SUPREME COURT OF CANADA

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Case in Brief: *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*

Judgment of October 23, 2020 | On appeal from the Court of Appeal for British Columbia
Neutral citation: 2020 SCC 29

A binding agreement will exist where both sides show by their actions they meant to enter an agreement, the Supreme Court has ruled.

Crystal Square was a large complex in Burnaby, BC. It had a mall, office tower, residential tower, hotel, parking garage, police office, and cultural centre. Each was in a different "air space parcel." Air space parcels are parts within a whole. They can be separate buildings, or parts of a building (like specific floors in a large tower). Legally, air space parcels are separate. But they can share certain parts of the building or services. For example, access to the street or connections for water or electricity.

When Crystal Square was built, its developer signed an Air Space Parcel Agreement with the City of Burnaby. One thing the agreement set out was access to parking for each air space parcel and how much they would pay for it.

The office tower was a strata (condo) tower. A strata is made up of several units or "strata lots." Strata lots are owned by different people, but have shared areas. Each strata lot owner is a member of a strata corporation. The corporation manages and maintains shared areas and services. A strata corporation is considered a legal person. That means it can sign contracts and own property, just like a physical person can. The strata corporation didn't exist yet when the Air Space Parcel Agreement was signed. But the members of the strata corporation still used the parking garage and paid for it like the agreement said.

Eventually, the owners felt that the parking cost was too high. They realized they never formally signed the Air Space Parcel Agreement. They said they didn't agree to the terms and it didn't apply to them.

Crystal Square Parking owned and ran the parking garage. It said the strata corporation accepted the agreement by following the terms for a while.

The trial judge said the strata corporation didn't sign any agreement. She said the agreement between the developer and the city couldn't be enforced against the corporation. The Court of Appeal said the strata corporation made a new agreement about parking. The new agreement had the same terms as the one between the developer and the city.

The majority of judges at the Supreme Court of Canada agreed with the Court of Appeal. They said the strata corporation made a new agreement with Crystal Square Parking, and that it could be enforced. They said the new agreement had the same terms that were in the Air Space Parcel Agreement.

The Court used the usual rules of contract law to decide this case. There was no law in BC that would change the way the rules applied to a strata corporation. It was clear the owners couldn't be forced to follow the original Air Space Parcel Agreement. Contracts are only between the parties who agree to them. Two people can't sign a contract to force another person, who didn't agree, to do something. This is called "privity of contract." ("Privity" comes from the same Latin word that "private" does, and contracts are private agreements.) Some companies can "adopt" contracts that were agreed to before they existed, but that didn't apply here.

The majority said the strata corporation made and accepted a new agreement, though. The owners had to follow that.

Generally, contracts don't have to be in writing. That just makes the terms easier to prove. If it's not clear that there is an agreement, or exactly what was agreed to, courts look at actions. If both sides showed they meant to enter an agreement, and acted in a way that led the other side to expect they would follow through, then there is a contract. In this case, Crystal Square Parking made parking passes available to the strata owners. The owners used the parking spots and paid the fees that the original Air Space Parcel Agreement set out. In this situation, there was no reason for Crystal Square Parking to think the strata owners *didn't* agree to the terms.

This case was decided based on common law contract rules (that is, rules about contracts developed by judges). Legislatures can change these rules by passing laws, but no written laws (statutes) applied to strata corporations in this particular case. The Supreme Court of Canada has dealt with many different kinds of contract issues before. For example, in *Moore v. Sweet*, it said a verbal agreement about who got insurance money was valid.

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Breakdown of the decision: ***Majority:*** Justice Suzanne Côté dismissed the appeal (Chief Justice Wagner and Justices Abella, Moldaver, Karakatsanis, Brown, Martin, and Kasirer agreed) | ***Dissenting in part:*** Justice Malcolm Rowe agreed with the majority on the law, but said the trial court was best-placed to decide whether the strata corporation agreed to accept the terms that were set out in the original Air Space Parcel Agreement

More information (case # 38741): Decision | Case information | Webcast of hearing

Lower court rulings: trial (Supreme Court of British Columbia) | appeal (Court of Appeal for British Columbia)