



Civil Resolution Tribunal

Date Issued: October 9, 2024

File: ST-2023-004951

Type: Strata

Civil Resolution Tribunal

Indexed as: *Aatelma v. The Owners, Strata Plan KAS 1351*, 2024 BCCRT 1002

BETWEEN:

NANCY AATELMA

APPLICANT

AND:

The Owners, Strata Plan KAS 1351

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Nancy Aatelma owns a strata lot in the strata corporation, The Owners, Strata Plan KAS 1351. She alleges that a January 2023 special general meeting (SGM) did not comply with the *Strata Property Act* (SPA). She says the strata held the SGM by restricted proxy, which the SPA does not permit, and that the strata council president lied to her that the strata was only treating the meeting as an information session.

She says that none of the business from the SGM was valid. She asks for orders that the strata acknowledge its mistake, that all resolutions passed at the SGM be declared invalid, and that a new SGM be held. She also asks for \$700,000 in compensation, which I break down below. Ms. Aatelma is self-represented.

2. The strata admits that it held an information session but only after it had completed the formal business of the SGM. The strata says that Ms. Aatelma and her husband, EA, have been so disruptive to strata meetings in the past that it was justified in preventing their direct participation. The strata asks me to dismiss Ms. Aatelma's claims.

JURISDICTION AND PROCEDURE

3. 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.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute question the credibility, or truthfulness, of the other. However, as discussed below, in the circumstances of this dispute it is not necessary for me to resolve the credibility issues that the parties raised. There is no other compelling reason for an oral hearing. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. 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.

7. In its submissions, the strata asks for several orders. However, the strata did not file a counterclaim, so these issues are not properly before me. I will not discuss them in this decision.
8. In her submissions, Ms. Aatelma argues that various aspects of the SGM's notice, the strata's financial statements, and its budget did not comply with the SPA and the *Strata Property Regulation*. She did not raise those issues in her Dispute Notice, which only mentioned the restricted proxy issue. So, I find that these issues are not properly before me either. I will not discuss them in this decision.

ISSUES

9. The issues in this dispute are:
 - a. Was the 2023 SGM valid?
 - b. If not, what remedies are appropriate?

ANALYSIS AND DECISION

10. In a civil claim such as this, Ms. Aatelma as the applicant must prove her claims on a balance of probabilities. This means more likely than not.
11. The strata consists of 12 strata lots in a 3-storey building. Ms. Aatelma has co-owned one of the strata lots with EA since 2016. On its face, this dispute is about the conduct of a single meeting, but the materials before me make it clear that there has been a longstanding and bitter conflict between two factions within the strata. Ms. Aatelma and EA are in the minority faction. I have reviewed all the evidence before me, including about this past conflict, but I only refer to what is necessary to explain my decision.

Was the 2023 SGM valid?

12. The strata provided notice of its January 29, 2023 SGM on January 8. Under the heading "Type of Vote", the notice said "restricted proxy or in person" and noted that

owners should “decide what’s best for you”. Further down the page, the notice said “as you are aware a new covid variant is going around” and that “due to covid isolation requirements, this meeting is being conducted by restricted proxy” (emphasis in original). At the end of the page, the notice instructed owners on where to hand in their ballots “if you do not plan to attend”. The notice was therefore ambiguous about whether the strata would allow in-person attendance.

13. According to the notice, there would be three resolutions for the owners to consider. The first was a $\frac{3}{4}$ vote resolution to terminate the strata’s contract with its strata manager. The second was a majority vote resolution to approve the budget for the 2022-2023 fiscal year. The third was a $\frac{3}{4}$ vote resolution to raise \$6,000 in a special levy for landscaping work.
14. The parties dispute exactly what happened on January 29. Ms. Aatelma asked for the opportunity to submit an audio recording of the meeting because the file size was too large for the CRT’s online portal. I considered doing so, but ultimately decided against it because it would not change the outcome of my decision. This is because the SGM was invalid regardless of whose evidence I believe. I will explain.
15. Ms. Aatelma gives the following account. She arrived at the meeting place on January 29, with a letter outlining various concerns. After a discussion, the strata council president decided not to hold the SGM that day and proceeded to hold an informal information session. There was no vote on any of the three resolutions. The next day, to her surprise, the strata circulated minutes indicating that the strata had held the SGM and the owners had approved the three resolutions. Ms. Aatelma calls these minutes a fabrication.
16. The strata says that it held the SGM with 6 of 12 strata lots represented, and had an information session afterwards. The strata’s evidence is not entirely clear, but I infer it says Ms. Aatelma refused to provide her restricted proxy form and was therefore not “represented” at the meeting. In any event, the strata essentially admits that it intentionally prevented Ms. Aatelma from participating in the SGM. Even though the SGM notice refers to the COVID-19 pandemic, the strata now says this was not the

real reason it wanted to prevent in-person attendance. Instead, the strata says its goal with the restricted proxy forms was to hold the meeting without Ms. Aatelma and EA to avoid a confrontation. The strata says it believed that if Ms. Aatelma and EA attended the SGM, they would be so disruptive that no business would get done. The strata says that at one past meeting, they swore at and made obscene gestures at a strata manager chairing the meeting. The strata provided written statements from several owners who say that Ms. Aatelma and EA engaged in disruptive and bullying behaviour at strata meetings. The strata says its decision to exclude Ms. Aatelma and EA was therefore justified and the SGM was valid.

17. So, despite disagreeing about what exactly happened, both parties say that the strata prevented Ms. Aatelma from participating in the January 2023 SGM. As noted, the strata's initial stated reason was the COVID-19 pandemic. Many strata corporations used restricted proxies early in the pandemic. The CRT, and later the court, consistently found this practice contravened the *Strata Property Act* (SPA). Specifically, section 56(4) says that an owner may appoint a proxy who may do anything the owner could have done at the meeting, including participation in any discussion. A restricted proxy prevents owners from appointing someone who will represent their interests.¹ The strata required Ms. Aatelma to submit a restricted proxy that was no more than an advanced ballot. By doing so, I find that the strata breached section 56(4), regardless of its reason.
18. Should I uphold the validity despite this breach? Without making any findings about the root cause of the parties' conflict, I accept that it was possible the January 2023 SGM could have gotten out of control if all the owners attended in person. A strata corporation cannot function if its owners disrupt meetings. That said, some amount of heated discussion or disagreement is common in strata corporations. The strata must balance its obligation to facilitate democratic and SPA-compliant governance with the practical need to conduct functional meetings.

¹ *The Owners, Strata Plan VR320 v. Day*, 2023 BCSC 364, at paragraphs 50 and 51.

19. The strata has options about how to achieve this balance. The most obvious is its right under SPA s. 49 to hold meetings entirely electronically. Electronic meetings, when deployed appropriately, can allow for healthy discussion while allowing the chair to mute anyone who crosses the line into disruptive or abusive conduct. The strata could also hire security if physical safety is a legitimate concern or pass bylaws governing conduct at meetings.
20. I note that in *The Owners, Strata Plan NW499 v. Kirk*, 2018 BCSC 1249, the court deemed an annual general meeting (AGM) invalid after the strata corporation intentionally failed to provide notice to someone the strata believed would be disruptive at meetings. This case underscores that a strata corporation cannot prevent owners or their proxies from participating in meetings because it perceives those owners as difficult or disruptive.
21. Also, Ms. Aatelma provided the minutes from the strata's June 28, 2023 SGM. The minutes show that all 12 owners were present either in person (6) or by proxy (6). There is no suggestion that anyone disrupted the meeting. The owners voted on three substantive resolutions, with all 12 votes recorded in the minutes. This meeting shows that democratic governance remains possible despite tensions in the strata. It also undermines the strata's argument that preventing Ms. Aatelma and EA from attending the January 2023 SGM was the only way to ensure the strata could get any business done.
22. In summary, I find that the January 2023 SGM was invalid because the strata prevented all owners from participating.

What remedy is appropriate?

23. Ms. Aatelma asks for an order that all the resolutions from the January 2023 SGM be declared invalid and that the strata hold another SGM to revote on them. In similar cases where the CRT has determined a general meeting was invalid, the CRT has not ordered the strata corporation to revote on resolutions where doing so would be impractical or pointless. In particular, the CRT has not ordered strata corporations to revote on budgets or other expenses where the strata has already spent the money.

This is because a “no” vote cannot undo the work or bring the money back. With that in mind, I turn to the individual resolutions.

24. First, I decline to order a revote on the entire 2022-2023 budget because most of the money has been spent. However, part of the budget was to make up a shortfall in the strata’s contingency reserve fund (CRF). To that end, the budget included an \$8,000 contribution to the CRF. The strata says that its strata manager had depleted its CRF without the strata’s knowledge or consent, making this large contribution necessary. While that may be true, I find that the strata could undo this aspect of the budget by refunding the owners if they do not retroactively approve the CRF contribution.
25. However, I do not order the strata to revote on the entire contribution. The strata’s budget had expenditures of \$57,000. At the time, the *Strata Property Regulation* required the strata to contribute 5% of its budgeted expenses to its CRF (it is now 10%), which is \$2,850. So, that much of the contribution was mandatory. I order the strata to call an SGM or AGM within 60 days of this decision that includes a resolution to retroactively approve the surplus \$5,150 contribution to the CRF. If the vote fails, the strata must refund that amount from the CRF. Because it is part of the budget, this resolution only needs a majority vote.
26. Turning to the landscaping plan, there is a progress report in evidence showing it was a three-year project. There is no evidence before me about how much of the \$6,000 special levy remains. The progress report shows some work has been done and at least some money has been spent. This cannot be undone. However, there is work scheduled for the summer of 2025. I order the strata to revote on the special levy for the landscaping work, and if the vote fails, to cancel any remaining work and refund any remaining special levy funds. This resolution will require a $\frac{3}{4}$ vote.
27. Finally, under SPA section 39, the strata can only cancel a strata management contract if approved by a $\frac{3}{4}$ vote. The strata cancelled its former strata manager’s contract based on the January 2023 SGM vote, and I find that decision cannot be undone because I cannot order the strata manager to take the strata back. However, because the strata is now self-managed, I find that the owners should properly

consider a resolution on whether to retroactively approve cancelling the strata manager's contract. If the resolution fails, the strata must take prompt steps to hire a strata manager, which may be but does not have to be the strata manager it had previously hired. This resolution will require a $\frac{3}{4}$ vote.

28. Next, I address Ms. Aatelma's claims for damages. She attached a \$100,000 value on two of her requested remedies: that the strata acknowledge wrongdoing and that the 2023 SGM be declared invalid. She also made a \$500,000 claim for mental anguish, exclusion, defamation, duress, breaching the SPA, and incompetence. However, Ms. Aatelma did not say anything about compensation in her submissions and did not provide any evidence to support these claims. I find that my orders above are sufficient to correct the strata's SPA breaches, and no compensation is warranted. I dismiss her damages claims.
29. Finally, Ms. Aatelma asks for an order that the strata acknowledge its mistake. This decision outlines the strata's error in how it held the January 2023 SGM. I find that the strata formally acknowledging it would serve no further purpose. So, I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

30. 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. Ms. Aatelma was mostly successful on the governance issue. However, she made substantial damages claims that were unsuccessful. In fact, as noted, she essentially abandoned these claims by making no submissions about them at all. Awarding reimbursement of CRT fees is discretionary, and in these circumstances, I decline to do so.
31. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Aatelma.

DECISION AND ORDERS

32. I order the strata to hold an SGM or AGM within 60 days of this decision to vote on the following:

- a. Whether to contribute \$5,150 into the strata's CRF as part of the 2022-2023 budget. If this majority vote fails, the strata must refund the owners from the CRF.
- b. Whether to raise \$6,000 in a special levy for the landscaping project. If this $\frac{3}{4}$ vote fails, the strata must cancel any remaining work on the landscaping project and refund the owners any leftover funds.
- c. Whether to retroactively approve the strata's cancellation of its strata manager's contract. If this $\frac{3}{4}$ vote fails, the strata must take prompt steps to hire a strata manager, who may be but does not have to be its former strata manager.

33. I dismiss Ms. Aatelma's remaining claims.

34. 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, Vice Chair