



Civil Resolution Tribunal

Date of Original Decision: June 3, 2019

Date of Amended Decision: June 26, 2019

File: ST-2018-009230

Type: Strata

Civil Resolution Tribunal

Indexed as: *Commercial Section of The Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991, 2019 BCCRT 674*

B E T W E E N :

Commercial Section of the Owners, Strata Plan LMS 1991

APPLICANT

A N D :

The Owners, Strata Plan LMS 1991

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about seven parking spots.

2. The respondent strata corporation, The Owners, Strata Plan LMS 1991 (strata) was created in 1995, with both residential and non-residential sections. The original bylaws filed by the owner developer created two separate sections within the strata under section 51(5) of the *Condominium Act*. This has not been altered.
3. There are 81 residential strata lots and 5 commercial strata lot in the strata.
4. The applicant, Commercial Section of the Owners, Strata Plan LMS 1991 (commercial section), says that the strata wrongfully designated these parking spots as “residents only” parking, and posted signed advising anyone not registered as a visitor will be towed. The strata disputes that it did anything wrong.
5. The parties are self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (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.
7. 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.
8. 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.

9. 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.
10. Tribunal documents incorrectly show the name of the applicant as Strata Corporation 2 of Strata Plan LMS1991. Based on section 193(4) of the SPA and the strata corporation's bylaws, the correct legal name of the strata is Commercial Section of the Owners, Strata Plan LMS 1991.¹ Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the commercial section's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUES

11. The issues in this dispute are whether the commercial section is entitled to
 - a. an order that the "residents only" parking restriction is illegal;
 - b. an order that the strata council members are personally responsible for the removal of signs, towing contact cancellation, and other expenses incurred in relation to the above; and
 - c. an order for the removal of the sign reserving one spot for the use of a residential contractor.

EVIDENCE AND ANALYSIS

12. The history of this dispute is partially documented in strata council meeting minutes. Further background information is summarized in a previous tribunal decision involving the same parties: *Commercial Section of the Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991*, 2018 BCCRT 333.

13. According to the February 15, 2018 minutes, strata council began reviewing enforcement of visitor parking in the upper parkade in response to a “number of inquiries”. Next, on July 30, 2018, it was noted that council was now considering enforcement of visitor-only parking in the upper parkade. The minutes state that, aside from the four stalls reserved for commercial section strata units, the upper parkade was intended for visitor parking only. No existing rule or bylaw was cited for this intended use.
14. According to the December 15, 2018 strata council meeting minutes, at that meeting strata council adopted a new rule regarding parking under section 125(1) of the *Strata Property Act* (SPA). The rule was summarized in the December 15, 2018 minutes and fully written and attached to the January 22, 2019 minutes in a document titled “Pacific Terrace Visitor Parking Policy Commencing February 4 2019” (parking policy). Among other things, the parking policy restricts parking in the upper parkade to visitor parking only. This excludes owners, occupants, tenants, employees, and anyone attending the building to seek the services of a professional. The parking policy also refers to a parking stall with a “Custodian Only” reservation sign. In the next meeting of January 22, 2019, strata council noted that enforcement of the parking policy would commence on February 4, 2019.
15. In this dispute, the commercial section objects to the parking policy. It submits that the seven upper parkade parking stalls were used by the commercial section’s employees and clients as part of a long-standing arrangement.
16. To resolve this dispute, I first considered whether strata council could validly make the parking policy. Section 125(1) of the SPA states that a strata corporation may make rules governing the use, safety, and condition of common property and assets.
17. The registered strata plan, amended October 9, 2008, shows four parking stalls designated as limited common property for the exclusive use of strata lots owned by the commercial section. The remaining areas labelled “visitor parking” on the plan are designated as common property. Given that the parking policy affects use of

common property, I find that strata council could validly enact this parking rule over the common property area.

18. Further, there is no indication that the strata formally granted any special rights or privileges in relation to the common property parking stalls to the commercial section. The commercial section provided correspondence from the owners of the commercial strata lots dated March 13, 14, and 22, 2019, as well as an undated letter from another owner. The correspondence does not refer to any lease, written agreement, or bylaw that provides the applicant with any exclusive use or special privileges in relation to the common property parking stalls. I note that one of the commercial section owners, Norma Eaton, wrote in her March 14, 2019 email that the strata stated Ms. Eaton would have “adequate parking at all times”. Further, she wrote that the strata council assured her that it would continue this parking arrangement. However, there are no details or documents that support these claims and her submissions are inconsistent with the correspondence of the other commercial strata lot owners. I therefore do not accept that such assurances were made.
19. Section 76 of the SPA provides that a strata corporation may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common assets or common property that is not designated as limited common property. However, section 76(2) provides that any such permission or privilege cannot be granted for a period of more than one year. There is no documentation to support the conclusion that the common property parking stalls were allotted to the commercial section year over year.
20. Instead, the evidence shows that the common property parking stalls were largely used by the commercial section in the daytime on a “first come, first serve” or “scramble” basis, and by the residential owners in the evening. I reach this conclusion based on the March 14 and 22, 2019 letters from Shaohua Lou and Jeffrey Kwee, the owners of commercial strata lots 86 and 84, respectively.

21. This arrangement was implicitly authorized by previous strata council for several years. In the August 27, 2012 strata council meetings minutes, council discussed the signage in the “commercial parking area”. It was noted that the parking signs there stated that parking was only permitted until 6:00 p.m. Council agreed that the commercial section could use the commercial parking area until 9:00 p.m. without vehicles being towed or tagged.
22. The strata submits that the commercial parking area refers to the commercial section’s limited common property parking stalls in the upper parkade. However, it is unclear why strata council would seek to restrict the times the commercial section could park in its own allotted parking stalls. I find it more likely that the commercial parking area refers to the common property parking stalls. Consistent with that, the owner of commercial unit 83, Peter Hodson, states in his undated letter that these signs referred to the common property parking stalls. As noted by Dr. Kwee in his March 22, 2019 letter, these signs were removed in July 2017, and since November 30, 2018, have been replaced with signs stating the parking is reserved 24/7 for residential visitors only. Dr. Kwee provided a photograph of one of these new signs in his letter. The change in signs, which occurred close in time to the adoption of the parking policy, tends to support the conclusion that the previous signs governed parking in the common property parking stalls.
23. I considered the March 27, 2006 bylaws to understand how the parties used the common property parking stalls. However, the parties largely did not rely upon the bylaws in their submissions. Further, as noted by the tribunal in reasons indexed as 2018 BCCRT 333, with the exception perhaps of the age restriction bylaw passed by the residential owners on May 29, 2017, the March 2006 bylaws are invalid. I find the March 2006 bylaws are of limited assistance in this dispute.
24. The commercial section submits that the parking policy was a significant change in the use of common property under section 71 of the SPA. It therefore required approval by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting.

25. In *Foley v. The Owners, Strata Plan VR 837*, 2014 BCSC 1333, the court provided a non-exhaustive list of factors to consider in determining whether a change is significant under section 71 of the SPA. Relevant factors include whether the change to the common property affects the use or enjoyment of a unit or number of units, or an existing benefit of a unit or all units; whether there is direct interference or disruption to use as a result of the change; whether the change affects impacts the marketability or value of the unit; the number of units in the building; and how the strata corporation has governed itself in the past, including what it has allowed.
26. I find that the parking policy constituted a significant change in the use of the common property parking stalls. The change excludes broad categories of people from using the common property parking stalls. Under section 1(c) of the parking policy, visitors do not include occupants, tenants, domestic partners, employees, clients, customers, and patients. Visitor parking is also limited to 12 hours, and visitors must display a valid parking pass issued to a registered strata lot owner or the visitor's vehicle will be subject to towing. These changes depart from the "scramble" model of parking previously used, which did not exclude customers and clients from parking in the common property parking stalls.
27. I find that the parking policy affects the commercial section's use of their strata lots, disrupts their businesses, and potentially impacts the value of their strata lots. These effects are discussed in the March 2019 letters from the commercial section owners. These letters also note that customers and clients will have greater difficulty reaching the commercial section's units as they are no longer permitted to park in the nearby common property parking stalls. The requirements to limit parking to 12 hours and to display a valid parking pass also affect both the residential and commercial section strata units. As the change affects all strata lots, the large-scale impact of the change supports the conclusion that the parking change is significant.

28. I am also bound by *Foley* to consider what the strata allowed in the past. The March 2019 letters state, and I accept, that the parking arrangement between the parties lasted many years before the December 2018 rule change.
29. For these reasons, I find that the parking policy was a significant change in the use of common property, as contemplated in section 71 of the SPA. As the change was not supported by a resolution passed by a $\frac{3}{4}$ vote at a general meeting of the owners, I conclude that it is of no force or effect.
30. Given the above, I find that there is no basis for the signs in the upper parkade reserving parking 24/7 for residential visitors only. The commercial section also seeks the removal of a sign reserving one common property parking stall for the use of a residential contractor. The strata submits that it is permitted to erect signage but otherwise does not provide a basis for the sign. There is no ratified rule or bylaw before me that appears to justify the sign. I find that there is no basis for this sign as well.
31. The commercial section seeks an order that the strata council members be personally responsible for the removal of signs, towing contract cancellation, and other related expenses incurred. The commercial section did not provide a specific basis for this order, but submits that the change in parking was done in retaliation for the outcome of a previous tribunal decision.
32. I decline to make that order. No specific strata council members have been named as parties in this dispute. Further, section 26 of the SPA provides that strata council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. I find that the strata corporation, rather than any individual strata council member, enacted the parking policy under this provision.

ORDERS

33. I declare the parking policy to be of no force or effect. I leave it to the strata to determine whether to hold a $\frac{3}{4}$ vote resolution at an annual general meeting or special general meeting, as proposed by the commercial section, and subject to the provisions of the SPA.
34. I order the strata to remove from the upper parkade area (as referred to in the parking policy) any parking signs that restrict parking, at all times, to residential visitors only. I also order the removal of any signs in the upper parkade area that restrict or reserve parking for the use of a residential contractor. These signs may be posted again, if a future parking change is endorsed by a $\frac{3}{4}$ vote resolution.
35. The tribunal's rules provide that the successful party is generally entitled to recovery of their tribunal fees. I see no reason to depart from this general rule. I find the commercial section has been the successful party. I order the strata to reimburse the commercial section \$225 for tribunal fees.
36. All other commercial section claims are dismissed.
37. 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. Proceeding by analogy, I order the strata to ensure that no expenses incurred by the strata in defending this claim, are allocated to the commercial section.ⁱⁱ
38. 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 123.1 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.

39. 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 123.1 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.

David Jiang, Tribunal Member

Amended Notes

ⁱ Paragraph 10 references corrected for clarity.

ⁱⁱ Paragraph 37 edited for clarity.