



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Siemens v. The Owners, Strata Plan EPS3699*, 2023 BCCRT 633

B E T W E E N :

KENDRA LEE SIEMENS

APPLICANT

A N D :

The Owners, Strata Plan EPS3699

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about a limited common property (LCP) parking stall.
2. The applicant, Kendra Lee Siemens, co-owns strata lot 90 (SL90) in the respondent strata corporation, The Owners, Strata Plan EPS3699 (strata). Ms. Siemens is self-represented. A strata council member represents the strata.
3. Ms. Siemens purchased SL90 from the owner developer in 2016, but did not take possession of the newly constructed strata lot until October 2018. I note that Ms.

Siemens' partner is related to, or part of, the owner developer, but nothing turns on this.

4. Ms. Siemens generally claims her underground LCP parking stall (PS133), designated exclusively for her use, is unusable because it cannot be reasonably accessed, since the parking lines were repainted in 2019. She says other cars block or impede access to PS133 and a chain-link fence located immediately next to the stall does not allow the doors of a parked vehicle to open. Ms. Siemens values her claim at \$35,000 but does not seek damages. I find she essentially asks the strata to correct the access issues to PS133 or provide her with another LCP parking stall at no cost to her.
5. The strata denies Ms. Siemens' allegations and opposes her relief sought. It says the parking stall issue is between Ms. Siemens and the owner developer, or alternatively, that the limitation period under the *Limitation Act* has expired, so her claim is statute-barred. The strata asks that Ms. Siemens' claim be dismissed.
6. As explained below, I find in favour of Ms. Siemens.

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). 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.
8. 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.

9. 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.

Preliminary Matter – Additional Requested Remedy

10. In her submissions, Ms. Siemens adds an additional optional remedy that the strata purchase her strata lot at fair market value, which was not included in the Dispute Notice. The purpose of the Dispute Notice is to define the issues and provide fair notice to a respondent of the claims against them. Procedural fairness requires that a party be notified of requested remedies and have a fair opportunity to respond. I find the additional optional remedy is not properly before me, and that it would be procedurally unfair for me to consider it. Therefore, I decline to consider Ms. Siemens' remedy that the strata purchase her strata lot. I also find such an order is likely outside the CRT's strata property claim jurisdiction.

ISSUES

11. The issues in this dispute are:
 - a. Is the strata the proper respondent?
 - b. If so, is Ms. Siemens out of time under the LA to file her claims?
 - c. If not, how must the strata address the parking stall issue, if at all?

BACKGROUND, EVIDENCE AND ANALYSIS

12. As applicant in a civil proceeding such as this, Ms. Siemens must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.

13. The strata plan shows the strata was created in June 2018 under the *Strata Property Act* (SPA). The strata includes 194 strata lots in a single building above 2 levels of underground parking. The strata plan confirms the parking stalls are different sizes and that they are all designated as LCP for the exclusive use of a single strata lot. PS133 is located on the second level of the underground parking garage, at the end of a drive aisle. PS133 is the end stall of a group of 3 stalls of equal size in that location.
14. The owner developer filed bylaw amendments with the Land Title Office (LTO) on June 14, 2018 that differ from the Standard Bylaws under the SPA. The strata subsequently filed additional bylaw amendments, but I find there are no bylaws that are relevant to this dispute.
15. It is undisputed that PS133 and the 2 stalls next to it were relocated by repainting the parking stall lines in 2019, after the strata plan was registered with LTO. The 3 parking stalls were moved approximately 2 feet to the east, away from some stairs. According to the strata, the owner developer relocated the stalls to comply with fire code concerns relating to the stairs.
16. It is also undisputed that the strata attempted to assist Ms. Siemens and other owners with similar concerns by, among other things, discussing the parking stall issues with the City of Kelowna (City), and seeking a new home warranty claim to address parking stall issues, which the warranty provider ultimately declined. The strata subsequently voted not to proceed with legal action against the owner developer.

Is the strata the proper respondent?

17. The strata argues Ms. Siemens' claim is against the owner developer, and not the strata, because all parking stall designations were made by the owner developer. The strata says the parking stall designations were a "contractual arrangement" between each owner and the owner developer. It says it "cannot be liable for matters determined before its creation".
18. Ms. Siemens does not directly address this argument. Her arguments initially include allegations that PS133, as identified on the strata plan, did not meet City bylaw

dimensions however, in reply submissions she clarifies her position. She says she is not seeking a larger parking stall, but simply seeking the return of a useable stall because PS133 was altered and made unusable after the strata was created. I take this to mean that Ms. Siemens would like PS133 to be moved back to its original location or exchanged for another usable parking stall. In any event, this clarification relates to the changes made to PS133 after the strata plan was filed with LTO, which I find is an issue that properly involves the strata. I say this for the following reason.

19. The strata is responsible for managing and maintaining common property for the benefit of the owners (see SPA section 3). LCP is a form of common property, so the strata is responsible for PS133. Further, the strata was created when the strata plan was deposited with the LTO (see SPA section 2). The owner developer must exercise the powers and perform the duties of the strata council from the date the strata is created until a new council is elected at the first annual general meeting (AGM) (see SPA section 5). It is unclear when the strata held its first AGM, however, given the foregoing, and that PS133 was altered after the strata plan was deposited with the LTO, I find it is the strata and not the owner developer that is responsible for managing PS133. This is true even if the owner developer unilaterally repainted the parking stall lines without telling the strata, because the strata is solely responsible for maintaining common property. Therefore, I find the strata is the correct respondent in this dispute.

Is Ms. Siemens out of time under the LA to file her claims?

20. For the following reasons, I find Ms. Siemens is not out of time to file her claim.
21. CRTA Section 13 confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is “discovered”. At the end of the 2-year limitation period, the right to bring a claim disappears.
22. Section 8 of the LA says a claim is “discovered” on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be

made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.

23. Here, I find the Ms. Siemens' claim is for a loss of use of PS133, so it is captured by the LA. Ms. Siemens said she was relying on the strata's assistance to resolve the parking stall issue based on its discussions with the City, and the inclusion of the issue in its warranty claim. In particular she relied on the strata manager's statements that the strata was "working... to rectify this situation" and that "there was a plan in place" to deal with the issue. These statements are confirmed in emails submitted in evidence.
24. The strata says that on Ms. Siemens' own evidence, she first noticed PS133 was inaccessible in July 2019, when the parking stall lines were "moved". It says she discovered her claim at that time and has allowed her right to a remedy to lapse. I infer the strata's argument is because it believes Ms. Siemens discovered her claim more than 2 years before she made her application for dispute resolution with the CRT, which was in September 2022.
25. However, the strata's obligation to manage common property for the benefit of the owners under SPA section 3 is a continuing obligation. Therefore, I find Ms. Siemens' claim for loss of use of PS133 from the strata's breach of that obligation is not statute-barred.

How must the strata address the parking stall issue, if at all?

26. It is undisputed that PS133 is functionally unusable as currently configured. I find this is largely because the parking stall has been relocated when the lines were repainted. Ms Siemens admits in her submissions that before the lines were repainted, PS133 was usable for a small vehicle. She says that it is impossible to access the stall when a vehicle is parked in a nearby stall configured perpendicular to PS133, because of the vehicle overhang. I take this to mean that when the parking stall located near the entrance to PS133 is occupied, a vehicle cannot drive into PS133 because the parked vehicle extends partly into the drive aisle. Ms. Siemens also says after the PS133 was relocated, the chain link fence bordering the east side of the stall was about 5

inches from the middle of the east parking stall line, making it impossible to open the door of a vehicle parked in PS133. I accept Ms. Siemens' statements are accurate based on the photographs provided in evidence and note the strata did not dispute them. For the following reasons, I find it appropriate for the strata to take steps to address the parking stall accessibility issue.

27. As earlier noted, I have found Ms. Siemens's position is that she is entitled to a usable parking stall, which is reasonable. I find this could include having PS133 moved back to its original location or having the strata designate SL90 the exclusive use of a different parking stall. In either case, the proximity of the fence to the parking stall would no longer be an issue, so I make no order about the fence.
28. Given the owner developer designated all parking stalls, except visitor stalls, as LCP on the strata plan, SPA section 257 requires the strata to pass a unanimous resolution to remove an LCP designation, including from PS133. However, to designate LCP only requires the strata pass a $\frac{3}{4}$ vote. According to the strata, some strata lots do not have parking stalls and there is a shortage of visitor parking stalls, because the owner developer did not construct the number of visitor stalls required by the City. In these circumstances, with the strata comprising 194 strata lots, I find it unlikely the owners would unanimously agree to allow Ms. Siemens to change to another parking stall. Therefore, I decline to make an order that involves re-designating LCP parking stalls.
29. The strata said PS133 was relocated by the owner developer because of fire code requirements for common stairs located nearby the stall. However, it provided no evidence to support its assertion. It also did not provide evidence that it took any steps to question the parking stall relocation in July 2019. Ms. Siemens provided photographic evidence and measurements of the parking stall that shows the parking stall lines were painted over and relocated, so I accept her submissions on the relocation of PS133. I also note the strata admitted PS133 was relocated. Based on the overall evidence and submissions, I find PS133 is not located as shown on the strata plan. Rather, it is located about 2 feet east of where it is shown on the strata plan. I agree with Ms. Siemens that the relocation of PS133 as a result of the line

repainting is contrary to SPA section 257 because her LCP was relocated without a unanimous vote.

30. The logical solution is for the strata to relocate PS133 (and the 2 stalls next to it) back to the location it was first installed, which I find is where it is shown on the strata plan. I acknowledge that this might require the strata to obtain approval from the City through negotiation or a variance application if there are fire code concerns. I order the strata to take all necessary steps to relocate PS133 back to its original location. If the City prohibits relocation of PS133 after the strata has diligently pursued negotiation, including if necessary a variance application with the City, I order the strata to make available other permanent parking arrangements for SL90. The strata must provide temporary parking arrangements for SL90 until SL90 has a usable, permanent parking stall. The strata must initiate these steps within 30 days of the date of this decision.

CRT FEES, EXPENSES AND INTEREST

31. 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. Here, Ms. Siemens was the successful party, so I find the strata must reimburse her \$225.00 for CRT fees.
32. Neither party claimed dispute-related expenses, so I order none.
33. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Ms. Siemens.

DECISION AND ORDERS

34. I order the strata to:
- a. Within 15 days of the date of this decision, reimburse Ms. Siemens \$225.00 for CRT fees.
 - b. Within 30 days of the date of this decision, take all necessary steps to relocate PS133 back to its original location, including negotiation and a variance

- application with the City if necessary. The strata must provide temporary parking arrangements for SL90 until SL90 has a usable, permanent parking stall.
- c. Make available other permanent parking arrangements for SL90 if the City prohibits relocation of PS133 after the strata has diligently pursued negotiation, including if necessary, a variance application with the City.
35. Ms. Siemens' remaining claims are dismissed.
36. Ms. Siemens is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
37. 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.

J. Garth Cambrey, Vice Chair