



Civil Resolution Tribunal

Date Issued: July 25, 2022

File: ST-2021-008028

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hewitt v. The Owners, Strata Plan LMS 2907*, 2022 BCCRT 843

BETWEEN:

R G JOHN HEWITT

APPLICANT

AND:

The Owners, Strata Plan LMS 2907

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about strata council elections.
2. The applicant, R G John Hewitt, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2907 (strata).

3. Mr. Hewitt says the strata council elections held at the strata's 2021 annual general meeting (AGM) did not follow the requirements of the *Strata Property Act* (SPA). He says 3 of the 7 elected council members were not properly elected because they did not receive a majority vote. Mr. Hewitt asks the Civil Resolution Tribunal (CRT) to order the strata to "enforce the law covering the election of Council members". He also says the CRT should order the strata to remove the 3 council members from office.
4. The strata says the vote was held correctly, and Mr. Hewitt's claim should be dismissed.
5. Mr. Hewitt is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. 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.
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 which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
8. 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.

9. 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.

ISSUE

10. Was the council election at the 2021 AGM held correctly, and if not, what remedies are appropriate?

BACKGROUND

11. In a civil claim like this one, Mr. Hewitt, as applicant, must prove his 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.
12. Documents filed at the Land Title Office (LTO) show that the strata repealed and replaced its all previous bylaws by filing new bylaws in August 2007. The strata filed several bylaw amendments after that. Taken together, these documents form the strata's complete bylaws. I refer to specific bylaws below where relevant. I find the Standard Bylaws in the SPA do not apply, since the Form I filed with the August 2007 bylaw amendments shows the resolution passed to amend the bylaws stated all previous bylaws were repealed "in their entirety".
13. SPA section 25 governs council elections. It says that at each AGM, the eligible voters who are present in person or by proxy at the meeting must elect a council. SPA section 51(1) says at annual and special general meetings, matters are decided by majority vote unless a different voting threshold is required or permitted by the SPA or the regulations. This means council elections must be approved by majority vote.

14. "Majority vote" is defined in SPA section 1(1) as "a vote in favour of a resolution by more than 1/2 of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting".
15. There are no other SPA provisions setting out how elections must occur. However, a strata corporation may have bylaws setting out the number of council positions, and how elections will be conducted.
16. The strata has the following bylaws about council elections:
 - Bylaw 9(1) – the council must have at least 3 and not more than 7 members.
 - Bylaw 10(1) – a council member's term of office ends at the end of the AGM at which the new council elected.
 - Bylaw 10(2) – a council member is eligible for re-election at the end of their term.
 - Bylaw 29(m) – the council election is the last item on the AGM order of business before the meeting ends.
17. There are no other strata bylaws specifically about how council elections must occur.

REASONS AND ANALYSIS

18. Mr. Hewitt says the council election did not meet the requirements of the SPA and the strata's bylaws. Specifically, he says only the first 4 candidates obtained the majority vote required to be elected to council. He says the remaining 3 candidates did not receive majority votes, and therefore should be removed from council.
19. The strata disagrees, and says it held the vote correctly.
20. The parties agree that Mr. Hewitt attended the August 25, 2021 AGM by proxy, and that his proxy was held by LL. The strata says LL left the meeting before the council election occurred. However, I find those facts do not affect the outcome of this

dispute. Rather, the question is whether the election met SPA and bylaw requirements.

21. The AGM minutes show that 8 owners, including LL, were nominated for council. The minutes state, "By no objection from the floor the members who obtained the greatest number of votes were declared as the new council". The minutes then list 7 council member names (all candidates except LL).
22. The minutes do not say how the voting was conducted, if at all, or what the vote count was. Mr. Hewitt says the AGM was chaired by the strata manager, who "declared" that 7 people had been elected to strata council. Although neither Mr. Hewitt nor his proxy were at the AGM at the time of the election, I find this account is consistent with the minutes, so I accept it.
23. The strata described the election in its submissions. The strata says that after LL left the AGM, "It was passed to have seven council members with no objections from the owners after our property manager asked three times are there any objections. The greatest number of votes were declared the new council." Elsewhere, the strata says this "was passed unanimously".
24. I find the strata's submission about the election procedure is not entirely consistent with a November 2, 2021 email from the strata manager to Mr. Hewitt. Mr. Hewitt had asked for the votes cast in favour of each of the 8 owners who stood for election at the AGM. The strata manager replied with the names of the 8 candidates, and a number from 24 to 62 beside each name.
25. There is nothing about these votes in the AGM minutes, and the strata provided no evidence or submissions about where it obtained these numbers. It may be the case that the strata provided a ballot with candidates names, and then either held a vote about or declared the top 7 candidates elected to council. But I find the evidence before me does not prove that is what happened, and the strata did not clearly explain what happened.

26. SPA section 35(1) says the strata must prepare minutes of all AGMs, containing the results of any votes. I find the August 2021 AGM minutes do not meet this requirement. Also, since the strata is required by statute to keep records of all votes, and has not provided that evidence in this dispute, I make an adverse inference that the August 2021 council election was not held by majority vote as required under the SPA. I therefore find in favour of Mr. Hewitt in this dispute.
27. Mr. Hewitt asks for an order that some council members be removed. I find this is not an appropriate remedy, in part because it appears none of the voting met SPA requirements, and in part because the strata must hold another council election very soon in any event. Therefore, I decline to order any strata council members removed from the strata council.
28. Mr. Hewitt also asks for an order that the strata “enforce the law covering the election of Council members”. By this, I infer he wants an order that the strata follow the SPA and bylaws when holding future council elections. Normally the CRT does not make that type of order, because it is about events that have not yet happened, and because a strata corporation is already required to follow the SPA and its bylaws. However, in this dispute the evidence indicates that the strata did not follow proper election procedures, including by not reporting the results of election votes in the AGM minutes. So, I order the strata to follow the SPA and bylaws when holding future council elections.
29. It is not the CRT’s role to give legal advice about how to hold future elections, so the strata may wish to seek advice about this.

CRT FEES AND EXPENSES

30. As Mr. Hewitt was mostly successful in this dispute, under the CRTA and the CRT’s rules I find he is entitled to reimbursement of \$225.00 in CRT fees. Neither party claimed dispute-related expenses, so I order no reimbursement.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Hewitt.

ORDERS

32. I order that:

- a. Within 30 days of this decision, the strata must reimburse Mr. Hewitt \$225 for CRT fees.
- b. The strata must follow the SPA and bylaws when holding council elections.

33. Mr. Hewitt is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

34. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair