Civil Resolution Tribunal

Date Issued: August 10, 2018

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Civil Resolution Tribunal

Indexed as: *Parkinson et al v. The Owners, Strata Plan VIS 5086*, 2018 BCCRT 438

B E T W E E N :

Joanne Parkinson and Ian Parkinson

APPLICANTS

A N D :

The Owners, Strata Plan VIS 5086

RESPONDENT

A N D :

Joanne Parkinson

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicants, Joanne Parkinson and Ian Parkinson, own strata lot 9 (SL9) in the respondent bare land strata corporation, The Owners, Strata Plan VIS 5086 (strata).

2. This dispute is about a fence and rock wall installed by the applicants on the strata's common property and the use of a parking stall located on SL9.

3. The applicants seek orders for permission to keep an existing fence and rock wall, the continued use of their parking stall, that the strata refrain from painting lines identifying common property boundaries, and that all bylaw fines assessed against SL9 by the strata be rescinded.

4. In a counterclaim, the strata seeks orders that Joanne Parkinson pay the current and future bylaw fines, pay for the relocation of the fence, pay to reinstate the common property to its condition prior to any alterations being completed, and that the parking space no longer be used for parking. The strata also seeks reimbursement of dispute-related expenses and estimated future expenses.

5. The applicants are represented by Ms. Parkinson. The strata is represented by a strata council member.

6. For the reasons that follow, I order that:

    a. the applicants propose a resolution for the strata to put before its owners at a general meeting about the fence and rock wall issue,

    b. the strata permit the applicants and their tenants continued use of the parking stall and to refrain from physically identifying common property boundaries, and

    c. the strata reverse all fines assessed against SL9.

JURISDICTION AND PROCEDURE

7. 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.

8. 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 credibility issues or other reasons that might require an oral hearing.

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.

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, order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:

    a. Were the applicants given approval to construct the rock wall and fence at their present locations?

    b. Should I order the strata to permit the applicants to keep the fence and rock wall alterations as installed? If not, what is an appropriate order?

c. Does the strata have authority to prohibit use of the parking space? If not, what is an appropriate remedy for use of the parking space?

d. What amount of fines, if any, should the applicants be ordered to pay?

e. Is the strata entitled to reimbursement for damage to a chain link fence?

f. Is the strata entitled to an order for future fines and expenses?

g. Are the parties entitled to reimbursement of tribunal fees paid or dispute-related expenses claimed?

BACKGROUND AND EVIDENCE

12. Though I have read all of the submissions and evidence provided, I refer only to that which I find relevant to provide context for my decision.

13. In a civil claim such as this, the applicant bears the burden of proof on the balance of probabilities. Here, the applicants have the burden to prove their claims and the strata has the burden to prove its counterclaims.

14. The strata is a 10-unit bare land strata corporation located in Langford, British Columbia.

15. Land Title Office documents show the applicants purchased SL9 on August 14, 2009. Shortly thereafter, the applicants say they completed the roughed-in secondary suite in their house and subsequently rented out the suite. This is not disputed by the strata nor did the applicants require the permission of the strata to do so.

16. The City of Langford (City) zoning bylaws in place at all material times require a residential house with a secondary suite to have a parking stall on their strata lot to service the secondary suite. The City confirmed that the building permit it issued for the construction of a house on SL9 has such a designated parking stall on its west boundary (parking space).

17. The parking space has a gravel surface, level with the strata's roadway on the west and supported by a rock wall (different from the rock wall under dispute) on the east, which I estimate from the photographs to be about 3 feet in height. The rock wall supporting the parking space on the east tapers to the strata roadway on its north and south ends at an angle of approximately 45 degrees. The roadway and parking space slope from north to south. The design is such that a vehicle can pull into the parking space by driving off the paved roadway and into the parking space. It is undisputed that the parking space was installed by a previous owner of SL9 and existed at the time the applicants purchased SL9.

18. The strata's relevant bylaws are those registered October 6, 2010 (October 2010 bylaws), which were filed with a Form I that stated they replaced all prior bylaws. The September 26, 2010 special general meeting (SGM) minutes confirm the October 2010 bylaws completely replace the previous bylaws. I therefore find the Standard Bylaws under the *Strata Property Act* (SPA) do not apply.

19. Bylaw 6 says that there is no parking on the street or on the common driveways at any time except for deliveries and pickups. It also says that all residents must park "within the driveway(s) associated with their residence."

20. Bylaw 10 allows the strata to fine $50.00 for each parking and vehicle bylaw infraction and to charge "additional fines for every 7-day period that the infraction remains."

21. The strata held an annual general meeting (AGM) on March 27, 2011 (March 2011 AGM). The applicants attended by proxy. The March 2011 AGM minutes show that after the meeting was adjourned it was realized that the applicants' request "to place a fence along the common property roadway, adjacent to their property for safety reasons" had not been discussed. The minutes state that as "80% of the residents were still represented, a vote was held, and the request was unanimously approved."

22. Over a number of months in 2011, the applicants excavated along the western boundary of their strata lot and on common property, north of the parking space, to

install the rock wall and fence they say were approved at the March 2011 AGM. The rock wall installed by the applicants abuts to the face of the previously installed rock wall supporting the parking space and proceeds north. The applicants' rock wall and fence was completed sometime in 2011.

23. In about April 2016, for reasons that are not clear to me, the strata installed a chain link fence at the northwest boundary of SL9 between the paved common property roadway and the fence installed by the applicants in 2011. The chain link fence does not extend as far south as the parking space.

24. In early July 2017 or before, the applicants parked a camper in the parking space which the strata says created a safety hazard for the applicants' son who was alleged to have "darted" on to the roadway from behind the trailer.

25. On July 19, 2017, the strata council met to discuss the safety issue of the parked trailer. The minutes show there was email and text conversations between strata council members and the applicants and that the strata council believed the camper was a safety concern and parked in violation of the strata's bylaws. The strata requested the applicants remove their camper from the parking space, which the applicants agreed to do after further email was exchanged between the parties.

26. On July 25, 2017, the strata council met via conference call. The strata council minutes show the strata contacted the City, the City's assistant Fire Chief, and a strata association, and unanimously agreed to extend the chain link fence as it determined "numerous safety issues could be resolved". I infer the council decided to install the new chain link fence along the common property roadway to block all access to the parking space. The minutes also state the fence was not deemed to be a significant alteration to common property, would be installed on August 11, 2017, and paid for as an operating expense as set out in section 98(3) of the SPA *[Unapproved expenditures],* and that $100 in bylaw fines assessed against SL 9 would be cancelled.

27. On August 4, 2017, all owners were notified the fence installation was scheduled to commence August 11, 2017, to which the applicants objected. There was an

exchange of correspondence between the strata council and the applicants that lead to the applicants retaining legal counsel who wrote to the strata on August 9, 2017 requesting that the fence not be installed.

28. On August 11, 2017, the date the fence was scheduled to be installed, the applicants' tenant parked their vehicle immediately adjacent to the common roadway to block the fence installation. Tempers flared, an applicant's relative attended the parking space as did Mr. Parkinson and the police. The fence was not installed.

29. On August 20, 2017, the applicants along with 2 other owners, petitioned the strata under section 43 of the SPA requesting an SGM be held to consider:

    a. Rescinding the council's resolution to fence off the parking space,

    b. Formally cancel any contract with the fencing company retained to install the fence; and

    c. Remove a council member and appoint another owner.

30. On September 6, 2017, at the strata's request and expense, a survey of the western boundary of SL9 was completed

31. On September 30, 2017, the strata held the petitioned SGM (September 2017 SGM), which included 5 additional ¾ vote resolutions on the agenda. The additional ¾ vote resolutions were:

    a. To designate as LCP for SL9 what I infer is the area of common property enclosed by the fence and rock wall and expend up to $1,500 for a surveyor to prepare an explanatory plan for the LCP designation as set out in section 74 of the SPA,

    b. To authorize an expense from the contingency reserve fund (CRF) to install a fence or erect bollards along the west boundary of SL9,

c. To authorize an expense from the CRF to install 2 signs prohibiting vehicles from parking in the parking space and that violators would be towed,

d. To authorize an expense for legal fees to allow the strata to address the parking stall issue, and

e. To amend the bylaws to require adult supervision of children under 10 years of age and restrict children's' toys and sports equipment from obstructing pedestrian or vehicle traffic through common property.

32. The September 2017 SGM minutes show the petitioners' majority resolutions passed and that all ¾ vote resolutions proposed by the strata failed. The minutes also state the strata's lawyer, who was present meeting, advised the strata had the right to fine and remove vehicles parked on common property in accordance with the bylaws.

33. At some time following the September 2017 SGM, the strata started to paint a blue line on the gravel next to the parking space to identify the boundary between the common property and SL9.

34. Since October 20, 2017, the strata has assessed the applicants a total of $2,350 for fines. The total includes $2,150 in parking fines for using the parking space contrary to bylaw 6, $150 in fines for removing the blue painted line 3 times, and $50 for a basketball net being located too close to the roadway.

POSITION OF THE PARTIES

35. The applicants say they received permission to construct a fence on common property at the March 2011 AGM. They say the rock wall was installed to provide support for the fence. They also say that up until July 2017, there was no communication from the strata objecting to the alterations they made. They say that it is not practical to remove the fence and rock wall only to relocate the fence a short distance away.

36. The applicants say that since they purchased their strata lot in 2010, the parking space was used without incident or concern until July 2017. They say that since July 2017, the strata has attempted to prohibit their use of the parking space and improperly fine them for using the parking space approved and required by the City under its zoning bylaws and the building permit issued for their house.

37. The applicants ask for orders that:

    a. They be permitted to keep their installed rock wall and fence,

    b. They be permitted continued use of the parking space,

    c. All fines assessed by the strata be rescinded; and,

    d. That the council refrain from painting blue lines along the west side of the property, which they say is contrary to section 71 of the SPA and has damaged their fence and rock wall.

38. Finally, the applicants request reimbursement of tribunal fees and legal fees related to this dispute.

39. The strata says the applicants were given permission to install a fence along common property but not on it. It also says, because of the fence being installed in the unapproved location, the applicants have gained between 125 to 175 square feet of common property, which is now enclosed for their exclusive use.

40. The strata says the parking space has been an issue since the applicants purchased their strata lot in 2010. It says the painted blue line was installed on the recommendation of legal counsel for safety and liability reasons, and to assist with bylaw enforcement.

41. Finally, the strata says it has properly enforced its bylaws and that the assessed fines are the result of bylaw infractions and should be paid.

42. In its counterclaim, the strata says the alterations to common property relating to the fence and rock wall should be removed and the common property reinstated to

its original condition including alterations made to a drainage ditch. It says the parking space is not an approved parking stall, is a safety concern, and that no one should be permitted to park there.

43. It also says a portion of the original chain link fence was damaged by the applicants' son and that the applicants' should be responsible for cost of its repair.

44. The strata says the expenses it incurred were unnecessary and seeks reimbursement of all expenses and future costs it incurs that relate to its dispute.

45. The applicants deny the strata's claims and ask they be dismissed.

ANALYSIS AND DECISION

Were the applicants given approval to construct the rock wall and fence at their present locations?

46. For the following reasons I find the strata gave its approval for the fence installation, and implicitly gave its approval for the rock wall installation, including the related excavation work.

47. In its submissions, the strata admits the applicants were given permission to install a fence but says the permission was for a fence to be installed along common property but not on it. It is undisputed that the applicants' letter submitted by their proxyholder at the March 2011 AGM, which details their request, has been lost and that a copy does not exist. Both parties rely on the March 2011 AGM minutes that state the applicants' request for a fence was approved. The actual language of the minutes is that the applicants' request "to place a fence along the common property roadway, adjacent to their property" was approved. I find the statement at the end of the March 2011 AGM minutes is consistent with the applicants' position and contrary to the strata's position. The applicants did precisely what the minutes show and installed a fence along the common property roadway adjacent to their strata lot.

48. The applicants say, and I accept, that the fencing and rock wall installation was completed over several months in 2011. Photographs provided by the applicants, show a small excavator removing soil from an area just north of the parking space. Given that SL9 is the second lot from the main entrance to the strata, and the extent of the work completed, I find it is more likely than not, that most, if not all owners, would have noticed the excavation work, rock wall construction and fence installation at some point during the lengthy time over which the work was completed. The strata does not dispute this and makes no argument to the contrary. If any owner or the strata had concerns with the applicants' alterations, including the rock wall and excavation work, those concerns should have been raised at that time. I find the strata implicitly approved the rock wall installation and related excavation work by allowing its ongoing construction with the approved fence, without objection.

49. Nothing turns on the fact the AGM may have been adjourned when the owners approved the applicants' request, as the owners' 80% vote in favour was recorded with the minutes. I find the strata owner's approval amounts to a direction provided to the strata council under section 27 of the SPA. One which the strata accepted

50. For these reasons, I find the strata gave the applicants approval to construct the rock wall and fence at their present locations, including the related excavation work.

Should I order the strata to permit the applicants to keep the fence and rock wall alterations as installed? If not, what is an appropriate order?

51. The applicants say to remove the rock wall and relocate the fence a short distance is impractical. They seek an order that they be permitted to keep the fence and rock wall as installed.

52. The strata says that it did not realize how much of the common property had been enclosed by the fence, suggesting it is 125 square feet to 175 square feet, which is now used exclusively by the applicants. It admits that it was only as a result of survey it obtained about the parking space issue discussed below, that it became

aware of the size of the enclosed area. It seeks an order that the property be returned to its original condition, suggesting it would cost about $5,000 to do so.

53. I find from the photographs and survey evidence that children's' playground equipment sits on the common property that is now enclosed. The ground itself appears to be covered in either bark mulch or grass. It is important to note that prior to the applicants' installation of the rock wall and fence in 2011, the common property appears to have been an unused or unusable natural area. Trees are located between the paved common roadway and the applicants'' fence at its most northern end.

54. In my view, the fact that the enclosed area is common property is not readily accessible by the strata and other owners and is essentially common property for the exclusive use of the applicants, creates certain practical and legal issues.

55. Under sections 3 and 72 of the SPA, the strata has a statutory duty to repair and maintain common property. The strata cannot make the applicants responsible for its repair and maintenance as permitted under section 72(2)(b)of the SPA because the *Strata Property Regulation* (regulations) do not currently provide for that option. The strata, therefore, must technically arrange for repair and maintenance of the enclosed common property. The strata must also maintain certain insurance on the enclosed common property.

56. Further, under section 77 of the SPA, the applicants must permit the strata reasonable access to the common property to exercise its powers and perform its duties.

57. If a practical arrangement for the strata to access to the property could be made, and if I were to allow the owners to keep the fence and rock wall, it would be prejudicial to the strata because of the strata's statutory obligations to repair, maintain, and insure common property that would only benefit the applicants.

58. On the other hand, it would be prejudicial to the applicants if I were to order the applicants to restore the common property, given I have found they have done nothing wrong.

59. Another issue created by the current situation is that of ownership of the enclosed common property. While the common property must be maintained and insured by the strata, every strata lot owner owns an undivided interest in the common property in proportion to the unit entitlement of their strata lot under section 66 of the SPA. This raises the question of access to the enclosed common property by every other strata lot owner in the strata.

60. Given the current circumstances, I find the situation must be corrected. However, I am not prepared to make either requested order. Instead, I adopt the view taken by the Supreme Court of British Columbia that the democratic government of a strata corporation should not be overridden by the court except where absolutely necessary and that it is important that owners in a strata corporation attempt to resolve their differences by following the procedures contemplated by their bylaws and the SPA. (See *Foley v. The Owners, Strata Plan VR 357*, 2014 BCSC 1333 at paragraph 30 citing *Lum v. Strata Plan VR 519 (Owners of)*, 2001 BCSC 493.).

61. For me to make an order before the strata and applicants have properly considered available options would be to interfere with the democratic rights of the strata owners, given the options involve the either ¾ vote or majority vote of the owners.

62. I am however, prepared to offer the following reasonable, non-exhaustive, options that may be available to the parties and note these are not the only options:

    a. Authorizing the strata, at its cost, to restore the common property to the condition prior to the applicants' installing the rock wall and fence. This would likely require a ¾ vote of the strata owners given it may now, at least 6 years later, fall under section 71 of the SPA as significant change to the use and appearance of common property.

b. Designating the area as LCP for SL9 under section 74 of the SPA, which would require the passing of a ¾ vote, and filing a sketch plan at the Land Title Office (LTO). I acknowledge a similar resolution was defeated at the September 2017 SGM but that resolution also included a $1,500 expense from the CRF. I note there was no prior consultation with the strata owners or applicants and that a sketch plan under section 74 does is not required to be completed by a British Columbia Land Surveyor. Further, the applicants may wish to cover the LTO registration expenses, thereby allowing the LCP designation at no additional cost to the strata. If the common property was designated as LCP for SL9, the strata would, by bylaw, be able to make the SL9 owners, responsible for ongoing repair and maintenance under section 72 of the SPA.

c. Providing short term exclusive use (up to 1 year) of the enclosed common property to the applicants under section 76 of the SPA, which could be done by the strata council but may require the passing of a ¾ vote if the change in use of the common property is significant within the meaning of section 71 of the SPA. Permission given under section 76 may be renewed on the same or other conditions at the discretion of the strata, which might not be acceptable to the applicants, and

d. Subdividing and disposing of the enclosed common property under sections 253 and 265 of the SPA and then adding it to the applicant's SL9 under section 262. This is likely the most expensive of the options presented and would likely require a ¾ vote under section 80 and possibly a unanimous vote under section 262. (See Scott Smythe & E. M. (Lisa) Voight, *McCarthy Tetrault's Annotated British Columbia's Strata Property Act*, Thompson Reuters, ((October 2016)).

63. To assist the parties in resolving this claim, I make the following orders:

a. Within 45 days of the date of this decision, the applicants must provide to the strata a written request proposing a resolution to be considered at an SGM.

The request must set out the proposed wording of the resolution and, state if the resolution requires a majority or ¾ vote to pass, and identify who should pay for any related costs associated with the proposed resolution, such as LTO expenses.

b. Within 15 days of receiving the applicants' written request, the strata, at its cost, must issue an SGM notice in accordance with SPA requirements. Unless otherwise agreed between the parties, the sole purpose of the SGM will be to consider the applicants' proposed resolution.

64. Nothing in this decision restricts the parties from discussing the options available to them before the SGM is called.

65. Additionally, nothing in this decision restricts the parties, after the SGM is held, from commencing a fresh claim about significant unfairness that might result from the outcome of the vote. I say this because significant unfairness has not been argued here and may not be alleged depending on the outcome of the vote.

Does the strata have authority to prohibit use of the parking space? If not, what is an appropriate remedy for use of the parking space?

66. The strata says the parking space is not an approved space, it is a safety concern, and that no one should be permitted to park there. Conversely, the applicants say the parking space was approved by the City when it granted the building permit for construction of the house currently located on SL9, it is not a safety hazard, and that they should be permitted continued use the parking space. For the following reasons, I agree with the applicants.

67. I find the evidence clearly shows that the City's zoning bylaw required the parking space for the applicants' house to be built. This is confirmed by the City staff in their email discussions with both parties' representatives, and contained in both parties' submissions relating to verbal conversations with City staff. Clearly, the house was built and therefore the zoning bylaw applies.

68. Section 121 of the SPA says a bylaw is not enforceable to the extent that it contravenes any enactment or law. I find that the City's zoning bylaw constitutes an "enactment" under the *Interpretation Act*. Therefore, I find that any strata bylaws that purport to entirely prevent the applicants or their tenants from using the parking space to be unenforceable. However, as discussed below, I find the strata may still reasonably restrict the use of the parking space under its bylaws.

69. The strata's attempt to block access to the parking space by installing fencing or bollards is inappropriate. Given my conclusion above, I find the strata must permit the applicants' access to the parking space.

70. I turn now to an appropriate remedy.

71. At the heart of this issue is that a vehicle parked in the parking space may sit partially on common property and partially on SL9, even though the parking stall is located entirely on SL9. The strata has painted a blue line on the gravel of the parking space in the location it says is identified in the survey it obtained, to show the boundary between the common property and SL9. If the blue line was not present it would be difficult to tell the boundary's location given the gravel parking surface extends continuously from the paved common roadway surface to the supporting rock wall located on SL9. I accept that the blue painted line shown in the photographs provided is the approximate location of the common property boundary with SL9.

72. The parking stall dimensions as required under the City's zoning bylaw were not provided in evidence. However, it is clear from the photographs that a passenger vehicle can park in the parking space and not extend onto common property..

73. Further, the City's zoning bylaw requires only 1 additional parking space for SL9. I find the reason for the required additional under the zoning bylaw is to accommodate 1 passenger vehicle used by the resident of the secondary suite. It follows that only 1 passenger vehicle used by a resident of SL9 should be permitted to park in the parking space at any one time and I so order.

74. Nothing in this decision restricts the strata from adopting parking bylaws that reasonably restrict the use of the parking space, providing such bylaws do not prohibit access to the parking space or its use for parking 1 passenger vehicle. For example, a bylaw restricting an owner from completing vehicle repairs in any parking stall or driveway would apply to the parking space as would a restriction of parking a derelict vehicle.

75. When enforcing its bylaws, the strata should be mindful that such enforcement is fair and consistent for all strata lots and not directed only at specific owners or tenants.

76. As for the strata's claim the parking space is a safety hazard, I disagree. Other than the 1 incident where the strata alleges the applicants' son "darted" out from behind a trailer parked in the parking space, other allegations of safety hazards asserted by the strata involve children playing on the common property roadway. It is children playing on or near the roadway that causes a safety hazard and not the existence of the parking space.

77. As for the strata physically painting a blue line on common property next to the parking space to mark the boundary with SL9, I find the painted line is more to with bylaw enforcement than with any safety concerns. From the submissions, it does not appear that blue painted lines have been used to identify common property boundaries with other strata lots. I agree with the applicants that painting a blue line to identify the common property boundary could be a significant change in the appearance of common property requiring a ¾ vote of the strata.

78. I find the strata must immediately refrain from physically marking its common property boundary with SL9 unless it passes a ¾ vote to mark all common property boundaries with all other strata lots in a similar manner.

79. In summary, my orders for the use of the parking space, to be effective immediately following the date of this decision, are that:

    a. The strata must not block or impede access to the parking space.

b. Only 1 passenger vehicle used by a resident of SL9 may be parked in the parking space. Use of the parking space for visitors or guests of the applicants or their tenants is not permitted;

c. The applicants must ensure any vehicle parked in the parking space does not extend onto the common property of the strata; and

d. The strata refrain from physically marking its common property boundary with SL9 in blue paint or otherwise until it passes a ¾ vote to similarly mark all common property boundaries and other strata lots.

What amount of fines, if any, should the applicants be ordered to pay?

80. The Dispute Notice for strata's counterclaim issued November 30, 2017 indicates a $550 claim for bylaw fines, which was not amended during facilitation. Given the strata claimed only $550 in fines that is the maximum amount I can order the applicants to pay. However, I have reviewed all of the fines assessed by the strata and find the applicants are not responsible to pay any fines for the following reasons.

81. The strata provided a summary of fines assessed against SL9 between July 1, 2017 and November 29, 2017 showing 11 fines of $50 each had been assessed (and not rescinded) against SL9. The $550 total of those fines matches the strata's claim and all but one fine relates to alleged parking infractions. The remaining bylaw fine of $50 was assessed for "removing line" as shown on the list of fines provided in evidence.

82. An updated fine list to March 28, 2018 was also provided in evidence that shows a total of $2,350 in fines had been assessed at that time, including the $550 assessed to November 29, 2017. In other words, an additional $1,800 in fines were assessed against SL9 before this dispute was moved to adjudication. Of the $1,800, all but 3 fines relate to parking infractions. Of the 3 other $50 fines, 2 relate to "Boundary line removal" for a total of $100 and one relates to "basketball

net". Only a sample of the strata's letters written to the applicants were provided in evidence.

83. Based on the evidence, I find the fines relating to the "boundary lines" relate to the applicants' removal of the blue painted line alleged to be on common property next to the parking stall. The basketball net fine relates to the allegation the applicants permitted a basketball net for their son's use to be placed in a location that blocked site lines to street signs.

84. In all cases, there is no evidence to suggest the applicants were given an opportunity to respond to the allegations including the right to a council hearing as required under section 135 of the SPA. The sample letters provided simply noted the bylaw infraction and that a fine had been assessed. This alone is sufficient for me to find all bylaw fines invalid. However, even if the strata was able to prove it followed section 135 of SPA, I would still find the fines invalid for the following reasons which I note for the strata's consideration for any future fines.

85. As for the fines relating to bylaw 6, given my conclusion about the use of the parking space and except for infractions where the parked vehicle extended onto the paved common property roadway, I would find all of the fines assessed against SL9 that relate to contravention of bylaw 6 invalid. The strata did not provide sufficient evidence for me to find a specific bylaw infraction related to a vehicle parked in a way that extended into the common property paved roadway.

86. As for the fines relating to removing the "boundary line", the letter quotes a section of the SPA that I infer was meant to be a section of the Standard Bylaws. The strata cannot fine for contravention of the SPA and I have earlier found the Standard Bylaws under the SPA do not apply to the strata. Given there are no bylaws that restrict the applicants from removing the painted line, I would find these fines invalid.

87. As for the fine relating to the basketball net, there are no bylaws prohibiting the use or location of a basketball net. Further the Standard Bylaw regarding nuisance or a similar one does not exist. That the strata council agreed the basketball net could

not be within 2 feet of the common property roadway does not permit it to assess bylaw fines.

88. For these reasons, I find the applicants are not required to pay any fines assessed against SL9 for the infractions alleged by the strata. I order the strata to reverse all bylaw fines.

Is the strata entitled to reimbursement of damage to a chain link fence?

89. The strata alleges the applicants' son damaged a portion of chain link fence located on common property but provided no evidence and very little argument to support this claim. As a result, I dismiss this claim.

Is the strata entitled to an order for future fines and expenses?

90. Given my conclusions above, I find I do not need to address the strata's claims for future fines and expenses. Additionally, I find it would be inappropriate to make an order for prospective fines about conduct that has not yet occurred.

Are the parties entitled to reimbursement of tribunal fees paid or dispute-related expenses claimed?

91. 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 this general rule. The applicants have been the most successful party and I order the strata to reimburse the applicants $225 for tribunal fees paid.

92. The applicants claim dispute-related expenses for legal fees totalling $4,300.

93. Tribunal rule 132 says that, except in extraordinary cases, the tribunal will not order one party to pay another party's legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I do not find this to be an extraordinary case.

94. The strata claims dispute related expenses totalling $4,000 comprising $2,600 for legal fees and $1,400 for the survey expense. I decline to order the applicants to reimburse the strata for tribunal fees it paid or for any dispute related expenses, given the applicants' overall success.

95. I note also my conclusion that this not an extraordinary case that would permit me to order reimbursement of the strata's legal fees.

DECISION AND ORDERS

96. I order that:

a. Within 45 days of the date of this decision, the applicants must provide to the strata a written request to propose a resolution to the strata at a general meeting. The request must set out the proposed wording of the resolution, state if the resolution requires a majority vote or ¾ vote to pass, and identify who should pay any related costs associated with the proposed resolution.

b. Within 15 days of receiving the applicants' written request, the strata, at its cost, must issue an SGM notice in accordance with the SPA requirements. Unless otherwise agreed between the applicants and the strata, the sole purpose of the SGM will be to consider applicants' proposed resolution.

c. The strata must not block or impede access to the parking space.

d. Only 1 passenger vehicle used by a resident of SL9 may be parked in the parking space. Use of the parking space for visitors or guests of the applicants or their tenants is not permitted;

e. The applicants must ensure any vehicle parked in the parking space does not extend onto the common property of the strata; and

f. The strata refrain from physically marking its common property boundary with SL9 in blue paint or otherwise until it passes a ¾ vote to similarly mark all common property boundaries and other strata lots.

g. The strata immediately reverse all fines assessed against SL9.

h. Within 14 days of the date of this decision, the strata pay the applicants $225 for tribunal fees

97. I dismiss all remaining claims of applicants and strata.

98. The applicants are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

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

100. 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.

101. 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.

J. Garth Cambrey, Vice Chair