Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Simpson et al v. The Owners, Strata Plan VAS 2876* 2017 BCCRT 43

BETWEEN:

Robin Simpson and Rosemary Jones

APPLICANTS

AND:

The Owners, Strata Plan VAS 2876

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member: Patrick Williams

INTRODUCTION

1) The respondent strata corporation, The Owners, Strata Plan VAS 2876 (the strata), comprises 17 strata lots. The strata plan, registered March 1, 1991, depicts

19 parking stalls as limited common property. The parking stalls are numbered in a manner that does not correspond to the same number as a strata lot.

2) The applicants Robin Simpson and Rosemary Jones (collectively the owners) own strata lot 4. The strata plan designates parking stall 20 as limited common property for strata lot 4. The strata states that the limited common property designation does not accurately reflect the situation. The strata states that strata lot 4 has the exclusive use of parking stall 13 and signed a Form B to that effect. The owners dispute that designation. The owners ask the Civil Resolution Tribunal (tribunal) to make three orders. First, an order that the strata recognize and confirm that strata lot 4 has the exclusive use of parking stall 20 as limited common property. Second, an order that persons other than the owners are prohibited from using parking stall 20. Three, that the strata provide a corrected Form B to the owners.

3) The strata states that it has always informed the owners that the owners have the use of parking stall 13. The strata states that parking stall 20 was licensed to strata lot 10 and parking stall 13 was licensed to strata lot 4. The strata states that since March 1, 1991, the strata has recognized these license agreements.

4) The owners are self-represented and the strata is represented by an authorized strata council member.

JURISDICTION AND PROCEDURE

5) These are the tribunal's formal written reasons. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

6) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions, because I find there are no significant issues of credibility or other reasons that might require an oral hearing.

7) The tribunal may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask the parties and witnesses questions and obtain information in any other way it considers appropriate.

8) Under section 48.1 of the Act and applicable tribunal rules at the time the dispute notice was issued, in resolving this dispute the tribunal may make one or more of the following orders:

   a) order a party to do or stop doing something;

   b) order a party to pay money;

   c) order any other terms or conditions the tribunal considers appropriate.

ISSUES

9) The issues in this dispute are:

   a) Is strata lot 4 subject to an unregistered license agreement that prohibits the owners from using parking stall 20 and requires the owners to use parking stall 13?

   b) Is the designation of limited common property parking as shown on the strata plan in error?

   c) Does the tribunal have the jurisdiction to direct the amendment of the strata plan to re-designate parking stalls as limited common property and common property?

   d) Must the strata issue a modified Form B for strata lot 4?

BACKGROUND AND EVIDENCE

10) Parking stall 20 is designated on the strata plan as limited common property for strata lot 4. That is not disputed. The strata has not resolved by unanimous resolution to re-designate the limited common property parking stall of strata lot 20.

11) The owners purchased strata lot 4 on August 25, 2015. Since that date, the owners have been unable to use parking stall 20. Parking stall 20 is being used by another resident owner. A Form B provided by the strata dated March 25, 2015 stated that parking stall 13 was the limited common property of strata lot 4.

12) Through their lawyer, the owners sent an August 25, 2015 letter to the strata. The letter requested that the strata advise the owner using parking stall 4 to cease parking in that parking stall immediately. The strata did not reply until October 15, 2015. The owners had previously sent two emails requesting a response. The strata reply simply stated that parking stall 13 was available to the owners as set out in the Form B. No other reason was given.

13) The owners sent a letter February 9, 2016 to the strata asking for a hearing pursuant to section 34.1 of the *Strata Property Act*, S.B.C. 1998, c. 43. The owners stated that no written response had been provided with respect to the use of parking stall 20. The hearing did not take place within the 4 weeks required by s. 34.1. The owners sent another letter March 23, 2016 requesting a hearing.

14) A hearing took place June 9, 2016 and a decision was rendered by letter dated June 16, 2016. An amended Form B was provided with the letter. The amended Form B stated

    a) Parking stall 13 was licensed for the exclusive use of strata lot 4 from the owner of strata lot 10; and

    b) Parking stall 20 was the limited common property of strata lot 4, subject to a license of exclusive use to the owner of strata lot 10.

15) The June 16, 2016 letter stated that the strata had always recognized that the developer, after deposit of the strata plan, had licensed different stalls to strata lots 4, 10 and 15. Other than the existence of a revised parking plan, the strata could not locate any license agreements. The strata stated that they could not refuse to recognize the license agreements because

a) The owner of strata lot 10 had been told by the seller that he had parking stall 20 and he had used that stall for over 5 years;

b) The owners were advised by the seller and the strata that strata lot 4 had the use of parking stall 13. The owners were aware of the license agreements before they purchased strata lot 4; and

c) The strata's bike room was using a parking stall shown as limited common property of strata lot 15 on the strata plan.

16) The June 16, 2016 letter proposed a solution that included the termination of license agreements upon the eventual sale of strata lots and an exchange of parking stalls with respect to strata lot 15 and the bike room use. The proposal required the agreement of the registered owners of strata lots 10 and 15.

17) The strata produced the parking garage plan (noted in the June 16, 2016 letter as the revised parking plan) as an exhibit. It is not known when it was prepared, or who prepared it. The strata states that it was a schedule to the disclosure statement of the developer. No disclosure statement or amendments to the disclosure statement were produced. The owners state that the parking garage plan was not a part of the disclosure statement that they received prior to purchasing strata lot 4.

18) The strata plan was produced as an exhibit. Sheet 3 of the strata plan shows the designated limited common property parking stalls numbered in a continuous and orderly fashion. It is different than the parking garage plan.

19) The difference between sheet 3 and the revised parking plan is that parking stalls 13 and 20 are switched between the owners of strata lots 10 and 4. Strata lot 15 has one stall designated as limited common property on sheet 3 of the strata plan. The revised parking plan notes that strata lot 15 and has two limited common property stalls. Neither sheet 3 nor the garage parking plan depict a bike room.

20) The owners have not used parking stall 13 since they purchased strata lot 4 in August, 2015. They have paid for a parking permit to use street parking nearby.

POSITION OF THE PARTIES

21) The owners argue that

- Strata lot 4 has the exclusive use of parking stall 20.
- The strata has not and cannot provide proof of any of the licensing agreements for the parking stalls.
- The strata arbitrarily assigned parking stall 13 to the owners.
- Parking stall 13 is being used by unknown residents. The owners do not have the authority to have the vehicle of such residents towed.
- The strata's treatment of parking stall 20 is a concern should the owners wish to sell strata lot 4.
- The strata made a mistake by not initially providing the correct Form B.
- The suggested compromise in the June 16, 206 letter is unworkable because it depends upon the agreement of other owners and it is not known when the sale of strata lots 10 and 15 might occur.

22) The owners request that I order that the strata confirm the entitlement of the owners to the exclusive use of parking stall 20, prohibit use of parking stall 20 by others and correct the Form B.

23) The strata argues that:

- The owner developer had the garage parking plan attached as an exhibit to the disclosure statement.
- The owner developer licensed parking stall 13 to strata lot 4 and parking stall 20 to strata lot, as noted in the garage parking plan.
- Since the building was built the parking stalls have been used in accordance with the garage parking plan.
- The strata lot 10 owner has a license recognized by the strata and known to the owners to use parking stall 20. The strata lot 10 owner has an unregistered interest in parking stall 20 and has used the stall for approximately 26 years.
- The owners took title to strata 4 with notice of the unregistered interest because they were told their parking stall was 13 (presumably by the initial Form B). To permit the owners to rely on the strata plan as the state of title is considered fraud within the meaning of section 29 of the *Land Title Act*, R.S.B.C. 1996, c. 250
- Alternatively, the strata plan contains an error in the allocation of limited common property parking stalls. A strata plan can be amended pursuant to section 257 of the *Strata Property Act*. The error can be cured by the application of Regulation 14.12 of the *Strata Property Act*.
- It would be significantly unfair to the strata lot 10 owner and the strata to allow the owners to rely upon the error in the strata plan.

24) The strata requests that I dismiss the owners claim.

25) The strata also requests that I direct the amendment of the strata plan to re-designate the parking stalls as limited common property and common property in accordance with the licenses, the historical usage and the parking garage plan.

ANALYSIS

Is strata lot 4 subject to an unregistered license agreement that prohibits the owners from using parking stall 20 and requiring the owners to use parking stall 13?

26) The limited common property designated on the strata plan for the exclusive use of strata lot 4 is marked as parking stall 20. The limited common property designated on the strata plan for the exclusive use of strata lot 10 is marked as parking stall 13. These designations on the strata plan are not in dispute.

27) Section 75 of the *Strata Property Act* states that the designation of common property as limited common property by the owner developer when the strata plan is registered can only be removed by an amendment to the strata plan under section 257.

28) Section 257 of the *Strata Property Act* states that the strata plan can only be amended by a unanimous vote of the strata at a general meeting.

29) I find that the strata has not presented a section 257 unanimous vote at a general meeting of the strata. A unanimous vote is defined in s. 1(1) of the *Strata Property Act* as a vote in favour of a resolution by all the votes of all the eligible voters.

30) In the absence of a unanimous vote, section 257 cannot be applied to the present situation. I recognize that if the strata presented a unanimous vote it would likely be defeated because the owners of strata lot 4 would cast an opposing vote.

31) The strata has argued that licensing agreements were entered into by the developer.

There was no evidence produced to indicate any such agreements were entered into by the owner developer. The strata stated it could not locate any licensing

agreements. A garage parking plan was introduced, but there was no evidence of who prepared it.

32) The strata states that the garage parking plan was an exhibit to the disclosure statement. The disclosure statement was not produced. The owners stated that the disclosure statement they received prior to purchase did not include the parking garage plan as an exhibit.

33) I find that there is no licensing agreement that would take precedence over the designations of limited common property on the strata plan. I am further reinforced in my finding when considering the circumstances surrounding the production of the Form B's.

34) The initial Form B of strata lot 4 issued March 25, 2015 stated that parking stall 13 was limited common property of strata lot 4. The initial Form B did not state that parking stall 13 was licensed to strata lot 4. If the strata knew that a license existed, then the initial Form B is a deliberate misrepresentation. If the strata did not know if the license existed, then it merely drafted an inaccurate original Form B.

35) The owners disputed the limited common property of strata lot 4 was parking stall 13 through their lawyer's letter dated August 24, 2015. If there had been a licensing agreement in existence, one would have expected the strata to immediately respond by stating the license agreement existed and took precedence over limited common property designations on the strata plan. Instead there was silence.

36) The owners sent emails to the strata dated August 30, 2015 and October 15, 2015 asking for a response to their August 25, 2015 letter. The strata eventually responded October 15, 2015. The strata response did not state that a licensing agreement existed. The strata merely stated that strata lot 4's parking stall was parking stall 13 as set out in the initial Form B.

37) By a letter dated February 9, 2016 the owners requested a hearing. They received no response and sent another letter March 23, 2016. There was still no statement from the strata that a licensing agreement was in effect.

38) A hearing took place on June 9, 2016 and a decision rendered June 16, 2016. That decision stated that the owners were aware of a licensing agreement in place at the time of their purchase. As noted previously, the owners say that they were no aware of a licensing agreement. An amended Form B noting the existence of license agreements was provided to the owners.

39) I find that the circumstances of no substantial responses from the strata for more than 9 months is consistent with no licensing agreement existing. I find that providing the amended Form B to the owners 9 months after they disputed the limited common property designation is not consistent with a licensing agreement existing.

40) I acknowledge that the strata has argued historical use of parking stalls 13 and 20 and the alleged licensing agreement with respect to the common property bike room. I find that of no significant relevance that would suggest those circumstances take precedence over the limited common property designations noted on the registered strata plan.

41) The owners stated that the decision in *Moure v. The Owners, Strata Plan NW2099*, 2003 BCSC 1364 should apply. The court in that decision held that while limited common property is not part of indefeasible title under s. 23(2) of the *Land Title Act*, it is a registered right associated with title constituting a special category of property "over which the unit owner has a substantial degree of control and something approaching a beneficial interest".

42) The strata argued that the owner of strata lot 10 had used parking stall 20 for approximately 26 years. The strata argued that the owners took title to strata lot 4 with notice of this interest since they were told their parking stall was number 13. The strata argued that meant the owners had actual knowledge of this interest.

The strata argued further that to then rely on the strata plan was considered fraud under section 29 of the *Land Title Act*. The strata referred to the decision in *Pilcher v. Shoemaker* [1997] B.C.J. No. 2038.

43) The owners argue that section 29 of the *Land Title Act* is an exception to the rule against indefeasible title. A purchaser who takes an interest in land is not affected by an unregistered interest affecting the land (the license) unless the purchaser has participated in fraud. The owners argue that limited common property is not part of indefeasible title. I agree with that argument.

44) I find that section 29 of the *Land Title Act* does not apply in the present situation. Limited common property is not part of the indefeasible title. In any event, I find that the owners did not have actual notice of the right of the owner of strata lot 10 to parking stall 20. The owners received the original Form B that was inaccurate and the owners immediately advised the strata that the designation was inaccurate. They were met with prolonged silence.

45) I find that strata lot 4 is not subject to a license agreement that prohibits the owners from using parking stall 20 and requires the owners to use parking stall 13. I order that the owners of strata lot 4 are entitled to the exclusive use of parking stall 20 as limited common property of strata lot 4. I order that persons other than the owners are prohibited from using parking stall 20.

Is the designation of limited common property parking on the strata plan in error?

46) The strata argues in the alternative that the strata plan contains an error in the allocation of limited common property parking stalls.

47) The strata argues that the decision in *Chow v. Strata Plan NW3243*, 2017 BCCA 28 should be applied. In that decision the Court of Appeal referred to *Strata Property Regulation* 14.12 as an alternative to section 257 of the *Strata Property Act* with respect to correcting limited common property designations.

48) The strata argues that the strata should be given an opportunity to correct the strata plan with the registrar of the Land Title Office or the court. The strata has made no such effort to date.

49) The plan of parking is sheet 3 of the registered strata plans. The limited common property designations are in sequential order. The strata argues that this parking plan is in error and should recognize designations that would be haphazard. In order for me to accept that, I would need the evidence of the surveyor of the strata plan that the surveyor intended the designations to be in haphazard order, rather than logical sequential order. No such evidence was produced.

50) I find that there has been no evidence presented that the strata plan designations of limited common property for the parking stalls have been made in error and reject the alternative argument of the strata. I make no order that the limited common property designated on sheet 3 of the strata plan is in error.

Does the tribunal have the jurisdiction to direct the amendment of the strata plan to re-designate parking stalls as limited common property and common property?

51) The strata argues that if I were of the view that the tribunal had the jurisdiction to do so, I should direct the amendment of the strata plan to re-designate parking stalls as limited common property and common property. The owners say the tribunal has no statutory authority to make such an order pursuant to regulation 14.12.

52) There has been no unanimous resolution pursuant to section 257 of the *Strata Property Act*. The strata has not applied to court for an amendment of the strata plan pursuant to section 257 of the *Strata Property* Act. The strata has not applied to the registrar of the land title office pursuant to *Strata Property Regulation* 14.12. I have found no evidence of an error on the strata plan. I have found strata lot 4 and parking stall 20 are not subject to licensing agreements. I find there is no justification for amending the strata plan. Consequently, there is no need for me to

determine whether the tribunal has the jurisdiction to direct that the strata plan be amended.

Must the strata issue a modified Form B for strata lot 4?

53) Section 59 of the *Strata Property Act* states the strata must give a person making a request an information certificate in the prescribed form. The prescribed form is the Form B. Among other things, the information on the Form B must include which parking stalls have been allocated to the strata lot and the manner in which they have been allocated.

54) Paragraph (m) of the Form B requires a ‘”yes” or “no” answer to whether a parking stall has been allocated to the strata lot. Subparagraph (m)(ii) of the Form B requires the identification of a parking stall number as limited common property for the strata lot.

55) The initial Form B noted that parking stall 13 was the limited common property of strata lot 4. That information was inaccurate.

56) The amended Form B provided June 16, 2016 noted that parking stalls 13 and 20 were the limited common property of strata lot 4, subject to a licensing agreement in which the owner of strata lot 10 had exclusive use of parking stall 20. That information was also inaccurate. Strata lot 4 does not have 2 limited common property parking stalls and I have found that parking stall 20 and strata lot 4 are not subject to any license agreements.

57) I order that the strata must issue a Form B for strata lot 4 within two weeks of the time when an appeal expires and leave to appeal has not been sought or consented to. The Form B must include information applicable at the time it is issued and note in paragraph (m) that a parking stall is allocated to strata lot 4; in subparagraph (m)(ii) that parking stall 20 is limited common property of strata lot 4; and that under the details portion of the Form B the words “the parking stall designations of strata lot 4 have been considered by the Civil Resolution Tribunal

and a decision issued on July 19, 2017 indexed as *Simpson et al v. The Owners, Strata Plan VAS 2876*".

DECISION AND ORDERS

58) I order that:

a) Strata lot 4 is not subject to a license agreement that prohibits the owners from using parking stall 20 and requires the owners to use parking stall 13.

b) The owners of strata lot 4 are entitled to the exclusive use of parking stall 20 as limited common property of strata lot 4.

c) Persons other than the owners are prohibited from using parking stall 20.

d) The strata must issue a Form B for strata lot 4 within two weeks of the time when an appeal expires and leave to appeal has not been sought or consented to. The Form B must include information applicable at the time it is issued and note in paragraph (m) that a parking stall is allocated to strata lot 4; in subparagraph (m)(ii) that parking stall 20 is limited common property of strata lot 4; and that under the details portion of the Form B the words "the parking stall designations of strata lot 4 have been considered by the Civil Resolution Tribunal and a decision issued on July 19, 2017 indexed as *Simpson et al v. The Owners, Strata Plan VAS 2876*".

59) Under section 49 of the Act, and tribunal rules 14 and 15, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. No claim for reimbursement has been made so they have not been awarded.

60) Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.3(3) of the Act has expired and leave to

appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

61) Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the Small Claims Act (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Patrick Williams, Tribunal Member