

CITATION: YCC No. 42 v. Gosal et al./YYC No. 42 v. Karim et al. 2014 ONSC 2035
COURT FILE NO.: CV-14-496029/
CV-14-496588
DATE: 2014 0402

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)

YORK CONDOMINIUM CORPORATION)
NO. 42)

Applicant)

Derrick M. Fulton, for the Applicant

- and -)

SANDEEP GOSAL, AMINA BURE,)
MARK CIAFARANI, VINCE)
CIAFARANI and VISTA PROPERTY)
MANAGEMENT INC.)

Respondents)

Self-represented

BETWEEN:)

YORK CONDOMINIUM CORPORATION)
NO. 42)

Applicant)

Carol A. Dirks, for the Applicant

- and -)

ANVER KARIM and SHAH JAHAN)
KHAN)

Respondents)

Self-represented

HEARD: March 28, 2014

PENNY J.

JUDGMENT

Overview

[1] This case involves two conflicting applications arising out of an election to fill two vacant positions on the Board of Directors of York Condominium Corporation No. 42. The Election took place during the AGM of the Corporation on September 26, 2013.

[2] The first application, commenced January 9, 2014, purports to be authorized by the pre-September 26, 2013, or “old,” Board (the “Khan Application”). Mr. Fulton purports to act for the Corporation in the Khan Application. This application seeks to set aside the results of the Election.

[3] The second application, commenced January 16, 2014 in response to the first application, purports to be authorized by the post-September 26, 2013, or “new,” Board (the “Gosal Application”). Ms. Dirks purports to act for the Corporation in the Gosal Application. This application seeks to uphold the results of the Election.

[4] On October 1, 2013, following the Election the Chair, Mr. Campbell, reported that he had counted the votes and had declared 135 of the tendered proxies invalid – 75 on account of apparent tampering and the remainder on other grounds, such as the owner being in arrears of payment of Corporation fees and therefore not entitled to vote. He concluded:

The final result of the election of directors at the 2013 AGM was as follows:

Amina Gure 255

Sandeep Gosal 248

Accordingly, I hereby certify that AMINA GURE and SANDEEP GOSAL were elected at the 2013 AGM to the board of directors of YCC 42.

[5] In a letter of November 25, 2013, Mr. Campbell reported on a purported “recount” of the votes cast at the Election which he had been asked to conduct by the new Board on November 20, 2013. In that report, Mr. Campbell confirmed virtually identical numbers for the elected candidates. However, the Chair also purported to receive additional representations from interested parties. Acting on this new information, he went on to say that “there is in fact a genuine possibility that multiple proxy forms were improperly altered and counted for the purpose of the election on September 26 AGM. The result, noted above, has thus been rendered unreliable.” As a result, the Chair purported to “rescind” his October 1, 2013 findings, to “de-certify” the Election results and to declare “invalid all proxy forms that were used for the purpose of the Sept. 26 AGM.”

[6] In another letter of November 29, 2013, the Chair indicated that he had been advised that Gosal and Gure were seeking a legal opinion with respect to the Chair’s November 25, 2013 letter. Based on this information, he then further purported to remove Gure and Gosal from the

Board and require that a new AGM be held “no later than January 3, 2014” using a revised proxy form which he provided with his letter.

[7] For further context, I note at the outset that no candidate who stood for office during the Election and was unsuccessful has brought or participated in any proceedings to set aside the election or, with one exception, filed any evidence in these proceedings.¹

[8] I also note that there is no evidence that any owner/grantor of a proxy lodged a complaint with the Corporation about the use or validity/invalidity of their proxy in the Election and no owner/grantor of a proxy has given evidence or sought to participate in these proceedings to complain about the registration or use of their proxy.

Background

[9] The Corporation is a nonprofit condominium corporation which is responsible for administering a condominium project consisting of 897 dwelling units which are in three high-rise condominium buildings located at 320, 330 and 340 Dixon Road in Toronto.

[10] Regrettably, the Corporation has a lengthy history of dysfunctional governance and physical disrepair. In 2006, the Superior Court of Justice appointed an administrator pursuant to s. 131 of the *Condominium Act, 1998* to manage and administer the affairs of the Corporation in place of an elected board of directors. The Corporation was not released from court-appointed administration until 2012.

[11] There is a very high percentage of nonresident unit owners in this Corporation. As a result, most of the votes cast at elections are by proxy. The grant, registration and voting of proxies has created problems in the past. D.M. Brown J. wrote, in an earlier endorsement:

YCC 42 is a very dysfunctional community. From my reading of the materials in the various motions brought before me, one factor contributing to such dysfunction is the high number of units not occupied by owners, but leased out. It appears that many unit owners no longer have a direct interest in the health of the YCC 42 community, save for collecting rent. As well, factions have formed and appear to use proxies to further their particular points of view.

[12] Although expressing concerns about the use of proxies in the pending 2012 election, Brown J. held that:

unit owners may use proxies to vote in the referendum in accordance with the Act, Declaration, By-law and rules.

¹ The exception is Rashpal Singh who, if every proxy with any form of amendment were invalidated, might have beat Gure for a spot on the Board. He has filed an affidavit saying that he has no interest in contesting the Election results as originally confirmed by the Chair on October 1, 2013 and is content to have Gure continue as an elected director of the Corporation.

The issue of proxies was raised again in subsequent proceedings before Newbould J. involving the conduct of a meeting to elect new directors post-administration. In his endorsement on the matter, Justice Newbould said that any restrictions must be found in the Act or the Declaration or By-laws of the Corporation. He declined to make any order limiting the date for filing of proxies. He left it to the chairman to decide how proxies were to be kept prior to the meeting.

[13] An election of a new board was held on September 27, 2012. This was the first board elected in the previous six years. Although five directors were elected, their terms were staggered. Mr. Shah Jahan Khan (Khan) was elected for a term of three years. Mr. Karim (Karim) and Mr. Sardar were elected for a term of two years. Two of the directors, Mr. Malick and Mr. Waqar Khan, were elected for a term of only one year. There was, accordingly, an election held in September 2013 to elect two new directors for a term of three years.

Issues

[14] There are essentially three issues arising out of these applications:

- (1) was the Chair's purported decertification of the Election and removal of directors in late November, 2013 valid?
- (2) if no, have Khan and Karim proved that the election should be invalidated on account of improper proxies? and,
- (3) in any event, what terms and conditions should apply to the grant, registration and voting of proxies at the next AGM and/or election of directors?

The Purported De-certification

General Principles

[15] The Act provides that votes may be cast at a condominium owners' meeting either personally or by proxy. All voting is on the basis of one vote per unit.

[16] Subsections 52(4) and (5) of the Act state:

Subject to the regulations made under this act and subsection (5), an instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer's attorney and shall be for a particular meeting of owners.

An instrument appointing a proxy for the election or removal of a director at a meeting of owners shall state the name of the directors for and against whom the proxy is to vote.

[17] Section 53 of the Act provides that all questions proposed for consideration at a meeting of owners shall be determined by majority of the votes cast by owners present at the meeting in person or by proxy, if there is a quorum at the meeting.

[18] An owner is not entitled to vote if any contributions payable in respect of the owner's unit have been in arrears for 30 days or more at the time of the meeting.

[19] The Act does not deal with the conduct of meetings or the need for or duties of a chairperson. Neither application filed any evidence, assuming it exists, of the retainer of Mr. Campbell in connection with the September 26, 2013 AGM. Accordingly, the duties of the chair must be determined from the common law and general principles.

[20] It is the duty of the chair of a condominium owners' meeting to enforce the rules of order, including the appointment and instruction of scrutineers, and to make rulings as to the validity of matters relating to the meeting, such as the validity of proxies, *Nathan's Company Meetings for Share Capital and Non-share Capital Corporations*, 10th Edition, pp. 81-85. Once the meeting is over and the ballots counted and the chair has declared the results of the voting, the chair's role is finished.

[21] In making rulings, the chair must act in good faith in accordance with any relevant law and on reasonable grounds. If the chair does so, the court will treat his or her determinations as correct unless it is shown that they were not made in good faith, there were no reasonable grounds to support it or, on the evidence, the determination was incorrect on a point of substance, *Davis v. Peel Condominium Corporation No. 22*, 2013 ONSC 3367 paras. 18-20; *Hastman v. St. Elias Mines Ltd.*, 2013 BCSC 1069, paras. 114-119.

[22] It is the duty of the chair to examine all ballots, decide on their validity, count the votes cast and declare the result. In the case of uncertainty, the matter of proxy validity should be referred to the chair for him or her to decide. Once the chair makes a declaration as to the result of the vote, it is final and binding unless otherwise reversed by the court, *Nathan's*, *supra* pp. 159 and 195.

[23] Each proxy is deemed to be valid and genuine if the form is proper and it appears to have been executed by a person qualified to vote. Both improper *rejection* and *admission* of a proxy may invalidate the results of the vote. Objections to the acceptance or rejection of proxies must be made at the meeting, otherwise the party objecting may be deemed to have waived any irregularity. The burden of proof is on those who seek to have proxies declared invalid, *Nathan's* pp. 176-177.

Analysis

[24] There is no doubt that Mr. Campbell had jurisdiction and discretion to review and rule on the validity of proxies at the September 2013 AGM. During the proxy registration process immediately before the commencement of the meeting, it was reported to Mr. Campbell that Mr. Khan was seen altering proxies. On examination, Mr. Campbell declared 75 of the proxies given to Mr. Khan invalid. Mr. Khan filed an affidavit in these proceedings. He did not deny the allegation that he had altered proxies and did not, at the time or, indeed, at any time, object in any way to the Chair's determination that 75 of his proxies should be invalidated.

[25] The Khan Application seeks to characterize the Chair's October 1, 2013 report as "preliminary" in nature, such that the Chair's later review of the proxies post-November 20,

2013 was merely the continuation of his role as Chair of the Election. I do not think the evidence is capable of supporting this allegation.

[26] The vote counting could not be completed on September 26 because the process extended past the time for which the meeting room had been rented. Accordingly, the ballot counting process continued back at the boardroom of the Corporation later that evening. Mr. Campbell took the weekend to tabulate the votes, consider the issues and prepare his report. As noted above, the report was released October 1, 2013 and is, by its own terms, styled a “final report” which “certified” the final results of the Election.

[27] Over that weekend, issues about proxy validity were raised with the Chair. When asked by the then property manager, Mary Kahn, whether Mr. Singh could contest proxies that had been allowed, Mr. Campbell responded: “Yes, he could contest those proxies, but not to me; I will not entertain the objection. He would have to bring the issue before the courts. There are 75 instruments that I’m prepared to reconsider.”

[28] Of significance, particularly in light of Khan’s subsequent conduct in late November, Khan wrote to the Chair on September 27 saying “YCC 42 had accepted results. Malick lost from my group but in the best interest of YCC 42 unit owners.” Khan raised no issue about the validity of proxies.

[29] Mr. Campbell’s October 1, 2013 covering e-mail to the property manager and the Board attaching his report refers to “my final report concerning the annual general meeting.” In correspondence with one of the defeated candidates, Mr. Nizamuddin, on Friday, October 4, 2013, Mr. Campbell again referred to “my final report dated October 1, 2013.” In that e-mail, he went on to say: “I unconditionally discounted 75 proxy forms and certified the result of the tabulation conducted at the meeting, however, when the objection raised at the meeting was effectively abandoned. *I have no further duties to perform in the capacity of chairman*” [emphasis added]. Similarly, in correspondence with Mr. Asad Aziz on the same date, Mr. Campbell attached his “final report” and added, “*I consider my duties as chairman to have ended*” [emphasis added].

[30] The process leading up to the November reconsideration is important in a number of respects. The new board met several times shortly after the September meeting. Neither Karim nor Khan objected to the election of the new directors or took issue with the validity of proxies used at the election at these early meetings. Indeed, Khan took the position, in the face of objections from a defeated candidate, Malick, being made in October that the election was entirely valid and that Malick should just accept the result.

[31] The board’s business was conducted in the normal course at these initial meetings. One item of business, approved by the board, was the termination of the existing property manager’s contract (this was a company called Mareka, headed by Mary Kahn) and the retaining of a new property manager (Vista, headed by Mark Cianfarani). November was the transition from Mareka to Vista.

[32] There is considerable evidence supporting the conclusion that the objections of Khan and Karim to the new directors’ election did not arise until after they realized that the two new

directors, together with the other existing director, Sardar, constituted a majority of the board and that they would not agree to requiring that Vista hire a relative of Karim's as property manager and would not agree to the election of Khan as president of the Corporation.

[33] In any event, it appears that by November, Khan, Karim and Mary Kahn of the outgoing property manager were working together to raise further objections to the September Election.

[34] Mr. Campbell had delivered, in a sealed envelope, the ballots and proxies from the Election to Mareka in its capacity as the Corporation's property manager. Without any authority from the board, Mary Kahn took it upon herself to break the seal, open the ballots and proxies and purport to do her own recount. It is not known who else had access to the proxies or who else may have been involved in the alleged recount. In any event, her conclusion was that Gosal and Gure had not won the Election, based on her assessment and rejection of allegedly altered proxies.

[35] There was an acrimonious meeting of the board on November 20, 2013 after receipt of this information from Mary Kahn. A majority of the board resolved to ask Mr. Campbell to conduct a recount of the proxies and ballots. The documents which embodied this request were not put in evidence although Mr. Campbell's November 25 letter confirms that there was an e-mail sent to him by Mr. Cianfarani. He calls the letter his "report on a recount of the votes cast" and other information recently received.

[36] As I understand the evidence, the Chair was asked to conduct a recount but was not asked to conduct any other form of investigation.

[37] Be that as it may, Mr. Campbell agreed to reconsider the proxies. This gave rise to Mr. Campbell's November 25, 2013 letter, referred to earlier in these reasons. However, in addition to reexamining and recounting the proxies, and before reaching the conclusions he did, Mr. Campbell entertained representations from Khan, now some seven weeks after the election, in which Kahn alleged, for the first time, that he had seen Gure altering proxies just prior to the proxy registration meetings that preceded the Election on September 26.

[38] Mr. Campbell's November 25 letter, as noted above, confirmed the earlier count of proxy votes contained in his October 1 final report. He identified the errors committed by Ms. Kahn in her alleged "recount" which she said gave rise to different numbers. Mr. Campbell, however, went on to consider the new allegations of Khan, commenting that they were "deeply troubling" and that "the information of Mr. Khan leads to the inference that approximately 215 proxy forms submitted to the September 26 AGM were improperly altered." That is clearly what led to his conclusion that there was "a genuine possibility" that multiple proxies were improperly altered and that the result of the Election was "unreliable."

[39] In my view, Mr. Campbell committed a legal error in undertaking a recount seven weeks after the election and purporting to "decertify" the Election. I come to this conclusion for a number of reasons.

[40] First, Mr. Campbell's role as chair was finished when he delivered his October 1 final report. Mr. Campbell himself recognized, in early October, that his role was complete and that

any further challenge to the election was a matter for the courts. His instincts at that time were correct and he would have been better to follow them. That initial reaction was, in my view, the correct judgment in accordance with the law governing the role of the chair in corporate meetings.

[41] I agree with counsel on the Gosal Application when she says, at para. 95 of her factum:

Once the results of the election were declared, Campbell had no authority whatsoever to address any issues respecting the 2013 AGM and to continue to communicate with Mareka, and/or any individuals. He also had no authority to reverse the declared results and purport to de-certify the election results, and advise that Gosal and Gure were no longer on the Board of Directors of YCC 42.

[42] In addition, by undertaking a recount after the fact, Mr. Campbell permitted himself to become an unwitting pawn in a power struggle surrounding control of the board and Mareka's transparent attempts not to lose the property management contract. Mr. Campbell himself realized the risk that there could have been post-Election alteration to the proxies by almost anyone after the sealed package of proxies was improperly opened by Mary Kahn. As a result, given what was going on, the possibility of post-Election proxy tampering was a real concern. Ms. Kahn did not give any evidence in this proceeding.

[43] Further, the law is clear that objections of the nature Khan eventually made must be brought promptly, either during the proxy registration process or immediately following the meeting. Here, Khan himself had been accused of improper proxy alteration on September 26. His allegation is now that he saw Gure altering proxies on the same day. The analogy to new evidence on appeal seems to me apt in this context. Khan knew the improper alteration of proxies would lead to their invalidation on September 26. If he had evidence of Gure's improper proxy alterations on September 26, his obligation was to bring that forward at that time. Khan has given no explanation for why he waited seven weeks before making these allegations. Also, the fact that he raised these allegations for the first time seven weeks after the election in the face of Gure's refusal to support Kahn's election as president, of itself, casts enormous doubt on the credibility of Khan's allegations.

[44] Mr. Campbell compounded the error of embarking on this enterprise by failing to conduct any investigation (indeed, he seems to have been assisting Khan by drafting his statutory declaration) and failing to afford even cursory procedural fairness rights to Gure and Gosal. Without any notice or affording any ability to respond, and without any investigation, Mr. Campbell jumped to the conclusion that the Election results were unreliable and that the Election should be de-certified.

[45] I say this because, as it turns out, the two so-called independent witnesses alleged by Khan to have seen Gure altering proxies on September 26 have, in this proceeding, filed affidavits denying Khan's claims. One of these alleged "witnesses" is Waqar Khan, a member of

the “old” board. He says Khan’s allegation is “totally false” and that he never saw Gure altering any proxies. He also says, as well, that as a member of the “old” board, he never authorized the Corporation to retain Mr. Fulton to bring the Khan Application.²

[46] The other witness to Ms. Gure’s alleged tampering identified by Khan in his statement to Mr. Campbell is Mr. Ali. He too swears that Khan’s allegations are “totally false” and that he never saw Gure altering any proxies.

[47] In addition, Mr. Campbell’s decision to “de-certify” the Election was based on his conclusion that there was a “genuine possibility” that the results of the election were “unreliable.” A possibility of unreliability is not the test. It was, in that context as it is now in these proceedings, Khan’s burden to show, on a balance of possibilities, that there were improper proxies and that they materially affected the outcome of the Election. Many things are possible. The issue was, and is, whether this particular allegation was proved on a balance of probabilities. In the circumstances, Khan’s declaration alone could not possibly have met the onus that was on him to prove that Gure had falsified or improperly altered proxies.

[48] I also find Mr. Campbell’s decision to invalidate all proxies - even those with no apparent alterations of any kind - puzzling. The law is that proxies are *prima facie* valid if they are in proper form and appear to have been executed by a person qualified to vote. As well, the improper *rejection* of a proxy is as potentially significant to an election as the improper admission of one. Proxies appearing to bear an amendment are not automatically improper; for example, the amendments may well have been placed on the proxy by the owner or his power of attorney.

[49] I also find that Mr. Campbell’s final act of purporting to remove Gure and Gosal from the Board was both beyond his jurisdiction and based on an entirely erroneous consideration; that is, the fact that Gosal and Gure sought independent legal advice about Mr. Campbell’s decision to purport to “de-certify” the Election. Gosal and Gure were entirely within their rights to seek legal advice.³ The fact that they did so could not possibly form the basis of a direction that they be summarily “removed” from office.

² There is evidence, not contradicted, that a majority of the “new” board authorized the Gosal Application. There is no evidence that three members of the “old” board authorized the Khan Application. Assuming Khan and Karim did so, the evidence is that, of the remaining three members of the old board, Sardar and Waqar Khan did not. There is no evidence that the remaining member of the old board, Malick authorized the Khan Application and, given that Khan was alleging that Malick himself was tampering with proxies, it seems highly unlikely that he would have done so.

³ Indeed, the advice they received, I have found in these Reasons, was correct.

[50] I conclude, therefore, for all these reasons that the Chair did not have the authority to de-certify the Election on November 25, 2013 or purport to remove Gure and Gosal from office and that his actions in purporting to do so are invalid.

Should the Court Invalidate the Election?

[51] As noted above, the law is clear that the onus is on Karim and Khan to show that there was improper tampering with proxies and that this materially affected the outcome of the Election.

[52] I do not think they have discharged this burden. The frailties of Khan's allegations about Gure's alleged proxy tampering have already been reviewed above. Similarly, the law does not allow me to assume, merely because a proxy has an amendment on its face, that the amendment was necessarily improper, because the alteration could have been place on the proxy legitimately by the owner or the power of attorney.

[53] Further, the "chain of custody" was obviously broken by the improper and unauthorized opening of the sealed proxies by Mareka. Ms. Kahn had a clear interest in the outcome of the board election, since her company's contract as property manager was terminated by the "new" board. We cannot know who might have had access to the proxies following the release of Mr. Campbell's October 1 report. In the circumstances, the potential for post-Election tampering is very real. No subsequent reviewer of the proxies could have the confidence that they remained, on November 20, 2013 or today, in the form originally submitted.

[54] In any event, the unchallenged evidence in the Gosal Application is that, even if all proxies altered in any form are eliminated from the count, there is still a quorum for the meeting and the only difference in result is that Rashpal Singh may have beaten Gure. Mr. Singh filed an affidavit in this proceeding deposing that he has no interest in contesting the Election results as originally confirmed by the Chair on October 1, 2013 and is content to have Gure continue as an elected director of the Corporation.

[55] Finally, there is, in this context, much to be said for Ms. Dirk's argument that Khan does not come to the court with clean hands. Khan's allegation in his application is that Gure improperly altered proxies. Gure denies it. The two independent witnesses claimed by Khan to have seen the improper alteration have utterly denied Khan's claims. Khan has not denied that he improperly altered at least 75 proxies. Based on the evidence before me, it seems more than likely that any possible improper tampering with other proxies was the work of Khan himself. Thus, we have a situation where the man seeking to invalidate the Election on the basis of improper proxy tampering is likely the one who did the altering. In these circumstances, it would involve a bitter irony to give effect to Khan's claims where he is the source of the problem.

[56] In conclusion, I find that the applicants in the Khan Application have not met their onus of proving both proxy tampering and material impact on the result of the Election.

Conclusion on Issues One and Two

[57] In conclusion, therefore, the result of the Election as affirmed by the Chair's report of October 1, 2013 is valid and stands.

[58] The Khan Application is dismissed. The Gosal Application is allowed, to the extent specified in these Reasons.

Use of Proxies in Future Meetings

[59] The Khan Application asks me to direct that the form of proxy recommended by the Chair be ordered as the form of proxy required for use in the next election.

[60] The last election used the form of proxy "prescribed" by the regulations, the use of which is permissive, not mandatory. That form of proxy is in the evidentiary record on these applications.

[61] Mr. Campbell's recommended form of proxy helps clarify the instructions for voting using a proxy and contains the warning that "your vote may not count if you do not follow these instructions."

[62] The Gosal Application asks me to require that all proxies must be deposited before the day of the election by the owner or his duly authorized power of attorney, in person with proof of identity, and that, until the counting of the ballot, the deposited proxies be secured in a locked ballot box.

[63] The latter approach is also endorsed by Mr. Fortunato, who is a resident owner in the Corporation and who, although not a party, filed, with the consent of all parties, an affidavit containing his recommendation for the use of proxies in future.

[64] Counsel for the Gosal Application argues that even an improved form of proxy like the one recommended by Mr. Campbell will not address the real problem seen in the last Election, which is the amending or altering of the proxies, and whether these are legitimate as having been made by or on the authority of the owner/POA or illegitimate as having been made by the proxyholder on his own after receiving the proxy.

[65] Ms. Dirks argues that the only way to prevent illegitimate alterations is to keep the proxy out of the hands of the proxyholder altogether – by requiring the owner/POA to deposit the proxy in advance of the election and to provide photo identification, at the time of deposit, to ensure that the grantor of the proxy is entitled to do so.

[66] Both D.M. Brown J. and Newbould J., in prior endorsements, declined to dictate how proxies were to be registered, relying on the Act, regulations, the Corporation's governing documents and the judgment of the independent chair overseeing the meeting to prevent improper proxy tampering.

[67] That seemed to work in the 2012 election.

[68] In the 2013 Election, the result has been this costly, divisive and disabling litigation.

[69] As a result, it is my order that at the next election of directors all proxies shall be deposited with the Corporation by one of two methods:

1. the proxy shall be deposited prior to the meeting in person by the owner or his POA, upon showing proof of identity and in the case of a POA, the instrument granting the POA; or
2. the proxy shall be deposited by mail by the owner or his POA prior to the meeting, enclosing a photocopy of proof of identity and, in the case of a POA, a photocopy of the instrument granting the POA.

[70] Any proxies not received in accordance with these instructions shall be considered invalid and shall not be counted.

[71] The notice of meeting shall clearly state that these requirements are by order of the Court and must be followed, failing which the proxy will be considered invalid and will not be counted.

[72] The Corporation, in conjunction with the appointed chair, may impose reasonable time periods for the deposit of proxies for the election on a timely basis so that the unit owners' meeting can proceed in an orderly way.

[73] Apart from this order, the provisions of the Corporation's governing documents shall continue to apply and the chair of the meeting will wield the full scope of authority generally conferred on chairpersons of unit owner meetings.

Costs

[74] I heard limited submissions on costs at the close of argument but parties had no Bill of Costs and it became apparent that the positions on costs were going to depend, to a significant extent, on the outcome.

[75] I strongly urge the parties to reach an accommodation on costs. Failing agreement however, anyone wishing to seek costs shall do so by filing a brief written submission, not to exceed two typed double spaced pages, together with a Bill of Costs and any other supporting material, within ten days of the release of these Reasons.

[76] Anyone wishing to respond to a request for costs shall do so by filing a written submission, subject to the same page limit, within a further seven days.

Penny J.

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JUDGMENT

Penny J.

Released: April 2, 2014