



Civil Resolution Tribunal

Date Issued: April 4, 2023

File: ST-2022-003556
ST-2022-005250

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong's Insurance Services Ltd. v. The Owners, Strata Plan LMS 3259*,
2023 BCCRT 283

B E T W E E N :

WONG'S INSURANCE SERVICES LTD.

APPLICANT

A N D :

The Owners, Strata Plan LMS 3259

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Wong's Insurance Services Ltd. (WIS) owns a strata lot in the commercial strata corporation, The Owners, Strata Plan LMS 3259 (strata). This decision resolves 2 separate Civil Resolution Tribunal (CRT) disputes WIS brought against the strata.

2. In dispute ST-2022-003556, WIS alleges that the strata provided the owners with inaccurate financial statements from September 2021 to January 2022. WIS asks for an order that the strata “cease such financial misfeasance” and hire either a strata management company or an accountant to ensure proper financial management.
3. In dispute ST-2022-005250, WIS makes several claims about the strata’s 2022 annual general meeting (2022 AGM). WIS alleges that the strata failed to hold a proper secret ballot election for strata council, contrary to its bylaws. WIS asks for an order that the vote be declared “null and void” and that the strata hold another general meeting with a true secret ballot. WIS also alleges that the strata’s budget failed to comply with the *Strata Property Regulation* (SPR). WIS asks for an order that the budget be declared “null and void” and the strata hold another general meeting to reconsider the budget. WIS also asks for an order that the strata comply with its bylaws in future general meetings because it failed to properly terminate the 2022 AGM.
4. The strata initially denied all WIS’s claims in both disputes, but later admitted that its budget did not comply with all of the SPR’s requirements. Still, the strata asks me to dismiss WIS’s claims, including the ones about the incomplete budget, because WIS’s requested remedies are not justified or practical.
5. WIS is represented by its owner, John Wong. The strata is represented by a council member.

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). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT’s process has ended.

7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

10. The issues in this dispute are:
 - a. Did the strata properly hold the 2022 strata council election by secret ballot? If not, what remedy is appropriate?
 - b. Did the strata's 2022 budget comply with the SPR? If not, what remedy is appropriate?
 - c. Did the strata properly conclude the 2022 AGM? If not, what remedy is appropriate?
 - d. Should I order the strata to hire a strata management company or accountant?

BACKGROUND AND EVIDENCE

11. In a civil claim such as this, WIS as the applicant must prove its claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. As mentioned above, the strata is a commercial development consisting of a multi-story shopping center. It has 265 strata lots. The strata filed a complete set of bylaws on October 16, 2018. I discuss them where relevant below.

EVIDENCE AND ANALYSIS

Dispute ST-2022-005250 Claim #1: The Secret Ballot

13. The 2022 AGM took place in the food court. A photo of the food court shows that it has several tables with either 4 or 6 chairs at each.
14. Bylaw 32(6) says that the strata must hold a strata council election by secret ballot if a voter requests it. It is undisputed that a voter requested a secret ballot. According to the meeting's minutes, at the strata's lawyer suggested that everyone use their existing voting card, write their vote on it, and fold it in half to cover up their vote. Then, the strata's mall manager walked around the food court and collected each vote into a plastic bag. The mall manager counted the votes.
15. A proxy holder who attended the 2022 AGM, SC, provided an affidavit in this dispute to support WIC's claim. SC's description of the voting process matches the minutes, so I accept that the minutes are accurate.
16. In *Imbeau v. Owners Strata Plan NW971*, 2011 BCSC 801, the court found that a secret ballot was not "secret" if it was "possible for others to see how a member or proxy voted". There, like here, voters filled out their cards in a communal space. The court found that even though some owners proactively folded their ballots before giving them away, it was "distinctly possible" that voters could see each other's ballots both when they were filled out and when they were collected. The court declared the vote invalid.
17. The CRT applied the principles from *Imbeau* in *The Owners, Strata Plan NW 2243 v. Cole*, 2018 BCCRT 823. There, the tribunal member found that the strata had met the requirements of a secret ballot by giving voters an isolated booth to mark their ballot before placing it in a ballot box. While I do not agree with WIS that *Cole* sets

out a mandatory, rigid system for secret ballots, I find that it does illustrate a process that complies with the requirements of a secret ballot.

18. Having reviewed photos of the food court where the vote took place, which again has communal tables with tightly packed chairs, I find that voters could easily have seen each other's ballots. I find that the lack of privacy means that the strata's attempt at a secret vote did not meet the requirements set out in *Imbeau*.
19. The strata concedes that its voting process did not comply with the principles set out in *Imbeau*. It says that it did not anticipate a secret ballot, and did its best to improvise. While that may be true, I find that the vote was invalidly held. The strata implicitly concedes this point, because it accepts that an order that it meet the requirements set out in *Imbeau* in future secret ballot votes is appropriate. I make that order on the terms set out below.
20. However, I do not order the strata to redo the vote at a general meeting within 30 days, as WIS wants. The strata says that its 2023 AGM will be held before the end of April 2023, which I find is likely true give the 2022 AGM took place on April 29. I therefore find that the strata is likely holding its AGM within 30 days of this decision whether I order it to or not. So, the strata council members who were elected with the flawed procedure will soon have their terms end. It would therefore be pointless to revote on the 2022 strata council. I dismiss this aspect of WIS's claim.

Dispute ST-2022-005250 Claim #2: The 2022 Budget

21. WIS says that the strata failed to include mandatory information in its 2022 budget, contrary to the SPR. Section 6.6 of the SPR sets out certain requirements for a strata corporation's budget. Section 6.6(1)(h) says that it must include the estimated balance in the operating fund at the beginning and end of the fiscal year. Section 6.6(1)(i) sets out the same requirement for the strata's contingency reserve fund.
22. Neither party provided a copy of the strata's 2022 budget, but the strata admits that its 2022 budget failed to include this required information. It says it will include it in its next budget.

23. WIS wants the budget declared “null and void” and for the owners to “reconsider” the budget at a general meeting within 30 days of this decision. The strata’s fiscal year ended on December 31, so I find that these orders would be pointless. The money from the 2022 budget has already been collected and spent. I also decline to order the strata to comply with section 6.6 of the SPR in the future. It is already legally obligated to comply with the clear requirements of the SPR, so it would be meaningless and redundant for me to order it to do so.

24. I dismiss this claim.

Dispute ST-2022-005250 Claim #2: The End of the 2022 AGM

25. WIS argues that the strata breached its bylaws because at the end of the 2022 AGM, the chair declared the meeting “adjourned”. Bylaw 33 sets out the order of business for general meetings. The final item, bylaw 33(n), is to “terminate” the meeting.

26. The strata describes this argument as “pedantic”. I agree. WIS does not say what turns on this word choice, and I find nothing does. I also find that this claim is frivolous, which means that it is groundless and a waste of the CRT’s time. I dismiss this claim.

Dispute ST-2022-003556

27. In the Dispute Notice for ST-2022-003556, WIS broadly frames its claims as being about “financial misfeasance” and the inaccurate recording of the strata’s financial position in monthly financial statements. However, WIS’s submissions are very brief. WIS says that the strata violated sections 6.6(1)(h) and 6.6(1)(i) of the SPR. I already addressed these allegations above. In its reply submissions, WIS reiterates that the strata violated the SPR and says that the “strata has been fined for late payment on several occasions”. However, WIS does not explain what “financial misfeasance” has occurred or otherwise say anything about the strata’s financial recordkeeping practices other than the admitted breaches of sections 6.6(1)(h) and (i) of the SPR.

28. WIS provided several financial records and other strata documents in evidence, including balance sheets and unaudited financial statements. However, it made no submissions about any of them, other than by saying that one financial record

“doesn’t make sense”. The CRT is not an auditor, and it is not the CRT’s role to independently review a strata corporation’s records to uncover errors. The CRT’s process is an adversarial legal process, which means that parties must provide evidence to support their claims and provide submissions that explain why the submitted evidence justifies the orders they ask for. I find that WIS did not do this. I find WIS’s allegations of poor financial recordkeeping and financial misfeasance are unproven.

29. Turning to the remedy, I find that ordering a strata corporation to hire a professional (whether a strata manager or an accountant) to address issues with a strata corporation’s governance or financial management is an extraordinary remedy. The SPA does not require a strata corporation to have a professional prepare its budgets or other financial records.
30. As mentioned above, the strata’s 2022 budget admittedly did not comply with the SPR and the strata’s secret ballot process was improper. However, I find that neither error is significant enough to justify forcing the strata to hire a strata manager or accountant. This is especially so given the strata invited an order about how to comply with future secret ballot requests and committed to complying with the SPR in future budgets. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicant was partially successful in dispute ST-2022-0052500 and unsuccessful in dispute ST-2022-003356. WIS paid a total of \$350 in CRT fees (2 \$125 application fees and 1 \$100 decision fee). I find the applicant is entitled to reimbursement of half of the \$175 in CRT attributable to ST-2022-005250, which is \$87.50. Neither party claimed any dispute-related expenses.
32. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against WIS.

DECISION AND ORDERS

33. I order that:

- a. The strata hold any future secret ballot votes in a way that voters are ensured privacy both when they mark their ballots and when they provide their ballots to the person counting the votes, and
- b. Within 30 days of the date of this decision, the strata pay WIS \$87.50.

34. WIS is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.

35. I dismiss WIS's remaining claims.

36. 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.

Eric Regehr, Tribunal Member