



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Li v. Section 2 of the Owners, Strata Plan EPS1069, 2022 BCCRT 857*

B E T W E E N :

MING LI and BIG GREY WOLF INVESTMENT INC.

APPLICANTS

A N D :

Section 2 of the Owners, Strata Plan EPS1069

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Ming Li, is the co-owner of 3 strata lots in the strata corporation, The Owners, Strata Plan EPS1069 (strata), including 2 office strata lots and 1 retail strata lot. The applicant, Big Grey Wolf Investment Inc. (BGWI), owns 3 office strata lots in the strata. The respondent, Section 2 of the Owners, Strata Plan EPS1069 (office section), is the strata's office section. The strata is not a party to this dispute.

2. The applicants say Mr. Li was elected to the office section executive (section executive) as BGWI's representative at the office section's January 25, 2022 annual general meeting (January AGM). They say the office section later told Mr. Li that he had not been properly appointed as BGWI's representative and was ineligible to serve on the section executive. The applicants say the office section was wrong to revoke Mr. Li's appointment. They seek orders that the office section accept Mr. Li's appointment as BGWI's representative, and that Mr. Li be reinstated to the section executive. In the alternative, the applicants seek an order that the office section provide a template of an acceptable corporate representative appointment form.
3. The office section says that the document provided by Mr. Li before the January AGM was only a proxy allowing him to vote on BGWI's behalf and did not appoint him as BGWI's representative. The office section further says that it has been unable to confirm with BGWI that Mr. Li is its representative. As a result, and because Mr. Li is not in good standing with his own strata lots, the office section says that he is not eligible to be on the section executive.
4. Mr. Li represents both himself and BGWI. The office section is represented by a section executive member and takes issue with Mr. Li representing BGWI in this dispute.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. 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. Bearing in mind the CRT's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
8. 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.

Preliminary Issues

9. In their reply submissions, the applicants take issue with the office section's written argument document that it included as part of its evidence, even though the document contains submissions and not evidence. The applicants say this written argument document includes new allegations that the CRT should reject. The applicants say that by raising these new allegations in its written argument, the office section has denied the applicants the opportunity to submit evidence in response.
10. In addition to this written argument document, the office section submitted shorter submissions in accordance with the timelines set by the CRT. These submissions also include the new allegations that the applicants take issue with. I find it was unnecessary for the office section to provide the written argument document as part of its evidence. Since I have the office section's submissions before me, I find no need to refer to the written argument document and give it no weight.

11. One of the allegations in the office section's submissions is that Mr. Li is not authorized to bring this dispute on BGWI's behalf. This is an issue that the office section did not raise in its Dispute Response and has raised for the first time in its submissions. Based on the evidence before me, Mr. Li's authority to represent BGWI in this dispute is unclear. However, I find I do not need to decide this issue, or any of the other new allegations raised by the office section in its submissions, since I dismiss the applicants' claims in any event.
12. In addition to the new allegations, the office section also seeks 2 orders in its submissions. First, it asks that I order BGWI to meet with it either in person or virtually within 60 days. Second, it asks that Mr. Li be precluded from sitting on the section executive in any capacity, until outstanding arrears for strata liens registered against his strata lots have been paid. I note that the office section did not file a counterclaim to seek these remedies, though it had the option to do so. Given the absence of a counterclaim, I decline to make the orders sought by the office section.
13. I now turn to the applicants' claims.

ISSUES

14. The issues in this dispute are:
 - a. Was Mr. Li elected to the section executive as BGWI's representative?
 - b. If so, should I order Mr. Li's reinstatement to the section executive?
 - c. Should I order the office section to provide a template of an acceptable corporate representative appointment form?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

Background

16. The strata was created in 2013 and consists of 3 sections: an office section, a retail section, and a food court section. In June 2013, the strata registered its bylaws with the Land Title Office. The bylaws also apply to the office section. The strata and the sections have made various amendments to the bylaws over the years, but I find the amendments are not relevant to this dispute. I discuss the relevant bylaws below.

Was Mr. Li elected to the section executive as BGWI's representative?

17. *Strata Property Act* (SPA) section 28 says that only owners, individuals representing corporate owners, and tenants who have been assigned a landlord's right to stand for council may be council members. This eligibility requirement also applies to section executives. The SPA does not specify who may be the individual representative for a corporate owner.

18. It is undisputed that Mr. Li is a co-owner of 2 office strata lots. However, it is also undisputed that Mr. Li is ineligible to be on the section executive in his personal capacity because of strata liens registered against Mr. Li's strata lots. This is because bylaw 15.1 says that no person may stand for council, including the section executive, with respect to a strata lot if the strata is entitled to register a lien against that strata lot.

19. The applicants say Mr. Li was successfully elected to the section executive at the January AGM as BGWI's representative. They say that BGWI's January 12, 2022 Proxy and Representative Appointment form (appointment form) was accepted at the January AGM and that this form not only appointed Mr. Li as BGWI's proxy but also as BGWI's representative.

20. The applicants further say that on January 31, 2022, the office section informed Mr. Li that based on advice from its legal counsel, the appointment form was only a proxy appointment and did not appoint Mr. Li as BGWI's representative, making him ineligible for section executive membership.

21. The office section says that Mr. Li was not elected to the section executive. It says that the voters at the January AGM said they would support Mr. Li's nomination on the condition that the strata manager could verify with BGWI that it had in fact appointed Mr. Li as its representative to run for section executive.
22. I now turn to the evidence. The January AGM's minutes note that BGWI and 5 others were nominated as members for the section executive. The minutes go on to say that the strata manager recommended that BGWI's eligibility be reviewed further. The chair agreed to accept BGWI's nomination temporarily, until further clarification could be obtained after the meeting. It was then unanimously carried to close the nominations and elect all 6 nominees, subject to a further review of BGWI's nomination. The minutes go on to say that by the time the minutes were recorded, the section executive had received a legal opinion about BGWI's nomination. In light of that opinion, the section executive members agreed that the nomination did not comply with SPA section 28 and was disqualified.
23. The legal opinion referenced in the minutes is a January 25, 2022 email from AM, a lawyer, to SL, the strata manager. In this email, AM said that the appointment form made Mr. Li a proxyholder for BGWI for the January AGM but did not make him eligible to run for the section executive. AM said that if Mr. Li was BGWI's corporate representative, then he was eligible to run, provided BGWI's strata lots were in good standing.
24. The appointment form is also in evidence. It states that under SPA section 54, BGWI appointed Mr. Li as its proxy and representative to act at his discretion at the January AGM or any adjournment thereof. SPA section 54 sets out who may vote at an annual or special general meeting. SPA section 56 says that any person who may vote under section 54 may vote in person or by proxy.
25. I find the appointment form did not authorize Mr. Li to run as BGWI's representative for the section executive. This is because the appointment form specifically says that it was an authorization for Mr. Li to act on BGWI's behalf at the January AGM. There is no indication in this document that BGWI intended to authorize Mr. Li to be its

representative outside of this meeting, which would be necessary for Mr. Li to be on the section executive as BGWI's representative. There is also no indication in this document that BGWI's appointment of Mr. Li was for the purpose of satisfying SPA section 28 since the only SPA section referenced was section 54.

26. Based on the above evidence, I find that contrary to the applicants' submissions, the office section did not accept that the appointment form made Mr. Li BGWI's representative for the purpose of running for section executive. Rather, I find Mr. Li's election to the section executive was conditional on the office section being able to verify his status with BGWI.
27. I now consider whether Mr. Li's election to council was confirmed by BGWI verifying his appointment as its representative. As mentioned above, the office section says that it has been unable to confirm this directly with BGWI.
28. The evidence includes a March 11, 2020 email from Mr. Li to SL. In this email, Mr. Li purports to relay a message from ZG, BGWI's sole director and officer, saying that Mr. Li is BGWI's corporate representative. The office section questions this authorization's validity. It says that because the email did not come directly from ZG, and because the message itself switched from first to third person, it was unclear whether ZG or Mr. Li drafted it. The office section also says that in the email, Mr. Li advised it to refrain from contacting ZG directly, which it submits is inappropriate and suspicious in light of the ambiguity surrounding Mr. Li's status as BGWI's representative.
29. There is also a January 25, 2022 letter that the applicants say is signed by ZG. Mr. Li sent this letter to SL by email on March 8, 2022. In this letter, ZG said that BGWI appointed Mr. Li as its corporate representative for matters related to BGWI's strata lots. The letter did not specify that this appointment was also for the purpose of having Mr. Li stand on the section executive as BGWI's representative. However, in his cover email to SL attaching the letter, Mr. Li said that this letter not only made him the contact person for BGWI but could also be used for election to strata council. Notably, ZG was not copied on Mr. Li's email to SL.

30. The office section's evidence includes a May 13, 2022 written statement from SL. In this statement, SL said that he had not heard directly from any director or officer of BGWI confirming that Mr. Li is its corporate representative for matters related to BGWI's strata lots. SL further said that the only correspondence he had received had come from Mr. Li, attaching documents that Mr. Li said were signed by BGWI's authorized officer.
31. The applicants say that the office section did not attempt to verify Mr. Li's status with BGWI. However, there are emails in evidence that show SL attempted to set a meeting with BGWI's registered director and officer. From the emails, it appears this meeting never took place after Mr. Li intervened, asking why the meeting was needed. When SL provided the reason, Mr. Li responded with the March 11, 2022 message mentioned above where he told SL to refrain from contacting ZG directly.
32. Based on the above evidence, I find that the office section did attempt to verify directly with BGWI whether Mr. Li was its representative but was unsuccessful in doing so. Notably, the applicants have not explained or provided any evidence to show what Mr. Li's relationship is to BGWI. From BGWI's BC Company Summary that is in evidence, I find that Mr. Li is not a director or officer of BGWI. The evidence does not address whether the office section was aware of any relationship between Mr. Li and BGWI. As such, I find it was reasonable for the office section to want to do its due diligence and seek verification directly from BGWI that Mr. Li was its representative for the purpose of standing on the section executive.
33. As mentioned above, Mr. Li and BGWI, as the applicants in this dispute, bear the burden of proving that BGWI appointed Mr. Li as its representative for the purpose of running for section executive. Given the lack of any direct evidence from BGWI on this point, I find the applicants have failed to meet this burden.
34. In short, I find that Mr. Li was not elected to the section executive at the January AGM as BGWI's representative. As such, I decline to order his reinstatement.

Should I order the office section to provide a template of an acceptable corporate representative appointment form?

35. As an alternate remedy, the applicants ask that I order the office section to provide an acceptable template for a corporate representative appointment form. However, they have not referred to any SPA provisions or bylaws that would oblige the office section to provide such a template. I find that the office section is not required to provide the requested template under the SPA or the bylaws. So, I decline to make the order sought by the applicants.

CRT FEES AND EXPENSES

36. 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 in this case not to follow that general rule. As the applicants were unsuccessful, I find they are not entitled to any reimbursement. The office section did not pay any CRT fees or claim any dispute-related expenses, so I order none.

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

ORDER

38. I dismiss the applicants' claims and this dispute.

Nav Shukla, Tribunal Member