



Civil Resolution Tribunal

Date Issued: July 24, 2024

File: ST-2022-009866

Type: Strata

Civil Resolution Tribunal

Indexed as: *0526078 B.C. Ltd. v. The Owners, Strata Plan LMS205*, 2024 BCCRT 709

B E T W E E N :

0526078 B.C. LTD.

APPLICANT

A N D :

The Owners, Strata Plan LMS205

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about parking in a strata corporation.
2. 0526078 B.C. Ltd. (applicant) owns strata lot 1 (SL1) and strata lot 29 (SL29) in the strata corporation, The Owners, Strata Plan LMS205. The applicant says that the strata treated it significantly unfairly by not allowing it to continue parking vehicles on

an area of common property near SL1 and SL29. The applicant seeks an order that the strata allow it to use the common property area as the designated parking spot for SL1 and SL29. In the alternative, the applicant asks that the strata assign it alternative parking spots for SL1 and SL29. The applicant's lawyer, Leah Vidovich, represents it.

3. The strata acknowledges that it allowed the applicant to use the common property area for parking for over 20 years without any meaningful objection. However, it says that it never gave the applicant permanent rights to the area and was entitled to cancel the applicant's permission to exclusively use the area on reasonable notice. The strata says it has not treated the applicant significantly unfairly and asks that this dispute be dismissed. The strata is represented by its lawyer, Stephen Hamilton.
4. As explained below, I dismiss the applicant's claims and this dispute.

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 and that an oral hearing is not necessary.
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.

Preliminary Issue

8. In its written argument, the applicant makes new claims and asks for an additional remedy that was not sought in its Dispute Notice. Specifically, the applicant claims that it has lost rental income as a result of the strata's allegedly significantly unfair act of refusing to allow it to continue using the common property area for parking.
9. The purpose of the Dispute Notice is to define the issues and provide fair notice to the strata of the claims against it. CRT rule 1.19 says that the CRT will not issue an amended Dispute Notice after the dispute has entered the tribunal decision process except in extraordinary circumstances. I find no extraordinary circumstances exist here to justify adding new claims at this late stage in the CRT's process. So, I decline to address the applicant's additional claims in this decision.

ISSUES

10. The issues in this dispute are:
 - a. Did the strata treat the applicant significantly unfairly by no longer allowing it to use the common property area for parking?
 - b. If so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

Background

12. The strata was created in 1991.
13. The strata filed a new set of bylaws at the Land Title Office (LTO) in February 2020, and subsequent bylaw amendments in June 2022 and March 2023. Together, I find

these are the strata's bylaws. I discuss the bylaws relevant to this dispute in my reasons below.

14. The strata plan shows that the strata consists of 30 commercial strata lots in 2 buildings. SL1 and SL29 are located at the north-east corner of building A. Each strata lot has 1 limited common property (LCP) parking spot designated for its exclusive use, with the designated spots generally located in front of each strata lot.
15. In August 1997, the strata gave the applicant permission to install a second garage door at SL1 so long as the applicant obtained the necessary permits from the City of New Westminster. The applicant obtained the permits and installed the garage door. Photographs show the 2 garage doors are located next to each other. According to the strata plan, SL1 and SL29's designated LCP parking spots are located next to each other, in front of the 2 garage doors. The applicant says that once it installed the second garage door, it was no longer able to use its designated LCP parking spots. So, the applicant says it began discussing alternative parking areas with the strata.
16. Sometime in 2000 or 2001, the strata agreed to allow the applicant to put gravel down in a landscaped area of common property next to SL1 and SL29 (CP area) so that the CP area could be used for additional parking. The strata council's December 5, 2001 meeting minutes noted that some owners raised concerns about the applicant's change to the CP area. The minutes said that the strata did not have enough parking, and based on that, SL1 and SL29 created 4 new spots at the applicant's expense. The minutes referred to the change as a means of "killing two birds with one stone" as the strata did not like paying for a green space to be looked after, and it helped get some more vehicles "out of the way".
17. The applicant or its tenants undisputedly used the CP area for parking until 2022. The strata says that the applicant did not have the strata's formal permission to do so under *Strata Property Act* (SPA) section 76, or by designating the CP area as LCP for SL1 and SL29's exclusive use. The applicant says that others at the strata have also used the CP area for parking over the years, including as recently as July 2022.

18. On May 13, 2022, the strata gave the applicant written notice that the strata would be restoring the CP area back to natural green space as the strata had concerns about the environment, the safety of sewer and pump systems, and potential liability of using the space for parking when it was not engineered for such use. The strata advised that it would be cancelling the applicant's exclusive use of the CP area on 3-months' notice.
19. The applicant disputed that the strata was entitled to revoke its right to exclusively use the CP area for parking and demanded a hearing under SPA section 34.1. The hearing took place on July 4, 2022, and the strata declined the applicant's request to continue using the CP area for parking.

Did the strata treat the applicant significantly unfairly?

20. The applicant argues that it was significantly unfair for the strata to stop it from using the CP area for parking. It says that all other strata lot owners have a designated LCP parking spot, and that after it installed the second garage door at SL1, it lost the designated LCP parking spots for SL1 and SL29 in front of the garage doors. So, it says that the strata agreed to allow it to use the CP area for parking instead. Based on this alleged agreement, the applicant argues that it is entitled to continue using the CP area for parking.
21. The CRT has authority to make orders preventing or remedying a strata corporations' significantly unfair actions or decisions. 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. In applying this test, an owner's objectively reasonable expectations are a relevant factor, but are not determinative (see *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173).
22. For the reasons that follow, I find the strata has not treated the applicant significantly unfairly.
23. First, as noted above, the strata plan shows that SL1 and SL29 each have a designated LCP parking spot.

24. The applicant says that when it installed the second garage door in 1997, it lost its 2 LCP parking spots because parking in front of bay doors was against the bylaws. It is not entirely clear what bylaw the applicant is referring to.
25. The evidence shows that the strata's bylaws in 2013 included bylaw 40.6 which said that an owner, tenant or occupant must not park or leave a vehicle in a manner that interferes with bay doors. The 2020 bylaws included bylaw 11(c) which said that no occupant or visitor can park on common property, exclusive use areas, stalls or garages allocated for the purposes of parking where it would impede entry to any door or entryway.
26. I find it is not clear from the evidence that parking in SL1 and SL29's designated LCP parking spots would have necessarily impeded entry or interfered with the bay doors, in contravention of bylaws 40.6 or 11(c). Further, the documentary evidence before me does not show that the strata restricted the applicant or its tenants from parking in front of SL1 in the designated LCP parking spots after it installed the second garage door, or that it took the position that the applicant could no longer park in its LCP spots.
27. In any event, in February 2023, the strata passed an amendment to bylaw 11(c), clarifying that strata lot owners, or those authorized by an owner, may park in front of the bay doors of their strata lot. This amendment was filed with the LTO in March 2023.
28. So, as it stands right now, there is nothing in the bylaws restricting the applicant or its tenants from parking in the designated LCP parking spots for SL1 and SL29. I note that in its reply submissions, the applicant says that the parties have agreed that its designated LCP parking spots in front of the bay doors are not considered legal parking. However, there is no evidence of any such agreement, so I find it unproven.
29. Given the above, to the extent that the applicant argues that it is significantly unfair for it to not be allowed to use the CP area for parking because the bylaws previously did not allow it to park in front of its garage doors, I find this unproven. In any event, the bylaws now clearly allow for parking in front of garage doors, meaning that the

applicant undeniably has access to its LCP parking spots, the same as all other owners.

30. Next, to the extent the applicant argues that it is entitled to use the CP area for extra parking, in addition to its designated LCP parking spots, I find this expectation unreasonable. No other strata lots have extra parking spots designated for their exclusive use.
31. Further, common property is jointly owned by all owners in the strata. So, it follows that decisions about common property should be decisions that substantially all owners agree with. Here, the evidence shows that the owners passed a resolution at the strata's February 22, 2023 annual general meeting to spend up to \$8,000 to restore the CP area back to green space. The strata has held off on implementing this change while this dispute is pending. However, given that more than $\frac{3}{4}$ of the owners voted in favour of the resolution, it is clear that the vast majority of owners do not want the CP area to be used for additional parking and favour changing it back to a landscaped green space.
32. The evidence also shows that the current zoning and development permit for the strata do not allow for the CP area to be used for parking. In fact, the applicant received a letter from the City in April 2003 saying just this. In the letter, the City said that all changes to the exterior of a building or the site in general require authorization by means of an amendment to the original development permit. The letter noted that the City had not given the applicant authorization to remove the landscaping in the CP area and convert it to a gravel parking lot. So, the CP area was contravening the City's development permit requirements and removing the landscaping was in breach of the City's zoning bylaw.
33. The applicant says that after receiving this letter, the City's mayor at the time visited the strata and told the applicant that the City would not interfere and that the gravel parking was a good idea. Notably, there is no documentary evidence showing that the City agreed to waive the strata's compliance with its zoning bylaw and development permit requirements with respect to the CP area. I agree with the strata

that recent communications from the City that are in evidence suggest that the gravel CP area continues to contravene the approved development permit.

34. The strata's evidence also includes a zoning compliance report from Thinkspace60 Architecture Planning Interior Design Ltd. (Thinkspace). The report was prepared by Rosie Hadzipetros and reviewed by Henk Kampman. Rosie Hadzipetros is a planner with Thinkspace and has a master's degree in urban design. Henk Kampman is a senior architect with Thinkspace. I find Rosie Hadzipetros and Henk Kampman are qualified to give expert opinion about whether the applicable zoning allows the CP area to be used for parking, and I accept the Thinkspace report as expert evidence in this dispute.
35. The Thinkspace report says that after reviewing the applicable plans and policies, the gravel CP area contravenes the City's development permit requirements and zoning bylaw. The report says that the conversion from a landscaped area to a gravel parking lot was not authorized by the City and is unlawful.
36. I note that the strata's bylaw 4.3(a)(iv) says that an occupant or visitor must not use common property in a way that is illegal or does not comply with city zoning bylaws. So, I find it is not reasonable for the applicant to expect the strata to continue to allow it to use the CP area for parking as doing so is contrary to the City's zoning bylaws and, as a result, strata bylaw 4.3(a)(iv).
37. I also agree with the strata that there is no evidence that the strata intended to grant the applicant permanent rights to the CP area. So, I find the applicant's expectation that it would be able to continue using the CP area for parking indefinitely, unreasonable.
38. Further, to the extent that the applicant argues that the strata's acquiescence in allowing it to use the CP area for parking for over 20 years has resulted in it acquiring some sort of right to exclusively use the area, I disagree. The only way for a strata lot owner to gain rights to exclusively use common property that is not LCP is by either designating the area as LCP or getting permission under SPA section 76 for short-term exclusive use.

39. Here, it is undisputed that the strata has not taken steps to amend the strata plan or hold a $\frac{3}{4}$ vote to pass a resolution to give the applicant exclusive use of the CP area as LCP. At most, I find the strata informally gave the applicant permission to exclusively use the CP area under SPA section 76.
40. SPA section 76 says that the strata may give an owner or tenant permission to exclusively use common property for a period of not more than 1 year, which can be renewed. Section 76(4) says that the strata can cancel that permission on reasonable notice. I find the strata did just that in its May 13, 2022 letter. As the SPA specifically allows the strata to cancel a short-term exclusive use agreement, I find the applicant does not have any entitlement to continue exclusively using the CP area for parking.
41. Finally, contrary to the applicant's assertions, I also find it unproven that the strata's decision to revoke the applicant's permission to continue using the CP area for parking was done in bad faith or malice.
42. Given all of the above, I find the strata has not acted significantly unfairly by refusing to allow the applicant to continue using the CP area for parking. As a result, I dismiss the applicant's claims.

CRT FEES AND EXPENSES

43. 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. As the applicant was unsuccessful, I dismiss its claim for reimbursement of its paid CRT fees. The strata did not pay any fees and neither party claims any dispute-related expenses, so I award none.
44. The strata must comply with SPA section 189.4 which includes not charging dispute-related expenses against the applicant.

ORDER

45. I dismiss the applicant's claims and this dispute.

Nav Shukla, Tribunal Member