



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

JENNY OBERMEIER and JAN CHRISTOPH OBERMEIER

APPLICANTS

A N D :

The Owners, Strata Plan BCS 2959, GRAHAM COLBY, and LAUREN
NICHOLE WYROSTOCK COLBY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about parking in a strata corporation.

2. The applicants, Jenny Obermeier and Jan Christoph Obermeier, own a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 2959 (strata). The other respondents, Graham Colby and Lauren Nichole Wyrostock Colby, also own a strata lot in the strata.
3. The Obermeiers and the Colbys are self-represented in this dispute. The strata is represented by a strata council member.
4. The Obermeiers say that following a complaint from the Colbys, the strata repainted the line between their parking stall (stall 47) and the adjacent stall 46. The Obermeiers say the new line made stall 47 0.31 meters narrower than before. The Obermeiers admit the new line matches the filed strata plan. However, they say new line makes their parking stall very narrow, and they have already damaged their car's right-side mirror by scraping it on a pillar. They say the stall's size change may lower the resale value of their strata lot. They also say the change is significantly unfair, since the majority of parking stalls do not match the strata plan, but others have not been changed.
5. As remedy, the Obermeiers request an order that the strata move the line back by 5 centimeters. Alternatively, they request an order that the strata must survey all parking lines, and put forward a resolution at a general meeting to change all parking stalls to match the strata plan.
6. The strata says that the original painted line between parking stalls 46 and 47 did not match the strata plan. The strata says the previous owner of the Colbys' strata lot rented a parking stall elsewhere in the strata, since stall 46 was small. The strata says that when the Colbys were assigned stall 46 in 2022, they discovered that the line did not match the strata plan, and asked that the strata correct the line. The strata says it corrected the line based on results from a licensed surveyor hired by the strata's owner developer. The strata says stall 47 now matches the strata plan, and meets City of Vancouver (City) parking stall size requirements. The strata says most of the strata's parking stalls match the strata plan, and where there are discrepancies, no one has complained, unlike with stall 47.

7. The Colbys confirm that they discovered the incorrect line placement when they bought their strata lot in 2022, and requested the correction. They say that the Obermeiers' claim, if allowed, would deprive the Colbys of the full use of their rightfully assigned parking stall. They say the Obermeiers always had access to the filed strata plan, which should prevail.
8. For the reasons set out below, I dismiss the Obermeiers' claims.

JURISDICTION AND PROCEDURE

9. The CRT has jurisdiction over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
10. 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. The parties have not requested an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required even where credibility is at issue. In this dispute, there are no significant factual disputes or issues of credibility that require oral testimony or cross-examination. Bearing in mind the CRT's mandate that includes proportionality and speedy dispute resolution, I find it is appropriate to decide this dispute through documentary evidence and written submissions.
11. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

Late-Raised Claim

12. In their CRT submissions, the Obermeiers say the Colbys use an area adjacent to stall 46 for storing bikes, strollers, and other items. They say this is unfair, since the area is common property not assigned to the Colbys. The Obermeiers request an order that the strata paint an additional line to mark the top border of stall 46.

13. This issue of unauthorized storage was not raised in the Dispute Notice. I find it would be procedurally unfair to address that claim in this decision. The Dispute Notice was already amended, so the Obermeiers could have included this new claim but did not. Since the claim was not raised until the submissions stage of the dispute, I find the respondents did not have a full opportunity to respond to the new claim about storage.
14. For this reason, I refuse to resolve the claim about storage adjacent to parking stall 46.

ISSUES

15. The issues in this dispute are:
 - a. Was it significantly unfair to move the line between parking stalls 46 and 47?
 - b. If so, what remedies are appropriate?

BACKGROUND

16. In a civil claim like this one, the Obermeiers, as applicants, must prove their claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
17. The following facts are undisputed.
18. The strata was created in 2008, and consists of 50 strata lots, plus common property. The strata plan shows there is an underground parkade in the strata building's basement. All parking stalls are designated as common property on the strata plan. The strata plan does not designate any parking stalls as limited common property for the exclusive use of one or more strata lot owners. Rather, the strata grants owners the right to park in designated spots through long-term leases noted on Form B Information Certificates.

19. The evidence shows that the Obermeiers bought their strata lot in August 2010, and the Colbys bought their strata lot in January 2022. The parties agree that shortly after the Colbys bought their strata lot, they discovered that their assigned parking stall (stall 46) did not match the strata plan, and they requested that the strata move the line between stalls 46 and 47 by moving it 0.31 meters towards stall 47.
20. After corresponding with the Colbys' lawyer, the strata council held hearings with both the Obermeiers and the Colbys, and decided to move the line to match the strata plan. This made stall 47 smaller.

REASONS AND ANALYSIS

Claims Against the Colbys

21. The Obermeiers' key argument in this dispute is that the decision to move the parking stall line was significantly unfair.
22. As noted above, the Obermeiers named the Colbys as respondents in this dispute. However, I find there is no basis for that claim. Since the parking stall lines did not match the strata plan, I find the Colbys had a right to raise the issue with the strata and request a change. The Colbys requested that the line be moved, but the strata council made the decision.
23. CRTA section 123(2) says the CRT may make orders preventing or remedying significantly unfair acts or decisions by a strata corporation, a strata council, or a person who holds 50% or more of the votes in the strata. The Colbys do not hold 50% or more of the votes, so CRTA section 123(2) does not apply to them.
24. I find there is nothing in the *Strata Property Act* (SPA) or strata bylaws that prevented the Colbys from raising the issue of parking stall size. Also, the Obermeiers have only requested orders against the strata in this dispute, and not against the Colbys.
25. For these reasons, I dismiss the Obermeiers' claims against the Colbys.

Was the strata's decision to move the line between parking stalls 46 and 47 significantly unfair?

26. The Obermeiers say that moving the parking stall line was significantly unfair to them.

27. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a reasonable expectations test for deciding claims of significant unfairness in a strata corporation. This test was restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28 as follows:

- a. What is or was the expectation of the affected owners?
- b. Was that expectation objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

28. The Obermeiers say they were assigned stall 47 when they bought their strata lot. They say that until the Colbys complained, they did not know the parking stall lines did not match the strata plan. I accept these statements, as they are undisputed. However, for the following reasons, I find the strata's decision to move the parking stall line was not significantly unfair.

29. Among other things, the Obermeiers argue that moving the parking stall line was significantly unfair because they fear that the smaller parking stall assigned to their strata lot will reduce their strata lot's value. They also say that stall 47 was "majorly decreased in size", which might make it unattractive for typical buyers of their 3-bedroom townhouse, who are likely to have average-sized cars.

30. I find the Obermeiers' argument about loss of strata lot value speculative. I accept that most people would prefer a larger parking stall, but I find there is no evidence before me that the Obermeiers' strata lot has decreased in value. The Obermeiers say they fear a reduction in value, but they have not provided a real estate appraisal or other evidence to establish an actual decrease. So, I find the Obermeiers have not proven any reduction in strata lot value. So, I find that this does not constitute significant unfairness, and does not entitle the Obermeiers to any remedy.

31. The Obermeiers also say that moving the parking stall line was significantly unfair to them because it is inconvenient to have a smaller parking space, and they have already scratched their car on a pillar next to stall 47.
32. Based on the photos and the Obermeiers' description, I accept that the smaller space is inconvenient, and that it is more difficult to park and to access the car doors. However, in *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the BC Supreme Court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. Following this reasoning, I find that inconvenience alone is not significantly unfair. The Obermeiers admit that they can park in stall 47, even when another car occupies stall 46. This is confirmed by photos. The Obermeiers would prefer a larger space, but I find it is not burdensome, harsh, wrongful, unjust, or inequitable for the strata to require them to use a parking stall that matches the strata plan.
33. Also, given that the filed strata plan is binding, I find that the Obermeiers' expectation that they continue to use space that the strata plan shows as part of stall 46 is unreasonable. In a document titled "Chronology of Events", the Obermeiers admit that 2 cars never parked in stalls 46 and 47, and that the previous owner of the Colbys' strata lot rented parking elsewhere "as she was not comfortable parking in a tight stall." I find the Obermeiers' expectation that the Colbys also park elsewhere, or park in a spot smaller than what is shown on the strata plan, is unreasonable. I note that the 2 stalls are bordered by a concrete block wall on one side and a concrete pillar on the other, so there is no option of making the available space larger.
34. The Obermeiers say the majority of parking stalls in the parkade do not match the strata plan. They say it was unfair to make their parking stall smaller, when other parking stalls that differ from the strata plan were not changed. The strata admits there are some discrepancies, but says the majority of stalls match the strata plan. The strata also says the situation with stalls 46 and 47 is different from other discrepancies, since the Colbys complained about it and others have not.

35. I find the Obermeiers have not proven their assertion that the majority of stalls differ from the strata plan. The Obermeiers provided a list showing discrepancies in 22 parking stalls. The strata plan shows 61 parking stalls, so 22 is not a majority. More importantly, of the 22 discrepancies documented by the Obermeiers, 9 are discrepancies of 3 centimeters or less. I find this is a trivial amount, which would not be noticeable or change the practical use of any parking stall.
36. The Obermeiers disagree with the strata's argument that a lack of complaints distinguishes the situation with stalls 46 and 47 from other discrepancies. The Obermeiers say they have complained about other parking stalls that do not match the strata plan. However, I am unpersuaded by this point, since the Obermeiers did not complain about other stalls until after the strata decided to move stall 47's line. There is no evidence before me that other owners have complained about the use of their parking stalls based on a variation from the strata plan. I find that since the strata is responsible for the repair and maintenance of the common property parking stalls under SPA section 72, it had a duty to address the Colbys' complaint. I find that moving the line to match the strata plan was a reasonable action in the circumstances.
37. The Obermeiers say the strata should have held a vote of the strata ownership before moving the parking line. I do not agree. Under SPA section 72, the strata has discretion to undertake repairs and maintenance, and generally does not need specific authorization. SPA section 71 says a $\frac{3}{4}$ ownership vote is required before significantly changing common property. For the following reasons, I find that moving the parking line 0.31 meters was not a significant change.
38. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the court set out a non-exhaustive list of factors to consider when deciding whether a change is significant:
- a. Is the change visible to other residents or the general public?
 - b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?

- c. Is there a direct interference or disruption because of the changed use?
 - d. Does the change impact the marketability or value of a strata lot?
 - e. How many units are in the strata and what is the strata's general use?
 - f. How has the strata governed itself in the past and what has it allowed?
39. Applying these factors to the facts before me, I find the change is not visible to the general public, and while technically visible to other residents, would not register as significant to anyone other than the users of stalls 46 and 47. I find the changed parking line affects the Obermeiers negatively, but not to the point of being unable to park. There are still 2 parking stalls, as there was before. Meaning, the strata did not change the 2 marked parking stalls into something else entirely, or combine them into 1 stall.
40. As previously stated, I find it unproven that the parking line change affects the value of a strata lot. I find that of the 61 parking stalls shown on the strata plan, at least 15 of them are the same size as stall 47 (post-change). There is no indication that the issue of parking stall size has been raised previously, so there is no evidence about previous governance on this issue.
41. Based on these factors, I conclude that moving the parking line 0.31 meters was not a significant change. So, the strata was not required to hold an ownership vote before moving the parking line.
42. The Obermeiers also say the strata handled the parking line issue significantly unfairly because similar issues were dealt with differently in the past. For example, they say that when an owner complained about rotted balcony doors, the strata assessed all doors, and then brought a resolution to an annual general meeting (AGM) for a vote. Similarly, when an owner complained about water ingress from a damaged deck membrane, the strata inspected all decks to assess required repairs and brought a resolution to an AGM for a vote.

43. I find these situations are different from the parking line issue. Specifically, fixing balcony doors or decks requires a significant financial expenditure. Under the SPA, the strata is required to hold an ownership vote for such expenditures. The February 2023 AGM minutes show that the owners voted to spend \$100,000 from the contingency reserve fund (CRF) and collect a \$153,000 special levy to pay for the balcony repairs. Under SPA sections 96 and 108, the strata could not have done either of these things without a $\frac{3}{4}$ vote of the ownership. In contrast, there is no such requirement for repainting a single parking line.
44. I also find the Obermeiers' argument that the strata should have assessed all the parking lines in the garage unpersuasive. I find that deck and door repairs are different from parking lines, since they could lead to leaks or structural problems with the building. So, it is reasonable for the strata to assess all doors and decks when problems are reported in one area, in order for the strata to meet its repair and maintenance duties under SPA section 72. There is no chance that parking lines will cause strata property to deteriorate, so I find there is no equivalent need for an overall assessment.
45. In any event, after the Obermeiers complained about other parking lines that did not match the strata plan, the strata put forward a resolution to address this at the February 2023 AGM. The resolution was to spend \$5,000 from the CRF to survey and repaint the parking lines. The minutes show the resolution did not pass. I find this action was reasonable in the circumstances, and the strata was bound by the outcome of the vote.
46. The Obermeiers gave a 3rd example of how the strata handled the parking line complaint differently from other complaints. The Obermeiers say that when someone complained about a balcony enclosure and lattice structure, the strata asked other owners to take down their enclosures also. I also find this situation is different from the parking line issue. Specifically, the strata determined that the balcony enclosures were prohibited by a strata bylaw. Under SPA section 26, the strata is obligated to enforce the bylaws, once it is aware of breaches. There is no argument before me

suggesting that the inaccurate parking lines breach any bylaw, so I find it was reasonable for the strata to treat the matter differently.

47. Finally, in finding that the strata did not act significantly unfairly, I place significant weight on the fact that the strata plan is binding. Without going through the process to amend the strata plan, the strata does not have authority to continue deviating from the strata plan, once a deviation is identified. So, even if a number of the strata's parking stalls are smaller than City bylaw requirements, as the Obermeiers argue, I find that the strata did not have authority to simply allocate space from stall 46 to stall 47. That would not be consistent with the strata plan.
48. For all of these reasons, I find the strata did not treat the Obermeiers significantly unfairly in handling the parking line issue, including by moving the line between stalls 46 and 47. I dismiss the Obermeiers' claims.

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. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.
50. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the Obermeiers.

ORDERS

51. I refuse to resolve the Obermeiers' claim about storage adjacent to parking stall 46.

52. I dismiss the Obermeiers' remaining claims, and this dispute.

Kate Campbell, Tribunal Member