

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hutchison v. The Owners, Strata Plan VIS*
962,
2026 BCSC 1451

Date: 20260730
Docket: S259520
Registry: Victoria

Between:

Kathryn Caroline Hutchison and John Michael Hutchison

Petitioners

And:

The Owners, Strata Plan VIS 962

Respondent

Before: The Honourable Madam Justice V. Jackson

Reasons for Judgment

In Chambers

Counsel for the Petitioners:

J.M. Hutchison, K.C.

Counsel for the Respondent:

E. Shen

Place and Date of Hearing:

Victoria, B.C.
April 1, 2026

Place and Date of Judgment:

Victoria, B.C.
July 30, 2026

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INTRODUCTION

[1] The petitioner Kathryn Caroline Hutchison is the successor in title to two dominant tenements. She and her spouse seek declarations that the Easement at issue in this case includes an ancillary right to park on the easement area.

[2] The Owners, Strata Plan VIS 962 ("Strata 962"), as successors in title to the servient tenement, oppose the relief sought.

FACTS

[3] The petitioners are the owner and spouse, respectively, of two strata lots in Lot 203, Victoria City Strata Plan 490, in downtown Victoria, British Columbia ("Strata 490").

[4] Strata 490 consists of three strata lots, vertically arranged. Strata Lot 1 is a commercial unit in which Mr. Hutchison's law firm has been located since Lot 1 was purchased in 2013 in the name of Ms. Hutchison (the "Law Firm Lot"). Strata Lot 2 is a restaurant, not owned by the petitioners. Strata Lot 3, the top unit, is the only strata lot zoned residential in Strata 490 and is the petitioners' residence (the "Residential Lot").

[5] The Residential Lot was constructed by Hans Hartwig, for his sister Katerina Monson and her husband Frederick Monson, when they immigrated from Germany. The Monsons acquired the Residential Lot on June 19, 1977, and lived there until their respective deaths. Mr. Monson died in March 1994, following which Ms. Monson became the sole registered owner. Following the death of Ms. Monson, full title to the Residential Lot passed to Mr. Hutchison in September 2009, by right of survivorship. On December 14, 2012, Mr. Hutchison transferred his interest in the Residential Lot to Ms. Hutchison. The petitioners have lived in the Residential Lot since September 2013.

[6] Strata 490 is its own building. However, it is attached to the northern end of Lot 2, of Lots 200A and 200B, and Lot 203, Victoria City, Plan 28188, (the "Hartwig Court Property and Building") and by appearance looks like it is part of Hartwig

Court. Both Strata 490 and Hartwig Court Property and Building front onto Wharf Street in downtown Victoria. The Hartwig Court Property and Building is entirely commercial.

[7] Strata 962 is civically located at 1234 Wharf Street in Victoria and consists of 57 strata lots (the “962 Property”). The building in which those strata lots are situated is referred to as the Victoria Regent Hotel (the “962 Hotel Building”).

[8] Approximately 30 strata lots of Strata 962 participate in a rental pool known as the Victoria Regent Waterfront Hotel and Suites (the “Hotel Operation”). A number of the strata lots in the 962 Hotel Building are owner occupied and do not form part of the Hotel Operation. The evidence does not include information about how the Hotel Operation is structured or governed, or the particulars of the relationship between Strata 962, or any of its strata lots, and the Hotel Operation.

[9] Prior to the construction of the 962 Hotel Building, the 962 Property was owned by Diversified Holdings Ltd. (“Diversified”), then owned by Mr. Hartwig, now deceased. The 962 Property at that time included a private road extending from Yates Street to the rear of Hartwig Court Property and Building, which provided the only access to the lowest level of Hartwig Court and the Strata 490 properties. According to Mr. Hutchinson’s evidence, Mr. Hartwig and the Monsons advised him that they and the tenants of Hartwig Court Property and Building were able to park their vehicles on that private road. I am mindful that this evidence, led for the truth of those out of court statements, is hearsay but I have concluded it is admissible under the principled exception to the hearsay rule. Given Mr. Hartwig and the Monsons are all now deceased, the hearsay evidence is necessary, and I consider it to be reliable. It is consistent with other evidence regarding subsequent litigation to which I refer later in these reasons, and the fact was pled in the petition and not disputed, and the evidence was not challenged or contradicted.

[10] The 962 Property was at some point acquired by Inner Harbour Management Corporation (“Inner Harbour”), the entity that undertook the construction of the 962 Hotel Building.

[11] The only direct access to Strata 490, other than by foot through Hartwig Court, is through a right of way which is registered on the title of the 962 Property as an easement with land registry number K71251 (the “Easement”), part of which passes through the lowest level (underground parking) of the 962 Hotel Building and part of which is outside.

[12] The Easement was entered into by:

- a) the Inner Harbour - then owner of the 962 Property and in the process of constructing the 962 Hotel Building;
- b) Cedric Steel Realty Ltd. (“Cedric Steele”) - then owner of the Law Firm Lot and Lot 2 of Strata 490;
- c) Diversified - then owner of the Hartwig Court Property and Building, which was adjacent to the 962 Property and Strata Plan 490;
- d) Kingsley Enterprises Ltd. (“Kingsley”) – which held a right to purchase Diversified’ s interest in the Hartwig Court Property and Building; and
- e) The Monsons - then owners of the Residential Lot.

[13] Cedric Steele and Kingsley were related entities with a common registered and records office and a common director, being Samuel Cedric Steele. Mr. Steele is still alive.

[14] In the Easement, Inner Harbour granted “in perpetuity” to Cedric Steele, Kingsley, Diversified and the Monsons, “the right and easement for those parties, their servants, agents, employees, successors and assigns and all other licensees of those parties the right to pass and repass whether by foot, on motor vehicle or otherwise over ... the easement area...for the purpose of access to Strata Lots 1 and 2 [being the Law Firm Lot and Strata 490 Lot 2 respectively], Lot 2 [being the Hartwig Court Property and Building] and Strata Lot 3 [being the Residential Lot]”.

[15] The Easement went on to state that the grant would take effect on the earlier of April 2, 1981, or when the buildings and improvements then being constructed on the 962 Property, being the 962 Hotel Building, had been substantially completed.

[16] The Easement further provided that “the passing and repassing over the easement area by Cedric Steele, Diversified and Kingsley shall only be between the hours of 7:00 AM and 9:00 PM, provided, however that [the] Monson[s’] right to pass and repass over the easement area shall be unrestricted as to time”. The difference in access hours was a clear recognition and reflection of the domicile nature of the Residential Lot.

[17] Ever since moving into the Residential Lot, the petitioners have parked their personal vehicles, including overnight, in the Easement area, in designated parking spots determined by Strata 962 (the “Parking Spots”).

[18] In May 2024, Strata 962 advised the petitioners they did not believe that Easement provided the petitioners any right to park in the easement area. On or about May 17, 2024, Strata 962 caused an email to be sent to Ms. Hutchison proposing license agreements allowing the petitioners to park in the Parking Spots, in exchange for the payment of a fee. The petitioners declined to sign the license agreements.

GOVERNING LEGAL PRINCIPLES

[19] Easements, like other restrictive covenants, are to be interpreted based on an application of the general principles of contractual interpretation: *Tessaro v. Langlois*, 2019 BCCA 95 at para. 18. The paramount goal of contractual interpretation is to determine “the intent of the parties and the scope of their understanding”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47 [*Sattva*]. The exercise of contractual interpretation involves reading “the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”: *Sattva* at para. 47; *Reddick v. Robinson*, 2024 ONCA 116 at para. 15.

[20] The owners of a dominant tenement are entitled to every reasonable use of an easement for its granted purpose, and “accordingly, the grant of an easement is *prima facie* also the implied grant of any ancillary rights that are necessary for the comfortable use and enjoyment of the easement in accord with its purpose”: *Armstrong v. North Saanich (District)*, 2025 BCCA 277 at para. 100, leave to appeal to SCC ref’d, 420334 (14 May 2026); *1711811 Ontario Ltd. v. Buckley Insurance Brokers Ltd.*, 2025 ONCA 56 at para. 25; *Moncrieff v. Jamieson*, [2007] UKHL 42 at para. 29. An ancillary right is a right that is reasonably necessary for the exercise or enjoyment of the easement: *Wolff v. Canada (Attorney General)*, 2017 BCCA 30 at paras. 40–41; *Fallowfield v. Bourgault*, 235 D.L.R. (4th) 264 at paras. 10–13, 2003 CanLII 4266 (O.N.C.A.); 555094 *B.C. Ltd. v Aphrodite’s Garden Oyster Company Ltd.*, 2022 BCSC 461 at para. 25; *Primont (Castelmont) Inc. v. Friuli Benevolent Corporation*, 2023 ONCA 477 at para. 63; *St. Hilaire v. 0772255 BC Ltd.*, 2022 BCSC 2168 at paras. 15–16; *Mighton v. Brindley*, 2024 ONSC 2204 at para. 18; *The Owners, Strata Plan VR 1364 v. The Owners, Strata Plan VR 2027*, 2025 BCSC 2555 at para. 55 [VR 1364].

ISSUE

[21] The issue is whether the petitioners have established that parking is an ancillary right reasonably necessary to the use and enjoyment of the Easement contemplated by the grantor.

ANALYSIS

Surrounding circumstances are properly considered as part of the Court’s analysis

[22] As a preliminary point, the respondent submits the Easement is not ambiguous and that therefore it is not necessary to consider the surrounding circumstances in which the Easement was made.

[23] However, consideration of what ancillary rights are reasonably necessary to the use and enjoyment of the easement which was contemplated by the grantor involves “a consideration of all of the circumstances which are in any way relevant”: *Kasch v. Goyan*, 81 B.C.L.R. (2d) 268 at para. 11, 1993 CanLII 2291 (B.C.C.A.); *MacKenzie v. Matthews*, 180 D.L.R. (4th) 674 at para. 8, 1999 CanLII 19931 (O.N.C.A.). The factual context in which the contract was created, and the background and purpose of the document known to the parties at the time, serve as guides to its interpretation, and evidence on such objective background facts is admissible: *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20 at paras. 63–65 [*Earthco*]; *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29 at para. 101; *Robb v. Walker*, 2015 BCCA 117 at paras. 31–32; *Arbutus Bay Estates Ltd. v. Canada (Attorney General)*, 2017 BCCA 374 at paras. 27 to 29; *Sattva* at paras. 50, 58; *Hofer v. Guittoni*, 2011 BCCA 393 at para. 14; *Brundrett v Muckle*, 72 A.C.W.S. (3d) 596 at para. 11, 1997 CanLII 4439 (B.C.C.A.).

[24] Evidence of surrounding circumstances must not overwhelm the words of the agreement: *Sattva* at para. 57; *Earthco* at para. 63; *Robb* at paras. 31–32. However, the law recognizes the limits of language, the fact that “words are not ends in themselves”, and that “words alone do not have an immutable or absolute meaning” so cannot, by themselves, convey the commercial purpose of a contract, but are rather “a means to demonstrate, discern and determine the true intention of the parties”: *Earthco* at para. 64.

[25] Further and in any event, the language of the Easement describing the purpose for which the right to pass and repass was granted in perpetuity is ambiguous, referring to “the purpose of access” without further detail. The Easement does not even specify whether such access is pedestrian only, pedestrian and vehicles, or otherwise, although the parties are *ad idem* that the intention included vehicle access. In my view, it is appropriate to look at the surrounding circumstances and objective facts that were known to the parties to the Easement at the time it was executed in determining whether parking is an ancillary right reasonably necessary

to the use and enjoyment of the Easement contemplated by the grantor: *Sattva* at paras. 57–58.

Positions of the parties

[26] The petitioners submit the language of the Easement, the right to park on the private road before the construction of the 962 Hotel Building, the elimination of the private road as part of the construction of the 962 Hotel Building with the consequence of the Residential Lot and the Law Firm Lot becoming landlocked with nowhere to pass “to” beyond what became the Easement area, and the subsequent litigation by the Monsons alleging interference with their parking rights and the settlement of that aspect of the litigation by execution of Easement, all support the conclusion that parking is an ancillary right reasonably necessary to the use and enjoyment of the Easement contemplated by the grantor at the time the Easement was executed.

[27] Strata 962 concedes the Easement is intended to create a right of vehicular access, but it argues that the right is limited to a right to drop off and pick up and does not include a right to park.

Parking is an ancillary right of the Easement

[28] I have concluded parking is an ancillary right reasonably necessary to the use and enjoyment of the Easement contemplated by the grantor. I find the intended purpose of the Easement was to provide off-street parking, 24 hours a day for the Residential Lot and during shorter business hours for the Law Firm Lot and other commercial dominant tenements.

[29] In 1980 the Monsons, then the owners of Lot 3, commenced an action in the Supreme Court of British Columbia's Victoria Registry against Inner Harbour, the company that had purchased the 962 Property from Diversified and was in the process of constructing the 962 Hotel Building. The action was assigned file number 80/1902. Given the passage of some 45 years, the file of Mr. Hutchison, who acted for the Monsons in that litigation, has long been destroyed.

[30] The action alleged Inner Harbour had constructed the 962 Hotel Building in contravention of the terms of its development permit and in interference with a parking right on a then existing easement in favour of the Residential Lot (the “Former Easement”) that the 962 Hotel Building had been constructed over.

[31] The issue with respect to the interference of the Monsons’ parking right under the Former Easement was settled by replacement of the Former Easement with the Easement at issue in this case, which was executed on June 10, 1980. The Easement was registered in the Land Title Office on July 10, 1981, and on July 23, 1981, the strata plan for Strata 962 was deposited in the land title office.

[32] Ultimately, a judgment in default was obtained against Inner Harbour, which judgment was for damages that were unable to be recovered as Inner Harbour Management Corporation had divested itself of the 962 Property by its conversion to Strata 962.

[33] At the hearing, counsel for the respondent argued the evidence of Mr. Hutchison with respect to the circumstances leading to the creation of the Easement should not be relied on because it was uncorroborated. However, the respondent did not dispute these background facts, which were pled in the petition, in its petition response. The evidence of Mr. Hutchinson was both unchallenged (no efforts being made to seek to cross-examine him on his affidavit) and uncontradicted, despite the fact that, as counsel for the respondent acknowledged at the hearing before me, Mr. Cedric Steele, principal of at least two of the parties to the Easement, is still alive. There was no suggestion he was incapable of providing evidence nor evidence about any steps taken by the respondent to seek his doing so.

[34] The respondent relies on *Brundrett* at paras. 10–13 and *Banville v. White*, 2002 BCCA 239 at para. 48, and for the proposition parking is a separate right which is not ancillary to an easement. However, as the respondent acknowledged, while parking is not necessarily ancillary to any particular grant of easement, it may be reasonably incidental, depending on the circumstances: *Brundrett* at para. 10;

Banville at paragraph. 47. Every case will turn on its own facts. The trial judge in *Arbutus Bay* acknowledged that parking is not an ancillary right in the majority of cases, but held that the case before her was an unusual one, akin to *Moncrieff*, since there was no parking available within 1.5 kilometres of the wharf and therefore concluded that in the unique circumstances of the case, parking along the road was a necessary ancillary right: *Arbutus Bay Estates Ltd. v. Canada (Attorney General)*, 2016 BCSC 2083 at para. 98, rev'd 2017 BCCA 374 at para. 73 [*Arbutus Bay CA*], leave to appeal to SCC ref'd, 37892 (11 October 2018). While Justice Tysoe allowed the appeal with respect to parking, he did so only to the extent the trial judge's order had permitted parking on lands owned by the plaintiff which were not part of the area covered by the easement: CA at paras. 74, 79, 88–89. The remainder of the trial judge's order remained intact.

[35] The respondent relies on *Brundrett*, in which Justice Southin held the grant did not carry with it the right parking: at para. 12. However in that case the language of the grant was “an easement as are reasonably necessary for [the] exercise and enjoyment” for several purposes including “to enter, construct, maintain, inspect, alter and repair the sewer lines” on the identified portion of the dominant lands, including with necessary equipment, and to “cross over the easement area... to and from the servient lands and Brook Ridge Drive”, evidencing an intention that the purpose of the easement was limited facilitating the creating and subsequent maintaining of the sewer lines. The facts of *Brundrett* are not analogous to those of the case before me and therefore it provides little guidance to me in interpreting the Easement.

[36] Similarly, the nature of the ancillary right asserted in *Robb*, on which the respondent relies, was to dig and lay permanent underground sewer lines, which is qualitatively different from the asserted ancillary right of parking in this case. Writing for the majority of the division, Justice Willcock upheld the trial judge's interpretation of easement, concluding that the easement in that case, which provided the grantees with the right “to use, enter, pass and re-pass over and upon” the lands, would only permit the installation of underground sewer lines if the word “use” were

read so broadly as to grant an easement to ‘use for any purpose’ or ‘use in any manner consistent with the designation of the easement as public land’, which Justice Wilcock found was inconsistent with the specific uses identified in the grant (entry, passing and re-passing): para. 37. Further, the factual matrix in *Robb* included the potential incidents that could flow from that such use. There are no such concerns in this case.

[37] The historical availability and right to use of the private road on the 962 Property for parking by owners of the Residential Lot pursuant to the Previous Easement prior to the construction of the 962 Hotel Building, the demise of that parking right as a consequence of Inner Harbour’s construction of the 962 Hotel Building, the parking dispute that followed, including litigation and settlement of that aspect of the litigation by way of the Easement, were all objective facts known to parties to the Easement agreement at the time the Easement was executed. Similarly, the absence of any other guaranteed off-street parking for the Residential Lot and the Law Firm Lot, and the geography and configuration of the Easement relative to Strata 490, were also objective facts known to the parties to the Easement at the time. Further, although my conclusion does not turn on this point, as counsel for the respondent acknowledged at the hearing, reasonably in my view, it was also undoubtedly known to the parties that residential zoning would have required guaranteed access to off-(public) street parking for the Residential Lot, given it is only very recently that such zoning prerequisites have been relaxed.

[38] My conclusion that parking is an ancillary right of the Easement is supported by several cases I find to be analogous and therefore instructive.

[39] The appellants in *MacKenzie* were owners of a cottage property (the mainland parcel) adjacent to a lake and applied for a declaration to determine the rights of the respondents (owners of two islands) with respect to a 20-foot right of way over the appellants’ mainland parcel which afforded the owners of the two islands access to their properties. The right of way in *Mackenzie* was created in 1980 by a predecessor in title of the mainland property who at the time also owned

the two islands. As it seems is often the case, the right of way was the result of a single owner of properties that would ultimately become the dominant tenement (there, the two islands) and servient tenement (there, the mainland property), transferring title of the former to a related party. In *MacKenzie*, the predecessor in title to the mainland parcel conveyed the two islands to his wife, and by separate deed also conveyed to his wife and her successors in title "a right of way for persons and vehicles" over the westerly 20 feet of the mainland parcel. Shortly thereafter, he conveyed the mainland parcel to a third party. A subsequent agreement between those parties clarified the right of way was a "private right of way providing access to the registered owners" of the islands and provided that the third party would not grant any right of way to "the public at large" over the right of way to anyone "other than the owners, guests and tradesmen" of the islands.

[40] The predecessor of the mainland parcel later reacquired the two islands later in 1980. The respondents subsequently acquired the two islands and an adjacent mainland lot and operated a commercial lodge operation on their properties, which included additional lands.

[41] The Court was called upon to determine whether a dock and parking of vehicles were ancillary rights to the right of way. After considering the circumstances existing at the time of the right of way, the Court concluded the easement was specifically intended to afford owners of the islands "access" to their properties, and the installation and maintenance of a dock (which had existed at the end of the right of way at the time it was created) was implicit in the easement: *Robb* at para. 8. Similarly, the Court concluded that given the purpose of the right of way was to provide access to dominant tenement, and that the users of the right of way had to arrive in vehicles which they could not transport to their property, supported their conclusion that parking of vehicles on the mainland parcel while the users accessed the two islands was an ancillary right reasonably necessary to the use and enjoyment of the easement. Like in *MacKenzie*, the geography of the Easement and Strata 490 is such that when the petitioners arrive by vehicle to access the dominant tenement, as Strata 962 acknowledges the Easement intended they be able to do,

they can not park those vehicles on their property. There is nowhere else for the petitioners to pass and repass to, and nowhere to leave their vehicles on their property, such that the parking of the vehicles while accessing the dominant tenements, is reasonably necessary and would have been viewed as such by the grantor, such access subject only to the time restrictions governing the Law Firm Lot and the other commercial dominant tenements.

[42] In *Square-Boy Limited v. The City of Toronto*, 2017 ONSC 7178 [*Square-Boy*], the applicant sought a declaration that the right-of-way granted by the City of Toronto as part its purchase of land from Square-Boy in 1971, included a right on the part of Square-Boy to park on the City's property. Like the respondent in this case, the City argued the right-of-way was intended to provide right a right to pass and repass, meaning access and egress, and by its nature was not intended to be parked on. The Court concluded that "a right-of-way can include a right to park if that was one of the purposes for which the right-of-way was granted", and that the right of way in that case intended such a right: *Square-Boy*, paras. 2 and 4. In coming to that conclusion, Justice Sanfilippo observed that the right of way area had been used by Square-Boy as a parking lot when the property was transferred to the City in 1971, and had been continuously used as a parking lot by Square-Boy in the 46 years since, and that the City's expropriation of the property in 1971 had caused Square-Boy to lose access to its parking lot and without unless some provision was made by way of easement the Square-Boy property would have become landlocked.

[43] I am mindful that surrounding circumstances capable of informing a contract's interpretation do not generally include subsequent conduct, and that post-easement parking falls in that category. Such evidence is generally not considered because of the dangers that can be inherent in relying on subsequent conduct in contractual interpretation - that the parties' behaviour in performing the contract may change over time and relying on subsequent conduct as evidence of intention could lead to fluctuating interpretations over time, the subsequent conduct may be ambiguous (a danger that is attenuated if the conduct is unequivocal), and the potential that subsequent conduct may be calculated to be self-serving in an effort to lend support

to a particular interpretation: *Wade v. Duck*, 2018 BCCA 176 at paras. 29–31; *VR 1364* at para. 72. However, where the subsequent conduct is unequivocal, has been consistent since immediately after the creation of the covenant at issue, being the “most formative time period for analysis of the parties’ conduct as it is most proximate in time to the grant of the Right-of-Way”, has continued over time and the conduct has been undertaken to the knowledge of the holder of the servient tenement, such dangers are attenuated and such subsequent conduct can be useful in assisting the court determining the parties’ intention at the time the agreement was formed: *Square-Boy* at para. 54; *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912 at para. 48. In my view, consideration of the fact that the Monsons and later the petitioners have parked their vehicles in the easement area consistently since the inception of the Easement, to the knowledge of Inner Harbour and later Strata 962, is relevant and admissible as part of the surrounding circumstances.

[44] The respondent argues that the parties knew or ought to have known about the parking dispute that arose in 1980 “but chose to exclude it deliberately when creating [the Easement]”. However, there is no evidence the parties deliberately excluded parking because it was not intended. Insofar as the respondent’s argument is that I should infer such an intent from the absence of express language about parking, description of the parking areas, and the designation of parking spots to specific entities, the evidence is that the construction of the 962 Hotel Building was in progress at the time the Easement was entered into. Uncertainty about the final layout (evident from the language of the Easement itself in its delayed effective date) would have likely precluded an assignment of particular parking spots. Further, the subsequent consistent parking by the owners of the Residential Lot and the Law Firm Lot, in the Parking Spots, without interruption, payment, or dispute until 2024, with the knowledge of the Strata 962 Strata, is inconsistent with an intention to exclude parking, and fully consistent with the parties’ intention to permit such parking on the Easement.

[45] In addition, the absence of an express reference to parking in the Easement was likely the result of the same approach taken by the parties to the right of way in

Lafferty v. Brindley, [2001] O.T.C. 1024, 2001 CanLII 2578 (O.N.S.C.), rev'd in part, but aff'd on this point *Boone v. Brindley*, 179 O.A.C. 50, 2003 CanLII 20920 (O.N.C.A.). In that case, the Court concluded parking was an ancillary right held by cottagers over a right-of-way over farmer's property since it was required to access their lakeside properties, and had been used for that purpose for 40 years, even though the right-of-way was silent on any entitlement to park. As Justice Donohue wrote at para. 41, "The matter is so obvious that the Hunter brothers [related parties who granted each other reciprocal rights of way so that one had a right of way over the farm, and the other had a right of way over the slope, enabling each to access the highway and the water] probably took it for granted and considered it unnecessary to be spelled out".

[46] The respondent also argues that the subsequent easement management and lease agreements entered into by Cedric Steele and Kingsley are also evidence that should be considered in determining the intention of the parties to the Easement. It argues such subsequent contracts are inconsistent with an intention that the Easement include the right to park. The respondent submits those agreements are "objective evidence that the Easement Parties intended to address the parking issues by entering into alternate arrangements outside the [Easement agreement]". They reason that if the parties intended that the Easement include parking rights it made "little commercial sense for Kingsley and Cedric Steele to separately contract and pay for parking rights".

[47] However, that evidence suffers from the potential frailties of subsequent conduct identified in *Wade* and I do not consider any of those post-Easement contracts to be reliable evidence of what the parties to the Easement intended when that contract was formed. The agreements relied on by Strata 962 post-date the Easement by at least 23 years. Further, although it is clear from the petitioners' evidence that, from their perspective, their parking current dispute with Strata 962 arose in 2024, I have no evidence about when, from Strata 962's perspective, the divergent views about the petitioners' right to park on the Easement arose, that being a point after which its conduct may be influenced by efforts that were self-

serving. Finally, the petitioners were not parties to those agreements, which were between Victoria Regent Hotel Ltd. and Kingsley and Cedric Steele. As I have already noted, the relationships between Strata 962 and the Hotel Operation is not clear from the evidence, nor are the relationships between the Hotel Operation and Victoria Regent Hotel Ltd. or between Cedric Steele, Kingsley and Victoria Regent Hotel Ltd.

[48] Relying on *VR 1364* at para. 48, the respondent says a right of access “must only be exercised without depriving the servient tenement of reasonable use and enjoyment of the servient tenement”. However, every easement will, to some extent, exclude the servient owner from the property and prevent the servient owner from exercising some proprietary rights over the property reserved for the easement: *Robinson v. Pipito*, 2014 BCCA 200 at para. 20. The relief sought by the petitioners does not deprive Strata 962 as the servient tenement of the reasonable use and enjoyment of the property. The petitioners have historically only parked one vehicle per lot, each in accordance with the hours of the Easement, although they have at times extended hours with respect to the Law Firm Lot by way of separate agreement. That is not unreasonable and indeed, in *Moncrieff* it was held that in modern times in regard to a residential lot, two to three vehicles would not be unreasonable: paras. 52, 133.

[49] The respondent argues that “it is facing parking shortages due to the lack of parking spots for its owners, occupants and guests”, however the Easement predates the creation of Strata 962 and the 962 Hotel Building, and so any such shortage would seem to be of their own making. Further, unlike many of the easement cases, where the dispute is about whether or not a particular type of use is consistent with the covenant, the dispute between the parties is about whether such use should be on terms imposed by Strata 962. Strata 962 does not say there is no room for the petitioners to park. The petitioners have parked in the Easement since they purchased their interests, and their predecessors in title did likewise. And, Strata 962 has continued to offer the petitioners the right to park there on an ongoing basis, but at a cost.

CONCLUSION

[50] For all these reasons I reach the same conclusion as was reached in *Moncrieff*, namely that the parties to the Easement must have contemplated and intended that the vehicles by which access to Residential Lot and the Law Firm Lot was obtained would have to be left in the Easement area, and therefore the right of parking must accompany the right of vehicular access.

[51] I make the declarations sought by the petitioner at Part 1, paragraphs 1 and 2 of the petition.

[52] Given Strata 962 has purported to allocate, directly or indirectly through agents such as the Hotel Operation or “easement managers”, portions (parking stalls) of the easement area to others for their exclusive use, the historical practice of the petitioners also having assigned parking stalls is a reasonable way to ensure the respondent is able to meet their ongoing obligations to allow the petitioners access to the Easement area. Accordingly, I order that practice to continue, and it shall form part of my order.

[53] I wish to thank both counsel for their very helpful submissions.

“V. Jackson J.”