



Civil Resolution Tribunal

Date Issued: June 21, 2024

File: ST-2023-000226

Type: Strata

Civil Resolution Tribunal

Indexed as: *Millard v. The Owners, Strata Plan LMS1027*, 2024 BCCRT 582

BETWEEN:

COLIN MILLARD

APPLICANT

AND:

The Owners, Strata Plan LMS1027

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about strata governance. The applicant, Colin Millard, co-owns strata lot 53 (SL53) in the respondent strata corporation, The Owners, Strata Plan LMS1027 (strata).

2. Mr. Millard says that the strata inappropriately held a townhall-style meeting in December 2022. He seeks orders for the strata to 1) reverse a motion passed at the January 18, 2023 annual general meeting (AGM) about an elevator refurbishment project, 2) produce a comprehensive package about the strata's plans for work on strata property, 3) call a special general meeting (SGM) to vote on matters including the operating fund, the contingency reserve fund, strata fees, budget, and landlord/tenant matters, and 4) to stop the strata from avoiding its obligations under the *Strata Property Act* (SPA). Mr. Millard also seeks costs as the tribunal sees fit.
3. The strata denies liability. It says that it was entitled to call the townhall meeting and did not breach the SPA or bylaws by doing so. The strata admits it held the January 2023 AGM late by 18 days but says this does not invalidate the AGM. It also says the claims about the budget, AGM, and elevator refurbishment are moot because of the passage of time and completion of the work. It says Mr. Millard's claims are an abuse of process.
4. Mr. Millard represents himself. A strata council member represents the strata.
5. For the reasons that follow, I dismiss Mr. Millard'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.
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.

Remedies about the Province

10. Mr. Millard requested as a remedy for the Province to “firm up” the SPA on “matters arising”. I infer that Mr. Millard may have been referring to, as a legal entity, His Majesty the King in Right of the Province of British Columbia. Mr. Millard did not elaborate. The strata objected to this claim or requested remedy arguing that the Province is not a party to this dispute.
11. I agree with the strata. As the Province is not a party to this dispute, I find any claims against it are not before me. I make no findings about such claims in my decision.

ISSUES

12. The issues in this dispute are as follows:
 - a. Are Mr. Millard’s claims moot?
 - b. Did the strata breach any legal obligation by calling townhall-style meetings?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Mr. Millard as the applicant must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

14. I will first begin with a brief history of the elevator. It is summarized in the signed March 1, 2024 statement of CH, a strata council member, and the documentary evidence cited below.
15. A November 28, 2013 depreciation report recommended that the strata upgrade and modernize its elevators by 2023. The strata hired GUNN Consultants Inc. to obtain bids for the work and provide recommendations. The strata intended for owners to vote on motions about the elevators at an AGM planned for December 7, 2022.
16. The November 2, 2022 council meeting minutes show that GUNN was unable to complete the tender process in time for the strata to provide proper notice for the planned December 2022 AGM. The strata decided to instead hold an informal townhall meeting on the December 7, 2022 date. The strata rescheduled the AGM to January 18, 2023.
17. Under SPA section 40(2), a strata corporation must hold its AGM no later than 2 months after the strata corporation's fiscal year end. The minutes in evidence show that the strata's fiscal year-end is October 31. The strata admits that by delaying the AGM it breached SPA section 40(2) by 18 days. I will return to this below.
18. The strata provided notice of the townhall meeting about the elevators in a November 3, 2022 notice and a November 23, 2022 reminder notice. At the townhall meeting, GUNN's project engineer attended to explain the scope of work, answer questions, and provide visual aids. Around 7 to 10 owners attended. Mr. Millard did not attend. The strata did not take any minutes of the meeting. It also did not take any votes or make any formal decisions at the time.
19. The strata held its AGM on January 18, 2023. The owners passed 2 majority resolutions unanimously: 1) to approve the transfer of the strata's operating fund surplus to the contingency reserve fund (CRF), and 2) to approve the operating budget. The owners also passed a $\frac{3}{4}$ vote resolution to spend up to \$286,015 on the elevator modernization from the CRF. The resolution passed with 34 owners in favour and 1 opposed.

20. CH's evidence is that Mr. Millard did not vote against any of the resolutions mentioned above, including the elevator resolution. Mr. Millard does not dispute this.

Issue #1. Are Mr. Millard's claims moot?

21. As noted above, the strata says Mr. Millard's claims are moot. It says the contractor finished work on the elevator refurbishment on January 8, 2024. It also says that it has since held another AGM and passed another budget on December 7, 2023.

22. Mr. Millard did not address this issue. In his reply submission he focused on the legality of townhall meetings.

23. I turn to the law. Mootness involves a 2-step analysis. The first is to consider whether the live issue disappeared, leaving any remaining issues theoretical or academic. The second is whether the CRT should exercise its discretion to hear the issue anyway, despite this. See *Binnarsley v. BCSPCA*, 2016 BCCA 259.

24. I find the non-binding decision of *Ottens v. The Owners, Strata Plan LMS 2785*, 2022 BCCRT 19 is relevant to determining whether the live issues in this dispute have disappeared. In that decision, the CRT held that subsequent votes on budgets and council members at the 2021 AGM had replaced the decisions from the 2020 AGM. It found that there would be no purpose for owners to vote on the 2020 issues anew.

25. I agree with the strata that the issues in this dispute are moot. The December 7, 2023 AGM minutes are in evidence. They show the owners have already voted on and approved new resolutions about or affecting the operating fund, budget, CRF, and strata fees for the 2023 to 2024 fiscal year. The strata and the owners are no longer relying on the previous budget or other financial decisions approved by the owners in January 2023 for the 2022 to 2023 fiscal year. I find the reasoning in *Ottens* applicable given these facts.

26. Similarly, Gunn's January 8, 2024 certificate of substantial performance shows the elevator refurbishment is complete. So, I find there is no live controversy about the elevators.

27. I earlier stated that the strata held its January 2023 AGM late. However, I find this does not change my finding that the above-stated issues are still moot. I also agree with the strata's submission that the normal remedy for a late AGM is to order the strata to hold the AGM as soon as possible. See the non-binding decisions of *Stevens v. KAS 2490*, 2021 BCCRT 492 and *Canadian Regal Education Corporation v. Section 2 of EPS1069*, 2021 BCCRT 411. As the strata already held the AGM, I find it unnecessary to make any orders about this.
28. I also find there is no utility in hearing these issues anyway. In particular, I find this would not be an appropriate use of CRT resources. The issues are fact specific to the parties and would not preclude further disputes or raise an issue of public importance. I see no reason for the CRT to make an exception and decide these issues in these circumstances.
29. Given the above, I dismiss Mr. Millard's claims about the January 2023 AGM and elevator refurbishment as moot.
30. Mr. Millard also said the owners should vote on "landlord/tenant matters". While this claim is not necessarily moot, I find it too vague to discern the claim. I also find it premature at this stage. For example, Mr. Millard has not attempted to require the strata to hold an SGM on the matter under SPA section 43(1). So, I dismiss this claim as well.
31. I find this leaves only Mr. Millard's allegation that the strata is breaching the SPA through its townhall meetings. As he seeks an order about the strata's future conduct, I do not find this moot and I discuss the issue below.

Issue #2. Did the strata breach any legal obligation by calling townhall-style meetings?

32. Mr. Millard says that he was unable to attend the December 7, 2022 townhall meeting. He says that townhall meetings are not contemplated by the SPA and are in breach of it. He says the strata must stop holding such informal, unstructured meetings.
33. The strata says the SPA and bylaws do not prohibit such meetings. It says the provincial government's website encourages such meetings as a way for owners to prepare for general meetings. It provided a website link in submissions, but not the actual website pages. As the website's contents may have changed, I have not relied on it in my decision.
34. The CRT has previously considered AGM formats that included pre-AGM discussion meetings like the townhall meeting in this dispute. See *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463 and *Gordon v. The Owners, Strata Plan NW 429*, 2022 BCCRT 1227 at paragraph 21. These decisions do not say that such meetings are always impermissible. Instead, they generally say the strata must allow owners to still participate in general meetings if they wish and to select their proxies without restriction. The townhall meetings also do not replace discussions and potential resolution amendments under SPA section 50(2) that are intended to occur at the same time, and by the same owners and proxies who vote on the resolutions at a general meeting.
35. As noted by the strata, there are no bylaws or provisions in the SPA that blanketly prohibit townhall-style meetings. There is no indication the strata prevented or discouraged in-person attendance at the January 2023 AGM or placed prohibitions on proxies. So, I find the strata did not breach any legal obligation in connection with the townhall meetings.
36. Mr. Millard says that the information from the townhall meeting should have been recorded in minutes, as if it were a general meeting under the SPA. However, that is currently not a requirement under the SPA or bylaws. To the extent that Mr. Milard says the strata attempted to "hide" information by providing it at the townhall meeting

instead of the AGM, I find this unproven. Given the 2 notices, owner attendance at the townhall meeting, and the presence of the GUNN project engineer, I find it more likely than not that the strata proceeded in good faith to provide information to the owners.

37. Mr. Millard says that the strata should have sought legal advice before holding a townhall meeting. He cites the website link provided by the strata. As noted above, the website is not in evidence. In any event, an informational website is not binding law.
38. For those reasons, I find the strata did not breach any legal obligation at the December 7, 2023 townhall meeting. Accordingly, I find it unnecessary to order the strata to stop holding such meetings. I dismiss this claim.

CRT FEES AND EXPENSES

39. 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. As he was unsuccessful, I dismiss Mr. Millard's claims for reimbursement of CRT fees. I also dismiss his claim for unspecified costs for the same reason. The strata did not make any claims for reimbursement.
40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Millard.

ORDER

41. I dismiss Mr. Millard's claims and this dispute.

David Jiang, Tribunal Member