



Civil Resolution Tribunal

Date Issued: March 24, 2022

File: ST-2021-006245

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. Section 1 of The Owners, Strata Plan VR 2540*, 2022 BCCRT 330

B E T W E E N :

IAN WONG

APPLICANT

A N D :

SECTION 1 OF THE OWNERS, STRATA PLAN VR 2540

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about charging an electric vehicle in a strata corporation's parkade.
2. The applicant, Ian Wong, owns a residential strata lot in the Owners, Strata Plan VR 2540 (strata). The strata's residential section is the respondent, Section 1 of the

Owners, Strata Plan VR 2450 (section). Mr. Wong says the section, or the strata, has turned off the power to the electrical outlet beside his parking stall, which Mr. Wong was undisputedly using to charge his hybrid vehicle. He asks that the section be ordered to turn the power back on for that electrical outlet and to allow him to charge his vehicle with that outlet, for a reasonable fee.

3. The section denies Mr. Wong is entitled to use its common electricity to charge his vehicle. It says it has now passed a rule prohibiting electrical vehicle (EV) charging through any 110-volt common property outlet. The section also says Mr. Wong has the option of charging his vehicle at the strata's common property EV charging stations, located in a different parkade.
4. Mr. Wong represents himself. The strata is represented by a section executive 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. Mr. Wong requested an oral hearing be held. However, I find one is not necessary to decide this dispute as the issue is based on the strata or section's authority to govern the use of the common property parkade. Credibility is not at issue and, even if it were, an oral hearing would not necessarily be required (see *Yas v. Pope*, 2018 BCSC 282). I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.
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.
9. Mr. Wong provided evidence after the deadline to do so had passed. While some of the evidence was duplicative, I find the evidence relevant to this dispute. I further find the section was not prejudiced by the lateness, given it was provided with the evidence and an opportunity to respond to it. Keeping in mind the CRT's mandate for flexibility and efficiency, I accept the late evidence.

ISSUES

10. The issues in this dispute are:
 - a. Is Mr. Wong entitled to use the common property parkade outlet to charge his vehicle?
 - b. Was the section's decision to turn off the electrical outlet near Mr. Wong's parking stall significantly unfair?
 - c. If either answer is yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one the applicant, Mr. Wong, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.

Background

12. The strata was created in 1989 and contains both residential and commercial strata lots in each of 2 phases. In 2015 Mr. Wong became the owner of strata lot 36 (SL 36), which is a residential strata lot located in Phase 1.
13. The strata plan shows a common property underground parkade under each of Phase 1 and Phase 2. The strata plan does not show individual parking stall numbers, but it is undisputed that Mr. Wong was assigned parking stall 61 in the Phase 1 parkade.
14. It is undisputed that Mr. Wong purchased a “plug-in hybrid vehicle” on February 24, 2021. He says, and the evidence shows, he regularly charged his vehicle using a common electrical plug beside his parking stall in the Phase 1 common property parkade.
15. On April 1, 2021 Mr. Wong asked the Phase 1 property manager to advise “strata council” that Mr. Wong had been charging his vehicle. He estimated how much electricity he was using and its cost and asked how he could compensate the strata for the electricity. Mr. Wong said he would like to attend a strata council meeting to answer any questions the council might have.
16. It is undisputed that the building manager for Phase 1 turned off the power to the parkade outlet on May 17, 2021. It is also undisputed that the power has not been turned back on, despite Mr. Wong’s emailed requests to the building and property managers for Phase 1 in May 2021 and verbal request at his August 25, 2021 strata council hearing.

Strata Council or Section Executive?

17. The strata filed an amended set of bylaws in the Land Title Office (LTO) on January 23, 2002, which I find apply to this dispute, as amended from time to time. Bylaws 32 to 36 create the strata’s residential and commercial sections.
18. Section 196 of the *Strata Property Act* (SPA) requires each section to elect a section executive which has the same powers over that section which the strata council has

over all strata lots. Bylaws 35 and 36 create 2 committees which, together, form the residential section executive, a Phase 1 residential committee, and a Phase 2 residential committee. The bylaw requires each committee to perform the duties assigned to it by the residential section executive.

19. Mr. Wong consistently refers to the strata council. The respondent refers to the residential committee, which I find means the Phase 1 residential committee, based on meeting minutes filed in evidence. It is clear that the Phase 1 residential committee initially denied Mr. Wong's request to charge his vehicle in the Phase 1 parkade. It is unclear whether the SPA allows a section executive, or a strata council, to delegate its decision-making powers to a committee. Further, it is unclear whether the full strata council, the residential executive, or the Phase 1 residential committee held the August 25, 2021 "strata council hearing" and decided Mr. Wong was not allowed to use the common parkade outlet to charge his vehicle. While the September 9, 2021 decision letter refers to the "strata council's" decision, the letter is written by the strata manager appointed by the Phase 1 strata lot residents only, pursuant to bylaw 43.
20. Given my ultimate finding that Mr. Wong cannot succeed on the merits of his claim, I find I do not need to decide whether the Phase 1 residential committee had the authority to turn off the power to the outlet near Mr. Wong's parking spot. I also find I need not determine whether it was the strata, the residential section, or both, which is responsible for the September 9, 2021 decision letter. Keeping in mind the CRT's mandate for efficiency and flexibility, I have decided to resolve the dispute without needing to determine exactly which strata entity made the specific decision Mr. Wong disputes. As Mr. Wong has named the section as the respondent in this dispute, I will continue to refer to the section as the decision maker.

Entitlement to the common property parkade for vehicle charging

21. Mr. Wong argues that the outlet in the parkade is common property and that he is entitled to use it to charge his vehicle as he is part owner of that property and there is no bylaw prohibiting such use.

22. In its May 25, 2021 email to Mr. Wong, the Phase 1 strata manager said the electrical cord required to charge his vehicle from the parkade outlet created a potential tripping hazard, contrary to strata bylaw 3(1). Among other things, the bylaw prohibits an owner from using common property in a way that causes a nuisance or hazard to another person. Based on Mr. Wong's photos, I agree that his electrical charging cord does not create a potential tripping hazard for anyone using the parking lot, given its location immediately beside and in front of his parking stall. So, I find his use of the parkade power outlet does not contravene bylaw 3(1).
23. The section says it created a rule against EV charging with common parkade outlets. According to the October 28, 2021 Phase 1 joint committee minutes, the Phase 1 residential committee passed new rule 12 which prohibits the use of parking garage or any other common property electrical outlet receptacles for charging EVs, including hybrid vehicles.
24. SPA section 197(4) allows a section executive to make rules governing the use, safety and condition of limited common property (LCP). Whether or not the residential can assign that power to a committee, I find the Phase 1 residential committee was not authorized to create Rule 12. This is because the rule governs the Phase 1 parkade which is designated as common property for use of all strata lot owners, and not LCP for the exclusive use of only the residential section owners. So, I find rule 12 is invalid as it is not authorized under the SPA.
25. According to its December 29, 2021 Special General Meeting (SGM) notice for all owners, the strata proposed new strata bylaw 3.14(1), limiting EV charging to designated charging stations only. The proposed bylaw specifically prohibits EV charging from any common property standard 110/120-volt electrical outlet. If the bylaw is enforceable, I find it would prohibit Mr. Wong from charging his hybrid vehicle with the common outlet near his parking stall.
26. However, it is unclear on the evidence before me whether the bylaw was approved by the strata lot owners and filed at the LTO. I decided not to ask the parties for further submissions on the state of this bylaw. This is because, whether bylaw 3.14(1) is

enforceable or not, I still find the section, or the strata, is not required to allow Mr. Wong to charge his hybrid vehicle in common parkade, as detailed below. Further, even if the EV charging bylaw is now valid and enforceable, I must still consider Mr. Wong's claim that the section's decision preventing him from charging his vehicle is significantly unfair.

27. Mr. Wong argues that, if there is no prohibitive bylaw or rule, he should be allowed to use the common parkade electricity how he wishes as he is part owner of that common resource. Section 3 of the SPA requires a strata corporation to manage, repair and maintain common property for the benefit of all owners. I find this provides the strata, represented by the strata council, the authority to decide how to use common property.
28. As explained by a CRT vice chair at paragraph 19 of *Walsh v. the Owners, Strata Plan EPS5285*, 2021 BCCRT 989, there is no requirement in the SPA or strata bylaws that an owner access and use any and all common property. The vice chair referred to mechanical rooms, roof access hatches, supply cupboards, and other common property areas or resources used for maintenance purposes that were kept locked and are not available for use by owners. She concluded there was no obligation for a strata corporation to make any common property electrical outlets available for owners to use. While CRT decisions are not binding, I agree with the vice chair's reasoning and adopt it here. I find neither the strata, nor the section, is required to allow Mr. Wong to use the common property electrical outlet to charge his hybrid vehicle.

Significant Unfairness

29. Although Mr. Wong does not use these words, I find he argues that the section's decision to turn off the power to the parkade outlet was significantly unfair to him.
30. CRTA section 123(2) gives the CRT the power to make an order directed at a strata or a section to remedy a significantly unfair action or decision. This provision mirrors section 164(1) of the SPA, which gives the same or a similar power to the BC Supreme Court.

31. In *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126, the court said a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 the court confirmed that an owner's reasonable expectation is a relevant factor to consider when assessing significant unfairness.
32. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the court applied a "reasonable expectations" test when considering whether a discretionary action of council was significantly unfair. The test asks: What was the applicants' expectation? Was that expectation objectively reasonable? Did the section violate that expectation with a significantly unfair action or decision?
33. I find Mr. Wong's expectation that he be allowed to use common electricity to charge his vehicle was not objectively reasonable. While I accept that Mr. Wong checked the strata's bylaws and section rules to see whether EV charging was prohibited, I find that is insufficient to create an expectation that he was allowed to do so. Mr. Wong did not ask the strata, or section, for permission to use the common property outlet for undisputedly lengthy charging times. He only notified the property manager after regularly charging his vehicle for over 1 month. I find Mr. Wong did not make reasonable inquiries as to whether EV charging with common property outlets was permissible.
34. Had Mr. Wong made reasonable inquiries or read the March 12, 2020 meeting minutes of the Phase 1 joint committee (both residential and commercial), he would have known that the committee decided to terminate a prior common property temporary exclusive use agreement for EV charging in the Phase 1 parkade and also denied 2 other owners' requests to charge their EVs in the parkade. Further, the August-September 2020 joint committee newsletter sets out that 2 EV charging stations were available in the Phase 2 parkade for the Phase 1 owners to use, for a fee. I find these documents do not support an objectively reasonable belief that an owner is entitled to charge their vehicle in the Phase 1 parkade.

35. Even if I had found Mr. Wong's expectations were objectively reasonable, I would have found the section's decision to turn off the power and disallow the vehicle charging was not significantly unfair. There is no indication the section has treated Mr. Wong differently from any other owner. In fact, the above documents indicate no owners are permitted to charge their vehicles with common parkade outlets.
36. Neither has Mr. Wong proven he has been prejudiced or oppressed by not being allowed to charge his vehicle as desired. Based on an undisputed letter from RC, a Phase 2 residential committee member, the 2 EV chargers in the Phase 2 parkade are available for Mr. Wong's use at the usual charge rate during regular business hours. Mr. Wong may also purchase a fob for \$50 to enter the parkade whenever he wishes, to access the chargers. Although Mr. Wong argues that the pay-for-use chargers are more expensive than reimbursing the strata or section for using the common electricity in his parkade, this is based on his estimates of the strata's electrical costs and the charging station fees, rather than any actual evidence such as receipts or hydro bills. In any event, I find Mr. Wong's estimated price difference of approximately \$100 per month is not oppressive, burdensome, or harsh.
37. Further, I find there are 2 commercial charging stations located close to the strata buildings, as stated in the 2020 joint committee newsletter. So, I find the section's decision does not effectively prevent Mr. Wong from charging his hybrid vehicle.
38. On balance, I dismiss Mr. Wong's claims.

CRT FEES and EXPENSES

39. As Mr. Wong was unsuccessful in his claims, I find he is not entitled to reimbursement of CRT fees or dispute-related expenses under section 49 of the CRTA and the CRT rules. As the successful respondent the section claimed no dispute-related expenses.
40. The section, and the strata, must comply with section 189.4 of the SPA, which includes not charging any expenses related to this dispute against Mr. Wong.

ORDER

41. I dismiss Mr. Wong's claims and this dispute.

Sherelle Goodwin, Tribunal Member