



Civil Resolution Tribunal

Date Issued: May 11, 2022

File: ST-2021-004818

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan LMS 2461*, 2022 BCCRT 562

B E T W E E N :

SHUN LAP EDNA WONG, TAGHI NOVIN, PUI CHING LI, WEI
JING YAO, FARAH KHODABAKHSH, TSUI LEUNG WONG, YUEN
WAI GAY CHAN, LEE-CHING SUSAN KAO, XIAO BING GAO,
COAST BLOSSOM MIRACULOUS SKIN CARE LTD., and ZE
QIANG RUAN

APPLICANTS

A N D :

The Owners, Strata Plan LMS 2461

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about strata governance, meeting procedures, hearing requests, access to records and other issues.
2. The applicants, Shun Lap Edna Wong, Taghi Novin, Pui Ching Li, Wei Jing Yao, Farah Khodabakhsh, Tsui Leung Wong, Yuen Wai Gay Chan, Lee-Ching Susan Kao, Xiao Bing Gao, Coast Blossom Miraculous Skin Care Ltd. and Ze Qiang Ruan, own or co-own strata lots in the respondent strata corporation The Owners, Strata Plan LMS 2461 (strata).
3. The applicants say the strata contravened its bylaws and the *Strata Property Act* (SPA) by hiring a lawyer to chair certain general meetings. They say the expenditures on that lawyer, a translator, and a security guard for general meetings were unauthorized. The applicants say the strata's decision to retain a lawyer for a previous Civil Resolution Tribunal (CRT) dispute was also an unauthorized expenditure. They seek a refund of their proportionate contributions to these expenditures.
4. The applicants also say the strata prevented them from participating and selecting their own proxies at certain general meetings. They say the resolutions passed at those meetings are invalid. Finally, the applicants also say the strata has failed to conduct hearings and give written decisions, failed to provide records upon request, and shredded documents without authorization. The applicants request various remedies for these claims.
5. The strata says it has acted in accordance with the SPA, the *Strata Property Regulation* (Regulation) and its bylaws. I infer it says the claims should be dismissed.
6. The applicants are represented by Shun Lap Edna Wong. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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.

Dispute Notice

11. The CRT issued the Dispute Notice based on the applicants' claims on July 5, 2021. During or after the facilitation phase of this dispute, the applicants withdrew some of their claims and modified others, resulting in the CRT issuing an amended Dispute Notice on October 28, 2021. Both parties were given a copy of the amended Dispute Notice and an opportunity to file submissions on the claims identified in the amended Dispute Notice during the tribunal decision process phase. Neither party objected to this process, and I find it created no procedural fairness issues.

Late evidence

12. The strata submitted 4 pieces of evidence after the evidence submission deadline. The applicants were given the opportunity to respond to the late evidence, so I find there is little or no prejudice to them in admitting it. Given the CRT's mandate that includes flexibility, I accepted the late evidence, although it was of limited relevance.

ISSUES

13. The issues in this dispute are:
- a. Did the strata contravene bylaw 31 by electing a lawyer to chair certain general meetings?
 - b. Were the expenditures on a lawyer, security guard and translator for general meetings authorized under the SPA?
 - c. Did the 2020 AGM, 2020 SGM or 2021 AGM procedures contravene the SPA?
 - d. Was retaining a lawyer for CRT dispute ST-2019-007667 an unauthorized expenditure, and if so, should the applicants be refunded their proportionate share of the expense?
 - e. Was the strata required to give Mr. Wong a hearing or written decision as requested on August 19, 2020 and May 24, 2021?
 - f. Was the strata permitted to withhold the records Mr. Wong requested on December 8, 2020?
 - g. Must the strata refund the applicants' proportionate shares of money spent shredding old records?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not.

15. The strata and the applicants' representative, Mr. Wong, have a long history of litigation. The parties provided evidence and submissions about events dating back to 2007, much of which was not directly relevant to any claim or any requested remedy. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
16. On June 4, 2018, the strata filed at the Land Title Office (LTO) a complete set of bylaws that repealed and replaced all previous bylaws. Those 2018 bylaws are the bylaws I find relevant to this dispute. There has been one filed amendment since then, which the applicants say was not validly authorized due to procedural irregularities at the 2020 AGM. I address that issue below.

Did the strata contravene bylaw 31 by electing a lawyer to chair certain general meetings?

17. It is undisputed that the strata hired a lawyer, Paul Mendes, to chair its May 29, 2020 annual general meeting (2020 AGM), December 28, 2020 special general meeting (2020 SGM) and May 27, 2021 annual general meeting (2021 AGM).
18. The applicants say the strata should be ordered to stop hiring a lawyer to chair its meetings. They say chairing meetings is the mandatory duty of the strata president and vice president.
19. Because the parties dispute the interpretation of bylaw 31, I set it out in whole:
 - (1) Annual and special general meetings must be chaired by the president of the council.
 - (2) If the president of the council is unwilling or unable to act, the meeting must be chaired by the vice president of the council.
 - (3) If neither the president nor the vice president of the council chairs the meeting, a chair must be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting.

20. When read together, these provisions do not impose a mandatory duty on the council president or vice president. They give a right of first refusal to the president, then the vice president. If neither is willing to chair the meeting, the voters must elect a chair. This interpretation is supported by bylaw 25, which allows the council to delegate its powers and duties, with limited exceptions that do not apply here, to persons who are not council members.
21. The applicants say Mr. Mendes did not have the right to attend the general meetings as he is not a “voter” under SPA section 54. However, section 54 is about who may vote at a general meeting. It does not restrict attendance or participation at general meetings.
22. If the strata intended to place restrictions on who could chair the meeting, it could have included restrictions in the bylaw. For example, the strata corporation’s bylaws in *Lam v. The Owners, Strata Plan EPS 2328*, 2018 BCCRT 73, said a chair would be elected “from among those persons, *eligible to vote*, who are present at the meeting” (at paragraph 48, my emphasis). I also note bylaw 32 specifically allows persons who are not eligible to vote to participate in discussion at the meeting. They must leave only if requested to do so by a majority vote resolution.
23. It is undisputed the president and vice president were unwilling to chair the 2020 AGM, 2020 SGM and 2021 AGM. It is also undisputed that at each of those meetings, it was moved and seconded to appoint Mr. Mendes to chair the meeting, and the vote result was in favour of appointing Mr. Mendes. I find the strata complied with its bylaws and the SPA in electing Mr. Mendes to chair the 2020 AGM, 2020 SGM and 2021 AGM. I dismiss this claim.

Were the expenses of having a lawyer, security guard and translator for the meetings authorized under the SPA?

24. The applicants argue that the owners never approved the expenditures of hiring Mr. Mendes, a security guard and a translator at the general meetings. I note both parties used the term “translator” where “interpreter” is more appropriate for oral translation, but I have adopted the parties’ term “translator” for consistency.

25. SPA section 92(a) says a strata must establish an operating fund for common expenses that occur annually or more frequently. Given that a strata must hold an AGM annually and SGMs as needed, I find expenses routinely associated with general meetings, like the cost of an external chair, translation and security services, are operating fund expenses.
26. SPA section 97 says the strata must not spend money from the operating fund unless the expenditure is consistent with the purposes of the fund as set out in SPA section 92(a) and first approved by a $\frac{3}{4}$ vote resolution at an AGM or SGM, or authorized in the budget, or authorized under SPA sections 98 or 104(3).
27. The first question is whether these meeting expenses were authorized in the strata's 2020 and 2021 budgets.
28. The strata says the authorization for a security guard and translator is found in the "miscellaneous" budget line, which allowed for \$1,000 in the fiscal year ending March 31, 2021, and \$1,500 in the fiscal year ending March 31, 2022. The strata does not say how much it paid for the security or translation services. However, on balance I accept that these services likely cost less than \$1,000 and fit within the "miscellaneous" budget line. The applicants provided no contrary evidence.
29. The strata says the authorization for the expenditure of Mr. Mendes' attendance at the general meetings is found in the "legal" budget line, which budgeted \$5,000 for each fiscal year. Invoices from Lesperance Mendes show the strata paid \$1,232 for Mr. Mendes' attendance and preparation for the 2020 AGM and \$448 for similar services related to the 2020 SGM and advice about the 2021 AGM. There is no invoice for attendance at the 2021 AGM in evidence but I find it likely did not exceed the amount for attendance at the 2020 AGM. The strata budgeted \$5,000 in both fiscal years under the category "legal". I find the expense of Mr. Mendes' services were less than \$5,000 in each year and were authorized by the annual budgets under SPA section 97. I do not agree with the applicants' assertion that expenses under the "legal" budget item must exclusively relate to litigation.

30. I conclude that the applicants have not established that the general meeting expenditures were not authorized by the strata's budgets. I dismiss this claim.

Did the 2020 AGM, 2020 SGM or 2021 AGM procedures contravene the SPA?

31. The applicants challenge the validity of the 3 general meetings and the resolutions voted on at those meetings. They say the meetings contravened SPA sections 49, 54, and 56. I first set out the law before considering whether each meeting met the SPA's requirements.

32. 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.

33. On April 15, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. M114 under the *Emergency Program Act*. That order enabled strata corporations to conduct general meetings electronically (by telephone or other electronic methods), during the provincial state of emergency declared due to the COVID-19 pandemic. The order applies to all strata corporations whether or not they have a bylaw allowing general meetings to be held electronically. Similar to SPA section 49(1), the only requirement is that all persons can communicate with each other.

34. The *COVID-19 Related Measures Act* (CRMA) says strata corporations could hold electronic meetings 90 days after the date on which the last extension of the declaration of a state of emergency expired or was cancelled, which was June 30, 2021. So, I find the strata was allowed to hold its 2020 and 2021 general meetings electronically in accordance with Order M114.

35. Section 54 of the SPA says that with limited exceptions all owners have a right to vote at general meetings. Section 56 says a person who may vote under section 54 may vote in person or by proxy and sets out who may be proxies.

36. The CRT has decided several disputes about general meeting voting rights during the COVID-19 pandemic. Generally, strata corporations must hold general meetings in a manner that permits owner attendance and participation, and restrictions on proxy voting are not permitted under the SPA (see, for example, *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463).

May 29, 2020 AGM

37. The strata acknowledges that it conducted the 2020 AGM using “restricted proxy” forms. The 2020 AGM notice said “attendance” was only permitted by proxy and all proxy forms must name as proxy the strata president, EC, with council member WW as an alternate. The proxy forms the strata distributed with the notice package already contained EC’s and WW’s names. There was no option for voters to select a different proxy. The notice also did not identify any means of participation, such as asking questions or proposing resolutions, in the meeting. However, it did say there was an information meeting by “electronic means” on May 21, for discussion of agenda items, questions, and nomination of council members.

38. The 2020 AGM minutes noted there were 103.2 votes by restricted proxy, 1 by “electronic means”, and 2 in person. Based on this, I find the strata prevented owners from attending and participating in the AGM. I also find the strata did not permit owners to select a proxy of their choice, contrary to SPA section 56. Overall, I find the strata’s 2020 AGM process failed to allow for the participation and discussion of owners and proxies contemplated by the SPA and Order M114.

39. The applicants say the strata should be ordered to “account for all the expenses”, including Mr. Mendes’ fees, for the 2020 AGM. It is not clear exactly what they mean. I find they are not entitled to a refund of their contribution to these fees because, as I found above, expenditure was approved as part of the strata’s previous budget. That the meeting’s procedures did not comply with the SPA does not negate the strata’s obligation to pay the expenses.

40. However, I agree with the applicants that the bylaw amendment adding bylaw 3(5)(m)(iv) passed at the 2020 AGM was not in accordance with SPA section 128,

which requires a valid $\frac{3}{4}$ vote resolution. I order the strata to refrain from enforcing that bylaw until the bylaw amendment is approved by a resolution passed by $\frac{3}{4}$ vote at an annual or special general meeting and filed at the LTO in accordance with SPA section 128.

December 28, 2020 SGM

41. The strata held the 2020 SGM primarily to consider a $\frac{3}{4}$ vote resolution to apply for judicial review of a CRT decision issued in 2019 using up to \$3,000 from the contingency reserve fund (CRF). The result was 115 votes in favour, 7 votes opposed, and 3 votes abstained.
42. It is undisputed that the strata allowed owners to select their own proxies and to participate via Zoom. In that regard, I find the 2020 SGM complied with the SPA, the bylaws, and Order M114.
43. The applicants say the resolution to fund the judicial review was invalid because Mr. Wong was prevented from acting as a proxy for voters on the resolution. The 2020 SGM notice included a proxy form that said owners who were the individual applicants in the 2019 CRT decision for which the strata was voting on applying for judicial review could not participate in the discussion or vote on the $\frac{3}{4}$ vote resolution. The strata relied on SPA section 169, which says if a strata corporation sues an owner or an owner sues the strata corporation, the owner does not have a right to attend those portions of any general meeting or council meeting at which the suit is “dealt with or discussed.” SPA section 189.4 says section 169 applies to CRT disputes.
44. According to the minutes, Mr. Wong held 19.2 votes by proxy, although 4 of the owners who named Mr. Wong as their proxy were also in attendance at the meeting. Mr. Mendes gave Mr. Wong the opportunity to address the attendees but removed him from the meeting before the discussion and vote on the $\frac{3}{4}$ vote resolution.
45. The applicants argue that Mr. Wong should not have been removed from the meeting because he was not attending as an owner but as a proxy standing in place of other

owners who were allowed to vote. They say the strata denied the voting rights of other owners.

46. On balance, I find the strata's approach complied with the SPA. The words "dealt with or discussed" in SPA section 169 are broad and must include voting on a resolution to fund a judicial review application, even when acting as a proxy. The provision is intended to prevent owners with a direct interest in proceedings from directing the strata's course of action with respect to those proceedings. Mr. Wong had no right to attend that portion of the SGM that was about the $\frac{3}{4}$ vote resolution. Owners were advised of this on the proxy forms, and were free to select as a proxy anyone who was not an applicant in the 2019 CRT dispute.
47. Even if I am wrong and Mr. Wong should have been allowed to participate as a proxy and cast the 19.2 proxy votes, it would not have changed the result. There would have been 115 votes in favour and, at most, 26.2 votes against, meaning 81% in favour. So, I dismiss the claim about the 2020 SGM.

May 27, 2021 AGM

48. The applicants raise 2 issues specific to the 2021 AGM. The first is that the meeting was by Zoom with no telephone option. Owners were advised in the 2021 AGM notice that they required a device with a camera and speakers to participate.
49. The applicants argue that the SPA and Order M114 require the strata to provide telephone participation. SPA section 49 leaves it to the strata to pass a bylaw that provides for attendance by telephone or other method, but as noted the strata has not done so here. Order M114 gives strata corporations the temporary power to conduct meetings "by telephone or any other electronic method," so long as all persons can communicate with each other during the meeting. The applicants do not argue that Zoom's online meetings do not allow all persons participating to communicate with each other. They also provided no evidence that any person was prevented from using Zoom and only could have participated by telephone. I find the Zoom meeting was an electronic method that allowed all persons participating to

communicate with each other, consistent with order M114. I find the strata was not required to allow telephone participation.

50. The other issue the applicants raise about the 2021 AGM is that, as stated in the notice, once the meeting was called to order, no further registrations were permitted. They say this penalized voters who may be late for any reason.
51. The applicants argue that bylaw 30(2) allows latecomers. Bylaw 30(2) is about quorum and says if a quorum is not present within 30 minutes of the meeting's start time, the eligible voters present in person or by proxy will count as a quorum. I do not agree that this means the strata cannot prevent late registrations in a Zoom meeting, particularly where the strata gives notice that late registrations will not be permitted as it did here. Anyone who could not make the meeting's start time was free to appoint a proxy. There is no legal requirement for strata corporations to follow particular rules of order when conducting meetings, so long as the process is fair. I note the applicants do not say that anyone was prevented from voting because they were late. I find there was no unfairness here. I dismiss the claim about the 2021 AGM.

Was retaining a lawyer for dispute ST-2019-007667 an unauthorized expenditure, and if so, should the applicants be refunded their proportionate share of the expense?

52. In the amended Dispute Notice, the applicants said strata council contravened SPA section 31, which sets out the standard of conduct for individual council members performing duties owed to the strata corporation. The courts have consistently found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA section 31. Given this, and because the applicants did not address SPA section 31 in their submissions, I have not considered section 31 further.
53. Mr. Mendes represented the strata in CRT dispute ST-2019-007667 (007667). That dispute led to a decision, *The Owners, Strata Plan LMS 2461 v. Luo*, 2020 BCCRT 1264, in which the strata was partially successful. It is undisputed that the strata's expenses associated with totaled \$16,513.32. The applicants say the strata's

decision to hire Mr. Mendes for 007667 was an unapproved expenditure out of either the operating fund or the CRF. They say the strata contravened either SPA section 97 or 98.

54. The strata says it already refunded the applicants' share of the dispute-related expenses as required by SPA section 189.4. The strata also says the applicants are improperly attempting to re-litigate claims that the CRT already decided. It says the issues are *res judicata*, meaning already decided. The strata's submissions fail to acknowledge that while there is some overlap, the applicants in this dispute are not the same as the respondents in 007667. For that reason, I find neither cause of action estoppel nor issue estoppel arise here. I also find that while 007667 considered and rejected the argument that the strata required a $\frac{3}{4}$ vote to authorize the dispute, it did not consider whether the expense of hiring a lawyer for the dispute was an authorized expense.
55. The strata does not say whether it spent money from the operating fund or CRF. In *Dockside Brewing Co. v. Strata Plan LMS 3837*, 2005 BCSC 1209, at paragraph 42, affirmed 2007 BCCA 183, the court said that payment of extraordinary legal fees like litigation expenses the strata chooses to incur cannot be made from the operating fund because they are inconsistent with the purposes of the fund.
56. The strata argues that section 98(3) permits the expenditures from the operating fund or the CRF if there are reasonable grounds to believe an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise. The strata also relies on the CRT's decision in *The Owners, Strata Plan VR 942 v. Thompson*, 2018 BCCRT 4. In *Thompson*, the CRT found that section 98(3) of the SPA applied to a strata's expenditure to have legal counsel at an AGM despite the fact that there were no formal legal proceedings, because the strata had fallen into dysfunction and the expenditure was considered necessary.
57. I find the strata has not established that there were reasonable grounds to believe retaining Mr. Mendes to bring a CRT claim against certain owners was immediately necessary. The strata has provided no evidence or argument that the matter could

not have waited for a ¾ vote approval. Starting a legal proceeding is different from a situation where a strata retains counsel to defend itself in a legal proceeding. I find the strata did not have authority for the expenditure of hiring Mr. Mendes for 007667.

58. However, the applicants have not provided any legal authority for their requested remedy of reimbursement of their respective contributions to the \$16,513.32 legal fees. The money has been spent, and the strata has reimbursed the respondents in 007667 as required by the SPA. I find that ordering the strata to hold an SGM or AGM to retroactively authorize the expenditure would ultimately serve no purpose and the applicants did not request that remedy anyway. Nor did the applicants request an order that the strata follow SPA sections 96 or 97 in the future, with the strata already required to do. For all these reasons, I decline to make any order.

Was the strata required to give Mr. Wong a hearing or written decision as requested on Aug 19, 2020 and May 24, 2021?

59. The applicants ask the CRT to order the strata to comply with SPA section 34.1 and hear Mr. Wong's complaints by "written presentation" and provide a written decision.

60. On August 19, 2020 Mr. Wong requested a hearing in a 3-page email. That email asked the strata council to "account for" issues ranging from surveillance cameras to the expense of shredding old records to the appointment of Mr. Mendes. The council offered Mr. Wong a hearing but cautioned that the purpose of the hearing would be to hear from Mr. Wong and not for Mr. Wong to interrogate the council. Mr. Wong declined the hearing.

61. On November 25, 2020, Mr. Wong emailed the strata manager, asking strata council to account for the issues he raised in his August 19 email and putting council on notice that if it did not comply with SPA section 34.1, he would commence legal action. Again the strata council offered a hearing, and again Mr. Wong declined.

62. Mr. Wong made additional hearing requests on May 8 and May 24, 2021. The May 8 request was for a hearing "by written presentation." Mr. Wong does not explain exactly what this means but I infer he wanted the council to read and consider his email or emails at a council meeting. The May 24 request was part of a 4-page email

with various complaints about EC. The strata council asserted that under section 4.01 of the Regulation, a hearing is an opportunity to be heard in person at a council meeting.

63. The applicants say they want the strata to “account for” or “deal with” these hearing requests and provide written decisions.
64. SPA section 34.1 says the strata must hold a hearing within 4 weeks if requested. It also says the strata must provide a written decision within 1 week of the hearing if the purpose of the hearing is to seek a decision. I find the strata has consistently offered to hold a hearing each time Mr. Wong has requested one, and each time, Mr. Wong has chosen not to attend. As well, I find Mr. Wong was likely not entitled to a hearing anyway. He was not accused of contravening a bylaw or rule. Rather, he wanted to complain about or ask questions of a council member. In *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11, the CRT found that in similar circumstances, the strata’s refusal to give an owner a hearing did not contravene the SPA (at paragraphs 82-100). I agree with the reasoning in *McDowell*, although it is not binding on me. A hearing is a right to be heard in person at a council meeting, not a forum to make demands or engage in discussion about strata governance.
65. I find Mr. Wong’s demands for a hearing “by written presentation” followed by a written decision from the strata council are not supported by the SPA. For clarity, I find the strata was not required to give Mr. Wong a written decision after any of his hearing requests because a) each time he declined to attend the hearing, b) he was not entitled to a hearing anyway, and c) the SPA does not contemplate hearing “by written presentation”.
66. I note another applicant, Taghi Novin, provided a sworn affidavit in which they said they too asked strata council for a written decision and did not receive one. I find the circumstances were similar in that Taghi Novin insisted that the hearing would be conducted “by written presentation” and demanded a written decision. I find the strata had no obligation to provide Taghi Novin with a written decision in the circumstances.

In any event, the applicants did not ask for a specific remedy related to Taghi Novin's hearing request.

Was the strata permitted to withhold the records Mr. Wong requested on December 8, 2020?

67. The applicants seek orders that the strata provide the records Mr. Wong requested on December 8, 2020. Mr. Wong asked for the following records the strata was required to prepare and maintain under SPA section 35(1)(b) and (c) and section 35(2):

- A list of council members and their contact information under section 4.1(1) of the Regulation,
- A list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers, parking stall and storage locker numbers, if any, and unit entitlements,
- A list of names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under SPA section 60,
- A list of names of tenants, and
- A list of assignments of voting or other rights by landlords to tenants under SPA sections 147 and 148.

68. Mr. Wong was entitled to ask for these records as SPA section 36 requires the strata to make the records available for inspection and provide copies of them to an owner upon request.

69. According to December 17, 2020 council meeting minutes, the strata council received complaints that Mr. Wong had knocked on the doors of rented units to obtain owners' contact information claiming the owners owed him money, and some owners were concerned that their personal information might be abused. The strata resolved to seek legal advice on the release of the information.

70. Mr. Wong says the strata ignored his request. The strata says it decided that it was not in the best interests of owners to provide the requested information. I find the language in SPA section 36 is mandatory. The strata does not have discretion to decide not to release records listed in section 35.
71. I find the applicants' requested resolution is sufficiently clear that they want the records Mr. Wong requested on December 8, 2020. I therefore order the strata to provide the applicants with the records identified in SPA section 35(1)(b) and (c), and section 4.1(a) of the Regulation. The strata may charge fees for copies of the records as set out in SPA section 36(4).

Must the strata refund the applicants' proportionate shares of money spent shredding old records?

72. As documented in July 16, 2020 council meeting minutes, the strata agent had 14 boxes of records over 6 years old that did not need to be kept any longer. The strata council considered options and costs and decided to make arrangements to shred the documents. The strata says the documents were shredded, but does not say at what cost, if any.
73. The applicants seek an order that the strata refund the applicants' share of money spent shredding strata records. They do not allege that the strata failed to retain records for the required time periods under SPR section 4.1. Rather, they say records belong to the owners so it was not the strata council's decision to make. The applicants also say shredding was not an approved, budgeted expense and the strata should have proposed a resolution for owners' approval.
74. A strata corporation's daily management is effected through the elected strata council (see *Jiwan Dhillon & Co. Inc. v. Gosal*, 2010 BCCA 324 at paragraph 18). The SPA sets out decisions that require votes of different thresholds depending on the importance of the decision. Nothing in the SPA requires a vote before documents the strata is not required to keep can be shredded. To interpret the SPA that way would paralyze the strata and annoy many owners.

75. As noted above, the operating fund is for expenses that occur at least annually, and the CRF is for expenses that occur less often than annually. Shredding old documents could be either depending on the strata's approach. The strata does not say whether it budgeted for shredding. Under SPA section 98(2)(b), shredding may also be excepted as an unapproved expenditure from the operating fund if it was, together with other unapproved expenditures, less than \$2,000. There is no indication in the evidence of the cost of shredding, so it is unclear what the strata spent. Accordingly, I find the applicants have not proven their claim that shredding was an unauthorized expenditure, and I dismiss it.

CRT FEES AND EXPENSES

76. 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. The applicants were partially successful, so I order the strata to reimburse them \$112.50 for half their CRT fees of \$225.00. Neither party claimed any dispute-related expenses.

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

ORDERS

78. I order that:

- a. Within 30 days of the date of this order, the strata pay the applicants \$112.50 for CRT fees.
- b. The strata must refrain from enforcing bylaw 3(5)(m)(iv) until the bylaw amendment is approved by a resolution passed by $\frac{3}{4}$ vote at an annual or special general meeting and filed at the LTO in accordance with SPA section 128.

- c. Within 30 days of the date of this order, the strata must provide the applicants with the records identified in SPA section 35(1)(b) and (c), and section 4.1(a) of the Regulation. The strata may charge fees for copies of the records as set out in section 36(4).

79. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*.

80. 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.

Micah Carmody, Tribunal Member