



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Laue v. The Owners, Strata Plan VR2435*, 2023 BCCRT 232

BETWEEN:

ULRICH LAUE

APPLICANT

AND:

The Owners, Strata Plan VR2435

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about permission to install an electric vehicle (EV) charger. The applicant, Ulrich Laue, co-owns strata lot 30 (SL30) in the respondent strata corporation, The Owners, Strata Plan VR2435 (strata). Mr. Laue says the strata wrongly denied his request to install the EV charger near his parking stall. He says

the parking stall is limited common property (LCP). He seeks an order for the strata to permit the installation.

2. The strata disagrees. It says the entire parkade is common property (CP), and the EV charger and other permanent items required to install it would be a significant change in the use or appearance of CP that requires owner approval under section 71 of the *Strata Property Act* (SPA). There has been no owner vote about Mr. Laue's request to date.
3. Mr. Laue represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Laue's claims.

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 as follows:
 - a. Is the proposed EV charger a significant change under SPA section 71?
 - b. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Laue as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. As noted above, a title search shows that Mr. Laue became a joint owner of SL30 in January 2020. The strata plan shows the following. The strata consists of several residential buildings. SL30 is located on the second floor of a 3-floor building. There is a large underground parkade beneath several of the buildings, including SL30's.
12. It is undisputed that Mr. Laue uses a parkade parking stall labelled "30" on the strata plan. Mr. Laue says it is LCP and the strata says it is CP. The stalls are generally labelled in a way so that they appear to correspond with a particular strata lot. However, all the stalls are labelled "PARKING CP STALLS" on the strata plan. There are also areas on the strata plan explicitly labelled and defined as LCP, and this does not include the parking stalls at issue. So, I find the parking stalls are CP and not LCP.
13. I turn to the chronology. The strata has never had any EV chargers installed on its property. In 2019, the strata formed a committee to gather information on what was required to install EV chargers in the strata's underground parkade. Committee

documents show its members were Mr. Laue, a strata council member at the time, and RS, the strata council president. These documents also show the strata was considering installing communal chargers in the visitor parking spots.

14. As part of the work, in October 2019 RS began exchanging emails with Plug In BC (Plug). Plug's emails show that it was an organization that was generally knowledgeable about EVs, EV chargers, and government rebates that might be available to the strata.
15. The committee conducted an owner survey about EV chargers. Among other things, the survey shows that 75.9% of owners supported installing EV chargers at the strata, in principle. The committee put its findings together in a November 2021 slide show and recommended that owners vote on installing an EV charger at the April 2021 annual general meeting (AGM). In January 2021, the strata also obtained a proposal from MJR Electric (MJR) to install chargers for the strata.
16. At the April 2021 AGM, the owners held a $\frac{3}{4}$ vote to approve a resolution about installing 2 EV chargers. The resolution also proposed, among other things, 1) approving the change to the extent that it is a significant change under SPA section 71, 2) raising \$12,500 to fund the installation, 3) amending the bylaws to dedicate 2 visitor parking stalls for the EV charging station, and 4) amending the bylaws to outline a procedure for EV users to use the EV chargers. The motion did not reach the necessary threshold as 21 voted in favour, 16 opposed, and 2 abstained.
17. The emails and letters from April to June 2022 show the following. Around April 2022 Mr. Laue asked the strata for permission to install 1) an EV charger near parking stall 30, 2) a new BC Hydro electrical meter and new electrical box for circuit breakers in the main complex electrical room, and 3) electrical cables from the new electrical box to stall 30. In a May 20, 2022 email, the strata manager replied that owners would have to approve the EV charger by a $\frac{3}{4}$ vote. Mr. Laue requested a hearing that the strata held on June 8, 2022. In the undated hearing decision letter, the strata said that the proposed alterations would be a significant change that requires a $\frac{3}{4}$ vote by the owners at a general meeting.

Is the proposed EV charger a significant change under SPA section 71?

18. As stated above, parking stall 30 is CP. The parties disagree on whether Mr. Laue's proposed alterations are a significant change in the use or appearance of CP. As noted above, the proposed EV charger necessarily includes other changes like cables and a new electrical box.
19. Section 71 of the SPA says that a strata corporation must not make a significant change in the use or appearance of CP unless the change is approved by a resolution passed by a 3/4 vote at an AGM or special general meeting, or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. See *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. As noted in *Foley*, the same test applies to proposed owner changes like the one in this dispute.
20. The proposed alterations are not about ensuring safety or preventing immediate significant loss or damage. So, I find that the vote requirement applies if the proposed alterations would be a significant change. In *Foley*, the court set out a non-exhaustive list of factors to consider when deciding whether a change is significant, which I summarize as follows:
 - 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?
21. Court decisions suggest that the more permanent the change, the more significant it is. See for example, *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Sidhu v. The Owners, Strata Plan VR1886*, 2008 BCSC 92.

22. Mr. Laue relies on the CRT decision *Reynolds v. Residential Section of the Owners, Strata Plan VR 2540*, 2020 BCCRT 271. In that decision, the CRT decided that installing an electrical outlet on a wall facing a parking stall would not be a significant change in the use or appearance of common property. CRT decisions are not binding. Further, this decision only considered whether extending a pre-existing electrical outlet was a significant change. It did not consider an EV charger and there is no indication the work affected the building's electrical load. So, I find that decision has limited relevance or applicability here.
23. I turn to the *Foley* factors. Based on the strata plan, I find that the EV charger and cables leading to the electrical room would be highly visible to residents but not the general public. This is because stall 30 is located in a central area of the parkade. I find it likely that most residents use the parkade, either to park their cars or access the storage lockers shown on the strata plan. I find this suggests the change is significant.
24. I find that the EV charger and related infrastructure would positively affect the use or enjoyment of SL30. There is currently nowhere to charge EVs in the parkade.
25. I find the change would create a direct interference or disruption. This is because the strata says the charger would add to the building's electrical load. Based on the following evidence, I agree.
26. In MJR's February 19, 2020 proposal, MJR wrote that the building is "running at its maximum capacity". It said the strata "may be able to install one charger on the current service as it is" and possibly another if its calculations were a "little high", for a maximum total of 2. MJR said the strata could consider hiring an engineering firm to do a building assessment and energy audit. MJR also said that it recommended that any building with more than 2 chargers have an engineer approve and stamp the designs.
27. I find the proposal is expert evidence under CRT rule 8.3 as its author, QM, is noted as MJR's owner and operator. Although QM's qualifications are not outlined in detail, I find it clear from the proposal that QM has expertise in installing EV chargers. To

the degree that the proposal does not comply with CRT rule 8.3, I waive compliance under CRT rule 1.2(2).

28. I find from the above that allowing Mr. Laue to install the EV charger may prevent the strata or anyone else from installing any other EV chargers. The survey and AGM vote show that the majority of owners have some interest in installing a shared EV charger. So, I find Mr. Laue's charger would be disruptive or an interference to other residents interested in an EV charger on strata property.
29. Mr. Laue says there are load management options to allow for multiple chargers to be installed. He notes that a December 18, 2019 EV charging committee document says that network chargers are available to spread the electrical load between chargers, which can be set to limit the time EVs are plugged in. However, there is no evidence that 1) Mr. Laue asked to install a network charger or network-compatible charger, or 2) that such an option works in the strata's specific situation. I find that Mr. Laue would need expert evidence to show this. MJR's February 2020 proposal does not mention network chargers as an option. So, I find it unproven that load management options are available to the strata.
30. I find the change would positively impact the marketability of SL30. This is particularly the case because, as stated earlier, no other EV chargers exist in the strata.
31. The strata plan shows there are 56 residential strata lots. I find this factor is neutral in this dispute.
32. Finally, I find the strata's past governance does not assist Mr. Laue. Mr. Laue focused his evidence on this point by showing that the strata approved or took no action to enforce bylaws about a water line on an upper deck, vents installed on the building, bike rack changes, and LCP landscaping changes. I find these have limited relevance to the issue at hand. They do not affect the parkade or the electrical load of the strata. I find the key point is that the strata has not permitted any similar changes in the past.
33. Notwithstanding Mr. Laue's evidence, I also find that the strata generally followed the rules regarding meetings, minutes, and notices. The strata uses a professional strata

manager. The minutes in evidence, such as those dated April 13, 2022 and May 4, 2020, show that the strata holds meetings and documents decisions in a manner consistent with the SPA.

34. For all those reasons, I find the proposed EV charger and associated alterations are a significant change under SPA section 71. This means that the strata cannot approve installing the proposed EV charger without a $\frac{3}{4}$ vote by the owners. As the owners have not voted to approve the change by the necessary margin or at all, I dismiss Mr. Laue's claim.

CRT FEES AND EXPENSES

35. 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 therefore dismiss Mr. Laue's claims for reimbursement of CRT fees. The parties did not claim for any specific dispute-related expenses.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Laue.

ORDER

37. I dismiss Mr. Laue's claims and this dispute.

David Jiang, Tribunal Member