hardship for several owners.
22. The strata says it will incur significant financial and other consequences if the applicants' claim succeeds. The strata says it has already acted on the results of the Resolution A revote, including signing a contract with a contractor, paying a \$50,000 retainer, and paying the contractor \$263,470.55 for materials and other expenses towards the project. The applicants say the strata should not have taken these steps, since it was aware of the applicants' objections to the revote.
23. The applicants made submissions about how some owners are opposed to the project, and similar resolutions to fund this work which failed at previous general meetings. However, I find those facts are not determinative of the issue in dispute. Instead, the issue to be decided is whether the voting procedure for approving Resolution A was valid. For the following reasons, I find that it was.
24. First, there is nothing in the SPA or the strata's bylaws that set out a specific procedure that must be followed in order to hold a revote. I agree that a revote in the context of online voting is similar to a recount of votes in an in-person meeting, where voting was done by show of hands rather than ballots. In that situation, the only way to hold a recount is to have the owners show their hands a second time. This sometimes means that a different number of voters will vote in the recount, or that some voters may change their votes. However, it does occur at times, and there is nothing in the SPA or the strata bylaws that makes it impermissible.

25. Also, there is no legal requirement for strata corporations to follow particular rules of order, such as *Robert's Rules of Order*, when conducting meetings or voting.
26. As noted above, the applicants dispute the strata's assertion that one or more voters were unable to vote. The applicants say that is untrue, and that during the meeting, the chair "waited on everyone and asked several times if people have voted."
27. I find the evidence before me establishes that at least one person was unable to vote, and communicated that problem to the meeting moderators using the platform's online chat tool immediately after the first vote. I base that finding in part on the written statement of owner SK. SK wrote that she had no problems in voting in the practice vote or majority votes during the AGM, but during the Resolution A voting she was unable to enter her vote. SK said the voting window failed to appear on her computer screen. SK said someone announced that the voting was closed, so she used the chat tool to send a message to advise that she had not been able to vote.
28. I find SK's statement reliable and persuasive, in part because she was not a strata council member or involved in running the meeting, and is therefore not subject to the bias the applicants attribute to some council members. Also, SK's statement is supported by written statements from 3 other witnesses DS, NS, and JD. These 3 witnesses are all employed by the strata's property management firm, FirstService Residential (FSR). All 3 witnesses say that one of the moderators of the online meeting, ML, received a chat message from an owner saying they had been unable to vote. In particular, I rely on the following statements:
- DS says she attended the AGM as co-moderator, and at least 1 attendee messaged in the chat that they were unable to vote.
 - Property manager NS says that as he was calculating the results of the first vote, ML called to her that someone had sent a chat message saying they were unable to vote.
 - FSR regional director JD wrote that after voting closed, one of the moderators announced there was at least one attendee who communicated through the

“Q&A” or chat function on the voting platform that they could not vote. JD says she immediately suggested to the meeting chair that they should “conduct a recount by way of a re-vote of Resolution A”. JD says the chair agreed, so the moderators opened the voting platform again to allow the attendees to cast their votes again.

29. Based on these statements from SK, DS, NS, and JD, I accept that the strata decided to hold the revote because an owner reported an inability to vote after the first vote on Resolution A was closed.
30. The applicants say the strata was required to hold a majority vote on whether to approve a revote. In support of that argument, they rely in part on the decision of the BC Court of Appeal (BCCA) in *The Owners, Strata Plan NW 971 v. Daniels*, 2010 BCCA 584. In *Daniels*, the BCCA considered the validity of a special levy resolution. The resolution did not get the required $\frac{3}{4}$ of votes in support on the first vote, and the meeting chair permitted a motion to reconsider the unsuccessful vote, based on *Robert's Rules of Order*. The resolution then passed after a second round of voting. The BCCA found that this was acceptable under the SPA.
31. The applicants also cite a BC Supreme Court (BCSC) decision, *Loveys v. The Owners, Strata Plan NW204*, 2008 BCSC 1924. *Loveys* was also about a resolution approving a special levy, which failed to obtain $\frac{3}{4}$ of votes in support on the first vote. After discussion about the merits of the resolution, and a recess in which owners discussed the matter among themselves, the owners held a majority vote in favour of revoting on the failed resolution. The BCSC found the revote was valid.
32. *Daniels* and *Loveys* are both binding precedents that the CRT must follow. However, I find that neither of these decisions suggest that a strata corporation is to follow particular rules of order, or hold a majority vote in order to hold a recount or a revote. As noted above, there are no mandatory meeting procedures, other than what may be set out in strata bylaws. Also, the courts did not say that a majority vote was necessary for a revote. Rather, I find that *Daniels* and *Loveys* establish that revotes

are acceptable, as long as they are held in a fair manner. The BCSC explained this as follows in paragraph 35 of *Loveys*:

The strata council bylaws are silent as to the procedure to be followed in meetings and do not adopt *Robert's Rules of Order*. Mr. Lehman testified that he has chaired the meetings of this corporation for a number of years and that he follows *Robert's Rules of Order* as a guideline. I find that the strata corporation must be able to decide how its meetings will be conducted, so long as the meetings are conducted in a way that is democratic and fair. The strata corporation adopted as a procedure one which is recognized as legitimate in other contexts, that is, *Robert's Rules*, and which is generally viewed as democratic and fair.

33. I find this reasoning means that strata corporations are required to follow fair and democratic general meeting procedures, but are not required to follow specific sets of rules unless that is specified in the bylaws. I note that the strata bylaws in this case do not include a requirement to follow particular rules of order, or to hold a majority vote before conducting a revote or recount.
34. The applicants cite my previous decision in *Hedberg v. The Owners, Strata Plan 511*, 2021 BCCRT 340 as authority for their argument that the strata should have held a majority vote to approve the revote. However, in *Hedberg*, I found that a second vote on a resolution was valid, even though there was no majority vote approving the revote. Thus, this decision, while not a binding precedent in any event, does not support the applicants' position.
35. The applicants also cited another CRT decision, *Bandara v. The Owners, Strata Plan NW 1721*, 2019 BCCRT 161. In *Bandara*, a CRT vice chair found that a strata corporation was required to conduct a second vote on a $\frac{3}{4}$ vote resolution after a majority of owners voted in favour of a motion to hold that second vote. However, I find that *Bandara*, which relied on the reasoning in *Daniels*, does not suggest that a strata corporation must obtain majority approval before holding a second vote on a resolution. Rather, as stated in *Bandara*, where the SPA and strata corporation

bylaws are silent on the procedure to be followed at a general meeting, the procedure adopted by the strata must not be unfair to the minority members. The applicants disagree with the outcome of the revote in this dispute. However, I find there is nothing in the evidence before me that establishes that the revote was unfairly conducted, or that the process of the first vote was more democratic than the revote.

36. For these reasons, I dismiss the applicants' claim.

Legal Fees

37. The strata requests reimbursement of its dispute-related legal fees, and provided invoices in support of this claim. For the following reasons, I dismiss this claim.

38. CRT rule 9.5(3) says the CRT will not order a party to pay another party's legal fees in a strata property dispute unless there are extraordinary circumstances that make it appropriate to do so. Rule 9.5(4) says that in considering whether to award reimbursement of legal fees, the CRT may consider the complexity of the dispute, the involvement of the representative, whether there was unnecessary delay or expense, and any other appropriate factors.

39. The strata argues that there are extraordinary circumstances justifying legal fee reimbursement in this dispute, in part because the applicants sent a letter relying on SPA section 51. Section 51 says owners may call for a reconsideration of a $\frac{3}{4}$ vote resolution if the vote passed with less than 50% of the strata corporation's votes, and if persons holding at least 25% of the votes make a written demand for a general meeting to reconsider the resolution.

40. In this dispute, the parties agree that there was no written demand from persons holding 25% of the strata's votes for a reconsideration of Resolution A. However, I find the fact that the applicants incorrectly cited a SPA provision in a letter to the strata is a minor issue that does not constitute an extraordinary circumstance justifying reimbursement of legal fees.

41. The strata also argues that its council members are volunteers who are guided by a property manager, none of whom are capable of giving legal advice, particularly given the significant financial implications if the applicants' requested remedy had been granted. I am not persuaded by this argument, since many CRT strata disputes have potentially high monetary amounts at stake, and CRTA section 20 specifically sets out the general rule that parties represent themselves in CRT proceedings.
42. Finally, the strata says the CRT has ordered legal fee reimbursement in previous cases, such as *The Owners, Strata Plan VR 293 v. Bains*, 2019 BCCRT 504, and *The Owners, Strata Plan KAS 1201 v. Neilson*, 2021 BCCRT 667. However, those cases involved bylaw enforcement, which triggers SPA section 133(2). Section 133(2) specifically permits strata corporations to seek reimbursement of their costs in enforcing bylaws. Also, in *Bains* and *Neilson*, the strata corporations each had bylaws that specifically permitted reimbursement of legal fees incurred to enforce bylaws. This is not a case about enforcing bylaws. For that reason, I find the reasoning in *Bains* and *Neilson* is not applicable here. Similarly, the strata cites *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, in which the Court of Appeal granted the strata corporation reimbursement of legal fees expended to remedy bylaw contraventions. I find this is a specific circumstance permitted under SPA section 133(2). I do not agree with the strata's submission that the applicants' attempts to question the validity of the revote are analogous to an owner having breached strata bylaws.

CRT FEES AND EXPENSES

43. Under CRTA section 49 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. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, other than the legal fees discussed above. So, I order no reimbursement.
44. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the applicants.

ORDER

45. I dismiss the applicants' claims, the strata's claim for reimbursement of legal fees, and this dispute.ⁱ

Kate Campbell, Vice Chair

ⁱ Amendment Notes: Paragraph 28 of this decision has been amended under the authority of CRTA section 64, in order to correct 2 inadvertent errors. The changes are shown as underlined text in this amended decision.