



Civil Resolution Tribunal

Date Issued: November 8, 2022

File: ST-2022-002232

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gordon v. The Owners, Strata Plan NW 429*, 2022 BCCRT 1227

BETWEEN:

LESLIE GORDON

APPLICANT

AND:

The Owners, Strata Plan NW 429

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about strata corporation meeting procedures.
2. The applicant, Leslie Gordon, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 429 (strata). Mrs. Gordon says the strata did not comply with the *Strata Property Act* (SPA) or the strata's bylaws in the way it

held the 2022 annual general meeting (AGM). She asks for a declaration that the 2022 AGM was invalid and an order that the strata hold a “proper” 2022 AGM in compliance with the SPA and bylaws.

3. The strata says it complied with the SPA and its bylaws in holding the 2022 AGM. The strata asks me to dismiss this dispute.
4. Mrs. Gordon represents herself. The strata is represented by a strata council member.

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. 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.
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.

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.

ISSUES

9. The issues in this dispute are:
 - a. Was the 2022 AGM held in compliance with the legislation and strata bylaws in effect at the time?
 - b. If not, what is the appropriate remedy?

BACKGROUND

10. In a civil proceeding like this one, the applicant Mrs. Gordon must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. The strata was created in 1975 under the *Strata Titles Act*, and continues under the *Strata Property Act* (SPA). It consists of 408 strata lots in 3 high-rise buildings. The strata filed a consolidated set of bylaws at the Land Title Office on March 21, 2002, which I find are the bylaws applicable to this dispute. I find that the various bylaw amendments filed after 2002 are not relevant.
12. 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.
13. On March 18, 2020, the BC government declared a state of emergency in response to the COVID-19 pandemic. On April 15, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. M114 (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.

14. M114 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. However, the provincial government later extended a strata corporation's ability to conduct electronic or remote meetings until the date the CRMA is repealed: see B.C. Reg 726/2021. The CRMA has not been repealed to date.

EVIDENCE AND ANALYSIS

15. The strata stated in its January 19, 2022 council meeting minutes that owners would be provided with proxy forms to cast their votes in the upcoming AGM, and they would be invited to participate in an AGM discussion via Zoom on March 1, 2022. The minutes also stated that anyone wishing to be a candidate for the 2022 strata council must advise the strata manager by 12 pm on February 8, 2022, so they could be included on the ballot sheet to be distributed with the AGM notice package.
16. The strata circulated a February 10, 2022 notice package stating the 2022 AGM would be held on March 8, 2022 by Zoom. The notice said that due to COVID-19 safety restrictions, owners were asked to vote using 2 secret ballot forms included in the package. There was one ballot provided for election of the strata council, and one ballot for voting on 2 resolutions. The first resolution was for a majority vote to approve the strata's operating budget, and the second resolution was for a $\frac{3}{4}$ vote to transfer \$100,000 from the operating surplus to the strata's contingency reserve fund (CRF).

17. The notice package instructed owners to deliver their completed ballots to the locked drop box in their building lobby or email them to the strata manager by 10 am on March 7, 2022. The notice package stated that the AGM was for owners interested in reviewing the AGM agenda and obtaining the voting results.
18. The February 10, 2022 notice package also advised there would be a “pre-AGM discussion” on March 1, 2022 about the AGM agenda topics, and where candidates for the 2022 strata council were invited to introduce themselves. The notice advised that no voting would take place at the pre-AGM discussion meeting.
19. There is no dispute that the AGM notice complied with the timelines required under the SPA, or that the notice package contained the information required by the SPA. Rather, Mrs. Gordon says that the method the strata used for owners attending and voting at the 2022 AGM contravened the bylaws and the SPA. As I explain below, I agree with Mrs. Gordon, and I also find the 2022 AGM contravened the electronic meeting provisions in the CRMA.
20. As noted, M114, which was incorporated into the CRMA, specifically requires that general meetings held electronically during the COVID-19 pandemic, must permit all persons participating to communicate with each other. The CRT has decided several disputes about general meeting voting rights during the COVID-19 pandemic and clearly found that strata corporations must hold general meetings in a manner that permits owner attendance and participation. See for example *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157 and *Balayewich v. The Owners, Strata Plan LMS317*, 2021 BCCRT 110.
21. The CRT has also specifically considered AGM formats that included pre-AGM discussion meetings like the one held in this case. Tribunal members have consistently found that such pre-AGM meetings do not replace discussions and potential resolution amendments that are intended to occur at the same time, and by the same owners and proxies who vote on the resolutions at an AGM. See *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463, *Ottens v. The Owners,*

Strata Plan LMS 2785, 2022 BCCRT 19, and my own decision in *Sarophim v. The Owners, Strata Plan EPS4597*, 2021 BCCRT 1091.

22. I agree with Mrs. Gordon that the strata's 2022 AGM did not allow owners to participate, make motions, amend resolutions, nominate themselves or others for strata council, or cast votes. While the strata says that owners were permitted to speak at both the pre-AGM meeting and the AGM itself, I find that communication was essentially meaningless, given the advanced voting process established by the strata. The voting ballots distributed in the AGM notice package were pre-printed with the nominees for the strata council and the wording of the proposed resolutions, and owners could vote immediately after receiving the notice package. So, there was no opportunity to nominate other council members or amend the budget or CRF resolutions at either the pre-AGM meeting or the AGM.
23. I disagree with the strata's submission that because the SPA does not expressly prohibit advanced voting by secret ballot at a general meeting, the strata was permitted to use advanced voting. Section 54 of the SPA says that with limited exceptions, all owners have a right to vote **at** an annual or special general meeting (my emphasis). Further, 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. I find that these sections of the SPA must be interpreted to require that voting take place during the general meeting, either in person or by proxy.
24. Further, strata bylaw 32.4 says that voting cards must be issued to eligible voters at an AGM, and bylaw 32.5 says votes are decided on a show of voting cards unless a precise count is requested. The strata says that relying on electronic voting during the AGM would have disenfranchised some owners due to age, technological capabilities, or lack of access to a stable internet connection. However, I find the SPA provisions permitting voting by proxy at a general meeting address those concerns. Overall, I find the advance voting process used at the strata's 2022 AGM was not permitted by either the SPA or the strata's bylaws.

25. For all these reasons, I find the participation and voting process the strata used for its 2022 AGM did not comply with the bylaws, the CRMA, or SPA sections 49, 54, or 56.
26. I note that because I have found the advance voting process was not permitted, I find it is unnecessary to address the parties' evidence and submissions about whether council candidates improperly campaigned or pressured owners to vote a certain way during the advance voting period.

What is an appropriate remedy?

27. While I have found the strata's 2022 AGM was not a valid AGM, for the following reasons, I decline to grant Mrs. Gordon's requested remedies.
28. First, declaring that the 2022 AGM was invalid would be a declaratory order the CRT does not have jurisdiction to make. See *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. So, I decline to make the requested declaration.
29. I also decline to order that the strata hold a new 2022 AGM. Aside from procedural resolutions, the only resolutions passed at the 2022 AGM were majority vote resolutions to approve the 2022 operating budget and elect strata council members for the current fiscal year, and a $\frac{3}{4}$ vote resolution to approve a transfer from the operating fund to the CRF.
30. I find it would serve no meaningful purpose to set aside the election of the strata council members or the approval of the operating budget. I agree with the strata's submission that by the date of this decision the strata council members will have already served a large portion of their term and the annual budget will have been implemented and utilized. If I were to make an order for a new AGM, I would order it take place within 90 days. That would be approximately when the 2023 AGM will take place in any event, where a new strata council and a new budget will be voted on.
31. I also decline to set aside the transfer of money to the CRF. Section 105 of the SPA says the strata is required to deal with an operating fund surplus in one of 3 ways, one of which is to transfer the surplus into the CRF, unless the strata passes a $\frac{3}{4}$ vote

resolution to deal with it in some other way. In other words, I find the SPA does not require owners to separately approve a surplus allocation to the CRF by a vote at an AGM. Therefore, I find the AGM resolution to approve the transfer of the operating fund surplus to the CRF was unnecessary, and so there is no reason to re-do the vote.

32. As I have not granted any of Mrs. Gordon's requested remedies, I find I must dismiss her claim.

CRT FEES AND EXPENSES

33. 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. While I did not grant Mrs. Gordon's requested remedies, I find she was successful on the main issue of whether the 2022 AGM was invalid. Therefore, I find she was partially successful and is entitled to reimbursement of half her CRT fees, which is \$112.50. Neither party claimed dispute-related expenses, so I make no order for those.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner Mrs. Gordon.

ORDERS

35. Within 30 days, I order the strata to reimburse Mrs. Gordon \$112.50 for half her CRT fees.
36. Mrs. Gordon is also entitled to post-judgment interest under the *Court Order Interest Act*.
37. I dismiss the remainder of Mrs. Gordon's claims.
38. 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.

Kristin Gardner, Tribunal Member