IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Owners, Strata Plan EPS 3699 v. Siemens,* 2025 BCSC 227

Date: 20250212
Docket: S235880
Registry: Vancouver

Between:

The Owners, Strata Plan EPS 3699

Petitioner

And

Kendra Lee Siemens
Civil Resolution Tribunal

Respondents

Before: The Honourable Madam Justice W.A. Baker

On judicial review from: A decision of the Civil Resolution Tribunal, dated July 28, 2023 (*Siemens v. The Owners, Strata Plan EPS 3699*, 2023 BCCRT 633 (ST-2022-006288)

Reasons for Judgment

Counsel for Petitioner:	S. Todesco
The Respondent, appearing in person:	K. Siemens
Counsel for Respondent, Civil Resolution Tribunal:	Z. Rahman
Place and Date of Hearing:	Vancouver, B.C. February 6, 2025
Place and Date of Judgment:	Vancouver, B.C. February 12, 2025

Introduction

[1] This is a petition for judicial review of a decision of the Civil Resolution Tribunal (CRT), dated July 28, 2023, brought by The Owners, Strata Plan EPS 3699, a strata corporation for a property in Kelowna, BC (the "strata"). The underlying dispute relates to the allocation of a limited common property (LCP) parking space in the property. Ms. Siemens, a strata unit owner, was successful against the strata before the CRT.

[2] The CRT briefly summarized the dispute as follows:

> 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.

[3] Before the hearing of this petition, the parties were able to narrow the issues before me. They agree on the standard of review, and they agree that there is only one order made by the CRT which remains in issue:

> 34. I order the strata to:
>
> …
>
> 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.

[4] It was common ground before me that the strata and Ms. Siemens have worked diligently to try to resolve the issue of Ms. Siemens' parking space, but have not been successful.

[5] The strata submits that, while it would like to comply with the CRT order, it is unable to do so given the restrictions it must work within pursuant to the *Strata Property Act*, S.B.C. 1998, c. 43 ["*SPA*"]. The strata submits that order 1(c) is patently unreasonable because it is *ultra vires* the *SPA*, it failed to take into account statutory requirements, and is vague, ambiguous and unenforceable as drafted.

Issues on Judicial Review

[6] The judicial review raises the following issues:

a) Is the decision of the CRT patently unreasonable?

b) If yes, what is the appropriate remedy?

Is the decision of the CRT patently unreasonable?

Standard of review

[7] The standard of review of CRT decisions is set out in the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 [“*CRTA*”], Part 5.1. The CRT has exclusive jurisdiction to determine this strata property claim, pursuant to s. 121 of the *CRTA*. As such, the CRT is considered to be an expert tribunal in relation to this claim (s. 56.7(1)), and the standard of review in relation to the CRT decision in this case is patent unreasonableness (s. 56.7(2)(a)).

[8] The strata submits the decision is patently unreasonable within the definition found in s. 56.9 of the *CRTA* in that the decision fails to take statutory requirements into account. In addition, the strata says the order is patently unreasonable because it is unenforceable.

Relevant findings of fact

[9] The CRT made a number of findings which are not challenged in this review.

[10] Under the headings “Is the strata the proper respondent?” and “Is Ms. Siemens out of time under the LA [*Limitations Act*, S.B.C. 2012, c. 13] to file her claims?”, the CRT made the following findings of fact.

[11] The CRT found that the strata council was responsible for PS133 (the parking stall allocated to Ms. Siemens), as a form of limited common property. Before the strata council is elected, the owner-developer must exercise the powers and duties of the strata council. After the deposit of the strata plan with the Land Title Office, the

original placement of PS133 was altered by the owner-developer while it was still exercising the powers and duties of the strata council. The CRT held:

> 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.

[12] The CRT also held that Ms. Siemens' claim was for the loss of a usable parking stall. Ms. Siemens "first noticed PS133 was inaccessible in July 2019, when the parking stall lines were 'moved'."

[13] The CRT held "the strata's obligation to manage common property for the benefit of the owners under *SPA* section 3 is a continuing obligation."

[14] The paragraphs of the decision which are central to the petitioner's application are found under the heading "How must the strata address the parking stall issue, if at all?". The CRT made the following findings of fact:

a) Before the lines were repainted, PS133 was usable for a small vehicle.

b) PS133 is functionally unusable as currently configured because the parking stall was relocated when the lines were repainted.

c) 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.

d) 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.

e) PS133 is located about 2 feet east of where it is shown on the strata plan.

f) Ms. Siemens's position that she is entitled to a usable parking stall, is reasonable.

g) PS133 is LCP and was relocated as a result of the line repainting, without a unanimous vote of the owners, as required by s. 257 of the *SPA*.

h) All parking stalls, except visitor stalls, are designated as LCP on the strata plan.

i) 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.

[15] The orders of the CRT were based on the following analysis:

> 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.

Analysis

[16] The petitioner submits that CRT order 1(c) lacks clarity and direction as to what a "permanent parking arrangement" is, and how the strata may, within the parameters of the *SPA*, make a permanent parking arrangement.

[17] Ms. Siemens submits that there are a number of options to resolve the parking issue. Two of the options proposed are now moot, as the City has not approved them. These are moving PS133 back to its original location, and moving the fence. The remaining two options are to 1) explore options under s. 76 of the *SPA* to provide Ms. Siemens with exclusive use of a visitor parking stall on a permanent basis, and 2) under s. 257 of the *SPA*, asking the owners to vote to remove the LCP designation of a visitor parking stall and assign it to Ms. Siemens. I note that while Ms. Siemens submits it is open to the strata to remove the LCP designation of a visitor parking stall, in fact the visitor parking stalls are common property, not limited common property. Therefore, Ms. Siemens options must logically be understood as two fold: 1) to grant exclusive use of one visitor parking stall to Ms. Siemens pursuant to s. 76 of the *SPA*, or 2) to designate one visitor parking stall as limited common property, to her benefit, under either s. 74 or 257 of the *SPA*.

[18] The petitioner submits that the CRT's order does not address any of the statutory provisions in the *SPA*, within which the strata must work, and does not set out the legal basis upon which the CRT made this discretionary order. If the intent of CRT order 1(c) is to require the strata to override the voting requirements of the owners set out in ss. 71, 74, or 257 of the *SPA*, the CRT has failed to identify in its decision the authority for such an order, and thus the Order is *ultra vires* and patently unreasonable.

[19] Limited common property is a unique category of property. While it is not owned by an owner in the way an owner owns their unit, the owner nevertheless exercises substantial control over their limited common property and has something akin to a beneficial interest in it: *Moure v The Owners, Strata Plan NW2099*, 2003 BCSC 1364 at para. 22.

[20] Sections 71, 74 and 257 of the *SPA* set out voting requirements before changes to common property or limited common property can be made. These sections require either a 3/4 vote of the owners, or a unanimous vote of the owners.

The voting rights of the owners are personal rights to the owners, and are independent of the powers and duties of the strata corporation.

[21] In *Norenger Development (Canada) Inc. v. The Owners, Strata Plan NW 3271*, 2016 BCCA 118, the court of appeal discussed the unique powers and duties of owners vis-à-vis the strata corporation. In that case, the court was addressing the powers of an administrator. However, I find that the comments are equally applicable to the case before me:

> [63] I would also find that the principles enunciated in *Aviawest*, *Toth* and *Cook* remain relevant despite the subsequent enactment of s. 174(7) in 2009. These principles are applicable to the case at bar and can be distilled as follows:
>
> - Democratic governance lies at the core of the *Act* and is fundamental to the function of a strata corporation established under the *Act.*
> - Under s. 174 of the *Act*, the court may appoint an administrator to exercise the powers and perform the duties of a strata corporation.
> - The powers and duties of a strata corporation are independent from the powers and duties of the owners who are members of that strata corporation. The right to vote on and pass a resolution at an annual or special general meeting is an individual right possessed by the owner of a strata lot (or an assignee or mortgagee under s.54 of the *Act).*
> - The *Act* provides that a strata corporation, *qua* strata council, must obtain the approval of voters before taking certain action.
> - Absent specific statutory authorization, the court cannot empower an administrator to act without the approval of voters as required under the *Act.*
>
> [64] Under s. 1(1), a "majority vote" means a vote in favour of a resolution by more than half of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and have not abstained from voting. A "3/4 vote" means a vote in favour of a resolution by at least three quarters of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and have not abstained from voting. A "unanimous vote" means a vote in favour of a resolution by all the votes of all the eligible voters. This latter threshold – the requirement for a resolution passed by *all eligible voters* – only serves to underscore the importance of an owner's stake in the democratic governance of a strata corporation.

Change in use

[22] Dealing first with s. 76 of the *SPA*, this section permits a strata to give an owner the right to exclusively use common property. The visitor stalls are common property. However, s. 76 does not permit a strata to grant exclusive use for a period

of more than one year (there is a provision for a period of up to five years in certain circumstances, which are not applicable here). The strata may renew the permission, and may cancel the permission. Therefore, s. 76 does not provide an avenue to deliver a **permanent** parking stall, as required by CRT order 1(c).

[23] In addition, s. 71 of the *SPA* requires any changes in the use of common property to be approved by a 3/4 vote of the owners at an annual or general meeting. As such, the strata does not have the jurisdiction under the *SPA* to unilaterally comply with CRT order 1(c), through the use of s. 76 of the *SPA*. The power under s. 76 is consequent upon a vote under s. 71, and exercise of the owners' voting rights.

Designation of limited common property

[24] Section 73 of the *SPA* sets out how common property may be designated as limited common property. In instances other than by the owner developer, such a designation may be made by an amendment to the strata plan under s. 257, or by resolution passed at an annual or general meeting of the owners pursuant to s. 74 of the *SPA*.

[25] A designation of limited common property made under s. 74 of the *SPA* is made pursuant to a 3/4 vote of the owners. However, such a designation may also be removed by a 3/4 vote of the owners. As such, a s. 74 designation may not be considered permanent as it is always subject to removal against the wishes of the owner holding the designation.

[26] Section 257 of the *SPA* permits a designation of limited common property through the amendment of the strata plan. It requires a unanimous vote at an annual or special general meeting of the owners to either designate limited common property, or remove a designation of limited common property, by way of an amendment to the strata plan. In a sense, a designation under s. 257 is as permanent a designation as can be achieved under the SPA, as it requires unanimous approval of all the owners to remove the designation.

[27] The CRT was alive to the restrictions under s. 257 when it concluded:

> 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 ¾ 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.

[28] The difficulty with order actually made by the CRT, is that it did not consider how common property could be permanently allocated to Ms. Siemens, i.e. by way of a limited common property designation. The CRT did not order a re-designation of an existing LCP parking stall to Ms. Siemens. Therefore, the only possible option appears to be designating common property as limited common property. If a visitor stall was designated LCP through an amendment to the strata plan, and that parking stall was transferred to Ms. Siemens (or associated with her unit), conceivably this would provide her with a "permanent parking arrangement". However, if the strata wanted to designate a visitor stall to LCP for Ms. Siemens, and amend the strata plan to do so, all of the owners would have to agree to this. Again, the strata does not have the jurisdiction under the *SPA* to unilaterally change the designation of common property.

[29] Further, as the strata property is already out of compliance with the City's required number of visitor parking stalls, it is not clear how the City would respond to the loss of one of the visitor parking stalls.

[30] The CRT identified no statutory authority which would permit it to order the strata to act without the approval of the voters as required under the *SPA*. Section 123 of the *CRTA* sets out the orders available to the CRT in a strata property claim. If the CRT intended to rely on s. 123 in making Order 1(c), it would need to explain in its reasons how that section permitted it to enable the strata to act without the approval of the owners required under ss. 71, 74 or 257 of the *SPA*.

[31] I agree with the petitioner that CRT order 1(c) is patently unreasonable for two reasons:

a) The CRT order fails to take all relevant statutory requirements into account, and provide a remedy consistent with the *SPA*.

b) The CRT order requires the strata to exercise powers it does not have under the *SPA*. In complying with the CRT order, the strata will be in breach of the *SPA*. As such, I find the order to be unenforceable.

If yes, what is the appropriate remedy?

[32] All parties agreed that if I found the CRT order to be patently unreasonable, I should remit this matter to the CRT for reconsideration.

[33] In the circumstances, I agree that this matter must be sent back to the CRT for a reconsideration, with the following directions:

a) the CRT will reconsider the issues raised in this claim, in the context of the statutory powers of and restrictions on a strata corporation under the *SPA*,

b) before the CRT, the parties may raise new remedies and bases for relief which were not argued on the original hearing, and may adduce new evidence relevant to these issues, and

c) the findings of fact made by the CRT, which are referenced in this decision, are not set aside, and the parties remain bound by those findings.

[34] All parties agree that they will bear their own costs of this judicial review.

"W.A. Baker J."