Civil Resolution Tribunal

Date Issued: November 21, 2022

File: ST-2022-001629

Type: Strata

Civil Resolution Tribunal

Indexed as: *BBR Management Inc. v. The Owners, Strata Plan KAS 3359*, 2022 BCCRT 1254

B E T W E E N :

BBR MANAGEMENT INC.

APPLICANT

A N D :

The Owners, Strata Plan KAS 3359 and KEVIN THOMPSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about ownership votes at the respondent strata corporation, The Owners, Strata Plan KAS 3359 (strata). The applicant, BBR Management Inc. (BBR), owns strata lot 73 at the strata. The respondent, Kevin Thompson, is undisputedly a shareholder of a corporation, 0762101 B.C. Ltd. (076), which is not a party to this

dispute. 076's shareholders, including Mr. Thompson, co-own strata lot G, which features 61 mobile home pads. 076 casts votes on strata resolutions as each strata lot G owner's proxy, based on 076 shareholder resolutions about how to vote. The strata lot G owners hold 61 out of the 100 total strata votes. BBR holds 1 strata vote.

2. Mr. Thompson has cast 076 proxy votes on strata ownership resolutions, as 076's voting representative. BBR says that because strata lot G has more than 50% of the strata votes, Mr. Thompson effectively controlled the strata. BBR says this is significantly unfair, and that Mr. Thompson has cast strata votes without proper 076 authorization. BBR requests an order setting aside any strata ownership resolutions that strata lot G's owners voted on by proxy without proper authorization by a majority vote of 076 shareholders. In its submissions, BBR clarified that those disputed strata ownership votes were held at July 6, 2021 and October 28, 2021 Special General Meetings (SGMs). BBR also requests an order that all future 076 shareholder resolutions about "strata meeting" votes be "verified." BBR suggests that such verification may include each 076 shareholder individually casting a single strata ownership vote.

3. The respondents say there were no deficiencies in 076's strata voting authorizations, and even if there were, that would be an internal governance issue for 076, which is not a party to this dispute. The respondents also say that 076 is only empowered to cast all 61 of strata lot G's strata votes either for or against an ownership resolution, which is not unfair to BBR. The respondents oppose BBR's claims.

4. BBR is represented by an owner. A strata council member represents the strata. Mr. Thompson is self-represented.

5. For the following reasons, I dismiss BBR's 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 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. BBR commenced another CRT strata property dispute, number ST-2022-001630, at approximately the same time as this dispute. Both CRT disputes are about whether the strata ownership properly authorized the strata to do certain things. These things included pursuing and funding a May 31, 2022 civil claim by the respondents and others against BBR and others, in the Supreme Court of British Columbia, No. S-224443, Vancouver Registry. These things also included pursuing and funding an arbitration commenced on May 31, 2022 by the respondents and others against BBR and others in the Vancouver International Arbitration Centre. Each CRT dispute involves different parties, different evidence, and different submissions. So, I found it was necessary to issue separate decisions for each CRT dispute, although portions of each decision are similar.

11. The CRT alerted BBR that some of its evidence did not upload correctly. The CRT provided instructions and suggestions about how to check whether the evidence had uploaded correctly and how to upload evidence before the deadline. BBR did not reach out to the CRT with any concerns about evidence uploads, yet some of its evidence remains unreadable. I find BBR had an adequate opportunity to verify its uploaded evidence and bring any concerns to the CRT, and did not. So, I find BBR likely chose to proceed knowing that some of its evidence was, or might be, unreadable. Given that the CRT's mandate includes speed and fairness, I found it was not necessary at this late stage to provide additional time to verify and correctly upload evidence. My decision is based on the evidence before me.

ISSUES

12. The parties agreed to remove 4 of this dispute's requested remedies during the CRT facilitation phase, and so the CRT issued an amended Dispute Notice.

13. The remaining issues in this dispute are:
    a. Whether the strata lot G owners' proxy votes were validly cast at the strata's July 6, 2021 and October 28, 2021 SGMs, and if not, should I order the respondents not to recognize or enforce those resolutions?

    b. Whether I should order the respondents to "verify" each of 076's internal authorizations for strata lot G ownership votes on future strata resolutions.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, BBR, as the applicant, must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.

15. At the outset, I note that BBR's requested remedies in this dispute are directed at "setting aside" strata resolutions, and "verifying" 076 shareholder resolutions. By "setting aside," I find BBR requests that the CRT order the strata not to recognize or

enforce certain strata resolutions. By "verifying," I find that BBR requests that the CRT order the strata to obtain evidence about future 076 shareholder resolutions. I find these requested remedies are directed at the strata, and not at Mr. Thompson. Further, I find the evidence does not show that Mr. Thompson, in his personal capacity, would be able to provide either remedy. So, I dismiss BBR's claims against Mr. Thompson. I consider below whether I should order the requested remedies against the strata.

16. The strata features recreational vehicle and mobile home sites, and other property that provides services to those sites. The amended strata plan and other land title documents in evidence show that the number of strata lots and their boundaries have been amended several times. According to the amended strata plan, Form V (Schedule of Unit Entitlement), and Form W (Schedule of Voting Rights) documents in evidence, I find the strata presently consists of 26 strata lots. Strata lot G has 61 strata votes, strata lot F has 15 votes, and strata lots 62 through 85 each have 1 vote, for a total of 100. None of this is disputed.

17. I find the land title documents in evidence show that numerous owners each own a fractional, undivided interest in the whole of strata lot G. Some of those individual fractional interests are held by 2 persons as joint tenants.

18. The following facts are undisputed. The strata lot G owners are also shareholders of 076. The parties agree, so I accept as fact, that the shareholders each signed a co-ownership agreement with 076 and other companies, like the submitted agreement signed by Mr. Thompson on August 13, 2013. Section 3.2 of that agreement said that an 076 shareholder cannot sell of transfer their ownership rights in strata lot G separately from their 076 shares. Any sale or transfer of either an owner's strata lot G ownership rights or 076 shares must also include the sale or transfer of the other.

19. Section 8.13 of the co-ownership agreements says that if the 076 shareholders are entitled or required to exercise a strata vote, 076 will be designated to hold the proxy for the shareholders. Further, 076 will cast all of the proxy votes in accordance with a corporate resolution passed by a majority of the 076 shareholders.

Strata Lot G Proxy Votes

20. Section 56 of the *Strata Property Act* (SPA) says that a person may vote by proxy. Section 29 of the *Interpretation Act* says "person" includes a corporation. A proxy stands in the place of the person appointing the proxy, and can do anything that the person can do, including vote. Section 56(2) says that a document appointing a proxy must be in writing and signed by the person appointing the proxy, and may be general in nature. I find that the co-ownership agreements signed by each strata lot G owner, which all the parties agree exist, qualify as general proxy appointment documents under section 56(2). Specifically, I find those agreements appoint 076 as each shareholder's general proxy, for any strata ownership vote.

21. BBR says that the 076 co-ownership agreements about strata voting should no longer be enforced, because they allegedly reflect an earlier strata configuration. I find nothing before me shows that those agreements are unenforceable, or that the parties agreed to amend them. Further, I find the strata lot G owners' chosen scheme for voting on strata resolutions does not affect BBR's voting rights as a non-owner of strata lot G. So, on the evidence before me, I find the strata voting provisions of the co-ownership agreements are enforceable.

22. BBR also says that it is not clear whether Mr. Thompson cast votes at the disputed SGMs as 076's representative for the strata lot G owners' proxy votes, or on behalf of himself or someone else. The respondents say 076 appointed Mr. Thompson to cast those proxy votes, and I find the evidence before me does not show otherwise. So, I find Mr. Thompson cast the strata lot G owners' votes at the disputed SGMs as 076's authorized representative for the purposes of proxy voting.

23. BBR also alleges that 076 may have cast the strata lot G proxy votes at the July 6, 2021 and October 28, 2021 SGMs without first receiving proper 076 shareholder approval under section 8.13 of the co-ownership agreement. So, BBR says the strata lot G owners' wishes might not be accurately reflected in those votes.

24. I find that the CRT's CRTA section 121 strata property jurisdiction does not extend to whether certain non-strata corporate actions were properly authorized by shareholder

resolution. Those are questions for the Supreme Court of BC, for example under section 227 of the *Business Corporations Act* addressing shareholder complaints. Again, 076 is not a party to this CRT dispute. Further, even if I had jurisdiction to consider such shareholder complaints, the evidence does not show that BBR is an 076 shareholder, or that it otherwise has standing to dispute 076's internal shareholder voting procedures.

25. For the above reasons, I find the 61 strata lot G votes at the 2 disputed SGMs were validly cast by the proxy 076. I find the question of whether 076 cast those strata votes as the strata lot G owners agreed is a matter of internal governance of 076, which is not a party to this dispute. I note that no evidence before me indicates that 076 shareholders allege that 076 was not validly appointed as their proxy, or that 076 cast proxy votes against the wishes of a majority of shareholders contrary to section 8.13 of the 076 co-ownership agreements. Overall, I find the evidence does not show that the strata lot G proxy votes cast on July 6, 2021 and October 28, 2021 were invalid.

"Shared" Votes

26. BBR cites SPA section 57. That section says that if 2 or more persons share 1 vote with respect to a strata lot, only one of them may vote on any given matter. The section also says that if the 2 or more persons who share the 1 vote disagree on how their vote should be cast, that vote must not be counted.

27. BBR says that the 61 strata lot G votes are "shared." It says that without evidence of an 076 shareholder resolution approving how strata lot G will vote, the strata chair overseeing the strata ownership vote "knows there is no agreement," and should disregard those votes.

28. I disagree that an absence of evidence about internal 076 shareholder votes confirms that those shareholders failed to agree about how particular strata lot G votes should be cast, or shows that those proxy votes should be disregarded. I find that 076, as the strata lot G owners' proxy, may validly cast those owners' votes. Nothing in the SPA or strata bylaws requires the strata to validate the reasons for a proxy's votes.

As noted, any alleged errors in 076 shareholder approval of strata proxy votes are internal matters between 076 and its shareholders only. Further, even if a minority of strata lot G owners wanted 076 to cast their proxy votes a different way, I find that under section 8.13 of the co-ownership agreements they each agreed that 076 would exercise their votes according to the wishes of a majority of shareholders. So, I find there would be no "disagreement" about the strata proxy vote in that case. I also find there is no evidence that any strata lot G owner revoked the proxy granted to 076 or terminated their co-ownership agreement with 076.

29. I also find SPA section 57 is inapplicable here, for the following reasons. Section 57 is directed at 2 or more persons sharing 1 strata lot vote. I find that is not the case here. The many strata lot G co-owners each have an undivided interest in a small fraction of the strata lot's entire block of 61 votes. That is not the same as all of the strata lot G owners sharing only 1 strata lot vote, as described in SPA section 57. It is also not the same as each of the co-owners having sole control of a single strata vote only.

30. I know of no decision, by the CRT or the courts, that addresses the application of section 57 where more than 1 vote is shared among 2 or more persons. However, I find that section should not be interpreted in a way that results in an absurdity. In alleging that SPA section 57 applies here, I find that BBR is essentially alleging that whenever votes on 076 shareholder resolutions about strata voting are not unanimous, all 61 strata lot G votes should be disregarded. In that case, I find it would likely be rare for 076 shareholder votes to be unanimous across all of the many shareholders, so it would likely be rare for any of strata lot G's 61 strata votes to be counted. I find the legislature cannot have intended section 57 to deprive strata lot G owners of their right to vote on most strata resolutions, in particular given that they hold a majority of the strata's voting rights. I find that would be an absurdity.

31. Further, I find that each of the strata lot G owners' undivided 1/61 interest in the whole of strata lot G is a separate and distinct interest, and is separately recorded in the land title register for strata lot G. So, I find that each strata lot G owner does not "share" any other owner's interest in strata lot G, including any resulting voting

interests, because each of those interests is distinct. Given the above, I find that section 57 likely addresses situations where 2 or more owners share the same specific voting interest, resulting from sharing the same specific and distinct ownership interest in a strata lot, and not simply from owning a similar but different fractional interest in the strata lot. So, I find that section 57 does not apply here. In particular, I find that section does not prevent 076 from voting based on the wishes of a simple majority of 076 shareholders, as set out in section 8.13 of the 076 co-ownership agreements.

SPA Section 164 and Significant Unfairness

32. Submitted records show the Superintendent of Real Estate approved the Schedule of Voting Rights that assigned strata lot G 61 strata votes. The fractional co-owners of the whole of strata lot G needed to devise a way they could collectively exercise those 61 strata votes, since none of the votes were assigned to any 1 owner. I find their solution was to vote according to the wishes of the majority of strata lot G owners, set out in section 8.13 of the 076 co-ownership agreements. In the following paragraphs, I consider whether that voting scheme resulted in any significant unfairness to BBR.

33. In its submissions, BBR requests that the CRT remedy significantly unfair votes at the July 6, 2021 and October 28, 2021 SGMs, and prevent similar future unfairness, under SPA section 164.

34. SPA section 164 empowers the Supreme Court of BC, and not the CRT, to remedy or prevent a significantly unfair exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting. However, CRTA section 123(2) similarly empowers the CRT to make an order directed at the strata, council, or person who holds 50% or more of the votes, if the order is "necessary to prevent or remedy a significantly unfair action, decision, or exercise of voting rights."

35. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal found that a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in

probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court said that a reasonable expectations test, as described in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, can form part of a significant unfairness inquiry involving allegedly oppressive conduct. The *Dollan* reasonable expectations test asks: what is the expectation of the affected owner or tenant, was the expectation objectively reasonable, and was it violated by a significantly unfair action?

36. BBR suggests 076's strata voting practices are unfair, and that 076 should allow the strata lot G owners to individually cast 1 strata vote each. Although that would be the case if each 076 shareholder solely owned 1 strata lot with 1 vote, as noted that is not the case here. The strata lot G owners undisputedly agreed to the strata voting principles in section 8.13 of the 076 co-ownership agreement. None of those owners claims significant unfairness as an applicant in this dispute.

37. BBR says that the final outcome of strata ownership votes may theoretically be different under the present strata lot G voting procedures than if the strata lot G owners had chosen a different procedure. Although that might be true, I find it does not follow that those procedures are significantly unfair to BBR or other owners, simply because they might not agree with the outcome of some strata votes. In any event, I find it is not reasonable for BBR to expect the strata lot G owners to alter their chosen 076 internal voting procedure based solely on BBR's opinion about its fairness, given that BBR is not an 076 shareholder or strata lot G owner.

38. Further, I find BBR does not adequately explain how the particular outcomes of the July 6, 2021 or October 28, 2021 strata ownership votes were significantly unfair to it. In particular, although BBR indicated that 31 strata lot G owners could theoretically control 61 out of the strata's 100 votes, I find BBR did not specifically identify how any of strata lot G's votes were harsh, wrongful, unfair, or unjust. Overall, I find there was no proven significant unfairness.

July 6, 2021 SGM Notice

39. I find submitted text message evidence shows that BBR received notice of the July 6, 2021 SGM, but did not attend because it was mistaken about the meeting time. However, BBR says that notice of the meeting was sent on June 22, 2021, which did not meet the notice period required under the SPA. I find BBR does not request a remedy specifically for this notice period deficiency. However, given BBR's complaints about the validity of resolutions passed at the July 6, 2021 SGM, I find it is necessary to address this notice period concern.

40. SPA section 45 says the strata must give at least 2 weeks' written notice of an annual or special general meeting to every owner, and in some cases not applicable here, to certain mortgagees and tenants. I find the evidence does not show that any strata owner gave an address outside the strata plan for receiving notices, so I find that email notice was likely permitted under SPA section 61(1)(b)(vii). Under section 61(3), notices are conclusively deemed to have been given 4 days after being emailed. I find this means that the June 22, 2021 SGM notice was conclusively deemed to have been given on June 26, 2022, which is less than the required 2 weeks before the July 6, 2021 SGM.

41. However, for the following reasons, I find no appropriate remedy is available for this short notice period. The SGM was undisputedly held to vote on resolutions approving a special levy for strata utility payments, professional payments, and litigation against BBR and others. I find the evidence shows the ownership later approved April 2022 resolutions to fund professional payments and pursue the same litigation, so I find it likely nothing turns on the July 6, 2021 resolutions on those topics. Further, in the absence of direct payment evidence, I find it likely that special levy amounts approved on July 6, 2021 were paid to the applicable utility companies and professionals. I find there is no evidence that those payments are reversible. So, I find an order invalidating the July 6, 2021 SGM resolutions would effectively be an order not to pay money that was already irretrievably paid. Any strata reimbursement of owners for those special levy amounts would simply be an order for the owners to pay themselves, and would not provide an actual remedy. Further, I find the evidence

does not show that the outcome of the July 6, 2021 SGM votes would have been any different if the owners had received a few more days of notice as required under the SPA.

42. For the above reasons, in these circumstances I decline to make any order based on the shorter-than-required July 6, 2021 SGM notice period. Again, this is because to the extent BBR requests that the CRT "set aside" the July 6, 2021 resolutions for insufficient notice, I find that would not remedy the short notice even if the evidence had shown the results of those votes would have been different with adequate notice.

SGM Minutes

43. BBR says that the strata's SGM minutes, in particular on July 6, 2021 and October 28, 2021, do not accurately record the full content of the meetings, including the acceptance of strata lot G owner proxies and precise vote counts.

44. SPA section 35(1) requires that minutes be taken at every SGM, including the results of any votes. Other than that, there are no specific requirements for those minutes, as noted in *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraphs 8 and 23.

45. Having reviewed the evidence, including submitted SGM minutes, I find that it is not sufficient to prove that the strata lot G proxies given in the 076 co-ownership agreements were invalid. I find the evidence also does not prove that any alleged inaccuracies in recording vote counts, even if true, were more than minor and would have changed the recorded outcome of the disputed SGM ownership votes, which I find passed overwhelmingly. Further, I find nothing in the SPA or strata bylaws requires the strata to keep records of written proxy appointments, in meeting minutes or otherwise.

46. For the above reasons, I dismiss BBR's claims against the strata, to "set aside" strata resolutions and to require strata verification of 076 shareholder resolutions.

CRT Fees and Expenses

47. 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. BBR was unsuccessful in this dispute, but the respondents paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

48. I dismiss BBR's claims, and this dispute.

Chad McCarthy, Tribunal Member