



# Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Sonya et al v. The Owners, Strata Plan LMS 2229 et al*, 2020 BCCRT 350

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

DOROTHY SONYA and STR8 TTH HOLDINGS INC.

**APPLICANTS**

**A N D :**

The Owners, Strata Plan LMS 2229 and DR. SHEA EL COLPITTS,  
OPTOMETRIC CORPORATION

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This is a dispute over who has the right to use a parking stall in the respondent mixed commercial/residential strata corporation, The Owners, Strata Plan LMS 2229 (strata). The applicant, Dorothy Sonya, is a dentist. The applicant corporation, STR8 TTH Holdings Inc. (STR8), is her holding company, and owns lot 41 in the

commercial section of the strata. The other respondent, Dr. Shea El Colpitts, Optometric Corporation (Dr. Colpitts), owns another commercial strata lot. The applicants say they, and not Dr. Colpitts, purchased the rights to parking stall 24 on the strata's common property.

2. The applicants seek an order for the exclusive use of stall 24, and an order that persons other than the owner of strata lot 41 are prohibited from using stall 24.
3. Dr. Colpitts says she purchased the rights to parking stall 24 from a previous owner of strata lot 41. She says the stall 24 parking rights were not transferred to the company who sold strata lot 41 to STR8. So, Dr. Colpitts says that company could not have transferred stall 24 parking rights to STR8. Similarly, the strata says Dr. Colpitts appears to have the legal right to stall 24.
4. Dorothy Sonya represents herself and STR8. The strata is represented by a strata council member. The respondent company, Dr. Colpitts, is represented by its employee or principal, Shea Colpitts.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.

7. 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.
8. 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.
9. Although Dorothy Sonya personally signed the contract of purchase and sale for strata lot 41, the name shown on the title to strata lot 41 and a 2018 parking stall assignment agreement is STR8 TTH HOLDINGS INCORPORATED. Under section 189.1(1) of the *Strata Property Act* (SPA), only a strata corporation, owner, or tenant may ask the tribunal to resolve a strata property matter. From the evidence, it appears Dorothy Sonya is not an owner or tenant of the strata and is not a strata corporation. However, given the outcome of my decision below, I find nothing turns on her standing to bring claims against the respondents as an individual.

### ***Preliminary Matters***

10. In a preliminary decision in this dispute, a tribunal vice chair refused to resolve the applicants' claim for damages against the strata for the applicants' inability to use stall 24 after purchasing strata lot 41. As a result, that claim is not before me, and my decision addresses the applicants' remaining claims.
11. In her preliminary decision, the vice chair found that on a preliminary basis, an order about the exclusive use of parking stall 24 fell within the tribunal's strata property jurisdiction, as set out in CRTA section 121. The strata plan filed with the Land Title Office shows that the strata's parking stalls are common property. The parties do not dispute this. The tribunal has jurisdiction over claims involving common property, under CRTA section 121(1)(b). So, I find the tribunal has jurisdiction to determine who has rights to use stall 24.

## **ISSUE**

12. The remaining issue in this dispute is whether STR8 is entitled to the exclusive use of parking stall 24, and if so, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

13. I have read all the submissions and evidence in this dispute, but I refer only to relevant information to the extent I find it necessary to provide context for my decision.

### ***Background***

14. This dispute is about who was legally assigned the rights to use parking stall 24. As discussed below, the parking scheme at the strata is governed by an original lease of the parking area granted by the original owner of the strata lands during their development. This dispute also involves multiple re-assignments of the stall 24 portion of the original lease to new leaseholders. So, as suggested by the vice chair in her preliminary decision, resolving this dispute involves interpreting the original lease to the parking area, and the subsequent assignments of stall 24, to determine who stall 24 was legally assigned to. Therefore, I must consider the origins of the parking lease rights, which date to the construction of the strata buildings and the formation of the strata.
15. The strata was formed in late 1995 under the *Condominium Act*, the predecessor to the present SPA. The strata added a parking bylaw, 3.3.6, in 2016, but nothing in this dispute turns on that bylaw or any other bylaw.
16. The evidence shows that before the strata was formed, a holding company, MPH, owned and developed the strata lands. According to the strata plan, another company, TD, was a mortgagee and holder of an option to lease on those lands.
17. MPH and TD signed an Option To Lease agreement (option agreement) dated November 14, 1995, for the portion of the strata lands that later became the strata's common property parking area. The option agreement was registered in the British

Columbia Land Title Office 2 days later. The option agreement said that TD could exercise the option by giving MPH, or its successor, written notice of the exercise of the option that clearly identified the option agreement and was unequivocal and unconditional.

18. The option agreement said that when TD exercised the option, MPH or its successor would sign and deliver an attached Parking Facility Lease agreement (original lease) to TD. The original lease would grant TD a 99 year lease to the land that later became strata's common property parking area. Under the original lease, MPH agreed that it would cause the yet-to-be-formed strata to assume its obligations under the option agreement and the original lease. The original lease would allow TD to assign to other persons parts of the parking area corresponding to individual parking stalls. Effectively, the lease would allow TD to sell parking stall leases that lasted for the remainder of the 99-year term, or until the strata was dissolved or the buildings containing the parking lot were destroyed.
19. The proposed original lease agreement said parking stall leases could be freely assigned and resold to others, these re-assignments would be absolute, and further re-assignments were permitted. However, there were transfer restrictions on parking stalls "appurtenant to", meaning associated with, residential strata lots. Specifically, each residential strata lot was required to have at least one parking stall assigned to it, which could not be transferred away. Such an assigned stall would automatically transfer to the new owner when the residential strata lot was sold. Importantly, there were no similar restrictions on the transfer of non-residential parking stall leases to owners of commercial strata lots.
20. Under the original lease, a partial parking lease assignment was not effective until written notice of the assignment, together with a copy of the assignment if available, was delivered to the strata. The original lease required to strata to keep a register that recorded each partial parking lease assignment, and to provide a certificate identifying the current parking stall leaseholder to strata lot owners and prospective purchasers if requested. However, nothing in the proposed original lease said that

the strata's register would be definitive proof of who owned the right to use a parking stall.

21. The undisputed evidence is that the parties have been operating on the assumption that the option agreement was exercised by TD, the original lease was properly executed, and rights to the strata parking stalls were assigned to other leaseholders, and possibly re-assigned to further leaseholders, under the terms of the original lease.

### ***The Stall 24 Assignments***

22. There are more commercial strata lots than there are non-residential parking stalls available to commercial strata lot owners. STR8 leased a commercial strata lot, but a parking stall was not included with the lease. Dr. Sonya says this was inconvenient, and required her to park at a different building. She then decided to purchase strata lot 41 in early 2018, from 0979490 B.C. Ltd. (0979). Dr. Sonya says a major reason for this purchase was to obtain rights to a parking stall, which she says was part of the sale.
23. Before purchasing strata lot 41, Dr. Sonya requested an Information Certificate (Form B) from the strata under section 59 of the SPA. The Form B said that no storage lockers were allocated to lot 41, and that parking stall 24 was allocated to lot 41, possibly by an owner developer assignment. STR8's real estate agent told Dr. Sonya that the Form B showed stall 24 "belonged to" strata lot 41. However, as discussed below, the strata says this was not entirely accurate, as the Form B did not disclose that Dr. Colpitts had rights to stall 24.
24. In the preliminary decision, the vice chair determined that disputes involving inaccurate Form B information fall within the exclusive jurisdiction of the Supreme Court of British Columbia, and not the tribunal. In their submissions on the merits of this dispute, the applicants later alleged negligent misrepresentation against the strata. I find this is essentially the same allegation, that the Form B information was inaccurate. Further, I find such a negligent misrepresentation claim does not fall within the tribunal's strata claims jurisdiction under section 121 of the CRTA. In

addition, the applicants did not amend their Dispute Notice to include a claim of negligent misrepresentation, so I will not consider that issue.

25. The contract of purchase and sale between Dr. Sonya and 0979 did not include a parking stall. However, as part of the sale, Dr. Sonya had a Parking Stall and Locker Assignment agreement (2018 assignment) drafted, which 0979 signed. The 2018 assignment was not in the same form as the Parking Stall Assignment form attached to the original lease for that purpose, and did not reference the date of, or existence of, the original lease.
26. Although the 2018 assignment said it assigned 0979's rights in storage lockers and parking stalls to STR8, no storage locker number was specified, which is consistent with the Form B information that no storage lockers were associated with strata lot 41. So, the 2018 assignment included unnecessary information about a non-existent storage locker transfer. Together with the fact that the 2018 assignment did not contain an expected acknowledgement of the original lease of the parking stalls, I find the 2018 assignment was more likely than not based on a more generic storage locker and parking assignment agreement template used with strata lot sales.
27. In any event, the draft 2018 assignment sent to 0979 said that the rights to parking stall number 24 were being transferred to STR8. However, in the signed version 0979 returned to STR8, the number 24 was crossed out.
28. There is no evidence that the applicants sought an explanation of why 0979 crossed out the parking stall number in the 2018 assignment, until several months after STR8's purchase of strata lot 41. 0979's lawyer later speculated that 0979 might have been unsure of the exact parking stall number, but I find this is unsupported on the evidence before me. Crossing out "24" left the parking stall field blank in the 2018 assignment, in the same way that the storage locker field was blank. I find that by crossing out the parking stall number, 0979 more likely than not indicated that no parking stall was assigned to STR8.

29. Dr. Sonya says that following the purchase of strata lot 41, she discovered Dr. Colpitts was using parking stall 24. Dr. Colpitts provided a signed Parking Stall Assignment dated May 29, 2015 (2015 assignment), in the correct form provided in the original lease. The 2015 assignment said that a person, RC, assigned the rights to stall 24 to Dr. Colpitts for \$18,000. RC and DC were formerly joint owners of strata lot 41, and they sold strata lot 41 to 0979 in 2014.
30. Dr. Colpitts obtained a written statement from RC, who said RC and DC had purchased the rights to stall 24 along with strata lot 41. However, RC said she and DC had retained the rights to stall 24 and did not assign them to 0979 when they sold lot 41. RC said she assigned stall 24 to Dr. Colpitts the following year, when she no longer needed it. Dr. Colpitts says rights to the strata's commercial parking stalls are commonly sold and transferred separately from commercial strata lots.

### ***Who Owns the Rights to Stall 24?***

31. All the parking stall lease rights at issue here flow from the original lease between TD and MPH or its successor. Without the original lease, no subsequent parking stall assignments under that lease are effective, and the applicants have no rights to stall 24. As noted, the parties have assumed this original lease is in place. The vice chair's preliminary decision indicated that determining the parties' rights to stall 24 would likely require interpreting the original lease and subsequent assignments of stall 24. The parties had an opportunity to make further submissions on this issue.
32. There is a lack of evidence showing that TD exercised its option under the option agreement, and that TD and MPH or its successor executed the original lease. There is also little to no evidence showing that stall 24 rights were assigned to the first owner of strata lot 41, or to the second owners, RC and DC.
33. However, in coming to my decision in this dispute, it was not necessary to make a finding about the existence of the original lease agreement, and I did not do so. Assuming the original lease was properly executed, and that stall 24 rights were then correctly vested in RC and DC, I still find that STR8 failed to meet its burden of proving that it owns rights to stall 24, for the reasons that follow.



34. The applicants primarily rely on two main, related lines of argument. One, they say the 2015 assignment to Dr. Colpitts was not effective, and the 2018 assignment to STR8 is. Two, they say the rights to parking stall 24 are associated with strata lot 41, and those rights are automatically assigned to purchasers of lot 41, including STR8.
35. STR8 says the 2015 assignment was not effective because RC had already sold strata lot 41 to 0979 in 2014, and no longer had any parking lease rights to assign in 2015. The original lease indicates that a residential strata lot owner's rights in a parking stall assigned to that lot end when the lot is sold. However, I find that there is no similar provision terminating non-residential parking stall rights when a commercial strata lot is sold. So, I am not persuaded by this argument.
36. STR8 says the Form B information, which came from the strata's register of parking stalls, is the best evidence of ownership of parking stalls. STR8 says that the register confirmed 0979, as the owner of strata lot 41 at the time, had the rights to stall 24, and then assigned them to STR8. I disagree, for the following reasons.
37. The strata says it provided the minutes of the strata's May 7, 2016 annual general meeting to STR8 along with the Form B. The strata says the minutes noted that each residential strata lot was assigned one parking stall and the rights to other parking stalls were sold separately. These minutes are not in evidence. The strata also says STR8 is a long term tenant of a commercial strata lot, and should have been aware that parking stalls do not follow the ownership of commercial strata lots.
38. The strata says it received a copy of the 2015 assignment, but has no record of when or how notice of that assignment was received. The strata says that for unknown reasons, at the time the Form B was issued, the parking register showed that stall 24 was allocated both to strata lot 41 and to Dr. Colpitts, effective December 29, 2015. Given that the original lease says parking stall rights do not necessarily follow ownership of commercial strata lots, the strata says this contradiction in the register appears to have been a clerical error. The strata later

ordered an audit of the parking register, although no results of this audit are in evidence.

39. I find the strata's parking register was not entirely accurate. Further, I find the Form B did not accurately reflect all the relevant information in the register, which showed that Dr. Colpitts had rights to stall 24. I find the register did not specifically identify 0979 as having any rights to stall 24. I find the best evidence of the rights in stall 24 is the 2015 assignment to Dr. Colpitts, which was reflected in the register, but not on the Form B. On balance, I find the strata was notified of the 2015 assignment by December 29, 2015, the date of the strata's parking register entry showing Dr. Colpitts as having rights to stall 24. There is no evidence of an earlier, explicit assignment from RC to 0907, and the original lease does not provide for automatic assignment of parking rights with the sale of a commercial strata lot. So, I find that the register entry stating that stall 24 was allocated to strata lot 41 as of December 29, 2015 was a clerical error. This supports a finding that 0907 never possessed rights to stall 24, and could not have assigned such rights to STR8.
40. STR8 says that RC and DC were joint owners of the stall 24 parking rights, and that the 2015 assignment was ineffective because it was missing DC's signature. There is no direct evidence of the nature RC and DC's ownership of the stall 24 rights. On balance, I am satisfied that the 2015 assignment effectively transferred all of RC and DC's stall 24 parking rights to Dr. Colpitts, including by RC acting as an authorized agent for DC, whom I infer is her husband.
41. I note that even if the 2015 assignment was ineffective, this would not assist STR8's claim. The stall 24 parking rights would have been retained by RC and DC, because they were not automatically assigned to 0907 with its purchase of strata lot 41. 0907 still would not have any rights in stall 24 to pass on to STR8.
42. Having considered all the evidence, I find the applicants have not proven that 0907 was ever assigned the rights to use stall 24. Therefore, even if the 2018 assignment was effective in transferring 0907's rights in stall 24 to STR8 despite the crossed-out parking stall number, 0907 had no rights to transfer. As a result, I find the

applicants do not have any rights to use parking stall 24. So, I decline to make any order regarding the applicants' exclusive use of stall 24, or the prohibition of persons other than the owner of strata lot 41 from using stall 24. I dismiss the applicants' remaining claims.

## **TRIBUNAL FEES AND EXPENSES**

43. In accordance with the CRTA and the tribunal's rules, as the applicants were unsuccessful, I find they are not entitled to any reimbursement of tribunal fees and dispute-related expenses.

44. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against STR8.

## **ORDER**

45. I dismiss the applicants' claims and this dispute.

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Chad McCarthy, Tribunal Member