



# Civil Resolution Tribunal

Date Issued: April 18, 2019

File: ST-2018-003305

Type: Strata

Civil Resolution Tribunal

Indexed as: *0716712 BC Ltd. v. The Owners, Strata Plan LMS 3924*, 2019 BCCRT 476

**B E T W E E N :**

0716712 BC Ltd.

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 3924

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The applicant, 0716712 BC Ltd., is the owner of strata lot 48 in the respondent strata corporation, The Owners, Strata Plan LMS 3924 (strata). The applicant requested access to a legal opinion about the allocation of parking spots (parking legal opinion). The strata asserted solicitor-client privilege. The applicant seeks an order requiring the strata to provide access to the legal opinions.

2. In a preliminary decision, *0716712 BC Ltd. v. The Owners, Strata Plan LMS 3924*, 2019 BCCRT 388 (previous decision), I assessed the parties' arguments about the scope of the strata's right to assert solicitor-client privilege over the legal privilege and about the jurisdiction of the Civil Resolution Tribunal (tribunal) over the dispute. I ordered the strata to provide a copy of the legal opinion to the tribunal, under seal, along with any proposed redactions that the strata wished to make, which the strata did. I also dismissed parts of the applicant's claim. This decision resolves the applicant's remaining claims.
3. The applicant is represented by a director. The strata is represented by its lawyer, Adrienne Murray.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 121 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.
5. 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.
6. 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.

7. Under section 123 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**

8. The issues in this dispute are:
  - a. Are the strata's proposed redactions of the parking legal opinion appropriate?
  - b. Has the strata acted significantly unfairly towards the applicant by refusing to provide an unredacted copy of the parking legal opinion?

## **BACKGROUND AND ANALYSIS**

9. I set out the factual background and applicable law in the preliminary decision. I will not repeat them in this decision.
10. The parking legal opinion is dated June 29, 2010. It addresses 2 distinct issues. The first portion of the parking legal opinion deals with access to a common property terrace. The strata does not seek to redact any portion of the parking legal opinion that deals with the terrace.
11. The second portion of the parking legal opinion deals with 17 common property parking spaces that the strata had designated as residential visitor parking. The parking legal opinion notes that the City of North Vancouver's zoning bylaw only requires 9 of those 17 parking spaces to be designated as residential visitor parking. The parking legal opinion notes that the zoning bylaw does not require the remaining 8 parking spaces to be used in any particular way. The strata does not seek to redact the portions of the parking legal opinion that set out the application of the City's zoning bylaw to the strata's allocation of the excess parking spaces.
12. The strata only seeks to redact the portions of the parking legal opinion that set out the strata's options for allocating the excess parking spaces.

***Are the strata's proposed redactions of the parking legal opinion appropriate?***

13. I invited the strata to provide supplementary submissions explaining why their proposed redactions were permitted pursuant to the previous decision and *Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428*, 2009 BCSC 506. The strata chose not to provide submissions in support of their proposed redactions other than to say that they “protect the Strata Corporation’s opinion as confidential from the Commercial Section”.
14. Because of the strata’s decision not to provide supplementary submissions, I rely on the correspondence between the strata’s lawyer and the commercial section’s lawyer from 2015, which is summarized in the previous decision. As discussed in the previous decision, that correspondence indicates that there was a potential dispute between the commercial section and the strata about how to allocate the strata’s excess parking stalls.
15. Based on that correspondence, I find that the portions of the parking legal opinion that the strata has redacted relate to a dispute or potential dispute between the commercial section and the strata. I find that the strata may redact those portions prior to providing the applicant with access to the parking legal opinion.

***Has the strata acted significantly unfairly towards the applicant by refusing to provide an unredacted copy of the parking legal opinion?***

16. The applicant claims that it is significantly unfair for the strata to refuse to provide the applicant with access to the parking legal opinion. The tribunal has authority to make an order to prevent or remedy a significantly unfair action or decision, which reflects the language of 164 of the *Strata Property Act*. The test for what actions are significantly unfair is found in *Dollan v. The Strata Plan BCS 1589*, 2012 BCCA 44, which I summarize as follows:

- a. Did the owner have a reasonable expectation of the strata?

- b. If so, did the strata violate that reasonable expectation in a way that was significantly unfair?
17. Because of my findings about solicitor-client privilege, I find that I do not need to address the parties' main arguments about significant unfairness in detail. I find that the applicant does not have a reasonable expectation that the strata will waive solicitor-client privilege over the portions of the parking legal opinion that relate to a dispute or potential dispute between the strata and the commercial section.
18. However, I will address one of the applicant's arguments that is not answered by my findings about solicitor-client privilege.
19. The applicant was on strata council when the strata first received the parking legal opinion. Therefore, the applicant has already seen the parking legal opinion and is aware of its contents. Presumably, the applicant understands that it is constrained in its ability to share that knowledge with other owners or the commercial section because it received the information while sitting on strata council.
20. The applicant argues that because it has already seen the parking legal opinion, withholding it now is significantly unfair. I disagree. The strata's position in this dispute clearly reflects its desire not to waive solicitor-client privilege over certain portions of the parking legal opinion. I find that providing an unredacted version of the parking legal opinion to the applicant would constitute a waiver of solicitor-client privilege regardless of whether the applicant saw it when a member of strata council.
21. In addition, even though I have ordered the strata to release portions of the parking legal opinion that it had previously refused to provide to the applicant, I find that the strata acted on the advice of its counsel. I do not find that it was unreasonable in the circumstances for the strata to resist disclosing the parking legal opinion. I therefore find that the strata has not breached any reasonable expectations of the applicant for access to the parking legal opinion.

22. In any event, insofar as there was any unfairness in the strata refusing to consider releasing a redacted version of the parking legal opinion, my order in this tribunal has remedied that unfairness.
23. I dismiss the applicant's claim for access to an unredacted version of the parking legal opinion based on significant unfairness.

## **TRIBUNAL FEES AND EXPENSES**

24. 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. While the applicant will be able to review some portions of the parking legal opinion because of this decision, I find that the applicant has not been successful in this dispute. I dismiss the applicant's claim for reimbursement of its tribunal fees. Neither party claimed any dispute-related expenses.
25. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

## **DECISION AND ORDERS**

26. I order that within 14 days of the date of this decision, the strata provide the applicant access to or a copy of the parking legal opinion.
27. I order that the strata may redact only those portions of the parking legal opinion that the strata identified with yellow highlighting in the copy of the parking legal opinion that it provided to the tribunal further to the tribunal's order in the preliminary decision.
28. The applicant's remaining claims are dismissed.
29. 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.

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Eric Regehr, Tribunal Member