



Civil Resolution Tribunal

Date Issued: October 14, 2020

File: ST-2020-004325

Type: Strata

Civil Resolution Tribunal

Indexed as: *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157

BETWEEN:

HUAN-TING SHEN

APPLICANT

AND:

The Owners, Strata Plan EPS3177

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a special general meeting (SGM) and $\frac{3}{4}$ ownership vote of the respondent strata corporation, The Owners, Strata Plan EPS3177 (strata).
2. The applicant, Huan-Ting Shen, co-owns a strata lot in the strata. Mr. Shen says that the strata failed to provide a proper meeting notice, or for adequate attendance and

voting, for a May 20, 2020 SGM. Mr. Shen also says the strata failed to provide adequate proxy voting information to strata lot owners, and that SGM votes were not counted by an independent party. Further, he says the strata council president, Frank Huang, improperly solicited votes before the SGM, and had a conflict of interest with the issue being voted on. Mr. Shen seeks an order to cancel the results of the SGM, and an order that Mr. Huang stop soliciting votes by telephone or by going door-to-door at the strata.

3. The strata says that the SGM was properly held, votes were fairly counted, and that Mr. Huang did nothing wrong, so it says I should not make the requested orders.
4. Mr. Shen is self-represented in this dispute. Mr. Huang represents the strata.
5. For the reasons that follow, I find that the May 20, 2020 SGM was not held in accordance with the SPA, so the vote held at the SGM was not valid. I also decline to make an order against Mr. Huang, whom I note is not named as a party in this dispute.

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). 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me without an oral hearing. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue.

Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the CRT rules, 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.
10. Mr. Shen provided some evidence after the deadline. I allow this evidence, because I find that the strata had access to it in formulating its arguments, and did not object to it.

ISSUES

11. The issues in this dispute are:
 - a. Whether the May 20, 2020 SGM and vote were held in accordance with the *Strata Property Act* (SPA) and BC Ministerial Order No. M114, and if not, should its results be cancelled?
 - b. Whether the strata is responsible for Mr. Huang's allegedly improper vote solicitation or conflict of interest, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Mr. Shen, as the applicant, must prove his claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Background

13. The strata was formed in 2016 under the SPA, and the parties agree it has 311 strata lots. The strata has amended its bylaws more than once, most recently on June 24, 2019. As the disputed activities took place in 2020, I find that all of the bylaw amendments apply to this dispute.
14. This dispute is related to the strata's contract with its property management company, 604 Real Estate Services Inc. (604), which is not named as a party to this dispute. In March 2020, the strata told 604 that it intended to terminate its contract for property management services. Under SPA section 39 and the property management contract, which is not in evidence, the strata could cancel 604's contract on 2 months' notice if the cancellation was first approved by a $\frac{3}{4}$ vote at an SGM.
15. The strata says the strata council decided to call an SGM for May 20, 2020, for the sole purpose of voting on cancellation of the 604 contract. There are no strata council meeting minutes in evidence documenting a decision to call this SGM, and no other direct evidence showing that the council made this decision. However, the SGM was announced, a vote was held at the SGM, and the evidence does not show that anyone said that the SGM was held without strata council authorization.
16. Whether all strata lot owners received sufficient notice of the SGM is disputed. Sections 45 and 61 of the SPA and the *Interpretation Act* effectively require that 20 days advance notice of an SGM must be given to strata lot owners. The strata posted information about the SGM in the strata's common mailroom and in an elevator. As set out later in this decision, SPA section 61 lists the methods by which such notice must be given, which include email, but not posting messages in common areas. I address this issue below.
17. In this posted information, and other messages sent to strata lot owners, the strata noted that the COVID-19 pandemic made holding an SGM difficult. On the evidence before me, I accept the strata's statements that provincial health orders at the time prohibited gatherings of more than 50 people. Mr. Shen raised BC Ministerial Order No. M114, made on April 15, 2020, which I find allowed attendance and voting at an

SGM by telephone or video, as long as all persons participating in the SGM could communicate with each other during the meeting. I find that the Ministerial Order did not make telephone or video attendance mandatory.

18. The strata says it decided against a telephone or video meeting, as it did not think that all strata lot owners would be able to participate by those methods. Instead, the information posted by the strata shows it decided to hold an in-person SGM using physical distancing measures, and limited to 50 attendees. On May 12, 2020, the strata posted the common area notices, and sent emails to some strata lot owners, inviting them to a May 15, 2020 “virtual town hall meeting” where they could discuss the proposed SGM resolution. I note that this informal meeting was held electronically, even though the strata chose not to provide an electronic attendance option for the SGM.
19. On the evidence before me, I find the strata intended the virtual town hall meeting or other advance discussions to replace discussions at the SGM, and that proxy or advance votes would largely replace in-person SGM votes, given the attendance limit imposed by the strata. The parties disagree about whether the SPA permitted the strata to limit SGM attendance to 50 people, given that there are more than 300 strata lot owners. I address this issue below.
20. The strata strongly encouraged strata lot owners to submit proxies. The strata council’s SGM notice package in evidence includes a blank proxy form. Mr. Shen says that the notice package did not include information about how to submit the proxies. I find the evidence shows that this information was later provided in posted signs and email messages several days before the May 20, 2020 SGM. Further, I find there is no requirement in the SPA or bylaws for an SGM notice to contain proxy submission information.
21. SPA section 56 provides for proxy voting. It says that by a signed, written document, a strata lot owner may appoint a proxy to stand in their place at an SGM, and to do anything that the strata lot owner can do at the meeting, including vote. So, under the

SPA, a “proxy” is an appointed person. There are no completed proxy forms in evidence, or other written proxy documents satisfying section 56.

22. On the evidence before me, the parties appear to suggest that the “proxies” they refer to are written, advance voting ballots, rather than appointed persons. Bylaw 27 says that SGM votes are taken by a show of voting cards issued at the meeting, not before. Bylaw 27 also says that, upon request for a precise vote count at an SGM, votes may be counted by a show of voting cards, roll call, secret ballot, or some other method. However, I find there is no explicit provision for advance ballot voting, before an SGM is held.
23. The strata says a person collected and recorded the “proxies” before the SGM. The strata provided an SGM sign-in sheet that listed the proxy votes of strata lot owners who had submitted them. But there are no advance ballots in evidence, and no witness statements from the persons who collected or counted the advance votes.
24. It appears that advance ballot votes were counted for the May 20, 2020 SGM vote. It also appears that this advance ballot voting was not permitted under the SPA or strata bylaws. But I find I do not need to address this issue, because even assuming that such advance ballots were permitted, I find that the SGM and vote failed for other reasons that follow.
25. It is not disputed that some sort of vote, including proxies or advance voting cards or both, was taken at the SGM and its results were counted and recorded at the meeting. According to the SGM minutes, 16 voters attended the SGM in person, and 132 by “proxy”. As 2 persons abstained, there were 146 votes cast, with 110 in favour of the resolution, or 75.34%. This result is greater than the $\frac{3}{4}$, or 75%, required to pass the resolution. I note that less than 50% of the 311 strata lot owners voted on the resolution, but the evidence does not show that 25% of the strata ownership applied for a reconsideration of the resolution under SPA section 51.
26. The strata sent 604 a letter on May 21, 2020, saying that the strata was cancelling their contract. However, according to correspondence several weeks after the May

20, 2020 SGM to some strata lot owners, the strata ceased its efforts to transition to a new property management company pending the outcome of this CRT dispute.

27. Before the SGM vote, 604 communicated directly to the strata lot owners, saying that the SGM notice was flawed and the vote would not be valid. Mr. Shen provided email evidence from 2 other apparent strata lot owners, who said that they chose not to participate in the SGM vote because 604 said it would be invalid. I note that the evidence shows 604 encouraged strata lot owners to commence CRT disputes about the alleged invalidity of the SGM, but 604 is not a named party in this dispute.
28. On May 12, 2020, Mr. Shen requested a strata council hearing about the SGM notice and SGM attendance restrictions. Citing the limited time before the vote, the strata council held a hearing with 4 council members on May 19, 2020, the day before the SGM, which Mr. Shen did not attend due to a scheduling conflict.

Was the May 20, 2020 SGM and vote properly held?

29. Mr. Shen raises several concerns with how the SGM was held. Mr. Shen says the SGM notice package was deficient and was not sent to all strata lot owners. He also says that the 50-person SGM limit and lack of alternative attendance by telephone or computer infringed on strata lot owners' voting rights. Mr. Shen also says many strata lot owners chose not to attend the SGM because of COVID-19 fears, but I find the evidence does not show that they chose not to attend or not to vote by proxy because of COVID-19. Mr. Shen says the SGM votes were not counted by an "independent party," because 604 was not involved in this meeting, but I find there is no evidence that the persons counting the votes made any errors. Mr. Shen also suggests that there was insufficient opportunity to exchange views on the proposed resolution, but I note that the strata council controls the agenda, and the SPA does not require pre-vote discussions.
30. I find that there are several flaws in how the SGM was held, mostly involving the strata's attendance limit and the SPA's SGM notice requirements.

31. First, the attendance limit. As noted, Strata bylaw 27, which is the same as Standard Bylaw 27, says that voting cards must be issued to eligible voters at an SGM. SPA section 56 says that eligible voters may vote in person or by proxy. I find this means that all eligible voters or their proxies must have the opportunity to vote in person at an SGM if they decide to do so. I find that Ministerial Order No. M114 allowed attendance at an SGM, and voting in person or by proxy, by telephone or any other electronic method that allowed all meeting participants to communicate with each other. I find a purpose of the Order was to accommodate the provincial 50-person limit on gatherings, and allow general meeting attendance by all eligible voters and proxies.
32. However, the strata did not provide an alternative method of attendance, such as by telephone or computer, that would allow all eligible voters and proxies to attend and participate “in person”. I find the evidence does not support the strata’s argument that not all strata lot owners would be capable of attending by telephone or electronic means, and in any event this does not affect the SPA’s SGM requirements. Also, I acknowledge that only 16 strata lot owners attended the SGM in person after the strata announced the 50-person limit, but again, this does not change the SPA’s SGM requirements.
33. I find that the strata failed to hold the May 20, 2020 SGM in a way that allowed attendance by all eligible voters and proxies as required under section 56 of the SPA. Further, in the posted signs and messages to some strata lot owners, the strata instructed strata lot owners to appoint a specific person identified by the strata as the “proxy” for voting, rather than freely choosing a proxy. These instructions are contrary to SPA section 56(3), which allows nearly anyone to be a proxy, subject to the regulations. For these attendance and proxy reasons alone, I would find that the May 20, 2020 SGM, and the vote counted at the SGM, were not valid.
34. Turning to SGM notice requirements, SPA section 45(1) says the strata must give at least 2 weeks’ written notice of an SGM to every strata lot owner, although as explained above, the required notice is effectively 20 days. The strata submitted a formal notice for the May 20, 2020 SGM dated April 28, 2020, which is more than 20

days before the SGM. But as discussed below, there is little evidence of when, or if, this April 28, 2020 notice was sent, or to whom.

35. Section 61 of the SPA says that a strata notice must be given in specific ways. If a person provides an address for notice that is outside of the strata plan, the strata must leave the notice with the person, or mail it to that address. If there is no address outside the strata plan, then under SPA section 61(1)(b), the strata must give notice by:

- a. Leaving it with the person,
- b. Leaving it with an adult occupant of the person's strata lot,
- c. Putting it under the door of the person's strata lot,
- d. Mailing it to the person at the address of the strata lot,
- e. Putting it through a mail slot or in a mailbox used by the person for receiving mail,
- f. Faxing it to a fax number provided by the person, or
- g. Emailing it to an email address provided by the person for the purpose of receiving the notice.

36. The evidence does not show that the strata knew whether each strata lot owner had an address outside of the strata plan, so I find the service methods in SPA section 61(1)(b) apply. Further, while the strata says it posted SGM notices in a common mailroom and elevator, and via social media, I find those are not valid methods of notice under SPA section 61. In addition, photos of the mailroom and elevator signs, and other evidence of messages sent from the strata to some strata lot owners, show that the signs and messages only indicated that notice of the SGM had been posted to 604's website, without giving an address for that website. I find the evidence does not confirm that the formal April 28, 2020 SGM notice was posted to a website, and even if it was, website postings are not valid notice under SPA section 61(1)(b).

37. Under SPA section 61, I find the only acceptable SGM notice method that the strata says it used was email. Mr. Shen says 604 has a list of strata lot owner email addresses, and 604 normally sends notices to strata lot owners, but 604 was not involved in the May 20, 2020 SGM. Mr. Shen says that the strata does not have a complete list of strata lot owner email addresses, and that he never received the April 28, 2020 SGM notice by email.
38. The strata says it sent notice of the SGM to strata lot owners by “emails,” but does not describe or provide the specific emails sent, or say when they were sent, or specifically what documents were sent. The strata does not say whether it had a complete list of strata owner email addresses, and did not provide the email list used to send the SGM notice. The strata does not say whether all strata lot owners provided an email address to the strata for the purpose of receiving notices. I find the only emails to owners in evidence contained, at most, supplementary statements about the SGM, such as the motivation for the resolution and the drop off location for “proxies”. These emails did not contain the April 28, 2020 SGM notice, or the text of the proposed resolution as required by SPA section 45(3).
39. I find that at least one person, Mr. Shen, did not receive the April 28, 2020 SGM notice, which I find is the only alleged notice before me with the proposed resolution wording required under the SPA. I find the strata is the only party in a position to show to whom it sent the April 28, 2020 SGM notice, and it has chosen not to do so, without explanation. On balance, I find that the strata did not give notice to all strata lot owners in accordance with SPA sections 45(3) and 61.
40. SPA section 47 says that failure to give proper notice of an SGM to a person entitled to receive notice under section 45 does not invalidate a vote taken at the meeting, as long as the strata made a reasonable attempt to give the notice. Here, the strata failed to give notice by any of the several methods permitted under SPA section 61. Among the permitted notice methods, the strata says it only attempted to give notice by email, which I found it failed to do for all strata lot owners, without adequate explanation. On the evidence before me, the strata appears to have assumed strata lot owners would see the messages posted in common areas, and in social media and email messages

sent to some of the strata lot owners, and would be able to track down the April 28, 2020 meeting notice. I find the strata did not account for strata lot owners who did not live at the strata, or any who did not provide email addresses for notice purposes. As a result, I find that the strata's attempts to give notice of the SGM were inadequate and not reasonable. So, I find that the May 20, 2020 SGM was not properly called, and the vote taken at the SGM is not valid.

41. There is also a flaw with the resolution voted on at the SGM. SPA section 45(3) says that the SGM notice must include the proposed wording of any resolution requiring a $\frac{3}{4}$ vote, which I find includes the May 20, 2020 resolution. The April 28, 2020 SGM notice contained proposed resolution wording. However, according to the SGM minutes, the resolution voted on at the SGM was different from the proposed wording in the SGM notice.
42. SPA section 50(2) says that during an SGM, amendments may be made to the proposed wording of a resolution requiring a $\frac{3}{4}$ vote, if the amendments do not substantially change the resolution and are approved by a $\frac{3}{4}$ vote before the vote on the resolution. I find the amended wording voted on at the SGM did not substantially change the resolution. However, I find the SGM minutes and other evidence show that the amendments were not approved by a $\frac{3}{4}$ vote before the vote on the resolution. I find this violated section 50(2). I find it significant that many strata lot owners cast advance "proxy votes" based on the proposed wording in the April 28, 2020 SGM notice, and that these votes were counted as approving different, amended wording at the SGM, without first approving those amendments.
43. On the evidence before me, I find that the strata failed to properly notify, or to make reasonable attempts to notify, strata lot owners of the May 20, 2020 SGM and proposed resolution wording. I also find that the strata lot owners voted on an amended version of the proposed resolution, without first approving those amendments. Further, I find the strata chose to limit attendance at the SGM without putting alternative attendance measures in place. For all of these reasons, I find the SGM and vote violated the SPA.

44. So, I find that no valid SGM or vote was held on May 20, 2020, and the results of the SGM and vote are void, and of no force or effect. I allow Mr. Shen's claim on this issue. I order the strata not to act on or rely on the invalid SGM results, including the invalid SGM vote. It remains open to the strata to hold a general meeting and vote, in accordance with its bylaws and applicable legislation, on replacing its property management company.

Is the strata responsible for Mr. Huang's allegedly improper vote solicitation or conflict of interest?

45. As noted, Mr. Huang represents the strata in this dispute. I note that Mr. Shen did not name Mr. Huang as a party to this dispute, despite seeking an order for Mr. Huang to stop soliciting strata ownership votes by calling or going door-to-door. Under CRTA section 123, I find I lack jurisdiction to make orders against a person who is not a party to this dispute. In particular, I find I cannot make orders against non-parties who have not been given the opportunity to respond to complaints made against them. So, I dismiss Mr. Shen's claim against Mr. Huang personally.

46. Even if Mr. Huang had been named as a party to this dispute, I still would have dismissed Mr. Shen's claims against him, for the following reasons.

47. Mr. Shen says that Mr. Huang sought to convince several strata lot owners to vote in favour of the proposed May 20, 2020 resolution, including by going door-to-door and by telephone. Mr. Shen also says Mr. Huang offered strata lot owners a position on the strata council if they voted for the resolution. Mr. Shen says this is a conflict of interest with Mr. Huang's position as strata council president. Mr. Huang denies lobbying for a preferred outcome, and that he only tried to ensure that strata lot owners knew how to vote in the SGM.

48. On balance, I find Mr. Huang did lobby for his preferred outcome. However, Mr. Huang is a strata lot owner, and I find neither Mr. Huang nor the strata council is forbidden under the SPA, strata bylaws, or otherwise, from advocating for their preferred outcome. I also find the evidence fails to show that Mr. Huang offered a strata council position to anyone in exchange for their vote. Further, I note that strata

council positions are assigned through strata ownership votes at general meetings, not by the strata council president.

49. Mr. Shen also suggests that Mr. Huang was trying to install an associate's property management company in place of 604, which he says is a conflict of interest under section 32 of the SPA. Section 32 says that a conflict of interest arises where a council member has an interest in a contract or transaction with the strata, or a matter that is the subject of consideration by council, if that interest could result in a duty or interest that materially conflicts with that person's duty or interest as a council member. If in conflict, a council member must disclose and describe the conflict to the strata council, and abstain from voting on the matter.
50. I consider Mr. Shen's allegations that Mr. Huang behaved improperly to be, essentially, that Mr. Huang acted in bad faith. A claim of bad faith implies Mr. Huang breached his standard of care under section 31 of the SPA. Section 31 requires a council member to act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
51. Based on decisions of the BC Supreme Court, I find Mr. Shen has no standing to make a claim under section 31. In *Wong v. AA Property Management Ltd*, 2013 BCSC 1551 at paragraph 36, the court said a strata lot owner may only sue an individual strata council member for a breach of the conflict of interest disclosure requirement under SPA section 32. Remedies for breaches of section 32 are excluded from the CRT's jurisdiction under CRTA section 122(1)(a). Similarly, in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the court said strata council member duties under SPA section 31 are owed to the strata corporation, and not to individual owners. This means the owner cannot succeed in a claim against the strata or individual strata council members for a breach of section 31.
52. These BC Supreme Court decisions are binding on the CRT. Given the *Wong* and *Sze Hang* decisions, even if Mr. Shen had named Mr. Huang as a party, I would

dismiss this claim for an SPA section 31 remedy because Mr. Shen does not have standing to make it.

53. Further, even if Mr. Shen had standing to make his claims against Mr. Huang, I find the evidence does not show Mr. Huang had any interest in changing the property management of the strata that could result in a materially conflicting duty or interest under SPA section 32. While the evidence shows that 604, Mr. Shen, and others suspected that Mr. Huang sought an advantage from having the property management company of an associate assume that role with the strata, there is no evidence to support this suspicion, which I find is entirely speculative.
54. I also note that Mr. Shen accuses Mr. Huang of lying in an affidavit where he denied offering strata council positions in exchange for votes, or soliciting votes. Mr. Shen also says the CRT explicitly said there is a penalty for lying, but Mr. Shen provided no additional detail on the alleged penalty or whether it would provide the remedy he seeks. I have weighed Mr. Huang's affidavit with the other evidence. While the opinions of Mr. Shen and Mr. Huang differ, I find the evidence fails to show Mr. Huang knowingly misrepresented his version of events, so I reject this allegation.

CRT FEES AND EXPENSES

55. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses.
56. Mr. Shen was successful on the SGM issue, but not on the claims against Mr. Huang personally. I find Mr. Shen's success was mixed, so he is entitled to half the CRT fees he paid, which equal \$112.50. The strata paid no CRT fees, and neither party claimed any CRT dispute-related expenses, so I order no other reimbursements.
57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Shen.

ORDERS

58. Effective immediately, I order the strata not to act on or rely on the invalid May 20, 2020 special general meeting results, including the invalid vote held at that meeting.
59. Within 30 days of the date of this order, I order the strata to pay Mr. Shen \$112.50 for tribunal fees.
60. Mr. Shen is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
61. I dismiss Mr. Shen's remaining claims.
62. 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.

Chad McCarthy, Tribunal Member