



Civil Resolution Tribunal

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File: ST-2021-008113

Type: Strata

Civil Resolution Tribunal

Indexed as: *Briscoe v. The Owners, Strata Plan 350*, 2022 BCCRT 936

B E T W E E N :

CLAYTON BRISCOE, DOUG MCALPINE, JOE VANDERWIEL, HUGH SCHMID, PAM STEVENS, BRUCE BRENDZY, LARRY CHADWICK, BARB MILLER, BRENDA AUCOIN, NANCY JENSEN, BILL PERKINS, DOUG BARKER, CHRISTINE MEDYNSKI, and BRENDA BEATON

APPLICANTS

A N D :

The Owners, Strata Plan 350

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This strata property dispute is about general meeting procedures and the enforceability of bylaws restricting owners from voting and standing for strata council.

2. The applicants, Clayton Briscoe, Doug McAlpine, Joe Vanderweil, Hugh Schmid, Pam Stevens, Bruce Brendzy, Larry Chadwick, Barb Miller, Brenda Aucoin, Nancy Jensen, Bill Perkins, Doug Barker, Christine Medynski and Brenda Beaton, own or co-own strata lots in the respondent strata corporation, The Owners, Strata Plan 350 (strata).
3. At a special general meeting (SGM) in September 2021, the strata ownership passed a resolution to add 2 bylaws. Those bylaws limited the ability of owners, in certain circumstances, to vote at general meetings and to stand for strata council election. The next month, the strata held an annual general meeting (AGM) where it applied those bylaws to prevent certain owners from voting and standing for strata council. The applicants say the September 2021 SGM, which was held “door to door”, did not comply with the *Strata Property Act* (SPA). They say the 2 bylaws are unenforceable for that reason, and because they conflict with the SPA. The applicants seek orders to “set aside” the September 2021 SGM and the 2021 AGM and to hold a new AGM. Lastly, the applicants say the strata has generally failed to comply with the SPA in various ways.
4. The strata generally denies the applicants’ claims. It says the new bylaws are important for the strata’s long-term stability, and says its general meetings have complied with the SPA.
5. Clayton Briscoe represents the applicants. A strata council member represents the strata.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
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 the parties and witnesses questions of 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.
10. CRT documents incorrectly show the strata's name as The Owners, Strata Plan, VIS350. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 350. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.
11. The strata provided late evidence that it inadvertently omitted during the evidence-submission phase. The applicants had the opportunity to respond to that evidence. Given the CRT's mandate that includes flexibility, I accept the late evidence and where relevant I have considered it in this decision.

ISSUES

12. The issues in this dispute are:
 - a. Did the September 2021 SGM comply with the SPA?

- b. Are the 2 bylaws restricting owners' ability to vote at general meetings and to stand for strata council unenforceable?
- c. Did the October 2021 AGM comply with the SPA, and if not, what remedy is appropriate?
- d. Should the CRT make any other orders?

EVIDENCE AND ANALYSIS

- 13. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
- 14. The strata was created in 1976 and includes 53 bare land strata lots. There are mobile homes on most or all of the strata lots. The strata's bylaws include the SPA's standard bylaws and other bylaws discussed where relevant below.
- 15. I will briefly set out some of the undisputed background to provide context for the dispute. In August 2020, all 5 members of the strata council at the time resigned, leaving the strata without a council. Those 5 members included 4 of the applicants in this dispute. In September 2020, some owners sought help from a strata manager and a lawyer. The strata manager chaired an October 26, 2020 SGM, at which a new strata council of 3 members was elected.
- 16. In the meantime, some of the former council members who had resigned claimed they had retracted their resignations and wrote to owners that the strata council was "back in business". This led to confusion about which strata council was properly constituted and had authority to make decisions for the strata.
- 17. Attempts to elect new strata council at SGMs in December 2020 and March 2021 were unsuccessful and the outcomes of those SGMs are not at issue here. The same 3-person strata council remained in place until the October 2021 AGM at issue in this dispute.

18. On September 17, 2021, the strata conducted an SGM to consider 2 new bylaws. The first proposed bylaw amendment, which eventually became bylaw 12(5), was:

ELIGIBILITY FOR COUNCIL – No owner, tenant, or resident may run or sit on council for the strata corporation for a period of 24 months, if during the 12 months preceding the AGM for the relevant year for which council is to be elected, such owner, tenant, or resident has been issued four (4) or more bylaw infractions by the strata corporation.

19. The second proposed bylaw amendment, which eventually became bylaw 27(8) was:

LIMIT TO VOTING – No owners, tenant or resident may vote more than four (4) ballots at any given meeting of the Strata Corporation. Despite the unit entitlement associated with each strata lot and specifically, those eligible to vote directly or by proxy, may not exercise same more than the limit of four (4) ballots.

20. The bylaw amendments were filed in the Land Title Office on October 13, 2021 as additions to the SPA’s standard bylaws 12 and 27, respectively. Several other bylaws were added or amended at the same time, although there is no reference to those proposed amendments in the September 2021 SGM documents or any of the materials before me. The question of the validity of such other bylaw amendments is not before me in this dispute.

21. On October 17, 2021, the strata held an AGM. At that AGM, any owners who owned more than 4 strata lots were only given 4 voting cards, and some owners were prevented from standing for council. Thus, the applicants argue the 2021 AGM was invalid because it applied unenforceable bylaws that were not approved by a valid resolution at a general meeting in compliance with the SPA.

Did the September 2021 SGM comply with the SPA?

22. The strata says on September 17, 2021, it held a “door to door” SGM to pass 2 new bylaws. The applicants say the SGM did not comply with SPA sections 45 and 61.

23. SPA section 45 says a strata corporation must give every owner, among others in certain circumstances, at least 2 weeks' written notice of an AGM or SGM. The strata's notice consisted of a written "announcement" dated August 28, 2021, and posted on the door of the "strata office."
24. SPA section 61 says a strata corporation must give notice in specific ways. The methods include leaving it with the person, mailing it to an address provided outside the strata plan, putting it under the strata lot door, through a mail slot or in a mail box, or faxing or emailing it to the person.
25. The applicants say the strata did not give any notice at all. The strata says "notices were handed out" but does not provide any details or say when this occurred, such as when council went door to door or earlier. There is no documentation of any notice other than the "announcement" that the strata says was posted on the strata office door. The strata does not say it handed out notices 2 weeks before the SGM. For these reasons, I find the strata did not give adequate notice of the SGM as required by SPA sections 45 and 61.
26. SPA section 47 says that failure to give proper notice of a general meeting to a person entitled to receive notice does not invalidate a vote taken at the meeting, as long as the strata made a reasonable attempt to give the notice. Here, the strata failed to give notice by any of the several methods permitted under SPA section 61, without adequate explanation. The strata appears to have assumed strata lot owners would see the announcement posted on the strata office door. I find the strata did not account for strata lot owners who did not live at the strata, or owners whose daily routine did not take them by the strata office door in the period that the notice was up. Overall, I find that the strata's attempts to give notice of the SGM were not reasonable, so SPA section 47 does not save the strata.
27. In addition, SPA section 45(3) requires that for any matter requiring a 3/4 vote of owners, the meeting notice must include the proposed wording of the resolution. I find the notice did not meet this requirement, as the written announcement did not provide

the proposed wording of the resolution amending the bylaws, or even say that bylaw amendments would be considered at the SGM.

28. I also note that under standard bylaw 26, tenants and occupants may attend all general meetings, and participate in the discussion. I find that a “door to door” meeting does not allow meeting participants to participate meaningfully in discussion, given the participants are not in the same place at the same time to hear each other’s views. Further, under standard bylaw 27, the strata was required to issue voting cards, and to decide the vote by show of voting cards, or a precise count if requested. There is no evidence the strata issued voting cards or counted the votes in this way.
29. For the above reasons, I find that the SGM did not comply with the SPA or the strata’s bylaws. It follows that the vote taken at the September 2021 SGM was not valid. This means the strata 2 bylaws limiting voting and eligibility for strata council are unenforceable.
30. Even if the strata had conducted the September 2021 SGM in compliance with the SPA, I would still order the strata not to enforce the 2 new bylaws passed at the September 2021 SGM.
31. I agree with the applicants that a strata corporation cannot, by bylaw, limit voting rights for persons who own more than 1 strata lot. SPA section 53(1) says at a general meeting each strata lot has 1 vote unless different voting rights are set out in a Schedule of Voting Rights in accordance with SPA sections 247, 248 or 264. Section 53(2) says a strata corporation may, by bylaw, provide that a strata lot’s vote may not be exercised if the strata corporation is entitled to register a lien against the strata lot under section 116(1). If the legislative drafters intended that strata corporations could restrict voting for other reasons, it would have provided those other reasons or simply not included the lien requirement. I find bylaw 27(8) is unenforceable because it conflicts with SPA section 53.

32. I also agree with the applicants that a strata corporation cannot, by bylaw, limit who may stand for strata council based on bylaw contravention history. SPA sections 28(1) and (2) provide that persons who may be council members are owners, individuals representing corporate owners, tenants assigned landlord's rights, and others designated by bylaw. SPA section 28(3) says that a strata corporation may, by bylaw, provide that no person may stand for council or continue to be on council if the strata corporation is entitled to register a lien against the strata lot under section 116(1). SPA section 116(1) does not allow a strata corporation to register a lien for unpaid bylaw contravention fines. The same analysis as for SPA section 53 above applies equally here. Applying that analysis, I find bylaw 12(5) is unenforceable as it conflicts with SPA section 28. Also, SPA section 129 sets out an exhaustive list of the ways a strata corporation may enforce its bylaws, which does not include revoking the right to stand for council.

33. I conclude that the September 2021 AGM did not comply with the SPA, and both bylaws voted on at the September 2021 SGM contravene the SPA, so I order the strata to immediately stop enforcing bylaws 12(5) and 27(8).

Did the October 2021 AGM comply with the SPA?

34. As noted, shortly after registering bylaws 12(5) and 27(8), the strata held its October 17, 2021 AGM. The meeting was contentious.

35. The motions documented in the minutes were all approved by majority vote, some overwhelmingly and some narrowly. The vote counts for the motions did not always add up to the number of voting cards issued. As noted in the minutes, the strata found it "extremely difficult" to count voting cards and observed that some owners who had designated proxies also attended the meetings and attempted to have their votes counted. It is not clear to what extent these votes were counted. There were no resolutions voted on at the 2021 AGM.

36. As required by the SPA, a new strata council was elected at the 2021 AGM. 10 people stood for election to council. The top 7 vote-earners were elected. Two of the 3 people not elected are applicants in this dispute. Although not documented in the minutes, an audio recording indicates that the strata also prevented 2 owners from standing for council based on bylaw infractions as contemplated by bylaw 12(5).
37. The strata confirms that any owners who owned more than 4 strata lots were only given 4 voting cards based on bylaw 27(8). This affected at least 1 applicant owner who the applicants say owned 10 strata lots and was only given 4 voting cards.
38. Based on the council election tally, the 6 votes that the strata prevented from being exercised could have changed the outcome of the election. Some of the motions that were approved were also within 6 votes of not having a majority.
39. I find the 2021 AGM did not comply with SPA section 53(1) because each strata lot did not have 1 vote, and because the strata applied unenforceable bylaws to exclude persons from voting and standing for council. Given this, and the questions surrounding the vote counts, I find the most appropriate remedy is to order the strata to reconsider all the motions, and the strata council election.
40. I order the strata to hold an SGM to elect a new strata council and reconsider the motions from the 2021 AGM within 90 days. Those motions include motions to approve the minutes of 2 previous meetings, a motion to approve the 2021 budget, and a motion to place surplus 2020 budget funds into the contingency reserve fund.
41. For clarity, the 2021 AGM approved strata fees, budget, and council remain in effect until the upcoming SGM.
42. If the strata holds its 2022 AGM within 90 days, the strata is not required to elect a new strata council at a separate SGM because a new strata council will be elected at the 2022 AGM. In that case, the strata must consider the motions from the 2021 AGM at the 2022 AGM, which must comply with the SPA's voting and council election provisions.

Should the CRT make any other orders?

43. In submissions, the applicants asked for 2 orders that were not identified in the Dispute Notice except possibly within the context of a requested resolution that simply stated that the strata had committed “multiple contraventions of the [SPA].” The strata did not object to these requested orders. I will address them briefly to explain why I am not making any orders.
44. The applicants allege that at the 2021 AGM a person, DS, was elected to the strata council who was not an owner at the time, nor assigned a landlord’s right to stand for council under SPA section 28(1). DS became a co-owner of their spouse’s strata lot a few weeks after the 2021 AGM. The strata says when council was made aware of this, DS resigned and the strata reappointed them under bylaw 12(1). That bylaw says if a council member resigns or is unwilling or unable to act for at least 2 months, the remaining council members may appoint a replacement council member for the remainder of the term. The strata did not provide supporting evidence that it took these steps, but it is unnecessary to make a finding. I say this first because I have already ordered the strata to elect a new strata council within 90 days, and second because DS is now eligible to be a council member and it would be open to the strata council to appoint DS despite their previous brief ineligibility.
45. The applicants also allege that the strata council failed to provide records when requested. The applicants seek an order that strata council comply with all requests under SPA section 36, which permits owners and others to access records and documents identified in section 35. The owners have not requested an order granting access to any particular records or documents. The strata is already required to comply with SPA section 36, and ordering it to do so in general terms would have no practical effect. For those reasons, I decline to grant this requested order.

CRT FEES AND EXPENSES

46. 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 find the applicants were generally successful, so I order the strata to reimburse the applicants for CRT fees of \$225. No party claimed dispute-related expenses.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

48. I order that the strata must immediately stop enforcing bylaw 12(5) and bylaw 27(8) filed at the Land Title Office on October 13, 2021.
49. I order the strata, within 90 days of the date of this order, to hold an SGM in compliance with the SPA to elect a new strata council and to consider the following motions:
 - a. Approve the minutes of the March 15, 2020 AGM,
 - b. Approve the minutes of the October 26, 2020 SGM,
 - c. Approve the 2021 budget,
 - d. Place surplus 2020 budget funds into the contingency reserve fund.
50. If the strata holds its 2022 AGM within 90 days of the date of this order, it need not hold the SGM but must consider the motions identified in the above paragraph at the 2022 AGM, which must comply with the SPA's voting and council election provisions.
51. I order the strata, within 30 days, to pay the applicants \$225 in CRT fees.
52. The applicants are entitled to post-judgment interest, as applicable.

53. 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