



# Civil Resolution Tribunal

Date Issued: June 12, 2020

File: ST-2019-010105

Type: Strata

Civil Resolution Tribunal

Indexed as: *Seto v. The Owners, Strata Plan EPS5326*, 2020 BCCRT 655

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

NICHOLAS SETO, VEYSEL AYDIN, CONNIE CHOISELAT, RICHARD  
OLVER, and WAYNE PRETIOUS

**APPLICANTS**

**A N D :**

The Owners, Strata Plan EPS5326

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. This dispute is about the validity and interpretation of a strata corporation's bylaws and rules about visitor parking.
2. The applicants in this dispute are Nicholas Seto, Veysel Aydin, Connie Choiselat, Richard Olver, and Wayne Pretious (applicants). Each of the applicants owns or co-

owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS5326 (strata).

3. The applicants are represented by Connie Choiselat in this dispute. The strata is represented by a strata council member.
4. The applicants say the strata's parking bylaw, bylaw 31.1(a), is ambiguous, and can be interpreted in 2 different ways. They say the wording of the bylaw means that visitors can park for up to 6 hours without a permit, and that the strata's rule stating otherwise is invalid because it conflicts with the bylaw.
5. The strata admits the bylaw is poorly worded and "subject to interpretation". The strata says the strata council has authority to interpret the bylaws, and properly adopted a rule, consistent with its parking bylaw, requiring visitor parking passes at all times.
6. The applicants seek an order that the strata revoke the disputed parking rule. The strata says the applicants' claims should be denied. It also says the strata ownership voted to amend its parking bylaw at its May 13, 2020 annual general meeting (AGM).
7. As explained in my reasons below, the evidence before me shows that the disputed visitor parking bylaw was never filed with the Land Title Office (LTO). It is therefore of no force and effect. As explained below, I find in favour of the strata in this dispute, and dismiss the applicants' claims.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

9. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconference, 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.
10. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
11. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUES**

12. The issues in this dispute are:
  - a. Does the strata have an enforceable bylaw about visitor parking?
  - b. Is the strata's Visitor Parking Rule requiring use of a visitor parking pass at all times enforceable?

## **EVIDENCE AND ANALYSIS**

13. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities.

### ***Strata Plan and Bylaws***

14. The strata plan shows that the strata was created in September 2018, under the *Strata Property Act (SPA)*.

15. The parties say that the strata has a bylaw, bylaw 31(1)(a), that governs visitor parking in the strata. According to the parties, bylaw 31(1)(a) says:

Visitors can park up to 6 hours and up to 48 hours with a valid permit from the Strata Corporation. Permission to park longer than 48 hours must be provided by the strata council in writing

16. Based on the evidence before me, particularly the evidence from the LTO, I find that the above-referenced bylaw 31(1)(a) is not enforceable.

17. SPA section 121(1) says that the bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the LTO. The Standard Bylaws are set out in a schedule to the SPA.

18. The LTO documents in evidence show that neither the owner developer nor the strata ever filed any bylaws at the LTO. In particular, the Strata Plan General Index document the CRT obtained from the LTO on December 2, 2019 shows that no bylaws were filed as of that date.

19. The strata submits that bylaw 31(1)(a), along with other bylaws, were “adopted” by the owner developer, and “inherited” by the strata. That may have been the owner developer’s intention. However, since no bylaws were filed with the LTO, only the Standard Bylaws apply. This means that bylaw 31(1)(a) does not apply, and is not a valid, enforceable bylaw.

20. The Standard Bylaws contain no specific provisions about parking, including visitor parking.

21. In a May 14, 2020 email to the CRT, the strata said that the ownership had voted in favour of a new visitor parking bylaw at its May 13, 2020 AGM. The text of that bylaw is not before me, and I have no information about whether it has been filed at the LTO. I therefore make no findings about the enforceability of any new visitor parking bylaw.

22. However, I find that until at least May 14, 2020, the strata had no enforceable visitor parking bylaw.

### ***Visitor Parking Rule***

23. The strata also has Visitor Parking Rules. Rule 3 states, “Visitor parking passes must be displayed from the rear view mirrors in side the vehicle at all times.” This rule is consistent with the signage posted in the parking area, as demonstrated by the photographs in evidence.

24. The parties do not dispute that the Visitor Parking Rules were correctly adopted or ratified. I therefore make no findings about this. The applicants argue that Visitor Parking Rule 3 is unenforceable, because it is inconsistent with bylaw 31(1)(a). SPA section 125(5) says that if a rule conflicts with a strata bylaw, the bylaw prevails.

25. Since I have found that bylaw 31(1)(a) is not a valid, enforceable bylaw, I find that it does not matter whether Visitor Parking Rule 3 is consistent with it. Since the Standard Bylaws apply, and since the Standard Bylaws have no provisions about visitor parking, I find that the strata’s Visitor Parking Rule 3 does not conflict with the strata’s bylaws.

26. I therefore find that at least until any new visitor parking bylaw is filed at the LTO, Visitor Parking Rule 3 is valid and enforceable. For this reason, I dismiss the applicants’ claims, and this dispute.

### **CRT FEES AND EXPENSES**

27. The applicants were unsuccessful in this dispute. In accordance with the CRTA and the CRT rules I find they are therefore not entitled to reimbursement of tribunal fees or dispute-related expenses.

28. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the applicants.

## **ORDERS**

29. I dismiss the applicants claims and this dispute.

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Kate Campbell, Vice Chair