Civil Resolution Tribunal

Date Issued: August 1, 2018

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Civil Resolution Tribunal

Indexed as: *Tan v. Mermut et al*, 2018 BCCRT 410

B E T W E E N :

Hian Kee Tan

APPLICANT

A N D :

Volga Mermut and The Owners, Strata Plan LMS 2731

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Amy J. Peck

INTRODUCTION

1. The applicant is the co-owner of strata lot 36 (SL 36) in the building of the respondent strata corporation, The Owners, Strata Plan LMS 2731 (strata). The respondent Volga Mermut (respondent owner) owns strata lot 42 (SL 42) in the

same building. The applicant says that the respondent owner has wrongfully been using parking space #15, which the applicant says is designated as the limited common property (LCP) of SL 36. The applicant asks for an order that the respondent owner stop parking in parking space #15 and for an order that the strata enforce parking space #15's LCP designation in favour of SL 36. The applicant also seeks reimbursement of legal fees and tribunal fees.

2. The respondent owner says when he bought SL 42, he acquired in the agreement of purchase and sale the right to use parking space #15 in exchange for parking space #31, the parking space designated as the LCP of SL 42. As such, he says the applicant should use parking space #31.

3. The strata takes no position on the applicant's claim and says that it does not have the authority to resolve this dispute between the two owners.

4. The applicant and the respondent owner are both self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal 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, and 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 that there are no significant issues of credibility or other reasons that might require an oral hearing.

7. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

8. The rules applicable to this dispute are those that were in force at the time the dispute notice was issued.

9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate. I did not find it necessary to ask any questions of the parties.

10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, and order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:

    a. Is the applicant entitled to the exclusive use of parking space #15?

    b. If so, should any order be made against the strata in this dispute?

    c. Is the respondent owner entitled to reimbursement of legal fees, towing fees or courier fees?

    d. Is the applicant entitled to reimbursement of legal fees?

BACKGROUND AND EVIDENCE

12. Though I have read and considered all of the evidence and submissions presented, I will only refer to what is relevant for my decision.

13. The LMS 2731 strata plan (strata plan) was deposited in the land title office on March 18, 1997. The strata plan shows two levels of parking. On March 27, 2007, the strata plan was amended pursuant to section 257 of the SPA. That section allows a strata plan to be amended to designate LCP if the amendment is approved by a unanimous vote of strata owners.

14. The March 2007 strata plan amendment designated a series of parking spaces that had previously been common property as LCP, and attributed all such designated parking spaces to a specific strata lot. No party in this dispute argued that this strata plan amendment was invalid or further amended at a later time.

15. The amended strata plan does not number the parking stalls. However, amended sheet 8A of the strata plan, titled Upper Parking Level Floor Plans, shows a parking space with dimensions of 5.59 metres by 5.11 metres as LCP of SL 36. A parking space with dimensions of 5.59 meters by 2.5 metres is designated as LCP of SL 42.

16. While the parties produced no evidence identifying the two parking spaces by space number, they agreed that the parking spaces in issue were #15, a larger parking space, and #31, a smaller parking space. I accept that the parking space designated on the amended strata plan as the LCP of SL 36 is parking space #15 and the parking space designated as LCP of SL 42 is parking space #31.

17. Separate sections of the strata were created on August 8, 2008. I find that this dispute involves only the strata and not either of the 2 separate sections.

18. The following strata bylaws are relevant to the parking space issue:

    (a) Bylaw 48 – Licence of Limited Common Property. That bylaw authorizes strata lot owners to licence LCP designated to the owner's strata lot to

another person provided that, among other things, the licence is in writing and signed by the parties. The bylaw states that the strata has adopted a form of licence agreement for parking stalls and that that form is available from the strata on request.

(b) Bylaw 49 – Parking Bylaw. Subsection (2)(a) of that bylaw says only vehicles owned or leased by the persons with the right to use the parking stall shall be permitted to use the stall. Subsection (2)(c) of that bylaw says that owners shall only use the parking stalls assigned to their strata lot. Subsection (2)(i) says that any vehicle that does not comply with the bylaw may be removed at the vehicle owner's expense.

(c) Bylaw 59 – Register for Parking Stalls. That bylaw obliges the strata to maintain a register of parking stalls showing the name, address, phone number and strata lot number "of the person using the parking stall, along with any other relevant information the Strata Corporation may deem fit to record in such register."

19. On August 6, 2008, the strata filed with the land title office bylaw amendments passed on March 23, 2007 approving that a form of licence be used for licencing parking stalls designated as LCP. I find that these bylaw amendments apply to the strata and not to either of the 2 separate sections.

20. There is no prescribed form of licence agreement registered with bylaws and no party to this dispute presented any form of licence for the use of parking space #15, or any other parking space in the building.

21. The respondent owner purchased SL 42 in July 2007 from Abbey Woods Developments Limited. The applicant and the respondent owner both presented an addendum to the respondent owner's contract of purchase and sale for SL 42 that says, among other things, "The assigned parking stall to be modified from #31 to #15 (parking stall number)." The unit number of SL 42 is #304.

22. The respondent owner presented two spreadsheets he called the "Parking Rent Roll", one that includes the date November 1, 2010 in its file name and the other that includes the date August 1, 2013 in its file name. The spreadsheets appear to track owned and rented parking spaces at the building, suggesting they are the register referred to in bylaw 59. Both those lists show parking stall #15 as "assigned" to SL 36 and parking stall #31 as "assigned" to SL 42. In the "Owned" column, the number "304" appears in both the parking stall #15 line and the parking stall #31 line. In the "Comments" column of both spreadsheets a notation in the parking space #15 line reads "NB: pkg swap agmt in P/S Agreement".

23. The applicant purchased SL 36 with a co-owner in February 2016. SL 36 is Unit 219 in the building. The applicant presented as evidence a Form B – Information Certificate dated November 13, 2015 (Form B) that says in paragraph (m) that a parking stall is allocated to SL 36 and that "Parking stall(s) number(s) 15 is/are limited common property".

24. Sometime in February 2016, the applicant discovered that another vehicle was parked in parking space #15. He says he left a note with a contact number on the vehicle asking the vehicle's owner not to use parking space #15 anymore. The applicant says the respondent owner called the contact number on the note and claimed that the respondent owner had purchased the right to use parking space #15 when he purchased SL 42, referring to his contract of purchase and sale for SL 42.

25. The applicant and the respondent owner corresponded with each other for many months about who was entitled to use parking space #15. The applicant contacted the strata in no later than August 2016 to advise of the dispute. The council member who was approached suggested that the applicant park in parking space #31 until the matter was resolved. The applicant did not agree to use parking space #31.

26. The applicant and the respondent owner emailed each other several times between August and October 2016 where the applicant repeatedly confirmed his

right to use parking space #15. The applicant noted that he had been attempting to resolve the issue with the respondent owner for more than six months, including the applicant extending the deadline to have the respondent owner move his vehicle several times.

27. In an email dated August 26, 2016, the applicant said that if the respondent owner did not move his vehicle by September 1, 2016, the applicant would have to have it towed. The applicant later agreed to give the respondent until September 15, 2016 and then again until October 7, 2016 to move his vehicle.

28. The applicant also suggested by email that the respondent owner contact the developer to try to obtain a larger parking space from the developer directly and offered his cooperation in doing so. The respondent owner indicated he had contacted the developer but it had no large spots at the building to offer.

29. The respondent owner asked in the email correspondence whether the applicant was interested in financial compensation for the inability to use parking space #15 and the applicant said no.

30. Sometime over Christmas while the respondent owner was out of town he says the applicant had his vehicle towed. The applicant does not deny this allegation.

31. On February 28, 2017, the strata property manager wrote a letter to the applicant on behalf of the strata council. In that letter, the property manager said that strata council had done everything reasonable to review and attempt to resolve the dispute but that it had consulted a lawyer and determined that strata council had no authority to make a ruling one way or another. Council suggested that the parties work out their dispute between themselves and said it had been advised to "step away from this matter".

32. Finally, the respondent owner presented an email dated May 29, 2017 from a person identified as the former owner of SL 36 stating that the former owner's tenant parked in parking space #31 when he owned SL 36.

POSITION OF THE PARTIES

33. The applicant argues that:

- Because the Form B states that parking space #15 is assigned to SL 36, he is entitled to use that parking space. He says a prospective owner relies on the Form B to confirm what is being purchased, and internal strata documents, such as the Parking Rent Roll, are not effective to change owners' property entitlements as shown on the Form B since there is no obligation or procedure for a prospective owner to receive timely access to internal strata documents.

- The fact that SL 36 was designated a larger parking space was an important factor in his decision to purchase the property and that he paid a premium for that larger parking space.

- He was entitled to have the respondent owner's vehicle towed after the dispute had gone on for many months.

- The strata is the body who should adjudicate strata violations, and it is unreasonable to expect he and the respondent owner to resolve this dispute without the strata's input.

34. The applicant requests that I order the respondent owner to stop parking in parking space #15 and that I order the strata to enforce the LCP designation of parking space #15 in his favour. He also seeks reimbursement of legal fees that he says he incurred, as well as his tribunal fees.

35. The respondent owner argues that:

- He obtained the right to use parking space #15 in his contract of purchase and sale for SL 42.

- The former owner of SL 42 and the developer have confirmed to him that he was entitled to use parking space #15.

- He has parked in parking space #15 for over 10 years without incident.
- when he purchased SL 42 he paid a premium for the extra parking space, which he needs in order to accommodate his large work vehicle. He will suffer hardship if he is unable to use parking space #15.

36. The respondent owner requests that I dismiss the applicant's claim. Also, despite not bringing a counterclaim in this dispute, the respondent owner asks that I order the applicant to reimburse the respondent owner for legal fees incurred in responding to this dispute, and for towing fees and courier fees for vehicle keys paid by the respondent owner when the applicant had the respondent owner's vehicle towed.

37. The strata argues that:

- The dispute is between two owners, and it is unclear why the strata has been included as a party to the dispute.
- The strata has no authority to make a ruling on the dispute about parking space #15.
- Because of the strata's lack of authority over this dispute, any order against the strata would be inappropriate.

38. The strata asks that I dismiss the applicant's claim against the strata.

ANALYSIS

Is the applicant entitled to the exclusive use of parking space #15?

39. LCP is defined in section 1(1) of the SPA as common property designated for the exclusive use of one or more strata lots. While the original strata plan for the building designated the parking spaces as simply common property, the strata plan amendment in March 2007 converted the parking spaces into LCP and each space was designated for one strata lot's specific use.

40. Section 59 of the SPA sets out the information that must be included in a Form B – Information Certificate for a specific strata lot. Among many other things, a Form B must include the parking spaces and storage lockers that have been allocated to the strata lot, if any ((section 59(3)(l.1)). A strata corporation must provide an owner with a Form B within one week of request on payment of the prescribed fee.

41. The respondent owner did not present as evidence a copy of the Form B he received when he purchased SL 42, nor did he specifically dispute that parking space #15 is LCP allocated to SL 36. Rather, he argues that he should be allowed to continue parking in parking space #15 as he has since he moved into the building.

42. While I am sympathetic to the respondent owner's position and acknowledge the hardship he says he will suffer if he is not able to park his work vehicle in parking space #15, I agree with the applicant that the applicant (and his co-owner) have the legal right to exclusively use that parking space.

43. Because parking space #15 is LCP allocated to SL 36, there would have to be some enforceable transfer of the legal right away from SL 36 or the applicant in order to affect the applicant's right to exclusive use, such as a change in the LCP designation. The respondent owner pointed to his agreement of purchase and sale that made reference to a swap of parking spaces. However, a reference to a different parking space in an agreement of purchase and sale does not have the effect of changing legal rights as registered in the land title office.

44. In addition, the Parking Rent Roll does not serve to affect the applicant's right to the exclusive use of parking space #15. While it certainly is confusing, and suggests that there were some informal agreements or acknowledgments in the past allowing the respondent owner to park in parking space #15, it does not have the legal effect of changing what the applicant purchased.

45. Another way in which the legal right to use parking space #15 could have been transferred is by way of licence from the owner of SL 36 to another resident of the building. Strata bylaw 48 clearly authorizes licences of LCP to another owner in the

building so long as some parameters are followed, including that the licence be in writing and signed by the parties. A copy of the licence agreement must be provided to the strata council on request. The bylaw also references an accepted form of licence document owners could use.

46. No party presented any evidence of any licence for the use of parking space #15, either by the developer or a prior owner of SL 36 to the respondent owner, or by the applicant to the respondent owner. Further, even if the developer or a prior owner of SL 36 had licenced the respondent owner to use parking space #15, that licence would not bind the applicant as the new owner of SL 36 without the applicant's specific consent. Unregistered licences are agreements between specific parties that create personal and contractual rights between the parties to the licence (see *Hollanders v. Burdwood Bay Settlement Co. Ltd.*, 1997 CanLII 605 (BCSC)). They are not interests in land that pass on a sale without the new owner accepting the terms of the licence.

47. For similar reasons, the letter from the former owner of SL 36 saying his former tenant used parking space #31 does not assist the respondent owner. The agreement, informal or otherwise, between former owners and tenants is not relevant to the applicant's rights to parking space #15 since he was not a party to any such agreement.

48. While not binding on me, I find persuasive the reasoning in *Simpson et al. v. The Owners, Strata Plan VAS 2876*, 2017 BCCRT 43, where another owner had used a parking space allocated as LCP for the benefit of the applicant owners' strata lot for approximately 26 years. In that dispute, as is the case here, because there was no licence agreement in place that would change the owners' rights to use the parking space under the LCP designation, the applicant owners were entitled to exclusive use of that space.

49. I conclude that the applicant as a co-owner of SL 36, is entitled to the exclusive use of parking space #15 as the LCP of SL 36. I order that the respondent owner immediately stop using parking space #15 and cease doing so unless and until:

a. he receives an authorized licence to do so, or

b. parking space #15 is designated as LCP for the benefit of a strata lot that he owns or occupies.

Should any order be made against the strata in this dispute?

50. The strata was a minimal participant in this dispute, arguing that this was a dispute between two owners and that it had no authority to assist in its resolution. I disagree.

51. Under section 3 of the SPA, a strata corporation is responsible for managing and maintaining the common property of the strata corporation for the benefit of the owners. LCP is a specific type of common property but it remains common property and under the strata corporation's responsibility, absent some authorized alternative arrangement.

52. One of the main ways in which a strata corporation manages common property is by creating and enforcing relevant bylaws. As authorized by section 129(1) of the SPA, in enforcing a bylaw, the strata corporation may impose a fine and, or alternatively, remedy the contravention of the bylaw. Under section 133 of the SPA, a strata corporation may do what is reasonably necessary to remedy a contravention of a bylaw, including by removing objects from the common property.

53. The Supreme Court of British Columbia, in *Strata Plan LMS 3259 v. Sze Holding Inc*., 2016 BCSC 32, confirmed that there is an obligation in the SPA for a strata to enforce its bylaws but that there is some discretion in doing so. However, that discretion is limited and a strata corporation must act reasonably in exercising that limited discretion. "Reasonableness" in that context includes considering the expectations of the parties and the effect of the failure to enforce the bylaw on the person asking for its enforcement (see *Curtain v. The Owners, Strata Plan VIS 4673*, 2018 BCCRT 100 at para. 50).

54. Bylaw 49 specifically deals with parking. In particular, it says owners shall only use the parking stalls assigned to their strata lot, and that a vehicle that does not

comply with the bylaw can be removed at the vehicle owner's expense. The meaning of "assigned" is not defined in the bylaws. I find that "assigned" in this context means allocated per the strata plan unless property licenced to another person under the bylaws. I make this finding because the amended strata plan specifically designates parking spots as LCP to specific strata lots, and because the Parking Rent Roll includes a "strata lot assignment" column that, at least in the case of parking space #15, is consistent with the LCP designation on the amended strata plan.

55. My conclusion is supported by section 59(5) of the SPA, which says that information included in a Form B is binding on the strata where an owner reasonably relied on the Form B. In this case, the applicant's Form B said that parking space #15 was LCP allocated to SL 36 and I find that he relied on that information. Therefore, the allocation is binding on the strata as far as the applicant is concerned and any other purported "assignment" of parking space #15 to another party without the applicant's agreement is invalid.

56. In this case, it was reasonable for the strata to enforce the parking bylaws at issue. The effect on the applicant of the strata's failure to enforce the bylaw deprived him of a significant property right for a long period of time and it was reasonable for him to expect that he could rely on the strata's assistance in the circumstances. The strata's failure to enforce the bylaw ultimately resulted in the applicant having to seek the tribunal's assistance.

57. I order the strata to enforce the LCP designation of parking space #15. In addition I order the strata to enforce bylaw 49 to allow the applicant (or his co-owner or authorized tenant) exclusive use of parking space #15. Also, in order to eliminate future confusion, I order the strata to immediately correct the current parking rent roll to show that parking space #15 is assigned to and "owned" by SL 36 or Unit 219, in compliance with bylaw 59.

Is the respondent owner entitled to reimbursement of legal fees, towing fees or courier fees?

58. The respondent owner did not bring a counterclaim in this dispute. However, he did ask for reimbursement of legal fees he said he incurred in defending this dispute, an amount he paid to recover his vehicle after it was towed, and courier fees paid to send his vehicle keys back to Vancouver while he was out of town.

59. I have allowed the applicant's claim with respect to exclusive use of parking space #15. Therefore, there is no basis to award these amounts to the respondent owner. In any event, the respondent owner presented no evidence to prove of any of the amounts claimed.

Is the applicant entitled to reimbursement of legal fees?

60. Rule 16 of the tribunal rules in effect at the time the dispute notice was issued says that, except in extraordinary cases, the tribunal will not order one party to pay another party any fees charged by a lawyer or another representative in the tribunal dispute process. This follows from the general rule under section 20 of the Act that parties are to be self-represented. I do not consider this to be an extraordinary case and I dismiss the applicant's claim for legal fees.

DECISION AND ORDERS

61. I order that:

    a. The applicant, as an owner of SL 36, is entitled to the exclusive use of parking space #15 pursuant to its LCP designation to SL 36.

    b. the respondent owner immediately stop using parking space #15 and cease doing so unless and until:

        i. he receives an authorized licence to do so, or

        ii. parking space #15 is designated as LCP for the benefit of a strata lot that he owns or occupies.

c. the strata enforce the LCP designation of parking space #15.

d. the strata enforce bylaw 49 to allow the applicant, as owner of SL 36 (or his authorized tenant(s)) exclusive use of parking space #15 until such time as the strata plan is amended to change this allocation or the use of parking space #15 is properly licenced under the bylaws to another party.

e. the strata immediately correct the parking roll to show that parking space #15 is assigned to and "owned" by SL 36 or Unit 219, in compliance with bylaw 59.

f. the applicant's remaining claims are dismissed.

g. the applicant is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

62. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule, except that in the circumstances the strata alone should be responsible for the applicant's tribunal fees because it had the ability to address the applicant's claim and the strata's unreasonable failure to enforce the parking bylaw required the applicant to pursue other dispute resolution through the tribunal. I therefore order the strata to reimburse the applicant $225 for tribunal fees within 21 days of the date of this decision.

63. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no part of the amount ordered to be paid by the strata, or any other expenses incurred by the strata in defending this claim, are allocated to the applicant.

64. 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 56.5(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 Supreme Court of British Columbia.

Amy J. Peck, Tribunal Member