



# Civil Resolution Tribunal

Date Issued: February 12, 2024

File: ST-2023-001288

Type: Strata

Civil Resolution Tribunal

Indexed as: *James v. The Owners, Strata Plan VIS 6197*, 2024 BCCRT 134

B E T W E E N :

NICHOLAS JAMES

**APPLICANT**

A N D :

The Owners, Strata Plan VIS 6197

**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 the validity of an annual general meeting (AGM).
2. The applicant, Nicholas James, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS VIS 6197 (strata). Mr. James is self-represented. A strata council member represents the strata.

3. Although Mr. James frames his claims differently, he essentially says the strata acted contrary to the *Strata Property Act* (SPA) by holding its July 23, 2021 AGM before its fiscal year end. He says the SPA and *Strata Property Regulation* (regulation) require the strata to present a budget that contains the actual opening balances in the operating fund and contingency reserve fund. Since the strata cannot know the actual opening balances until after the fiscal year, Mr. James says the strata must hold its AGM after its fiscal year has passed.
4. Mr. James also says it was significantly unfair for the strata to require him to vote on an invalid budget and not disclose a complete financial statement for the 2021 fiscal period.
5. Mr. James seeks orders that:
  - a. The July 2021 AGM, and all decisions made at the meeting, are invalid, and
  - b. The strata refund him \$600 for the increased strata fees he paid based on the alleged invalid 2022 budget.
6. In submissions, Mr. James provided an alternative argument that only the approved budget was invalid but did not change his requested remedy that the strata refund him \$600 for increased strata fees. I address all of Mr. James' arguments below.
7. The strata says the SPA permits it to hold its AGM before its fiscal year end and that the July 2021 AGM was held in compliance with the SPA and regulation. It relies on its interpretation of various parts of the SPA and advice it received. The strata also says it did not treat Mr. James significantly unfairly. The strata asks that Mr. James' claims be dismissed.
8. As explained below, I dismiss Mr. James' claims and this dispute.

## **JURISDICTION AND PROCEDURE**

9. 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.

10. 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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
11. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## **ISSUES**

12. The issues in this dispute are:
  - a. Did the strata hold its July 2021 AGM in compliance with the SPA?
  - b. Did the strata treat Mr. James significantly unfairly?
  - c. If the answer to either question is no, what is an appropriate remedy?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

13. In a civil proceeding such as this, Mr. James must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision. Notably, Mr. James made submissions about Generally Accepted Accounting Principles (GAAP) and the difference between accrual accounting and cash accounting. He asserts accrual accounting is preferred. However, I make no findings about these things because there is no requirement in the SPA, regulations, or bylaws that require a strata corporation to use GAAP or prepare its financial statements using an accrual method. As noted in *Kayne v. The Owners, Strata Plan*

*LMS 2374*, 2007 BCSC 1610 at paragraph 15, “[the SPA] requires the corporation to keep books of account showing money received and spent. It does not require those documents to be prepared and kept in any particular form.”

14. The strata was created under the SPA in January 2007. It consists of 8 residential townhouse-style strata lots in several buildings.
15. I have reviewed the strata’s bylaws and I find none are relevant to this dispute.

***Did the strata properly hold its July 2021 AGM?***

16. I note the parties did not raise any deficiencies with the AGM notice period or how the AGM was conducted. The only issues before me are the budget requirements and when the AGM must be held. The parties agree the strata’s fiscal year end is August 31. There is no dispute the strata considered its 2021-22 proposed budget at the July 2021 AGM.
17. I summarize the relevant parts of the SPA and regulation as follows:

**SPA section 40(2)** says the strata must hold its AGM “no later than 2 months after [its] fiscal year end”.

**SPA section 103** says:

- the strata must prepare a budget “for the coming fiscal year” for approval at the AGM (subsection (1)),
- the proposed budget must be part of the AGM notice “accompanied by a financial statement” (subsection (2)), and
- the budget and financial statement must contain the information required by the regulations (subsection 3(a)).

**Regulation section 6.6(1)(a)** says the budget required under SPA section 103(3) must contain “the opening balance” in the operating and contingency reserve funds. Other parts of section 6.6(1) refer to estimated amounts, such as income and expenses.

**Regulation section 6.7(1)** says a financial statement under SPA section 103(3) must contain certain information that is ‘within the 2 month period before’ the AGM date.

18. I first note that Mr. James argues that the use of the word “must” in each of the sections I have outlined above means “imperative” as defined under section 29 of the *Interpretation Act*. I agree with Mr. James on that point. The legislative requirements are mandatory and not discretionary.

### Statutory Interpretation

19. The principles of statutory interpretation have been well considered by the Courts. They state that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament”. See *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27 at paragraph 21.
20. There are 2 aspects to Mr. James’ arguments which both involve statutory interpretation.
21. First, Mr. James says the AGM itself was invalid because it was held before the strata’s fiscal year end, contrary to SPA section 40(2). Secondly, he says the budget in the July 2021 AGM notice was invalid and did not comply with SPA section 103 or regulation 6.6(1)(a) because it did not include the September 1, 2021 opening balance of the operating fund and contingency reserve fund.
22. I will first address SPA section 40(2).
23. The plain meaning rule of statutory interpretation says that if the meaning of legislative text is plain or clear then the court or CRT may not interpret it but must simply apply it as written. If the text is ambiguous or vague, the court or CRT may resort to rules and techniques of statutory interpretation.
24. I find that SPA section 40(2) is not vague or ambiguous. It clearly sets the last date the strata’s AGM can be held is 2 months after its fiscal year end. In this case that is October 31. It does not say the strata must hold its AGM after its fiscal year end nor

does it restrict the strata from holding its AGM before its fiscal year end. For this reason, I find section 40(2) does not restrict the strata from holding its AGM before August 31.

25. I turn now to SPA section 103 and regulation 6.6(1)(a).

26. As noted, read together, these sections require the strata to include the opening balances of the operating and contingency reserve funds in the proposed budget distributed with the AGM notice. I find Mr. James interprets regulation 6.6(1)(a) to mean **actual** opening balances but that is not what the regulation says. While I agree with Mr. James that the actual opening balance of the 2 funds would not be known until after the strata's fiscal year end had concluded, I find the term "opening balance" could also be interpreted to mean "estimated opening balance". A strata corporation could use an actual opening balance if the budget were drafted after the fiscal year end, or an estimated opening balance if the budget were drafted before the fiscal year end, such as it was here. I find both approaches comply with regulation section 6.6(1)(a).

27. Further, had the legislators intended a strata corporation to include the actual opening balances in its proposed budget, it would have used more precise language in regulation section 6.6(1)(a).

28. For these reasons, I find the strata's proposed 2021-22 budget included in the July 2021 AGM notice was valid.

***Did the strata treat Mr. James significantly unfairly?***

29. Mr. James also argues it was significantly unfair for the strata to require him to vote on an invalid budget, and not to disclose a complete financial statement for the 2021 fiscal period. He says these are other reasons to find the AGM invalid.

30. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

31. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.” See *Reid, Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
32. Here, given I have found the strata’s 2021-22 proposed budget was valid, Mr. James’ argument about the strata requiring him to vote on an invalid budget must fail.
33. Although not entirely clear, I understand Mr. James’ argument about the 2021 financial statements to be that the strata did not disclose financial statements for the August 2021 fiscal year end in the July 2021 AGM notice. This appears to be a related argument about why the strata must hold its AGM after its fiscal year end. However, there is no requirement for the strata to include year end financial statements in its AGM notice.
34. Regulation 6.7(1) requires the strata to provide a financial statement to a date that is within 2 months of the AGM date. There is no evidence the strata failed to do this, and Mr. James does not argue otherwise.
35. The only requirement about year end financial statements is found in regulation section 6.7(2). That section requires the strata to prepare a year end statement within 8 weeks of its fiscal year end.
36. Therefore, I find Mr. James has not proved the strata treated him significantly unfairly.
37. For all these reasons, I dismiss Mr. James’ claims and this dispute.

## **CRT FEES AND EXPENSES**

38. Under CRTA section 49 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. The strata was the successful party but did not pay CRT fees, so I make no order for CRT fees.
39. Neither party claimed dispute-related expenses other than CRT fees, so I order none.

40. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. James.

## **DECISION**

41. I dismiss Mr. James' claims and this dispute.

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J. Garth Cambrey, Vice Chair