



# Civil Resolution Tribunal

Date Issued: August 10, 2022

File: ST-2020-007219

Type: Strata

Civil Resolution Tribunal

Indexed as: *1003708 B.C. Ltd. v. The Owners, Strata Plan EPS2300*, 2022 BCCRT 901

**B E T W E E N :**

1003708 B.C. LTD.

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS2300

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about an alleged invalid annual general meeting (AGM) and related bylaw fines and legal expenses.
2. The applicant, 1003708 B.C. Ltd. (708), owns strata lot 9 (SL9) and other strata lots,

in the respondent strata corporation, The Owners, Strata Plan EPS2300 (strata). Mr. Vlado Brcic is the sole director of 708 and represents it in this dispute.

3. 708 says the strata's annual general meeting (AGM) of November 23, 2020 (November 2020 AGM) was held contrary to the requirements of the *Strata Property Act* (SPA). It says this because the strata used a restricted proxy process that violated the principles of procedural fairness. 708 seeks the following orders:
  - a. The strata's November 2020 AGM is a nullity and all decisions made at the meeting are set aside, including the decision to raise strata fees.
  - b. All fines levied against 708 are set aside.
  - c. The strata reimburse 708 \$2,845.72 for legal fees it incurred.
  - d. A declaration that the strata has acted contrary to the SPA and bylaws.
4. The strata disagrees with 708 and says it did not act contrary to the SPA or in a manner that was procedurally unfair. The strata asks that the CRT dismiss 708's claims. A strata council member represents the strata.
5. For the reasons that follow, I find the November 2020 AGM was invalid. I order the strata to reconsider resolutions to approve the previous AGM minutes, waive the depreciation report under SPA section 94(3), and approve the budget commencing September 1, 2020. I also order the strata to reverse bylaw fines associated with a June 17, 2021 letter and I refuse to resolve 708's claim for a declaration the strata acted contrary to the SPA and bylaws. I dismiss 708's remaining claims.

## **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.
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 section 10(1) of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
10. Under section 123 of the CRTA and the CRT rules, 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 Matters***

11. The original multi-claim Dispute Notice was issued on October 15, 2021. An amended Dispute Notice was issued on April 4, 2022 after 708 withdrew all claims except the claim that the November 2020 AGM was procedurally unfair and held contrary to the SPA. Two additional requested remedies were also added to the amended Dispute Notice and are included in the requested remedies noted above. The strata was given an opportunity to amend its Dispute Response but advised CRT staff that it would rely on its original Dispute Response, so I find no procedural unfairness issues arise concerning the amended Dispute Notice.
12. I also note that 708 did not provide any evidence to support its claim. So, at my request, CRT staff requested 708 provide evidence relevant to its claim in the amended Dispute

Notice and its requested remedies. 708 provided some evidence, which the strata was able to review. The strata was again given the opportunity to amend its Dispute Response but chose not to do so.

## **ISSUES**

13. I find the issues in this dispute are:

- a. Was the November 2020 AGM conducted contrary to the SPA and if so, should the AGM be declared a nullity and all decisions set aside?
- b. Is the strata entitled to collect fines imposed against 708?
- c. Should the CRT declare the strata acted contrary to SPA and bylaws?
- d. Is 708 entitled to reimbursement of \$2,845.72 for legal expenses?

## **BACKGROUND, REASONS AND ANALYSIS**

14. As applicant in a civil proceeding such as this, 708 must prove its claims on a balance of probabilities, meaning “more likely than not”. I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.
15. The strata plan shows the strata was created in June 2017 under the *Strata Property Act* (SPA). It consists of 39 strata lots in a single 5-level building above an underground parking area. Of the 39 strata lots, 3 are commercial and 36 are residential.
16. Land Title Office documents confirm the strata’s bylaws are the Standard Bylaws under the SPA as amended by bylaws filed with the LTO on November 20, 2019. I note there are no bylaws that create separate types of strata lots or separate sections as permitted under the SPA. There is also no bylaw permitting owners to attend a general meeting electronically.

17. Based on the overall evidence, I infer Mr. Brcic also represented 708 at times leading up to this dispute being filed.
18. I briefly summarize the background information which is not contested.
19. On April 17, 2020, the BC government issued Provincial Government Ministerial Order M114 (Ministerial Order) under the *Emergency Program Act*. Section 2(2) of Ministerial Order allowed a strata corporation to hold a strata meeting by electronic means even if the strata corporation did not have a bylaw permitting electronic attendance at its meetings, as required under SPA section 49. As noted, the strata did not have a bylaw that permitted electronic attendance at general meetings during the time of this dispute.
20. The Ministerial Order became a provision of the *COVID-19 Related Measures Act* (CRMA) when the CRMA was enacted on July 8, 2020. Under section 3(5)(a) and Schedule 1 of the CRMA, the electronic attendance at strata property meetings provision remained in effect until December 31, 2021: see B.C. Reg. 181/2021.
21. On October 21, 2020, the strata manager emailed strata owners of the upcoming November 2020 AGM to be held by “Restricted Proxy and Zoom Conference” because of the COVID-19 pandemic. The email explained that the proposed budget for the 2020/2021 fiscal year was a significant increase over the previous year’s budget and gave reasons for the increase in strata fees. A copy of the proposed budget was attached to the email. The email also requested that owners interested in standing for a strata council position notify the strata manager prior to October 30, 2020 and that the strata council election would also be done by restricted proxy. Mr. Brcic replied by email on October 22, 2020 expressing concern about the lack of budget information and the short time (9 days) given for a response.
22. On November 4, 2020, the strata issued formal notice for the November 2020 AGM. The notice period is not at issue. Although neither the AGM notice package nor the restricted proxy is in evidence, a covering letter dated November 4, 2020 (covering letter) is. The covering letter includes the following relevant points:

- a. Owners cannot make changes to the restricted proxy form.
- b. Amendments to resolutions will not be considered.
- c. Owners who submit completed restricted proxy forms will not be able to alter their vote.
- d. Motions to amend the budget or for additional nominations to the strata council will result in the meeting having to be adjourned.
- e. Secret ballots will not be permitted.
- f. Only those owners who advise the strata manager of their intention to attend the Zoom meeting and conference call will be given a link to the meeting.

23. On November 17, 2020, Mr. Brcic provided a signed proxy form to the strata and requested further information on the increased budget. The following day on November 18, 2022, the strata manager emailed Mr. Brcic and requested he “circle a name from the list to be your proxy” from 1 of 4 strata council members, stating “the naming of the proxy will not affect your vote in any way”. I infer the email relates to the signed proxy form. It appears Mr. Brcic provided a revised proxy form as he admits his “vote” was counted at the November 2020 AGM. There is no evidence the strata responded to his budget questions.

24. The November 2020 AGM was held by Zoom and conference call as scheduled. The meeting minutes confirm 4 strata council members were present in person plus the strata manager. The minutes also confirm that 25 strata lots, including “21 Restricted Proxies issued by owners and four in person” owners were represented at the meeting. I infer the 4 owners present “in-person” at the meeting were the 4 strata council members. In addition to administrative matters, the minutes show the following decisions:

- a. Passed a majority vote resolution to approve the September 30, 2019 AGM minutes,

- b. Passed a  $\frac{3}{4}$  vote resolution to waive the depreciation report requirement under SPA section 94(3),
  - c. Defeated, by majority vote, a proposed rule about realtor lockboxes,
  - d. Passed, by majority vote, the annual operating budget effective September 1, 2020 (2020 budget), and
  - e. Approved, by majority vote, the election of a 5-member strata council.
25. After the November 2020 AGM, 708 and Mr. Brcic learned of CRT decisions concerning the use of restricted proxies. Mr. Brcic made several enquires of the strata about the validity of the AGM given the strata's use of restricted proxies at the November 2020 AGM. He requested a new AGM be held based on his belief the November 2020 AGM was invalid and decisions made at that AGM were invalid. The strata confirmed in correspondence through its strata manger to Mr. Brcic dated December 12, 2020 and February 17, 2021 that it would not hold a new AGM. The strata also wrote to Mr. Brcic on December 22, 2022 stating the process it used permitted owners to attend the meeting and communicate with each other.
26. 708 admits it did not pay the increased amount of strata fees based on the newly adopted budget.
27. On June 17, 2021, the strata manager emailed "The Dakova Group" via Mr. Brcic advising the strata had "approved a fine of \$200 for unpaid Strata Fees". The letter references strata lots 1, 9, 10, 11, 12 and 19 and says a statement of account was attached, but the statement is not before me.
28. 708 requested a strata council hearing under SPA section 34.1 which occurred on August 16, 2021, but did not resolve this dispute.

***Was the November 2020 AGM conducted contrary to the SPA?***

29. The CRT has consistently found that general meetings that employ restricted proxies are invalid. A common theme in these decisions is that a person who has a right to vote at a general meeting cannot be deprived of their right to appoint a proxy of their

choosing and the process used by the strata must allow discussion among owners at the meeting. See for example, *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157, *Balayewich v. The Owners, Strata Plan LMS317*, 2021 BCCRT 110 and *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463. I note that 708 expressly brought the decisions in *Shen* and *Balayewich* to the attention of the strata when he learned of them.

30. Among other things, *Shen*, *Balayewich*, and *Hodgson* address an owner's right to vote through a proxy of their choosing. SPA section 54 sets out a person's right to vote at a general meeting. Generally, all owners, and in some cases tenants and others, can vote. In this dispute, 708, as owner, had the right to vote. SPA section 56 says a person, which includes a corporate entity such as 708, who may vote under section 54 may vote in person or by proxy. Nothing in the SPA gives a strata corporation the power to restrict a person's choice of proxy. Under section 56, a person may appoint any proxy of their choosing and limit such an appointment at their discretion.

31. As noted, the strata's restricted proxy form is not before me. However, based on the overall evidence and submissions, I find the strata did not allow 708 to choose its own proxy, contrary to SPA section 56. I place significant weight on the strata manager's November 18, 2020 email requesting Mr. Brcic identify a strata council member as his proxy, in essence to ensure his "vote" would count. I also place significant weight on the strata council president's December 12, 2020 letter to Mr. Brcic which states in part:

... your suggestion that submitting your proxies to one of the council members was improper or unusual, and somehow jeopardizes your vote is also incorrect. The implication that council members lack the integrity to be straight up on the outcomes is offensive.

32. I agree with the strata's December 22, 2022 reply to Mr. Brcic that the process the strata used might have permitted owners to attend the November 2020 AGM by electronic attendance and communicate with each other. However, given owners were required to provide a proxy to a strata council member, I find the strata's process did



not allow owners to discuss or consider amendments to the proposed resolutions, which I find is the intent of SPA section 49, the Ministerial Order and the CRMA .

33. For these reasons, I find the November 2020 SGM was conducted contrary to the SPA and other legislation concerning the COVID-19 pandemic. It follows, and I find, that the November 2020 AGM was invalid. Therefore, I find the resolutions passed at the September 2020 AGM area also invalid.
34. I turn now to 708's requested remedies.

***What remedies about the November 2020 AGM are appropriate?***

35. 708 seeks an order that the November 2020 AGM be declared a nullity and all decisions set aside, and that the CRT declare the strata acted contrary to SPA and bylaws. I find by "all decisions", 708 means the 5 resolutions I have set out above. I decline to order the requested remedies, but order an alternate remedy.
36. In reaching my conclusion, I am guided by the court's decision in *SWS Marketing Inc. v. Zavier*, 2021 BCSC 312, upheld by the BC Court of Appeal in 2021 BCCA 201 at paragraph 34, where the court expressed concern about unintended consequences relating to an ordered remedy. In *SWS Marketing*, the B.C. Supreme Court found at paragraph 33:

...that any remedy should be narrowly and carefully crafted to address solely those questions presently at issue between the parties.

37. I do not order the strata to reconsider the majority vote resolution about the rule because it was defeated, although the strata is open to do so if it chooses. Nor do I order the strata to reconsider election of the 5-member strata council as I find it is likely another strata council has been elected at a 2021 AGM, which I find would effectively correct the invalid election that occurred at the November 2020 AGM.
38. Here, I find the strata must reconsider a majority vote resolution to approve the previous year's AGM minutes and a  $\frac{3}{4}$  vote to waive the requirement to obtain a depreciation report. I say this because I find both resolutions may have a future effect

on how the strata operates. Based on the overall evidence and submissions, I find 708's main concern is the allegedly approved 2020 budget. This is because there are items of correspondence in evidence dated both before and after the AGM that show 708 objected to the proposed budget and how strata fees for the contingency reserve fund were calculated. Given this, and the fact the 2020 budget resolution allegedly failed by a narrow 1.84 votes, I find it appropriate that the strata reconsider approval of its 2020 budget.

39. I also find the allegedly approved 2020 budget might have future implications on the strata's operation. I recognize that the strata has likely passed a new budget and that some or all of the strata fees collected under the 2020 budget may have been spent. However, under SPA section 103, the strata is required to prepare a budget for approval at its upcoming AGM. By conducting the invalid November 2020 AGM, I find the strata has not followed section 103. I find the only way for the strata to correct its error is to reconsider (by re-vote) the 2020 budget at a properly convened general meeting.

40. For these reasons, I order the strata to hold an SGM to reconsider the following resolutions:

- a. The majority vote resolution to approve the September 30, 2019 AGM minutes, if not already approved at a subsequent general meeting,
- b. The  $\frac{3}{4}$  vote resolution to waive the depreciation report requirement under SPA section 94(3), and
- c. The majority vote resolution to approve the strata's 2020 budget.

41. I have considered that it is possible the 2020 budget may be amended or not approved at the new SGM. If the 2020 budget is passed in a different amount, or does not pass, the strata must reconcile individual owners' strata fees paid against those approved. The strata must also adjust individual owner strata fee balances accordingly, bearing in mind SPA section 104 and any budget that has been properly passed since the November 2020 AGM. For clarity, the relevant part of section 104 requires owners to

continue to pay the same strata fees until a new budget is approved. It also governs how the strata may spend money out of its operating fund, which may or may not apply, depending on if the strata has passed a new budget since the November 2020 AGM.

***Is the strata entitled to collect fines imposed against 708?***

42. Under SPA section 135(1), before imposing fines for bylaw or rule infractions, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested.
43. The BC Court of Appeal has found that strict compliance with section 135 is required before a strata corporation can impose fines. The court has also determined that fines may be found to be invalid if the procedural requirements set out in section 135 are not followed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
44. 708 argues that all fines imposed against it must be set aside. However, it does not provide details of the fines except a June 17, 2021 letter from the strata manager stating the strata has approved a \$200 fine against “each of your Strata Lot[s]... for unpaid Strata Fees”. As mentioned, the letter is directed to Mr. Brcic of “The Dakova Group” and references strata fees arrears for strata lots 1, 9, 10, 11, and 12. Based on the June 17, 2021 letter, and that 708 admits to not paying the increased amount of strata fees allegedly approved at the November 2020 AGM, I find it reasonable to conclude the bylaw fines in question relate to unpaid strata fees after September 1, 2020. For the following reasons, I find the strata is not entitled to collect these fines.
45. First, the only evidence I have about ownership is that SL9 is owned by 708. The strata wrote to The Dakova Group on June 17, 2021 but provided no evidence The Dakova Group and 708 are the same entity. The company search for 708 that is before me also does not show a relationship between the 2 entities.
46. Second, have found the November 2020 AGM was invalid, and more particularly that the 2020 budget was invalid. Therefore, no increase in strata fees was passed at the

November 2020 AGM. So, even if 708 is The Dakova Group 708, 708 could not be found to be in arrears of strata fees for the 2020 budget.

47. Third and most importantly, I find the strata's June 17, 2021 letter is contrary to SPA section 135 because the letter clearly says the strata imposed the bylaw fines without giving 708 an opportunity to respond. Following *Terry*, I find bylaws fines associated with the June 17, 2021 letter are invalid and order the strata to reverse all fines it imposed based on that letter. I make no findings or orders about other fines that might have been imposed that do not relate to the June 17, 2021 letter.

***Should the CRT declare the strata acted contrary to SPA and bylaws?***

48. 708 asks that the CRT declare that the strata acted contrary to the SPA and bylaws. I find the CRT has no jurisdiction to make such a declaratory order in the circumstances of this dispute. Although not binding on me, I rely on the CRT vice chair's decision in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 that a declaratory order is outside the CRT's jurisdiction unless the order is incidental to a claim for relief in which the CRT has jurisdiction. I find that is not the case here. Under CRTA section 10(1), I must refuse to resolve a claim that is outside the CRT's jurisdiction, so I refuse to resolve 708's claim that the strata acted contrary to the SPA and bylaws.
49. Further, even if I found the CRT had jurisdiction, I would find such an order unnecessary and of no practical effect because I find the actions of the strata are clear from my discussion above.

***Is 708 entitled to reimbursement of \$2,845.72 for legal expenses?***

50. 708 says it had to incur legal fees of \$2,845.72 to "protect [its] rights as an owner". This is because it says the strata manager and strata council president failed to "abide by the bylaws... and listen to the owners".
51. In support of its claim for legal expenses, 708 provided copies of 2 invoices from its lawyer dated February 26 and June 30, 2021 totalling \$2,910.33. 708 does not explain why there is a difference in the total amount claimed and total of the legal invoices.

However, I find I need not determine the difference because I decline to award reimbursement of the claimed expenses to 708 for the following reasons.

52. The description of service listed on the February 2021 invoice provides no detail. The description simply makes reference to emails “from and to client”, notes “to client”, and telephone calls. There is no supporting evidence, such as a letter from 708’s lawyer, confirming what work was done. Further, the description on the June 30, 2021 invoice includes similar entries plus entries about consultations, drafting submissions and “attempted filing of CRT dispute”. I find from the descriptions that part of legal charges are for assisting 708 with the application for this dispute. Under CRT Rule 9.5(3), the CRT will not order reimbursement of a party’s legal expenses, except in extraordinary circumstances, which I find do not exist here.
53. Finally, a July 29, 2021 entry on the description of the June 30, 2021 invoice relates to preparing a letter to the strata council and strata manager. A copy of that letter has not been provided so I cannot determine whether it relates to 708’s claim in this dispute or some other matter.
54. Therefore, I decline to make the order requested by 708 for the strata to reimburse its legal fees.

## **CRT FEES AND EXPENSES**

55. 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 not to follow this general rule in this dispute.
56. I find 708 was partially successful and paid \$225.00 in CRT fees. Therefore, I order the strata to pay 708 ½ of its paid CRT fees, or \$122.50.
57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against 708.

## ORDERS

58. I refuse to resolve 708's claim for a declaratory order that the strata acted contrary to the SPA and bylaws under CRTA section 10(1).

59. I order the strata:

a. Within 90 days of the date of this decision to hold an SGM to reconsider the following resolutions from the November 2020 AGM:

- i. The majority vote resolution to approve the previous year's AGM minutes,
- ii. The  $\frac{3}{4}$  vote resolution to waive the requirement to obtain a depreciation report under SPA section 94(3), and
- iii. The majority vote resolution to approve the strata's 2020 budget. If the 2020 budget is amended at the SGM and is passed in a different amount, or does not pass, the strata must reconcile strata fees paid against those approved and adjust individual owners' strata fee balances accordingly. In reconciling strata fees, the strata must bear in mind SPA section 104 and any budget that has been properly passed since the invalid November 2020 AGM.

b. Within 15 days of the date of this decision,

- i. Reverse all fines it imposed based on its June 17, 2021 letter to 708, and
- ii. Pay 708 \$112.50 for CRT fees.

60. I dismiss 708's remaining claims.

61. 708 is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

62. 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.

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J. Garth Cambrey, Vice Chair