Civil Resolution Tribunal

Date Issued: July 27, 2020

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Civil Resolution Tribunal

Indexed as: *Miller v. The Owners, Strata Plan 248*, 2020 BCCRT 828

B E T W E E N :

LINDA MILLER

APPLICANT

A N D :

The Owners, Strata Plan 248

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. The applicant, Linda Miller, owns strata lot 7 in the respondent strata corporation, The Owners, Strata Plan 248 (strata).

2. Ms. Miller alleges that the strata has been acting contrary to the strata's bylaws and the *Strata Property Act* (SPA) with respect to certain 2019 strata council meetings,

two special levy resolutions that passed at a Special General Meeting (SGM) on July 31, 2019, and by failing to set a requested hearing. In her submissions Ms. Miller asks for the following remedies or actions, summarized as follows:

a. an order that strata council stop making decisions by email, and instead call all council meetings and record all decisions made by the strata council in a strata council meeting;

b. a finding that the strata council violated SPA s. 26 by not following proper procedures and communicating to owners under the bylaws and SPA in calling the July 3, 2019 council meeting;

c. a finding that the strata council violated SPA s. 108;

d. an order that the two special levy resolutions to "augment" the Contingency Reserve Fund (CRF) at the July 31, 2019 SGM be repealed.

e. an order that strata council confirm in the minutes that it did not acknowledge or convene a hearing in response to Ms. Miller's September 5, 2019 request.

3. The strata says that it followed the required council meeting processes and complied with the SPA and its bylaws when passing the July 31, 2019 special levy resolutions. It says it did not receive Ms. Miller's hearing request due to an inadvertent omission by its property manager. It says that it has not acted significantly unfairly and therefore, the CRT should not intervene. The strata asks that Ms. Miller's claims be dismissed.

4. Ms. Miller is self-represented. The strata is represented by a council member.

5. For the reasons that follow, I dismiss Ms. Miller's claims.

JURISDICTION AND PROCEDURE

6. 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). 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 in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

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. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

11. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 248. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 248. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under CRTA section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

12. In her original application for dispute resolution, Ms. Miller requested that the CRT order strata council to call an SGM to repeal one of the special levy resolutions and to obtain legal assistance with drafting special levy resolutions. During the CRT's

case management phase, Ms. Miller amended her requested remedies to those summarized above.

13. I note that Ms. Miller asks that I not consider personal character attacks in the strata's response arguments. I find the strata's allegations about Ms. Miller's past conduct are not relevant to the governance issues before me. I have therefore not relied on the information in the strata's personal allegations when deciding this dispute.

ISSUE

14. The issues in this dispute are:

    a. Should the CRT direct that future council meetings are held in person?

    b. Did the strata act contrary to the SPA when calling the July 3, 2019 strata council meeting?

    c. Did the strata violate the SPA section 108 when approving the resolutions to raise funds by special levy?

    d. Must the strata state in its meeting minutes that it did not hold a hearing in response to Ms. Miller's September 5, 2019 request?

EVIDENCE AND ANALYSIS

15. In a civil proceeding such as this, Ms. Miller as the applicant must prove her claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what was necessary to explain my decision.

16. The strata was created on February 6, 1976 under the former *Strata Titles Act* and continues to exist under the current SPA. I find the strata's bylaws governing this dispute are those filed in the Land Title Office (LTO) on April 3, 2019. I have summarized the relevant bylaws when discussing each issue below.

17. The events leading up to this dispute relate to 2019 council meetings and resolutions related to a special levy to raise CRF funds. The relevant background details are as follows.

18. On May 17, 2019 the strata notified the ownership of a June 6, 2019 SGM to vote on a resolution for a special levy for a CRF contribution of $666,352.50. The June 6, 2019 SGM minutes show that the ownership discussed the proposed special levy payments, and possible alternatives. The proposed resolution was defeated.

19. Following the June 6, 2019 SGM, the council discussed matters related to the resolution by email and held an email vote on a new proposed resolution for the special levy. The council then held an in-person council meeting on July 3, 2019. The July 3, 2019 meeting minutes were distributed after the meeting and the minutes were approved at the council's July 22, 2019 meeting. The minutes state that "As previously voted on electronically, Council agreed to the proposed resolution regarding the CRF as drafted for the upcoming SGM". There are no other details of the resolution in the minutes in evidence. I discuss this decision further below.

20. On July 12, 2019, the strata notified the owners that a SGM would be held on July 31, 2019, to approve the SGM June 6, 2019 minutes and to vote on 2 resolutions for special levies to fund the CRF. The special levy resolutions were included in the notice and read as follows:

> Resolution #1 – ¾ Vote – Special Levy
>
> Contributions to the Contingency Reserve Fund Fiscal 2019
>
> BE IT RESOLVED AS A ¾ VOTE RESOLUTION OF THE OWNERS OF STRATA PLAN VIS248 THAT the owners authorize a Special Levy in the total amount of $55,577.50 to be contributed to the Contingency Reserve Fund for the purposes of augmenting the fund in order to pay for anticipated projects. The contribution of each Unit shall be calculated in accordance with

the schedule of Unit Entitlement (attached) and due and payable on October 1, 2019.

Resolution #2 – ¾ Vote – Special Levy

Contributions to the Contingency Reserve Fund Fiscal 2020 – 2024

BE IT RESOLVED, AS A ¾ VOTE RESOLUTION OF THE OWNERS OF STRATA PLAN VIS248, THAT the Owners authorize a Special Levy in the amount of $555,775.00 to be contributed to the Contingency Reserve Fund for the purposes of augmenting the fund in order to pay for anticipated projects. The payments will be ten sums of $55,577.50 due and payable on April 1, 2020; October 1, 2020; April 1, 2021; October 1, 2021; April 1, 2022; October 1, 2022; April; 1, 2023; October 1, 2023; April 1, 2024 and October 1, 2024. Such funds shall be calculated in accordance with the schedule of Unit Entitlement (attached).

21. The minutes of the July 31, 2019 SGM show that Resolution #1 passed 48 in favour, 1 against, and Resolution #2 passed 42 in favour, 8 against.

Should the CRT intervene to direct that future council meetings are held in person?

22. Ms. Miller says council conducted some of its council discussions and meetings by email. She states that the July 3, 2019 council minutes also record a decision on the proposed special levy resolution that was made by email. She says this raised questions for her about the resolution that are not answered in the meeting minutes. In addition, Ms. Miller says that the council never formally approved its July or November SGM agendas in a properly constituted meeting. As I understand her argument, Ms. Miller argues that council lacks transparency by discussing or making its decisions other than during in person meetings. Though not entirely

clear, I find Ms. Miller is arguing that the strata council must conduct all its future council meetings in person.

23. The strata's bylaw 17 filed at the LTO states that council meetings may be held by electronic means, so long as all council members and other participants can communicate with each other. I find therefore, that the strata's bylaw explicitly permits the strata to hold its council meetings by email. I also find nothing in the bylaws prevents the council members from engaging in email discussions about strata matters.

24. The BC Supreme Court has upheld the use of council meetings by email. In *Yang v. Re/Max Commercial Realty Associates (482248 BC Ltd.),* 2016 BCSC 2147, the court stated that the SPA does not specifically prevent a council from holding a meeting by email, although minutes must be provided for them (paragraph 134). In *Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428*, 2009 BCSC 506, the court also held that nothing in the SPA requires a meeting to be held in person and that email meetings are permissible.

25. As for decisions made by email, the court in *Kayne v. The Owners, Strata Plan LMS 2374,* 2007 BCSC 1610*,* held that a decision taken at an electronic meeting has no validity unless and until it is taken or ratified by a properly constituted and minuted council meeting. The court in *Kayne* held that the SPA does not require the minutes to contain a particular level of detail or the discussions leading up to the decision, but the minutes must contain the decision itself.

26. Based on these BC Supreme Court decisions and bylaw 17, I find the strata's council here was permitted to make its decision by email. However, I find the council's decision was not valid until it ratified the decision at a properly constituted and minuted meeting. I find the decision on the draft "proposed resolution regarding the CRF" special levy was voted on by email and it became valid when it was ratified at the July 3, 2019 meeting and documented in the minutes. I find based on the minutes, the meeting was properly constituted with sufficient quorum. I find the

strata was not required to include the discussions or details leading up to the resolution or meeting agenda decisions.

27. While the minutes do not require details, I find the minutes should be clear enough to understand what council decided. By referring to "resolution" in singular, Ms. Miller argues that it is not entirely clear that council agreed to drafts of both resolutions as put forward at the July 31, 2019 AGM. However, I find the distinction trivial in this particular situation. The 2 special levy resolutions are for the same purpose, to raise CRF funds, but separated based on different fiscal year payments and schedules. The 2 resolutions were also sent to the ownership on July 12, 2019 with notice that they were the resolutions that would be voted on at the July 31, 2019 SGM.

28. As for the agendas, SPA section 46(1) says council determines the agenda of an annual general meeting (AGM) or SGM. Bylaw 28 sets out the order of business and requires the agenda be approved at the AGM or SGM. The SGM minutes in evidence show that the July 31, 2019 and November 28, 2019 agendas were approved at the start of each respective SGM meeting. I find the SGM agenda decisions were ratified as required under the bylaws at the properly constituted and minuted SGMs.

29. Section 123 of the CRTA allows a tribunal member to intervene in strata governance to remedy a significantly unfair act by a strata corporation. A "significantly unfair" act encompasses conduct or decisions defined as burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable, or prejudicial (*Reid v. Strata Plan LMS2503*, 2003 BCCA 126). I find Ms. Miller has not established a pattern of council making decisions or voting by email without ratifying its decision in a properly constituted meeting. I find the evidence does not show that the strata acted unjustly or otherwise treated Mr. Miller significantly unfairly in holding council meetings by email. Again, I find council was entitled to hold its council meetings by email. I find no reason for the CRT to interfere with strata's future governance by making the order Ms. Miller seeks.

30. I dismiss Ms. Miller's claim on this issue.

Did the strata act contrary to the SPA when calling the July 3, 2019 council meeting?

31. Ms. Miller says the strata violated the SPA section 26 by calling the July 3, 2019 council meeting without notice to the ownership. Section 26 of the SPA is a general provision that states that council must exercise the powers and perform the duties of the strata corporation. There are no provisions in the SPA that expressly require a strata corporation to notify its owners of regular council meetings. The strata's bylaw 14 applies to council meetings. It does not say that the strata must provide notice prior to the meeting. However, bylaw 14(4) requires council to inform owners about a council meeting "as soon as feasible after the meeting has been called".

32. The strata says that while it is not required under its bylaws to provide advance notice, its regular practice is to inform the ownership prior to the strata council meetings. I understand from the parties' submissions that the council meeting was originally scheduled for June 24, 2019, and the strata had provided notice to all owners of this meeting. However, the strata had to cancel the meeting due to illness and its property manager neglected to inform the ownership of its rescheduling to July 3, 2019.

33. Ms. Miller was not on strata council and did not know about or participate in the July 3, 2019 council meeting. I accept that Ms. Miller only learned about the July 3, 2019 meeting and email vote on July 19, 2019 when she received the minutes.

34. I agree with the strata that it is not required under the SPA or its bylaws to notify owners prior to its regular council meetings. In this case, the strata informed Ms. Miller 16 days after the meeting was held by providing her with copies of the meeting minutes. I find the strata gave itself some leeway by using the term "feasible" in bylaw 14(4), rather than setting a specific timeline to inform owners. Ms. Miller did not argue or submit any evidence to show that the strata could feasibly have informed her earlier. I find Ms. Miller has not proven that the strata breached bylaw 14(4).

35. Based on the parties' submissions, I also find this was likely an isolated event or departure from the strata's normal practice of informing the ownership prior to its council meetings. Ms. Miller does not say whether or how she was impacted by it. Ms. Miller was not on strata council or entitled to vote at the council meeting. I find no evidence that Ms. Miller was treated significantly unfairly by the strata not informing her of the council meeting until July 19, 2019.

36. I find that Ms. Miller has not proven that the strata acted contrary to the SPA when calling the July 3, 2019 council meeting. I dismiss Ms. Miller's claim on this issue.

Did the strata violate the SPA section 108 when approving the resolutions to raise funds by special levy?

37. Section 108(1) and (2)(a) of the SPA provide that the strata corporation may raise money from the owners by means of a special levy calculated on each strata lot's share in accordance with SPA section 99, 100 or 195 as approved by a resolution passed by a ¾ vote at an annual or special general meeting. Section 108(3) sets out the resolution requirements. Section 108(4) requires that the strata corporation (a) account for money collected separately from other money of the strata corporation, (b) invest all the money collected in a prescribed way, (c) use the collected money for the purpose set out in the resolution, and (d), inform owners about the expenditure of the money collected.

38. Ms. Miller says the strata violated section 108 in passing 2 special levy resolutions to augment the CRF "without accounting for the money separately from other money of the strata corporation". She asks: "How can the strata accomplish this requirement when they are in fact combining the two accounts?" She also asks, "what about investments and refunds?".

39. I find that Ms. Miller is simply questioning how the strata might financially manage the special levy funds rather than putting forth an argument that the strata breached SPA section 108. I find nothing about the special levy resolutions themselves prevents the strata from creating a separate line item in its financial statements or otherwise, to account separately for the monies.

40. I find the resolutions themselves met the requirements of the SPA. They included the levy's purpose, total amount, method to determine each strata lot's share, amount of each strata lot's share, and payment dates as required under SPA section 108(3). The attached schedule shows that each strata lot's share was to be calculated by unit entitlement. The July 31, 2019 SGM meeting minutes show that both special levy resolutions passed by a ¾ vote as required under SPA 108(2)(a). As for notice, I find the strata provided 2 weeks notice of the SGM with a copy of the proposed resolutions as required by SPA section 45. Therefore, I find the strata complied with the SPA when raising funds by way of special levy at the July 31, 2019 SGM.

41. I dismiss Ms. Miller's claim on this issue.

Must the strata state in its meeting minutes that it did not hold a hearing in response to Ms. Miller's September 5, 2019 request?

42. Under SPA section 34.1 an owner may request a hearing at a council meeting by stating the reason for the request in writing and the council must hold a meeting to hear the applicant within 4 weeks of the request. Th strata's bylaw 15 also applies and is basically the same wording as SPA section 34.1.

43. On September 5, 2019, Ms. Miller sent an email to the strata's property manager requesting a meeting to discuss the July 31, 2019 SGM, special levies, and the implementation of a depreciation report. Ms. Miller says the strata never responded and did not hold a hearing.

44. The strata agrees that it never responded to Ms. Miller's hearing request. The strata says this was because Ms. Miller "knowingly" sent the request for a meeting directly to the strata's former property manager's email address. She did not sent a request for a hearing to the council's dedicated email as it says she was required to do for a hearing request. The strata's uncontradicted evidence is that the property manager left their employment with the strata management company and the strata did not receive Ms. Miller's email requesting a meeting until several months later. The

strata says its failure to respond was inadvertent. The strata says it will acknowledge the omission in its meeting minutes.

45. I note that the July 22, 2019 council minutes, which Ms. Miller says she received on August 12, 2019, states that its communication protocol requires owners to make requests through council's dedicated email and not to its property manager. I find Ms. Miller must have known about the strata's dedicated email address because she included that email address in the body of her September 5, 2019 email. For some unexplained reason, Ms. Miller did not carbon copy the strata's dedicated email address and only sent the request to the property manager. I find Ms. Miller did not send her request to council as the protocol required despite having the information. I also find the strata's lack of response was because it did not receive the request.

46. I note that the strata has already agreed to acknowledge that it did not respond to Ms. Miller's September 5, 2019 email in its meeting minutes. The details are also contained in this published decision. I find no need in the circumstances to grant the requested order. I dismiss Ms. Miller's claim on this issue.

CRT FEES AND EXPENSES

47. 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 Ms. Miller was the unsuccessful party, I dismiss her claim for reimbursement of CRT fees. The strata paid no CRT fees and neither party claimed dispute-related expenses.

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

ORDER

49. I dismiss Ms. Miller's claims and this dispute.

Trisha Apland, Tribunal Member