



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Rittinger v. The Owners, Strata Plan NW2154*, 2024 BCCRT 336

BETWEEN:

SUE RITTINGER and BRIAN REVEL

APPLICANTS

AND:

The Owners, Strata Plan NW2154

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. Sue Rittinger and Brian Revel each co-own strata lots in the strata corporation, The Owners, Strata Plan NW2154 (strata). The applicants say there were a number of procedural issues relating to the strata's September 27, 2022 electronic annual general meeting (2022 AGM). First, they say the strata failed to allow votes by secret ballot, despite Ms. Rittinger's request. The applicants also allege the strata manager

who chaired the 2022 AGM improperly forwarded all proxies to the strata council, rather than vetting the proxies themselves, resulting in a loss of confidentiality. Next, the applicants say the strata misled owners that the proposed budget at the 2022 AGM would not change the owners' monthly strata fees for the next fiscal year. Finally, the applicants allege the strata's decision to hold annual general meetings (AGMs) and special general meetings (SGMs) electronically is unfair, and in-person meetings would be more democratic. The applicants are self-represented.

2. As remedies, the applicants seek the following orders:
 - a. The strata hold an in-person SGM where the attending owners can re-vote on the portion of the budget from the 2022 AGM that increased strata fees, using secret ballots if requested,
 - b. The Civil Resolution Tribunal (CRT) appoint an unbiased chair for the SGM,
 - c. The current strata manager, GH, be replaced with a new and impartial one,
 - d. The CRT appoint a mediator to assist with issues at the strata, at the strata's expense, and
 - e. The strata manager vet all proxies with no involvement from the strata council.
3. The strata says the 2022 AGM and the votes held during it were valid. It further says it has not treated the applicants significantly unfairly. It asks that I dismiss the applicants' claims. A strata council member represents the strata.
4. As explained below, I find the applicants are not entitled to any of their claimed remedies.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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 without an oral hearing.
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.

Preliminary Issue

8. In its submissions, the strata argues that the applicants raised new claims in their submissions. It says that the applicants did not raise these claims in the amended Dispute Notice so it would be procedurally unfair for the CRT to consider them. I find most of the applicants' allegations relate to remedies that they specifically seek in the amended Dispute Notice, and the strata has had an opportunity to respond to all the allegations. So, I find it is not procedurally unfair for me to make findings about those allegations that relate to the requested remedies set out in the amended Dispute Notice. To the extent the applicants raise new allegations in their submissions that do not relate to their requested remedies, I find it unnecessary to address them.

ISSUES

9. The issues in this dispute are:
 - a. Should the CRT make orders to replace the current strata manager, appoint a chair for the strata's next SGM, or appoint a mediator?
 - b. Did the strata breach any *Strata Property Act* (SPA) provisions or bylaws in the way it dealt with proxy forms for the 2022 AGM?

- c. Did the strata breach any SPA provisions or bylaws by refusing to allow votes by secret ballots at the 2022 AGM?
- d. Should the strata hold a re-vote for the budget passed at the 2022 AGM?
- e. Should the CRT order the strata to hold an in-person SGM?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

Background

- 11. The strata is a residential building with 63 strata lots. It filed a complete set of bylaws with the Land Title Office (LTO) on January 29, 2016. I find these bylaws apply to this dispute. Various subsequent amendments have been filed with the LTO that I find are not relevant here. I discuss the relevant bylaws in my analysis below.
- 12. On September 8, 2022, the strata issued a written notice for the 2022 AGM which was scheduled to be held via Zoom on September 27. Both applicants attended the 2022 AGM.

Should the CRT make orders replacing the current strata manager, appointing a chair for the strata's next SGM, or appointing a mediator?

13. The applicants ask for a number of orders that are about how the strata governs itself, including to replace the current strata manager, appoint a chair for the strata's next SGM, and appoint a mediator. For the reasons that follow, I decline to make any of these orders. In *Oakley et al. v. Strata Plan VIS1098*, 2003 BCSC 1700 at paragraph 16, the court said that it is not its role to interfere with a strata corporation's democratic process. I find this reasoning applies equally to the CRT with respect to these requested orders. There are processes set out in the SPA and the bylaws that allow the owners and the strata council to deal with these matters. For example, SPA

section 46 says that if 20% of owners by written demand ask that a resolution be added to the agenda of a general meeting, the strata must do so. Bylaw 28 deals specifically with who must chair an AGM or SGM, including the possibility of an election to vote for the chair. That bylaw could be amended if enough owners are unhappy with the current situation. Similarly, SPA section 39 sets out how a strata corporation can cancel a strata management contract and SPA section 27 allows a majority of owners to direct the strata council if they are unhappy with the strata council's choice of strata manager.

14. Given these available processes, I find these are all decisions that are best left to the owners. I find it is not appropriate for the CRT to grant these orders and interfere with the strata's democratic process. I acknowledge the applicants' submission that they are not seeking to cancel the current strata management contract but rather have the strata management company appoint a new strata manager in place of GH. However, I find the essence of the applicants' request is to cancel the current contract. In any event, to the extent the applicants seek an order that the current strata management company appoint a new manager for the strata, the strata management company is not a party to this dispute, and I cannot order non-parties to do something. So, I dismiss the applicant's claims about replacing the strata manager, appointing a chair for the strata's next SGM, and appointing a mediator.

Proxies

15. I turn now to the applicants' allegations about proxies. Mr. Revel held 16 proxies for other owners during the 2022 AGM. Before the meeting, Mr. Revel emailed copies of the completed proxy forms to GH. In the email, Mr. Reval said the proxies should be held in secret, and asked that GH only forward the list of proxies in confidence to either the strata council president or vice president. GH responded that all correspondence is forwarded to the strata council.
16. The applicants allege GH breached the SPA by forwarding the completed proxy forms to the whole strata council, resulting in a loss of confidentiality. The strata says that proxy forms are not secret documents and can be viewed by any strata council member. It says there are no provisions in the SPA or the strata's bylaws requiring

the identity of proxy holders or the number of proxies held by an individual to be kept private and confidential.

17. I agree with the strata. Proxy forms are not secret ballots and I find there is nothing in the SPA that allows anyone to attend an AGM or SGM anonymously. The strata council is entitled to know which owners are attending and voting at AGMs and SGMs, and in what capacity. Further, the bylaws here essentially require open voting unless there is a secret ballot. In other words, owners are generally not entitled to vote anonymously. Under the circumstances, I find it was not improper for GH to forward the proxy forms to the strata council.
18. As for the applicants' request that I order the strata manager to vet proxies for the next SGM without the strata council's involvement, I decline to do so for the following reasons. Bylaw 32.1 sets out the order of business to be followed at an AGM or SGM, with the first item including certifying proxies. While it does not say so explicitly, I find it is the meeting chair that must certify proxies. There is nothing in the bylaws or the SPA that says the chair is unable to do the legwork of certifying the proxies before an AGM or SGM, or that the strata council cannot help the chair. So, I find the applicants are not entitled to an order that the strata manager vet proxies for the next SGM without the strata council's involvement and I dismiss this part of their claim.

Secret ballots

19. Next, the applicants argue GH improperly denied Ms. Rittinger's request for votes by secret ballot at the 2022 AGM. The evidence shows that at the beginning of the meeting, Ms. Rittinger made a request for all votes to be done by secret ballot. GH, as the meeting's chair, dismissed Ms. Rittinger's request. The applicants say GH was wrong to do so. They say that because secret ballots were not allowed, some owners who are susceptible to bullying changed their votes.
20. The applicants rely on section 27(7) of the SPA's Standard Bylaws which says that despite anything in section 27, an election of council **or any other vote** must be held by secret ballot, if the secret ballot is requested by an eligible voter (my emphasis).

21. The strata says that the Standard Bylaws do not apply here because the strata filed different bylaws with the LTO. I agree. SPA section 120(1) says the Standard Bylaws apply to a strata corporation, except to the extent that different bylaws are filed with the LTO. Here, section 30 of the bylaws addresses voting matters. In particular, bylaw 30.7 says that despite anything in bylaw 30, an election of council or removal of a council member must be held by secret ballot, if the secret ballot is requested by an eligible voter and approved by a majority vote resolution. I find that by including bylaw 30.7, the owners decided that Standard Bylaw 27(7) which allows for the potential of secret ballots for any votes, no longer applies.
22. Further, bylaw 30.3 says that at an AGM or SGM, a vote is decided by a show of voting cards, unless an eligible voter requests a precise count. Under bylaw 30.4, if a precise count is requested, the meeting chair must decide whether it will be by show of voting cards, roll call, secret ballot, or some other method. So, I find there was nothing improper about the chair's decision to decline Ms. Rittinger's request that all votes at the 2022 AGM be done by secret ballot since the bylaws do not allow for secret ballots for all votes, unless the chair decides otherwise after an owner requests a precise count. No one at the 2022 AGM requested a precise count of any vote, so the chair had no authority under the bylaws to make any voting secret. Accordingly, I dismiss the applicants' claims about secret ballot votes.

2022 AGM budget vote

23. The applicants argue that a re-vote on the budget passed at the 2022 AGM is necessary because the AGM agenda contained a false statement. Specifically, that there would be no change to the monthly strata fees for the next fiscal year, when the schedule of owners' monthly strata fees that was attached to the agenda showed a clear increase. The applicants say the owners saw the statement about there being no change and took it at face value, approving the budget by majority vote. They say that neither the strata council nor GH explained at the AGM that there was in fact an increase.
24. Having reviewed the evidence, I am unable to find any such statement in the agenda or meeting notice as alleged. Rather, the statement the applicants refer to appears to

be in the 2022 AGM meeting minutes. The applicants do not say that any verbal statement was made at the 2022 AGM that there would be no increase in strata fees if the budget was approved. So, it is unclear why or how this statement ended up in the meeting minutes. In any event, I find it unproven that the strata represented that the strata fees would be unchanged before the owners voted on the budget. Further, the schedule showing the proposed changes and increases to owners' strata fees was attached to the agenda and meeting notice and available for all owners to view before the meeting. So, all the owners had to do was review the schedule to see how the strata fees were changing for their specific unit to note any differences. I dismiss this claim.

In-person SGM

25. Finally, I address the applicants' request for an in-person SGM. They say that the electronic meetings the strata has held since the COVID-19 pandemic do not allow for the same level of debate and discussion that happens at in-person meetings, which they say are more democratic.
26. More specifically, the applicants allege that GH, as chair at the 2022 AGM, muted Ms. Rittinger after denying her request for secret ballots for all votes and did not allow her to explain that the strata had previously held secret ballots without issue on Zoom. They also allege that GH has threatened to mute or remove individuals at meetings. The applicants suggest that GH, and the strata council by extension, have treated the applicants and other owners that have dissenting opinions about strata governance issues unfairly at the electronic meetings.
27. I find the applicants essentially allege that they were treated significantly unfairly at the 2022 AGM, and continuing to hold AGMs and SGMs electronically is also significantly unfair. The CRT has authority to make orders remedying a strata corporation's significantly unfair actions or decisions. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust or inequitable. In applying the test, an owner's objectively reasonable expectations are a relevant factor, but are not determinative (see *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44, *King Day Holdings Ltd. v. The*

Owners, Strata Plan LMS3851, 2020 BCCA 342, and Kunzler v. The Owners, Strata Plan EPS 1433, 2021 BCCA 173).

28. Since the COVID-19 pandemic, the legislature has amended SPA section 49 to allow for AGM and SGMs to be held electronically, so long as certain requirements set out in section 49(2) are met. In particular, the meeting notice must include instructions for attending by electronic means, the electronic means must enable all attendees to communicate with each other, and the electronic means must enable the chair to identify whether a person attending electronically is an eligible voter. So, I find it is not significantly unfair for the strata to hold electronic AGMs and SGMs so long as these requirements are met.
29. I also find the applicants have not proven that the strata treated them significantly unfairly at the 2022 AGM itself. Contrary to their submission, I find the evidence does not show that Ms. Rittinger was prohibited from explaining that secret ballots could be cast on Zoom as alleged. Rather, in an October 6, 2022 email to the strata management company, Ms. Rittinger said that after GH denied her secret ballot request, saying that it was not possible to do so on Zoom, she explained at the 2022 AGM that it was possible and had been done at the last AGM by using the chat box. It is unclear what more Ms. Rittinger had to say about the secret ballots once she provided this explanation. Further, I find that even if Ms. Rittinger was muted as she claims, she could have still used the raise-hand function or the chat box to communicate, and there is no evidence that she did.
30. Overall, I find the applicants have not shown that the strata has treated them any differently than any other owners at the 2022 AGM. So, I find it unproven that it is significantly unfair for the strata to hold electronic AGMs and SGMs. As a result, I dismiss this part of the applicants' claim as well.

CRT FEES AND EXPENSES

31. 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. Since the applicants were unsuccessful, I dismiss their claim for reimbursement of their paid CRT fees. The strata did not pay any fees and none of the parties claim any dispute-related expenses, so I award none.

32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDER

33. I dismiss the applicants' claims and this dispute.

Nav Shukla, Tribunal Member