



Civil Resolution Tribunal

Date Issued: December 3, 2021

File: ST-2021-004464

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 2 of The Owners, Strata Plan LMS 3924 v. The Owners, Strata Plan LMS 3924, 2021 BCCRT 1271*

B E T W E E N :

SECTION 2 OF THE OWNERS, STRATA PLAN LMS 3924

APPLICANT

A N D :

The Owners, Strata Plan LMS 3924

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about visitor parking. The respondent strata corporation, The Owners, Strata Plan LMS 3924 (strata), has 9 visitor parking spaces on common property (CP). The strata has signs on those spaces saying that they are residential visitor parking. The parties agree this signals the spaces are for visitors

to the strata's residential section strata lots only, and not visitors to commercial section strata lots.

2. The applicant, Section 2 of The Owners, Strata Plan LMS 3924 (commercial section), says that the strata's bylaws and City of North Vancouver (city) bylaws do not restrict visitor spaces to only visitors of Section 1 (residential section). The commercial section requests an order saying that commercial section visitors have the right to use the visitor parking spaces, and an order that the strata change the signs on the visitor spaces to read "Visitor Parking Only" in compliance with city bylaws.
3. The strata opposes the commercial section's claims. The strata says that city bylaws imply that the visitor parking spaces are for the use of residential "dwelling units" only, and that its visitor parking signage complies with the intent of the city bylaws. It also says that allowing commercial section visitors to park in the visitor spaces would be a significant change in those spaces' historical use, requiring an ownership vote.
4. In this dispute, the commercial section is represented by a commercial section executive member and the strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary

evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, 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

9. The issues in this dispute are:
 - a. Is the strata entitled to restrict visitor parking to residential section strata lot visitors only?
 - b. If not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant the commercial section must prove its claims on a balance of probabilities. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
11. The strata was formed in 1999 under the *Condominium Act*, and continues under the *Strata Property Act* (SPA). It is a mixed-use strata corporation with 44 residential strata lots and 10 commercial strata lots. The strata filed complete consolidated bylaws at the Land Title Office on August 17, 2012, which I find are the bylaws applicable to this dispute. The strata bylaws create 2 sections, as noted above: a residential section and a commercial section.

12. All of the strata's parking areas, including visitor parking spaces, are undisputedly CP, as shown on the strata plan. There is no evidence before me showing that any portion of the parking areas has been designated as limited common property (LCP) for the exclusive use of 1 or more strata lots. Further, I find the evidence does not show that any of the visitor parking spaces are subject to a lease or other encumbrance that affects the strata's ability to use those areas for visitor parking purposes. The strata says that although it restricts the 9 visitor parking spaces to residential section visitors, it leases other, surplus parking spaces to commercial section owners and tenants.

13. The strata bylaw section titled "Preamble" says that for the purposes of the bylaws, "resident" or "residents" means owners, tenants, and occupants, and unless the context requires otherwise, includes owners, tenants, and occupants of non-residential strata lots, among others. The bylaws also say that terms have the same meanings as in the SPA unless otherwise stated. Under the SPA, a residential strata lot is one designed or intended to be used primarily as a residence. So, I infer that "non-residential strata lots" means strata lots in the commercial section. I find that unless the context of the bylaw requires a different interpretation, the word "resident" includes an owner, tenant, or occupant of a strata lot in the commercial section.

14. Although there are strata bylaws specific to the residential section, and others specific to the commercial section, the parking bylaws are in the portion of the bylaws titled "common and all sections". Strata bylaw 44.5 says that a "resident" must park only in the parking stall assigned to the resident. It is undisputed that the strata lots have assigned parking spaces, but those are not at issue here. Bylaw 44.7 says:

"Visitor parking stalls are for visitors only for a maximum of two consecutive 24 hour periods. Any use of visitor parking for periods longer than 48 hours requires strata council approval."

15. “Visitor” and “visitor parking” are not explicitly defined in the bylaws or the SPA. From context, I find that a visitor is a person attending a strata lot who is not an owner, tenant, or occupant. I find that visitor parking is any parking space that is reserved for visitor use only, such as the 9 visitor parking spaces at issue here. I find that the strata bylaws do not limit visitor parking use to visitors of a particular section of the strata. I find that on their face, the strata bylaws permit a visitor to any strata lot in either section to use visitor parking.
16. Both parties rely on city bylaw 908, although they differ on how it should be interpreted. This bylaw is about the minimum provision of parking spaces. It sets out the minimum number of parking spaces required for buildings, generally based on the number of dwelling units for residential use buildings, and the gross floor area for other types of buildings. City bylaw 908(7) says that when 10 or more parking spaces are required on a city “lot”, as is undisputedly the case here, some of the spaces must be dedicated for visitor parking. The visitor spaces must be:
- a. Calculated at a ratio of 0.1 spaces **per dwelling unit** (my emphasis),
 - b. Provided in a common parking area and accessible to visitors at all times,
 - c. Individually labelled “Visitor Parking Only”,
 - d. Held in common ownership and not assigned to any strata lot, and
 - e. Approved by the city if they are laneway stalls.
17. It is undisputed that the commercial section strata lots are not dwelling units, and that the residential section strata lots are dwelling units. The strata says that because the minimum number of visitor parking spaces is calculated based on the number of dwelling units, this implies that the visitor parking spaces are for visitors to those dwelling units – in this case, the residential section strata lots. I find that the method of calculating the minimum number of visitor parking spaces is separate from the question of who may use those spaces. I find city bylaw 908 does not restrict the use of visitor parking to the visitors of a subset of a building’s owners, tenants, or occupants. The visitor parking spaces simply must be

“available to visitors at all times” without further qualification. In context, I find this does not restrict the visitor parking spaces’ use to visitors of “dwelling units” or visitors of a particular strata section.

18. The city bylaw also requires visitor parking spaces to be held in “common ownership” and not assigned to any strata lot. I find that because the visitor parking spaces are non-LCP CP, they are collectively owned by all strata lot owners, including owners of strata lots in the commercial section.

19. The strata argues that permitting commercial section visitors to use the visitor parking spaces would be a significant change in the use of that CP, requiring an ownership vote. SPA section 71 says the strata must not make a significant change in the use or appearance of common property unless the change is approved by a $\frac{3}{4}$ vote resolution. *Foley v. The Owners, Strata Plan VR387*, 2014 BCSC 1333 provided a non-exhaustive list of factors to consider when determining whether a “significant change” had occurred. These factors are: how visible the change is, whether it affects the use or enjoyment of any strata lots, whether it causes any disruption or affects the value of a strata lot, the number of units in the building and its use, along with what kinds of changes the strata has allowed in the past.

20. In the circumstances of this dispute, I find that allowing commercial section visitors to use visitor parking would not change the appearance of CP at all. I also find it would not represent a significant change in use of CP, for the following reasons. I find the parking spaces have been used for visitor parking since shortly after the strata was formed, and would continue to be used for that fundamental purpose. Further, I find the strata’s suggestion that allowing commercial visitor parking would increase visitor parking use to a point where it would become unavailable to more residential visitors is speculative and unsupported by evidence. So, I find the evidence does not show that allowing commercial visitors to park in visitor parking would negatively affect the use and enjoyment of any strata lots, cause disruption, or affect the value of any strata lots.

21. The strata cited *Commercial Section of The Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991*, 2019 BCCRT 674, which is not binding on me. In that decision, a strata corporation changed its parking policy to **prohibit** commercial visitors from using CP visitor parking stalls that had previously been available to them. The tribunal member found that was a significant change that had not been approved by $\frac{3}{4}$ ownership vote. I find that issue is different than the strata's argument here, namely that **removing** a long-standing restriction on commercial section visitor parking would be a significant change in use. In any event, the outcome of *LMS 1991* was that the tribunal member found that absent a valid bylaw or $\frac{3}{4}$ ownership approval, the new parking policy was invalid, and the tribunal member ordered the strata to remove signs restricting visitor parking to residential visitors only. That is what the commercial section requests in this dispute. Further, I find that even if I applied the reasoning in *LMS 1991*, and found that the strata's policy restricting visitor parking to residential section visitors only was a significant change in use, I find that the evidence does not show that there was ever an ownership vote approving that restriction as required.

22. Nothing in the SPA says that long-term or customary restrictions on the use of CP are sufficient to authorize such visitor parking restrictions. As noted, there was no ownership vote authorizing the visitor parking restrictions as a significant change in use. The strata bylaws do not restrict visitor parking to residential section visitors. The visitor parking spaces have not been designated as LCP for the exclusive use of residential section visitors, through an ownership vote under SPA section 74, a strata plan amendment under SPA section 258, or otherwise.

23. Further, although SPA section 76 allows the strata to provide an owner or tenant permission to exclusively use non-LCP CP, that use must be for a period of not more than 1 year, subject to renewal. As noted, the strata has restricted the visitor parking spaces to residential section visitor use for longer than 1 year. I find the evidence does not show that the strata explicitly renewed any such exclusive use.

24. Overall, having found there is no applicable LCP designation, strata plan amendment, strata bylaw, or approved significant change in use, I find that the

strata lacks any authority in the SPA, strata bylaws, or otherwise, to prevent the use of those spaces by commercial strata lot owners for visitor parking purposes.

25. I turn now to the requested remedies. I find the commercial section's request for an "order that the commercial section visitors have the right to access and use" the visitor parking spaces, as written, may be a request for declaratory relief. The CRT has no authority to make declaratory orders under its strata jurisdiction, as CRTA section 123 does not provide that power. However, I find the commercial section's request, and the primary reason it raised this CRT dispute, was for the strata to stop restricting which strata lot visitors could use the visitor parking spaces. In the circumstances, I find it appropriate to order the strata to stop preventing commercial section visitors from using the 9 visitor parking spaces.

26. The commercial section also requested an order that the strata change the visitor parking signs to say "Visitor Parking Only" as required by city bylaw 908(7)(c). The CRT lacks authority to enforce city bylaws under its strata jurisdiction. However, given my finding that the strata cannot presently restrict visitor parking use to residential section visitors, I find the present signs reading "Residential Visitor Only" are incorrect and misleading. I order the strata to remove the word "Residential" from those signs.

CRT FEES AND EXPENSES

27. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the commercial section was successful in its claims, so I find it is entitled to reimbursement of the \$225 in CRT fees it paid. The commercial section claimed no CRT dispute-related expenses. The strata claimed \$46.86 in Land Title Office fees for retrieving strata bylaws and the strata plan, but because the strata was unsuccessful, I find it is not entitled to any reimbursement. In any event, the strata did not explain why it needed to pay for those documents when the CRT also provided them at no charge.

ORDERS

28. I order the strata to immediately stop preventing visitors of the commercial section from using the strata's 9 visitor parking spaces for visitor parking purposes.

29. Within 30 days of the date of this decision:

a. I order the strata to remove the word "Residential" from its visitor parking space signs, and

b. I order the strata to pay the commercial section \$225 in CRT fees.

30. The commercial section is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

31. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Chad McCarthy, Tribunal Member