



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

JANIS WONG and DONN LOUIE

APPLICANTS

A N D :

The Owners, Strata Plan LMS2919

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about the assignment of parking stalls in a strata corporation.
2. The applicants Janis Wong and Donn Louie say that when they bought strata lot 125 (SL125) in the respondent The Owners, Strata Plan LMS2919 (strata), the purchase included exclusive rights to storage locker 125 and parking stalls 83 and 75.

3. Parking stall 75 is one of the limited common property (LCP) parking stalls on the strata plan. Ownership and use of parking stall 75 is not in dispute here.
4. In 2005, the applicants relinquished the use of parking stall 83 in exchange for a disabled-accessible parking stall.
5. In 2007, the applicants say they traded parking stall 83 for parking stall 70, which they understood was LCP designated for the exclusive use of the owner of strata lot 116 (SL116), MC. MC is not a party to this dispute.
6. The applicants say they sent the strata the written assignment agreements for parking stalls 83 and 70 but the strata refuses to amend the strata plan to reflect the trade.
7. The applicants seek an order that the strata:
 - a. amend the strata plan to show that parking stall 83 is assigned to SL116 and parking stall 70 is assigned to SL125,
 - b. file the amended strata plan with the Land Title Office (LTO), and
 - c. return vacant possession of parking stall 70 to them.
8. The strata says the applicants, as owners of SL125, have the exclusive use of one limited common property (LCP) parking stall, identified on the strata plan as 75. The strata says the owner of SL116 has the exclusive use of 2 LCP parking stalls, being 70 and 115. The applicants also have use of a CP parking stall, number 83, pursuant to a lease of CP that I will discuss further below.
9. The strata says the private arrangement between the applicants and the owner of SL116 cannot be reflected as an amendment to the LCP on the strata plan without a unanimous vote of the owners under *Strata Property Act* (SPA) sections 25 and 75. The strata suggests that the applicants' proper claim is not against it, but against the owner of SL116.
10. The strata also says the applicants' claim is barred by the *Limitation Act*.

11. The strata asks that the dispute be dismissed.
12. The applicants Janis Wong and Donn Louie represent themselves. The strata is represented by contact RS, who I infer is a strata council member.

JURISDICTION AND PROCEDURE

13. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
14. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
15. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. A dispute that involves some issues that are outside the tribunal's jurisdiction may be amended to remove those issues.
16. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
17. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

18. The issues in this dispute are:

- a. whether the applicants are out of time to bring this dispute?
- b. whether the strata must record parking stall 83 to SL116 and parking stall 70 to SL125 on the strata plan and, relatedly, whether the applicants are entitled to exclusive use of parking stall 70, and
- c. whether the strata must return vacant possession of parking stall 70 to the applicants?

EVIDENCE AND ANALYSIS

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

20. The applicants co-own SL125, unit 225, in the respondent strata.

21. The applicants purchased SL125 in late July 2005.

22. The applicants' contract of purchase and sale addendum for SL125 says the purchase included the "exclusive use of parking stalls 75 and 83". I find that the right to use parking stall 83 must have passed to the applicants when they purchased the strata lot, pursuant to the terms of the lease, discussed further below.

23. On August 1, 2005, the applicants relinquished the use of parking stall 83 to the strata so that they could use the disability accessible parking stall adjacent to the main lobby.

24. In June 2006, the strata's property manager authorized the applicants to use a disability accessible parking stall closer to the mail box lobby entrance rather than the one they were already using.
25. On August 28, 2006 the strata council met. The minutes record that SL125 had two parking spots, one of which (83) was relinquished to the strata for a disability accessible parking stall. The minutes explain that the strata could rent out stall 83 while the applicants used the accessible parking stall.
26. The strata says that MC, the owner of SL116, had the exclusive use of LCP parking stalls 70 and 115, according to the strata plan. This is consistent with an annotated copy of the strata plan that was filed in evidence.
27. On April 27, 2007, the applicants emailed the strata property manager asking how to properly complete the assignment of a parking space, if they decided to sell or trade one.
28. On April 30, 2007, the property manager responded saying there was "no special format". He wrote that it would be "sufficient" for strata purposes if the applicants supplied a letter indicating the owner of the suite assigning a given parking stall to another owner, with both owners signing the "assignment letter."
29. The applicants say that, on May 31, 2007, MC transferred parking stall 70 to them.
30. A written agreement dated May 8, 2007, signed by the applicants, documents that they sold their "right, title and interest in parking stall number 83" to MC. Their signatures are witnessed by RJ.
31. In another written agreement dated May 31, 2007, MC sells her "right, title and interest in parking stall number 70" to the applicants. The agreement is signed by MC and witnessed by RJ. RJ provided a statement in evidence that MC signed the May 31, 2007 agreement and appeared to understand it.
32. On May 31, 2007, the applicants provided the two written agreements showing, they say, that parking stalls 70 and 83 had been traded, to the strata via registered mail.

33. At a June 25, 2007 strata council meeting, the minutes recorded that parking stall 83 was swapped for parking stall 70. The minutes also documented that parking stall 70 was relinquished by the applicants for their use of a disability accessible parking stall. The minutes record that parking stall 70 was therefore being rented out to unit 437. The minutes also record that the property manager would check the records for any conflicts.

34. On July 30, 2007, MC appeared at a strata council meeting disputing that she ever agreed to transfer parking stall 70.

35. The Minutes of the July 30, 2007 strata council meeting read, in part:

Owners are reminded that the parking stall allocations to their strata lots are registered on their title documents and the Strata Corporation does not control any transfer of parking stall interests and only keep on-site records as reported to the Strata Corporation by Owners, selling, buying or transferring their interest in parking stalls to other Strata Lot Owners. A current complaint of an Owner relating to a parking stall document is fair warning to anyone not to sign any documents relating to an interest in a parking stall without legal advice.

36. The applicants continued to use the disability accessible parking space. I find that, because parking stall 70 was rented out by the strata, the applicants did not realize at that stage that they had a conflict with the strata about the stall 70's ownership. That is, they understood that stall 70 had become the stall relinquished to the strata once they sold stall 83 to MC. This understanding is consistent with the June 25, 2007 strata council meeting minutes.

37. On April 15, 2013 strata council met and recorded that it had received correspondence from SL116 regarding "parking stall issues", which it referred to that owner with advice to contact a lawyer and seek to resolve the parking stall dispute between the owners.

38. On December 11, 2016, the applicants wrote to the property manager asking to relinquish use of the accessible parking stall and to have parking stall 70 returned to them.
39. On January 5, 2017, the property manager wrote to the applicants informing them that their strata lot was assigned parking stall 75 on the strata plan. The letter said that they could opt to use a handicap parking stall but must trade parking stall 75 to the strata. They could elect to lease back parking stall 75 for \$50.00 per month.
40. The letter also said that parking stall 70 was assigned to SL116, not to SL125. The applicants say this is when they discovered that they had a claim against the strata.
41. On January 10, 2017, the applicants wrote back to the strata to say that they had purchased stall 70 in exchange for stall 83 and attached documentary proof.
42. On March 31, 2017, the strata wrote to MC and asked her to move her car out of stall 70, because it had been transferred to the applicants.
43. On April 7, 2017, legal counsel for MC, the owner of SL116, wrote to the strata advising that the May 31, 2007 document purporting to transfer parking stall 70 to the applicants is invalid, having been "either fabricated or obtained by improper means."
44. On January 22, 2018, the applicants had a hearing before strata council regarding parking stall 70.
45. On January 29, 2018, the strata property manager emailed the applicants to say that strata council declined to become involved in the dispute about the validity of agreements to trade the parking stalls between two owners. The property manager asked that the applicants contact the SL116 owner to resolve the matter.
46. A March 23, 2018 Form B Information Certificate generated by the strata lists parking stalls 75 and 83 as LCP for the exclusive use of SL125. Parking stall 83 being LCP as indicated on the Form B is not consistent with the strata plan, which shows it to be CP.

Bylaws

47. In bylaws filed at the LTO on June 5, 2001 which I find applicable, bylaw 10(d)(1) says that an owner may not use a parking space other than the one specifically assigned to their strata lot or leased by the owner or when specifically agreed with another owner, the parking space assigned to the strata lot of that owner.
48. The meaning of “assigned” is not defined in the bylaws. I find that “assigned” in this context means allocated per the strata plan unless the LCP parking stall is licensed to another owner by agreement.
49. In bylaw amendments filed at the LTO on August 1, 2017, the strata adopted Bylaw 9, which provides that a strata lot owner may elect to trade their designated stall for a “handicap” parking stall or lease such a stall at the rate determined by strata council.

Strata Property Act (SPA)

50. Section 75 of the SPA states that the designation of common property as limited common property by the owner developer when the strata plan is registered can only be removed by an amendment to the strata plan under section 257.
51. In this strata, most parking stalls are identified as limited common property (LCP) as noted on page 1 of each phase of the strata plan. However, there are 19 remaining stalls that are CP, subject to a lease that I discuss further below.
52. Section 257 of the SPA states that removal of an LCP designation made by the owner developer can only be amended by a unanimous vote of the strata at a general meeting, followed by an application to amend the strata plan which must be made to the registrar, meaning the registrar of titles as defined by the *Land Title Act*.
53. Parking stall 70 is LCP. Therefore, a unanimous vote would be needed under section 257.

54. I find that no one has presented a section 257 unanimous vote on the question of parking stall 70 at a general meeting of the strata. A unanimous vote is defined in s. 1(1) of the SPA as a vote in favour of a resolution by all the votes of all the eligible voters.
55. Section 74 of the SPA provides that common property may be designated as LCP by a $\frac{3}{4}$ resolution at an annual or special general meeting. Regarding parking stall 83, it may be that an owner could bring a $\frac{3}{4}$ resolution at an annual general or special general meeting, to attempt to change the designation to LCP for the exclusive use of their strata lot. However, no such motion has been brought.
56. Section 59 of the SPA requires a strata corporation to identify how many parking spaces and storage lockers are allocated to a strata lot on a Form B: Information Certificate.

Lease of CP

57. On September 3, 1997, Palladium Productions Inc. (Palladium) leased 19 CP parking stalls from the owner developer of the strata. The lease provides that the owner developer leased all parking stalls “excluding the limited common property and visitor and handicapped parking stalls” for a term from September 3, 1997 until the dissolution or destruction of the strata. The lease to Palladium included stall 83.
58. The lease says that the owner/developer may assign its rights under the lease to particular parking stalls to purchasers of strata lots. Any such assignment will be “absolute”. If a holder of such an interest in a parking stall then sells his or her strata lot, without concurrently executing an assignment of the stall to the new owner, the interest of the strata lot owner in the parking stall will be “deemed to have been automatically assigned to and assumed by” the purchaser.
59. At section 4.3, the lease provides that an owner with an interest in a parking stall may exchange that interest for an interest in a different stall, by written agreement in a given form. The exchange will not be effective until written notice of the assignment is delivered to the strata.

60. On July 23, 1999, Palladium assigned the lease for stall 83 to XH, the then owner of SL 125, to be used by SL125.

Is the applicants' claim against the strata barred by the expiry of the limitation period?

61. The *Limitation Act* applies to tribunal disputes. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. The current *Limitation Act* provides that there is a 2-year limitation period for strata claims discovered after June 1, 2013.

62. The *Limitation Act* says a claim is “discovered” on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

63. While there was a July 30, 2007 strata council meeting where MC disputed that she agreed to transfer parking stall 70, the issue was only conclusively addressed via strata council hearing in 2018.

64. I find that the applicants discovered their claim against the strata on April 7, 2017, when MC’s legal counsel formally objected to the validity of the transfer agreement and the strata appeared to take notice. I find that it was at that point that the applicants realized they may have a claim against the strata for failing to document the transfer of parking stalls in the manner that they wanted. The application for dispute resolution was submitted on March 20, 2019. Because this is less than 2 years after April 7, 2017, I find the applicants are in time to bring their claim.

Are the applicants entitled to the exclusive use of parking stall 70?

65. For the reasons given below, I dismiss the applicants’ claim to compel the strata to recognize what they frame as their right to the exclusive use of parking stall 70 through a strata plan amendment and bylaw enforcement process.

66. I cannot decide the validity and effect of the license agreement with the owner of SL116, which that owner disputes. I say that because MC is not a party.
67. The *CLE Strata Property Manual* summarizes the rights arising from designation of LCP parking stalls as follows:
- If parking is designated on the strata plan as limited common property for each strata lot on a stall-by-stall basis, the owner of the strata lot from time to time has an inalienable right to use the stall in accordance with the bylaws. The designation can only be changed by an amendment to the strata plan, which requires unanimous approval of the owners.
68. In *Tan v. Mermut et al*, 2018 BCCRT 410 an owner sought orders against a strata because he said he purchased the use of a certain parking stall with his strata lot, and it was reflected on a Form B, but another owner also said they had the right to use the same parking stall. In *Tan*, which is not binding upon me but which I find useful, the tribunal ordered that the strata enforce its parking bylaws where there was a dispute over the ownership of a parking stall. However, the tribunal also noted that a licence agreement for use of a parking stall designated to a strata lot, made by a previous owner, was of no effect against a new owner who had not agreed to grant that licence.
69. The Form B issued to SL125 shows it has parking stall 75 and 83 as its designated LCP. I find this was an error on the part of the strata, because stall 83 is CP subject to the owner developer lease as it is included on Schedule "A" to the lease document.
70. In *Moure v. The Owners, Strata Plan NW2099*, 2003 BCSC 1364 the court held that while limited common property is not part of indefeasible title under s. 23(2) of the *Land Title Act*, it is a registered right associated with title constituting a special category of property "over which the unit owner has a substantial degree of control and something approaching a beneficial interest".

71. 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)). The courts have described these types of agreements as not creating interests in land that pass on a sale unless the new owner accepts the terms of the licence.
72. Having said that, the use of parking stall 70 is not allocated to SL125 on the strata plan. I have found that the enforceability of the license agreement is not before me. It is a disputed matter between 2 sets of strata lot owners. As far as the strata is concerned, it must rely upon the CP and LCP designations of the parking stalls, and the terms of the owner developer lease.
73. There has been no unanimous resolution pursuant to section 257 of the *Strata Property Act*. The strata has not applied to court for an amendment of the strata plan pursuant to section 257 of the *Strata Property Act* for parking stall 70, nor attempted a section 74 $\frac{3}{4}$ vote resolution regarding stall 83. The strata has not applied to the registrar of the LTO pursuant to *Strata Property Regulation* 14.12.
74. If they seek to change the designation associated with parking stall 70, the applicants would need to request that the strata pass a unanimous resolution under section 257 of the SPA or a $\frac{3}{4}$ resolution under section 74, and then ask the strata to either apply to the registrar of the LTO or file the section 74 resolution at the LTO. I recognize that if a unanimous vote motion is required, it may be defeated because MC may cast an opposing vote.
75. In *Simpson et al v. The Owners, Strata Plan VAS 2876*, 2017 BCCRT 43, the tribunal found that where there was no evidence of an error on the strata plan or that the parking stalls considered there were subject to licensing agreement, there was no justification for amending the strata plan. The tribunal did not determine whether it had jurisdiction to direct that the strata plan be amended.
76. While section 123(1)(a) of the CRTA permits the tribunal to make an order that a party do something, I find that ordering an amendment to the strata plan should only be considered in situations where the parties demonstrate the required vote under

section 257 or designation under section 74 cannot be obtained. The correction of errors in a registered strata plan falls under the registrar's jurisdiction under section 14.12 of the *Strata Property Regulation*, so the reason for requesting a strata plan amendment would also have to fall outside correction of an error. Given that the owners have yet to attempt either a section 257 or a section 74 resolution, I decline to make an order to amend the strata plan.

77. As noted above, the applicants did not name MC as a respondent. Nothing in this decision prevents the applicants from bringing a claim against MC in respect of the May 2007 written agreements, subject to any applicable limitation period.

78. For these same reasons, I cannot grant the other relief sought by the applicants. I dismiss the applicants' claims and this dispute.

TRIBUNAL FEES and EXPENSES

79. Under section 49 of the CRTA, 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. As the respondent strata was successful but paid no tribunal fees and did not claim dispute-related expenses, I make no order in this regard.

ORDER

80. I order that the applicants' claims and this dispute are dismissed.

Julie K. Gibson, Tribunal Member