



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

MARKO ERCEGOVIC and GREGORY MILLER

APPLICANTS

A N D :

The Owners, Strata Plan VR 1405

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Laylí Antinuk

INTRODUCTION

1. This dispute is about a strata's parking stall assignments.
2. The applicants, Mr. Ercegovic and Mr. Miller, own strata lot 20 (SL20) in the respondent strata corporation, The Owners, Strata Plan VR 1405 (strata). The strata has 43 underground common property parking stalls (underground stalls) and 46

residential strata lots. So, there are 3 less underground stalls than there are strata lots. To address this, the strata assigns 3 outdoor parking stalls to 3 strata lot owners. However, these parking stalls (laneway stalls) are not strata property. They are City of Vancouver (City) property in the laneway behind the strata building.

3. The strata assigned the applicants a laneway stall. The applicants say there are multiple unoccupied underground stalls. They ask me to order the strata to assign them an underground stall.
4. The strata says it assigned the applicants a parking stall based on the strata's parking rules, so it "does not have the authority to acquiesce" to the applicants' request for an underground stall.
5. Mr. Ercegovic represents himself and Mr. Miller. A strata council member represents the strata.
6. As explained below, I find merit in some aspects of the applicants' arguments but have not granted the order they request.

JURISDICTION AND PROCEDURE

7. 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. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the parties that will likely continue after the CRT process has ended.
8. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided to hold a written hearing in this case. I find I am properly able to assess and weigh the documentary evidence and submissions before me. Keeping in mind the CRT's mandate, which includes proportionality and speedy dispute resolution, I see no reason for an oral hearing.

9. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence 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.
10. In resolving this dispute, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also order any other terms or conditions it considers appropriate.

Preliminary Issue – a strata council member’s allegedly punitive actions

11. The applicants say that a certain strata council member (member) has engaged in targeted and “punitive” actions that have prejudiced other owners against them. For example, the applicants allege that the member has repeatedly approached other tenants/owners accusing the applicants of trying to steal other people’s parking spaces. The applicants also allege that the member has repeatedly instructed third parties to park in the applicants’ assigned laneway stall. The applicants provide video footage of a third party saying the member told them to park in the applicant’s assigned laneway stall.
12. I find that the applicants’ allegations are about the member’s failure to fulfill his duties under section 31 of the *Strata Property Act* (SPA). SPA section 31 says that in exercising the strata’s powers and performing the strata’s duties, each council member must act honestly and in good faith with a view to the best interests of the strata, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
13. The BC Supreme Court has said that strata council members owe their duties under SPA section 31 to the strata corporation, not to individual strata lot owners. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267. This means that strata lot owners, like the applicants, cannot succeed in a claim against a council member for a section 31 breach. *Sze Hang* is a binding precedent that I must follow. So, I find that the applicants have no standing (legal right) to make claims under SPA section 31.

14. The BC Supreme Court has also said that the CRT does not have jurisdiction to decide claims under SPA section 31. See *Williams v. The Owners, Strata Plan NW 1340*, 2021 BCSC 2058. So, even if the applicants had standing to make claims under SPA section 31, I would not have jurisdiction to decide those claims.
15. I will not discuss these aspects of the applicants' submissions further.

ISSUES

16. The issues in this dispute are:
 - a. Does the strata's parking assignment process comply with the SPA?
 - b. If not, what, if anything is the appropriate remedy?
 - c. Is the strata's parking assignment process significantly unfair?
 - d. Should I order the strata to assign the applicants an underground stall?

EVIDENCE AND ANALYSIS

17. As the applicants in this civil claim, Mr. Ercegovic and Mr. Miller must prove their claims on a balance of probabilities (meaning "more likely than not").
18. I have read all the parties' evidence and arguments. However, I will refer only to what is necessary to explain my decision.

Background

19. The strata was created in 1984 under the *Condominium Act* and continues under the SPA. It consists of 46 apartment-style residential strata lots in 1 building. It has an underground parking area designated as common property on the strata plan. As noted, the parking area contains 3 less stalls than the number of strata lots.
20. In February 2009, the strata filed a complete new set of bylaws with the Land Title Office (LTO) repealing and replacing all previously filed bylaws, including the SPA's Standard Bylaws. Since then, the strata has filed several bylaw amendments with the

LTO, but I find none of those amendments relevant here. I find that the February 2009 bylaws apply to this dispute.

21. The strata has a total of 7 parking rules, 3 of which are relevant here. The strata ratified the relevant rules at a general meeting held in October 2018. They say:
 - a. All parking stalls are common property.
 - b. All suites are entitled to 1 parking stall, underground or in the laneway.
 - c. A new strata lot purchaser is not automatically entitled to an underground parking stall but will go on a list and be allocated one when available in priority sequence by date of purchase.
22. The parties agree that the applicants bought SL20 in March 2019. The strata assigned them laneway stall #44. The applicants do not claim the strata contravened the rules in making this assignment. Instead, they question whether the rules are in the best interests of all owners and say the rules may not comply with the SPA.

Does the strata's parking assignment process comply with the SPA?

23. Parking rules 1 and 2 say **all** parking stalls are common property and **all** suites (strata lots) are "entitled" to either an underground or laneway stall. When read together, I find that these rules treat the laneway stalls as though they are common property. This is clearly incorrect. The laneway stalls are undisputedly City property and, in the absence of any agreement with the City saying otherwise, owners cannot be "entitled" to City property. The emails in evidence show that there is no such agreement with the City. It follows that the rules are incorrect in saying all strata lots are entitled to 1 parking stall. The strata has 46 strata lots and only 43 stalls. So, it is impossible for all strata lots to be "entitled" to their own parking stall.
24. SPA section 125 says the strata may make rules governing the use, safety and conditions of the **common property** and common assets (my emphasis). The SPA does not allow the strata to make rules about anything else. The laneway stalls are not common property, so the strata cannot make rules about them. I find the parking

rules invalid and unenforceable to the extent that they involve City property. The strata has no authority to make rules about City property.

25. That said, the underground stalls are common property, so the strata can make rules about them. Additionally, SPA section 76 says the strata may give an owner or tenant permission to exclusively use common property for a period of not more than 1 year. The strata can renew the permission, make it subject to conditions, and cancel it on reasonable notice. SPA section 3 says the strata must manage and maintain common property for the benefit of all owners. SPA sections 4 and 26 say the strata council must exercise the strata's powers and duties. Taken together, these provisions mean a strata council has the power to give an owner or tenant exclusive use of a parking stall for up to 1 year at a time.
26. Previous CRT decisions have found that strata corporations have the discretion to assign common property parking stalls in the best interests of all owners as long as doing so is not significantly unfair. See *L.S. v. The Owners, Strata Plan ABC XXXX*, 2019 BCCRT 454 [L.S.] and *Gibraltar Project Consultations Ltd. v. The Owners, Strata Plan EPS4764*, 2020 BCCRT 1242. While I am not bound to follow these decisions, I agree with their reasoning and adopt it here. I find that the strata has discretion to assign the underground stalls to owners and tenants anyway it sees fit, provided it does so in the best interest of all owners in a manner that is not significantly unfair.
27. Additionally, in the *L.S* decision, the tribunal member found that the SPA requires strata corporations to “formalize” their assignment of common property parking stalls. I agree. I also find that the SPA requires the strata to revisit its common property parking stall assignments annually. I say this because, as noted, SPA section 76 allows the strata to give an owner/tenant permission to exclusively use common property for up to 1 year only.
28. Neither party provided any evidence to show that the strata has followed the SPA requirements when assigning common property parking stalls. I note that the parking rules and the bylaws say nothing about the parking assignment process in terms of

the requirements of section 76. For example, the bylaws and rules do not reference section 76 or include any provisions that make it clear that the strata considered section 76 when making the bylaws/rules. For example, the rules do not say that underground stall parking assignments last only one year and may be renewed, cancelled or made subject to conditions. The only thing the rules say about the parking assignment process is that new purchasers are not automatically entitled to an underground stall but will be assigned one in priority sequence based on purchase date.

29. When the applicants asked the strata for documentation showing all the parking assignments, they received an undated, untitled document in response. The document shows unit numbers and their assigned parking stall numbers. It does not show that the strata revisits its assignment of underground stalls annually. It also does not say whether the strata has imposed conditions on any stall assignment. I find that this document does not satisfy the requirements of SPA section 76. There is no other evidence before me to show how (or even if) the strata documents its decisions respecting parking assignments. The email evidence shows that the applicants got their parking stall assignment via an email from the building caretaker, who is not on the strata council. With all this in mind, I find that the strata has not properly formalized the manner in which it grants permission for short-term exclusive use of common property as required by SPA section 76.

30. I will now discuss the parties' arguments about the rental of underground parking stalls. The parties agree that the strata allows owners to rent their underground stalls to others. The applicants argue that the strata should not allow this. They say the strata itself should rent any unused underground stalls since they are common property or should assign unused stalls to owners who do not already have one. The strata says, "owners are entitled to make such arrangements at their leisure" and claims that it "has no authority to define such activity."

31. I do not agree that the strata has no authority to define these activities. As noted, SPA section 76 allows the strata to impose conditions on the permission it grants an owner/tenant for the short-term exclusive use of common property. This means the

strata could, for example, say that any given parking assignment is subject to the condition that the owner/tenant does not rent the stall to anyone else. However, nothing in the SPA obliges the strata to impose this type of condition.

32. Additionally, I find that bylaw 41.4 allows owners to rent their assigned parking stall to other owners or occupants. Bylaw 41.4 says, “An owner must not sell, lease or licence parking stalls to any person **other than** an owner or occupant of the Strata Corporation.” This bylaw allows an owner to rent out their assigned underground stall as long as the strata has not made the assignment of that stall subject to a contrary condition. So, I find that owners may rent out their underground stalls to other owners or occupants. I also find that the strata has the authority to prohibit this by imposing conditions under SPA section 76 but is under no obligation to do so and has not done so here.
33. I will now summarize my findings and discuss the appropriate remedy.
34. First, I have found that the rules involving City property are invalid and unenforceable. So, I order the strata to make new parking rules that do not involve City property. The new rules should not entitle all strata lot owners to their own parking stall because that is impossible in the circumstances.
35. Second, I have found that the strata does not follow SPA section 76 when assigning underground stalls. So, I order the strata to do so. The strata must revisit its underground stall assignments annually and has the discretion to renew them, make them subject to conditions and cancel them with reasonable notice. The strata must make all parking assignment decisions in the best interests of all owners and in a manner that is not significantly unfair.

Is the strata’s parking assignment process significantly unfair?

36. The applicants have not argued that the strata treated them significantly unfairly by assigning them a laneway stall. However, the applicants say there are multiple empty underground stalls, yet the strata refuses to assign them one. Additionally, as discussed above, the strata must not act in a significantly unfair manner when making

parking assignments under SPA section 76. So, I will consider whether the strata's parking assignment process or its decision not to assign the applicants an underground stall is significantly unfair.

37. The courts have equated significant unfairness with oppressive or unfairly prejudicial conduct. The BC Court of Appeal has interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable. See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 [*Reid*] and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
38. The strata characterizes its assignment of underground stalls as a "first-bought, first-assigned" protocol. In effect, a new strata lot owner must wait for the sale of 3 strata lots before the strata will assign the new owner an underground stall. It is undisputed that the strata followed this protocol when assigning the applicants a laneway stall.
39. The applicants argue that the "first-bought, first-assigned" protocol unfairly advantages owners that rent their strata lots to tenants instead of living in the building. This is because landlord owners get to keep their underground stalls throughout multiple tenancies, but when an owner sells, their buyer gets bumped to the back of the list. The applicants also argue that there are currently multiple vacant underground stalls that the strata could reassign to owners who do not have one.
40. While I acknowledge that the "first-bought, first-assigned" protocol means the applicants do not have an underground stall yet, I do not find the strata's assignment of underground stalls oppressive or unfairly prejudicial. The evidence shows that the strata treats every new owner the same way. I recognize that this means owners with an assigned underground stall who rent their strata lots to tenants get to keep their underground stall assignment throughout multiple tenancies. I also recognize that the rules do not require owners with assigned underground stalls to use the stalls, meaning some stalls may be empty.
41. However, the courts have said that strata corporations must often utilize discretion when making decisions which affect various owners or tenants. At times, a strata corporation's duty to act in the best interests of all owners is in conflict with the

interests of a particular owner, or group of owners. Courts (and by extension the CRT) should only interfere with a strata corporation's discretion if exercised oppressively. See *Reid* at paragraph 27 citing *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120 at paragraph 28.

42. Here, the strata contains 3 more strata lots than underground stalls. So, if owners are to receive short-term exclusive use of underground stalls, 3 owners cannot have a stall. By ratifying the parking rules, the strata democratically decided that the 3 newest owners would be the ones not to receive an underground stall. While I acknowledge that the interests of the 3 newest owners conflict with the interests of the 43 owners with an assigned underground stall, I see nothing burdensome or oppressive in the parking rules. The strata council followed the ratified rules in deciding not to assign the applicants an underground stall at this time. I do not consider this significantly unfair.
43. Taking all this into account, I find that the strata's parking stall assignment process and its decision not to assign the applicants an underground stall is not significantly unfair.

Should I order the strata to assign the applicants an underground stall?

44. I have found that the strata did not act significantly unfairly when it decided not to assign the applicants an underground stall. Additionally, as noted, the strata did not contravene any rules or bylaws in making this decision. On the contrary, the strata's decision not to assign the applicants an underground stall aligns with the parking rules. It is undisputed that the applicants knew about the parking rules when they bought SL20. Additionally, I have found that the strata's decision to allow owners to rent their underground stalls to other owners/tenants aligns with the bylaws.
45. More importantly, the evidence shows that the strata has already assigned all the underground stalls to other owners. The applicants say there are empty underground stalls but did not provide any evidence to prove this. Even if they had, I would not order the strata to assign them one of the empty underground stalls without first hearing from the owner/tenant with that assigned stall. I find that it would be

procedurally unfair for me to make an order that removes an owner's right to exclusive short-term use of common property without providing that owner with an opportunity to be heard. The applicants did not name any respondents other than the strata. The applicants also did not provide statements from any owners that currently have short-term exclusive use of an underground stall that they do not use.

46. All the above findings weigh against ordering the strata to assign the applicants an underground stall.
47. I also found the strata does not follow SPA section 76 when assigning underground stalls. In addition, I found that the parking rules are invalid and unenforceable to the extent that they involve City property and purport to entitle all owners to a parking stall. However, these findings do not weigh in favour of the order the applicants request. Instead, as described above, I conclude that the appropriate remedy is an order requiring the strata to address these issues.
48. Taking all this into account, I do not order the strata to assign the applicants an underground stall.

CRT FEES AND EXPENSES

49. Under CRTA section 49 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 to depart from the general rule in this case.
50. The applicants are the only ones that paid CRT fees. They had mixed success in this dispute. On the one hand, I have found that some aspects of the parking rules are invalid and unenforceable, and the strata has not followed SPA section 76 when assigning underground stalls. On the other hand, I have not made the order the applicants request. In the circumstances, I consider it fair and appropriate to order the strata to reimburse half the applicants' CRT fees. So, I order the strata to pay the applicants \$112.50 in CRT fee reimbursement.

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

ORDERS

52. I order the strata to:

- a. Within 90 days of this decision's date, follow SPA section 76 when assigning underground parking stalls,
- b. Within 90 days of this decision's date, make new parking rules that do not involve City property. The new rules should not entitle all strata lot owners to a parking stall because that is impossible.
- c. Within 30 days of this decision's date, reimburse Mr. Ercegovic and Mr. Miller \$112.50 in CRT fees.

53. Mr. Ercegovic and Mr. Miller are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

54. I dismiss the applicants' remaining claims.

55. Under CRTA sections 57 and 58, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation under \$35,000. Once filed with a court, the order has the same force and effect as if it were a judgment of that court.

Laylí Antinuk, Tribunal Member