



Civil Resolution Tribunal

Date Issued: March 18, 2024

File: ST-2023-000001

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan LMS 1101, 2024 BCCRT 278*

BETWEEN:

CHUI WONG

APPLICANT

AND:

The Owners, Strata Plan LMS 1101

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about strata corporation governance and a late annual general meeting (AGM).
2. The applicant, Chui Wong, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1101 (strata). Ms. Wong is self-represented. A strata council member represents the strata.

3. Ms. Wong says the strata is generally ignoring owners' interests through its actions or non-action. I summarize her claims against the strata as follows:
 - a. Minutes of the 2021 AGM were inaccurate and misleading,
 - b. The 2022 AGM was held 5 months late, and conducted contrary to the *Strata Property Act* (SPA),
 - c. During the 5-month period, the strata council was unauthorized to act on behalf of the strata,
 - d. The 2022 AGM minutes were inaccurate,
 - e. The strata has not commissioned a depreciation report,
 - f. Contrary to the strata's bylaws, the strata has not properly informed owners of strata council meeting dates and has not provided meeting minutes within the timeframe set out in the bylaws.

4. Ms. Wong seeks orders that the strata:
 - a. Have its fiscal year end financial statements for 2022 and 2023 audited,
 - b. Hold a special general meeting (SGM) within 2 months to:
 - i. correct errors in 2021 and 2022 AGM minutes,
 - ii. fund a depreciation report from its operating fund and commission the depreciation report within 1 month of the SGM, and
 - iii. reconsider the matters set out in the 2022 AGM minutes, and
 - c. Comply with the strata's bylaw timeframes about publishing a council meeting schedule and circulating council and general meeting minutes.

5. The strata says it is aware of its duties under the SPA and bylaws and has performed them as best as possible. It acknowledges its 2022 AGM was held late but says it made appropriate efforts to conduct the AGM in a safe manner due to COVID-19

concerns, relying on its strata manager. The strata also says that it has already corrected and redistributed the 2021 AGM minutes. Finally, the strata acknowledges a resolution to waive the requirement for a depreciation report in 2021 failed but says the strata did not have sufficient funds to obtain a depreciation report. In submissions, I understand the strata says it has corrected the depreciation report issue. I infer the strata asks that Ms. Wong's claims be dismissed.

6. As explained below, I find the strata must reconsider a bylaw amendment, obtain a depreciation report within the timelines set out below, and immediately comply with its bylaw 15(4) and 20(1) about strata council meetings and minutes.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.

SPA section 31 allegations

10. In submissions, Ms. Wong suggests the strata council breached SPA section 31 by not acting in the strata's best interests. The courts have found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA

section 31. See for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Rochette v. Bradburn*, 2021 BCSC 1752. Therefore, I will not address Ms. Wong's allegations involving section 31.

ISSUES

11. The issues in this dispute are:

- a. Must the strata correct its 2021 AGM minutes?
- b. Is the 2022 AGM valid, and if not, should the CRT order the strata hold an SGM?
- c. Must the strata complete financial audits for 2022 and 2023?
- d. Must the strata obtain a depreciation report?
- e. Should the CRT order the strata to comply with its bylaws about distributing minutes and providing advance notice of its council meetings?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this, Ms. Wong must prove her 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.

13. The strata was created in November 1993 under the *Condominium Act* and continues to exist under the SPA. It consists of 337 residential strata lots in 3 high-rise towers.

2021 AGM Minutes

14. Ms. Wong claims the April 28, 2021 AGM minutes incorrectly state a $\frac{3}{4}$ vote resolution to waive the strata's requirement for a depreciation report permitted under SPA section 94 passed. She says the resolution failed.

15. SPA section 1(1) says a $\frac{3}{4}$ vote means:

a vote in favour of a resolution by at least $\frac{3}{4}$ of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting;

16. The minutes show the resolution received 38 votes in favour, 15 votes against, and 2 abstentions. I agree with Ms. Wong because 38 votes in favour of a total of 53 votes excluding abstentions equals 71.7%. Thus the vote fell short of the 75% required to pass.

17. In an August 12, 2021 email to Ms. Wong, the strata manager confirmed the error and said it would send an amended version of the minutes to the strata owners. There is no evidence the strata manager did send out corrected minutes. I accept Ms. Wong's assertion it did not based on email she exchanged with 2 other owners. Also, the strata made no amendments to the minutes at subsequent general meetings up to June 2023. The strata submits Ms. Wong has not proved her claim and essentially says the outcome of the revised vote would not affect her claim. I note it is difficult to prove amended minutes were not circulated, and the strata could have easily proved that it did. I also disagree with the strata that the revised vote outcome does not affect Ms. Wong's claims. I discuss the failed resolution further below when I address Ms. Wong's claim for a depreciation report.

18. However, I do not find it necessary for the strata to correct the error in the 2021 AGM minutes as I find my reasons in this decision are sufficient to address the error.

Is the 2022 AGM valid?

19. It is undisputed the strata's fiscal year end is January 31. SPA section 40(2) says the strata must hold its AGM "no later than 2 months after [its] fiscal year end". Ms. Wong argues the 2022 AGM had to be held by March 31, 2022. I agree based on section 40(2). The 2022 AGM was not held until September 8, 2022. Several Court decisions have noted a strata corporation must hold its AGM within 2 months of its fiscal year end. However, I cannot locate a Court decision that directly addresses relief available to an owner if the AGM is held late, other than a declaratory order stating the AGM

was late. See for example, *Jiwan Dhillon & Co. Inc. v. Owners, Strata Plan LMS4385*, 2010 BCSC 254 at paragraph 74. The CRT cannot make such a declaratory order, nor did Ms. Wong seek one.

20. Ms. Wong's arguments about the late AGM relate to the strata council's lack of authority to spend money because the new budget was not approved. She requests orders that the strata complete an audit of its financial statements for the fiscal years ended January 31, 2022 and January 31, 2023. As the strata correctly notes, the previous years' budget continues until a new one is approved. See SPA section 104(2). While SPA section 104(3) restricts what the strata council can spend, Ms. Wong did not make arguments about specific expenditures. I acknowledge the strata's submission that it regularly completes an audit of its year end financial statements but note neither the SPA nor the bylaws require the strata to complete annual audits. For these reasons, I find Ms. Wong has not proven audits are required, so I dismiss this aspect of her claim.
21. Ms. Wong makes several other arguments about why the 2022 AGM did not comply with the SPA. Most are what I would characterize as minor or inconsequential. I agree with the strata that many are process-related, such as not following the agenda. This includes not formally calling the meeting to order, providing proof of notice of the meeting, approving the agenda, adopting the 2021 AGM minutes and reporting on insurance. As a result, and because I find the meeting was invalid, I will not address them here.
22. More importantly, Ms. Wong argues the AGM did not allow either in-person or electronic attendance by owners, nor the ability for owners to communicate during the meeting. The evidence is that owners had to submit their votes in advance of the AGM and were not allowed to participate in person or electronically, as Ms. Wong suggests. The covering letter the strata sent with the AGM notice on August 15, 2022, confirms this and states, in part:

Owners have the right to vote and are encouraged to exercise this right by submitting the enclosed vote form with voting instructions and drop off at the meeting room on the date of the annual general meeting.

23. The 2022 AGM minutes also support Ms. Wong's claim. Under the heading "CALL TO ORDER", the minutes say:

The strata council coordinated with the participants lining up with the proper distancing protocol outside of [the meeting room] to register for voting and to cast their votes into the appropriate boxes. The counting of votes by the council started at 8:45 pm to conclude the owners' resolution.

24. I find the manner in which the strata held the 2022 AGM was akin to a restricted proxy, which the CRT has addressed in several decisions. SPA section 54 sets out a person's right to vote at a general meeting, which generally includes owners and some tenants. SPA section 56 says a person who may vote under section 54 may vote in person or by proxy. Under section 56, a person may appoint any proxy other than an employee of the strata or a person who provides management services to the strata. Nothing in the SPA gives a strata corporation authority to restrict a person's choice of proxy, or to require votes be cast in writing prior to the general meeting. Therefore, a strata corporation cannot prevent a person from attending a general meeting to exercise their vote in person and cannot restrict how they choose to vote. See for example *Balayewich v. The Owners, Strata Plan LMS317*, 2021 BCCRT 110; *Curl v. The Owners, Strata Plan NW2926*, 2021 BCCRT 504; and *Raitt v. The Owners, Strata Plan LMS 1087*, 2021 BCCRT 683.
25. Even if the strata manager gave the strata advice that voting in the manner used for the 2022 AGM was an option, I find that advice was incorrect.
26. The strata also suggests COVID-19 restrictions played a role in the 2022 AGM. I disagree. The BC government declared a state of emergency in response to the COVID-19 pandemic in March 2020. The extended state of emergency ended on July 6, 2021, well before the 2022 AGM was required to be held. Therefore, there was no reason for the strata not to hold its AGM in person because of COVID-19.
27. For these reasons, I find the 2022 AGM was invalid. For clarity, this does not mean that the strata must reconsider all the business from that AGM, as I discuss below.

Must the strata call an SGM?

28. I turn now to Ms. Wong's requested remedies. She requests an order that the strata call an SGM to correct errors in 2021 and 2022 AGM minutes, fund a depreciation report from its operating fund, commission the report within 1 month of the SGM, and reconsider the matters set out in the 2022 AGM minutes. I decline to make the requested orders, but I agree to a modified order about a bylaw amendment and the depreciation report. My reasons follow.
29. As earlier noted, I decline to order correction to the 2021 AGM minutes. Ms. Wong says there were also errors in the 2022 minutes. I also decline to order their correction for the same reason. That is, I find my reasons in this decision are sufficient to address the errors.
30. I will next address the resolutions passed at the 2022 AGM. They consist of majority vote resolutions to approve the 2022-2023 budget and elect the strata council members, and $\frac{3}{4}$ vote resolutions to approve a depreciation report funded from the contingency reserve fund (CRF), approve a \$100,000 expense from the CRF to upgrade the closed circuit television camera system and complete exterior caulking repairs, and the addition of a bylaw to prohibit barbeques.
31. The 2023 AGM and subsequent SGM have already been held to approve a new budget and elect new council members, so I decline to set aside the budget approval or council election. I note it would serve no purpose and likely cause more harm than good to do so.
32. I also decline to set aside the \$100,000 CRF expense because it is unclear what expenses have been made since September 2022. If the funds have been spent or the project is complete, it would be impractical to make such an order. Further, the strata's current financial status is not before me so if I ordered the funds returned to the CRF it could create additional issues not contemplated by Ms. Wong.
33. As for the bylaw amendment, given my finding that the 2022 AGM was invalid, I order the strata not to enforce bylaw 3(30) which prohibits barbeques if it has been registered at the LTO. If the bylaw has not been registered, I order the strata not to

register it. The strata must reconsider the same resolution to add bylaw 3(30) at the SGM I order below.

34. That leaves the issue of the depreciation report. Depreciation reports have strict guidelines as addressed in SPA sections 92, 94, and 96 and *Strata Property Regulation* (regulation) section 6.2. Briefly, SPA section 92(a)(iii) permits a strata corporation to fund a depreciation report from its operating fund, which can be done by way of majority vote. Section 96(b)(i)(A)(I) also permits a strata corporation to fund a depreciation report from its CRF by passing a majority vote resolution.
35. SPA section 94(3)(a) says a depreciation report is mandatory unless the strata waives the requirement by passing a $\frac{3}{4}$ vote at a general meeting. Based on the evidence before me here, I find the strata has never obtained a depreciation report. I infer the strata has historically waived the requirement for a depreciation report until its 2019 AGM.
36. Regulation 6.2(7)(b) says if a strata corporation has waived the requirement, the waiver stands for up to 18 months. Section 6.2(7)(c) says a strata corporation may waive the requirement as early as 1 year of when the depreciation report is due.
37. Effectively then, the strata must waive the requirement to obtain a depreciation report every year. If it does not, the SPA requires the strata obtain one, which is what find happened here.
38. In an August 12, 2021 email to Ms. Wong, the strata manager confirmed that 2 $\frac{3}{4}$ vote resolutions were put to the strata owners at the 2019 AGM. One resolution proposed the requirement of a depreciation report be waived and the second proposed the strata obtain a depreciation report funded by a \$35,000 expense from the CRF. The email confirmed both resolutions failed. Given the strict wording contained in SPA section 94, I find the strata did not waive the requirement to obtain a depreciation report, so it was required to obtain one. I find the results of the 2019 votes are sufficient for me to order the strata obtain a depreciation report but, for completeness, I will review the subsequent meetings voting results that are before me.

39. The 2020 AGM minutes are not before me, however, as mentioned, the 2021 AGM minutes confirm the proposed resolution to waive the depreciation report failed. This result required the strata to obtain a report. Even though I have found the 2022 AGM was invalid, a proposed $\frac{3}{4}$ vote resolution to fund a depreciation report from the CRF at that meeting also failed. I note the resolution would also have failed it had been proposed as a majority vote resolution. I do not agree with the strata that a failed $\frac{3}{4}$ vote to fund a depreciation report implies the owners approved a waiver. This is because SPA section 94(3)(a) expressly requires the strata to pass a $\frac{3}{4}$ vote to waive the depreciation report requirement.
40. The 2023 AGM minutes confirm a $\frac{3}{4}$ vote resolution to fund a depreciation report from the CRF was “dismissed”, which I infer means no vote was taken. Minutes from a June 8, 2023 SGM confirm a majority vote resolution to fund a depreciation report from the CRF failed and that a $\frac{3}{4}$ vote to waive the depreciation report requirement was approved. To the extent the strata argues the June 8, 2023 approved resolution corrects the previous years’ voting outcomes, I disagree. As I have mentioned, the SPA and regulation contain strict requirements about waiving a depreciation report. So, by the strata failing to pass a $\frac{3}{4}$ vote to waive the report requirement within the statutory timeframe, means the strata must obtain a depreciation report and I so order.
41. I turn now to how the strata may fund the depreciation report expense. I decline to order the strata fund the report expense from its CRF, because it is unclear whether the strata has sufficient funds in its CRF to do so. I find it appropriate to order the strata hold an SGM within 60 days of the date of this decision to consider how it will fund the report, or if the timing allows, the strata may add the matter to its AGM business. The strata’s funding options are to:
- a. Pass a majority vote resolution to fund the depreciation report from its CRF or operating fund,
 - b. Pass a $\frac{3}{4}$ vote resolution to approve a special levy to fund the expense, or
 - c. A combination of these.

42. The strata may choose to give the owners more than 1 option, but it must obtain at least 1 quotation from a “qualified person” within the meaning of the SPA and regulation to determine the amount of funding needed. The strata must retain a qualified person to prepare the depreciation report within 30 days of the SGM or AGM.

Should the CRT order the strata to comply with its bylaws about distributing minutes and providing advance notice of its council meetings?

43. The strata filed an updated set of bylaws with the Land Title Office on June 11, 2010. It also filed subsequent bylaw amendments, but I find none are relevant to this dispute. Ms. Wong effectively argues the strata does not follow its bylaws 15(4) and 20(1) because it does not notify owners of council meetings or provide meeting minutes within 2 weeks. She also argues the strata distributes general meeting minutes late. I note SPA section 35 requires the strata to keep minutes of its council and general meetings, however, the SPA does not address when general or council meeting minutes must be distributed to owners. I will first address Ms. Wong’s claims about council meetings.

44. Bylaw 15(4) says the strata council “must inform owners about a council meeting as soon as possible after the meeting has been called”. Bylaw 20(1) says the strata council “must inform owners of the minutes of all council meetings within 2 weeks of the meeting”.

45. The strata argues its council members are volunteers doing the best they can, and any non-compliance is due to inadvertence. It relies on *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153, where the court found that latitude is justified when scrutinizing the conduct of a volunteer strata council. The strata also says it wholly relies on its strata manager and cites *Weir v. Strata Plan NW 17*, 2010 BCSC 784 for the proposition that the strata is entitled to rely on its strata manager, even if it is later found to have erred. Finally, the strata says there is no need to order it to comply with its bylaws as it is already required to do so under the SPA and, in any event, the CRT has no authority to grant a declaratory order.

46. I would likely agree with the strata if the lack of council meeting notice and late distribution of minutes were not routine, but that is not case. Based on the minutes in
47. evidence and a summary provided by Ms. Wong, I find the emailed minutes are almost always sent well after 2 weeks of the meeting date and after the next strata council has already happened. So, the owners are not made aware of the next meeting. This is not a one-off occurrence, so I find *Mitchell* and *Weir* do not assist the strata here. I also find CRTA section 123(a) allows me to order a party to do something so, in the circumstances of this dispute, I find it appropriate to order the strata comply with bylaws 15(4) and 20(1).
48. As for general meeting minutes, I do not reach the same conclusion, given there are no requirements in the SPA or bylaws about distributing general meeting minutes. I also have limited evidence when the strata distributed general meeting minutes for the meetings noted above, so I find Ms. Wong has not proved her claim about the distribution of general meeting minutes. Having said that, the strata must act reasonably and provide general meeting minutes within 2 weeks of a request under SPA section 36. Therefore, the strata should produce its general meeting minutes in a timely manner. I decline to make the order requested by Ms. Wong about distributing general meeting minutes.

CRT FEES AND EXPENSES

49. 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. Ms. Wong was partially successful and paid CRT fees of \$225.00. The strata did not pay CRT fees. I order the strata to reimburse Ms. Wong ½ of her CRT fees or \$112.50.
50. Ms. Wong also claimed \$12.27 in dispute-related expenses for registered mail expense to serve the strata. The strata did not claim dispute-related expenses, so I order the strata to pay Ms. Wong ½ of her claimed expenses, or \$6.13.

51. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Ms. Wong.

DECISION AND ORDERS

52. I order the strata to do the following:

- a. Immediately comply with its bylaws 15(4) and 20(1).
- b. Within 15 days of the date of this decision, pay Ms. Wong a total of \$118.63, broken down as follows:
 - i. \$112.50 for CRT fees, and
 - ii. \$6.13 for dispute-related expenses.
- c. Within 60 days of the date of this decision, hold a general meeting to:
 - i. Reconsider the $\frac{3}{4}$ vote resolution to amend the strata's bylaws to prohibit barbeques, and
 - ii. Propose resolutions about funding a depreciation report after obtaining at least 1 quotation from a qualified person.
- d. Within 30 days of the general meeting, retain a qualified person to prepare a depreciation report.

53. Ms. Wong's remaining claims are dismissed.

54. Ms. Wong is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

55. This is a validated decision and order. 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.

J. Garth Cambrey, Vice Chair