

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 21, 2022

**CASE:** 2022-00212N

**Citation:** Delia v. Ranches et al., 2022 ONCAT 127

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Jennifer Webster, Member

**The Applicant,**

Dario Delia

Self-Represented

**The Respondents,**

Kimberly Ranches and Jeffrey Cleminson

Self-Represented

**The Intervenors,**

Amanda Homen

Self-Represented

Toronto Standard Condominium Corporation No. 2014

Represented by Mary Kahn, Agent

**Hearing:** Written Online Hearing – August 2, 2022 to October 31, 2022

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Dario Delia (the “Applicant”) is the owner of a unit of Toronto Standard Condominium Corporation No. 2014 (“TSCC 2014”). He claims that he is experiencing unreasonable noise from Kimberly Ranches and Jeffrey Cleminson (the “Respondents”) who occupy the unit above his. Amanda Homen is the owner of the unit above the Applicant’s unit and the Respondents are Ms. Homen’s tenants. The Applicant states that he is subjected to noises from the Respondents’ unit on a daily basis that include banging, moving of furniture, loud music, slamming of doors, and regular domestic arguments.

[2] At the outset of the hearing, the Applicant stated that he was seeking an eviction order against the Respondents. I advised him that an eviction order was outside the Tribunal’s jurisdiction, as set out in section 1.44(4) of the *Condominium Act*,

1998 (the “Act”), that states: “The Tribunal shall not make an order requiring a person to vacate a property permanently.” After I provided this information, the Applicant clarified that he is seeking an order that the Respondents cease making the unreasonable noise and an order that Ms. Homen take necessary remedial measures to end the noise, including the installation of full underpadding on the unit’s floors. He is also seeking damages of \$5,000 for emotional distress and his costs of this application.

- [3] It is the position of the Respondents and Ms. Homen that this application should be dismissed. The Respondents submit that they are not making unreasonable noise in their unit. Instead, they state that the Applicant is complaining about sounds related to their activities of daily living and that these sounds do not amount to unreasonable noise. Moreover, the Respondents argue that the Applicant is engaging in aggressive and harassing confrontations with them about his noise complaints. Ms. Homen submits that she responded to the noise complaints when TSCC 2014 advised her of them by discussing the condominium rules with her tenants and installing foam pads under the furniture.
- [4] TSCC 2014 participated in this hearing in a limited way only and it takes no position on the application. After the hearing started, I asked Tribunal staff to contact TSCC 2014 and advise its representative who is the condominium manager that I was seeking information about its response to the noise complaints. TSCC 2014 submitted its relevant governing documents and a brief narrative description of the history of the complaints. However, TSCC 2014 did not provide any records about its interaction with any of the parties in relation to the Applicant’s noise complaints.
- [5] For the reasons set out below, I dismiss Mr. Delia’s application.
- [6] Before setting out the reasons for this decision, I highlight that this has been an intensely acrimonious dispute between the Applicant and the Respondents. The level of acrimony was apparent in their submissions and evidence, and particularly in a video recording of an altercation between them on July 11, 2022, that I describe in more detail below. I do not expect that this Tribunal proceeding or decision will assist in decreasing the acrimony between them. Nonetheless, I encourage all parties to commit to respectful community living in this condominium corporation.

**B. BACKGROUND**

- [7] The Respondent moved into the unit above the Applicant’s in January of 2021.

- [8] The Applicant first contacted the condominium manager at the time, Pat Neely, about noises from the Respondents' unit on December 2, 2021 by email. Ms. Neely asked the Applicant to provide details about the dates and times of the noises. He advised Ms. Neely that there were noises every morning starting at 6:00 am or 6:30 am for 30 to 45 minutes that he believed were related to working out with exercise equipment as well as noises in the evening after the Respondents returned from work.
- [9] On December 13, 2021, Ms. Neely asked for the exact dates and times of the occurrences. The Applicant responded to her that the sounds were happening every day and included exercise equipment noise, banging, loud parties, and music.
- [10] Mr. Cleminson testified that he was unaware of any noise complaints prior to December 2021. He explained that he had an interaction with the Applicant on the morning of December 17, 2021, during which the Applicant yelled and swore at him about noise he had heard the previous evening. Mr. Cleminson recalled that on the evening of December 16, 2021, he and Ms. Ranches had been bringing groceries into their unit, and he believed that the noise may have been footsteps on the stairs and unpacking of groceries.
- [11] The Applicant sent emails to Ms. Neely with noise complaints about the Respondents on a regular basis up to March 2022 when he filed this application with the Tribunal. In his email exchanges with Ms. Neely, the Applicant frequently requested that TSCC 2014 work toward evicting the Respondents from their unit.
- [12] Mr. Cleminson challenged the Applicant's claim of excessive noise and stated that any noises being made in his unit were related to activities of daily living. He testified that it was their regular routine to be at work away from the unit during weekdays and he acknowledged that their routines before and after work would cause some noise, but not unreasonable noise. He also stated that they would only occasionally host social gatherings.
- [13] Mr. Cleminson testified about a series of heated exchanges between the Applicant and the Respondents, most of which were related to the Applicant's noise complaints. Mr. Cleminson submitted a video recording taken by Ms. Ranches of one particular interaction with the Applicant that occurred on July 11, 2022. The video showed the Respondents' guest leaving their unit at or around 8:00 pm. As the guest opened the door to leave, the Applicant was standing at the entrance. He held the door open and started yelling at the Respondents through the open door. The yelling from the Applicant included swearing and racial slurs directed mostly at Ms. Ranches. She yelled back and also swore at the Applicant. After

almost a minute of yelling between Ms. Ranches and the Applicant, Mr. Cleminson descended the stairs and closed the door to end the interaction. The Respondents contacted the police about this incident, and police officers responded and interviewed all three parties. According to Mr. Cleminson, the interaction in the video was illustrative of the manner in which the Applicant would aggressively knock on their door and yell at them.

- [14] Although TSCC 2014 was an intervenor in this application, it did not participate until after I asked Tribunal staff to contact its representative to advise that I was seeking information about the response from TSCC 2014 to the noise complaints. Unfortunately, TSCC 2014 only provided limited information. TSCC 2014's representative, Ms. Mary Kahn, the current condominium manager, confirmed that Ms. Neely had received noise complaints from the Applicant and that Ms. Neely had contacted Ms. Homen, the unit owner, about the complaints. Ms. Homen testified that, after hearing from Ms. Neely, she took a number of steps in response to the Applicant's complaints. Ms. Homen explained that she spoke to the tenants about the noise, ensured that foam pads were installed under all the furniture, and inspected the unit for damage to the floors related to the noise described by the Applicant. Ms. Homen confirmed that there was no damage to the unit.
- [15] Mr. Cleminson also testified about steps he and Ms. Ranches took in response to the noise complaints from the Applicant. He stated that they stopped playing music at 11:00 pm, stopped using a wheeled office chair, and relocated a foot pedal garbage can. He also noted that foam pads had been installed under all furniture in the unit.
- [16] Despite Ms. Kahn's statements about the actions taken by TSCC 2014 in response to the Applicant's complaints, TSCC 2014 did not provide any records related to its interactions with the Applicant, the Respondents, or Ms. Homen.

### **C. ISSUES & ANALYSIS**

- [17] The issues in this application relate to the Applicant's claims that the Respondents are causing unreasonable noise. Section 117(2) of the *Act* states:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements of the assets, if any, or the corporation.

- [18] The Tribunal has jurisdiction over disputes relating to the provisions of a

corporation's governing documents that "prohibit, restrict or otherwise govern the activities described in subsection 117(2) of the Act."

[19] Therefore, the issues to be determined in this case are as follows:

1. Is the Applicant experiencing an unreasonable noise contrary to section 117(2) of the *Act* or TSCC 2014's governing documents?
2. What orders, if any, should the Tribunal make?

**Issue 1: Is the Applicant experiencing an unreasonable noise contrary to section 117(2) of the Act or TSCC 2014's governing documents?**

[20] The Applicant has presented evidence of a history of noise complaints made by him to the condominium manager between December, 2021, and March, 2022. In these complaints, he describes the noise as: working out every day around 6:30 am; loud music, social gatherings; slamming of the entrance door; and constant domestic issues. The Applicant also testified about unreasonable noise events that he described as having occurred in July 2022. The Applicant's wife and nephew provided witness statements detailing the same type of noises identified by the Applicant.

[21] The Respondents challenged the Applicant's description of the noises. They stated that they did not have loud parties and that any noises coming from their unit were related to regular activities during the daytime. The Respondents submitted witness statements from Mr. Cleminson's father and a friend. Each witness confirmed that the Respondents' activities were not causing loud noises. These witnesses also testified that the Applicant engaged with the Respondents in an aggressive and heated manner when he had concerns about noise.

[22] The Tribunal considered a claim of unreasonable noise in *Friedlander v. York Condominium Corporation No. 427*, 2022 ONCAT 110. In *Friedlander*, the unit owner retained an acoustical consultant to measure the sounds in her unit. The acoustical consultant produced a report that described the noise levels, frequency and duration. Although the Tribunal concluded in *Friedlander* that the data from the acoustical consultant did not demonstrate that there was unreasonable noise, I note that the data did provide objective evidence about the sounds beyond the purely subjective evidence of the unit owner's complaints.

[23] In this matter, the only evidence of any noise from the Respondents' unit is the Applicant's descriptions and complaints, supported by the statements from his wife and nephew. There is no objective evidence of unreasonable noise, such as the

report of an acoustical consultant as submitted in *Friedlander*. Based on the Applicant's limited and subjective evidence, I cannot conclude that there is unreasonable noise.

- [24] It is also possible that objective evidence of unreasonable noise could have been obtained through an investigation by the condominium corporation. Despite my specific questions, however, TSCC 2014 provided no evidence that it investigated the Applicant's complaints to determine whether there was unreasonable noise and, if there was noise, whether it was coming from the Respondents' unit. Section 17(3) of the Act requires a condominium corporation to take all reasonable steps to ensure that owners and occupiers of units comply with the Act and the corporation's governing documents. Given the limited evidence provided by TSCC 2014, it seems as though it did not fully consider or act upon its duty under section 17(3). In the absence of an investigation or other documentation, TSCC 2014 has offered no evidence to support the Applicant's claim of unreasonable noise.
- [25] The video recording, however, provides some objective evidence but not in relation to the noises complained of by the Applicant. This recording shows the Applicant aggressively interacting with the Respondents when he is complaining about noise. The Applicant repeatedly swears at the Respondents and directs a racial slur at Ms. Ranches. I note that the only noise apparent in this video is the Applicant's yelling followed by yelling from Ms. Ranches. There is nothing in the video to show that there is unreasonable noise being made by the Respondents at 8:00 pm on July 11, 2022, and the Applicant has offered no explanation of the types of noise that caused him to respond in the manner he did.
- [26] I find that the evidence does not establish that the Applicant is experiencing unreasonable noise. It is apparent that he is regularly complaining of noise to the condominium manager and the Respondents. However, there is no evidence to substantiate his complaints that the noise being caused by the Respondents is unreasonable.
- [27] TSCC 2014 identified that there were provisions in its declaration that were relevant to the Applicant's noise complaints. TSCC 2014 submitted that section 3.1 (a) of the Declaration prohibited noise nuisance through the requirement that no condition "be permitted to exist, and no activity [...] carried on in any Unit or on the common elements this is likely to damage the Property, or that will unreasonably interfere with the use or enjoyment, by other Unit Owners, of the common elements and the other Units..."
- [28] I have found that the evidence does not show that there is unreasonable noise and I conclude, therefore, that the Respondents are not carrying on activities that

unreasonably interfere with the Applicant's enjoyment of his Unit. I find that there is no violation of section 3.1(a) of TSCC 2014's declaration.

**Issue 2: What orders, if any, should the Tribunal make?**

[29] As noted above, the Applicant was initially seeking an eviction order when he started this application. After I advised him that this order was outside the Tribunal's jurisdiction, he confirmed that he was seeking an order requiring the Respondents to cease making unreasonable noise and an order requiring Ms. Homen to take remedial measures to address the noise. The Applicant is also seeking \$5000 in damages for emotional distress and his costs of this application.

[30] I have found that the Applicant has not established that the Respondents are making unreasonable noise. Consequently, I find that there is no basis to issue orders against either the Respondents or Mr. Homen. Given that the Applicant has not been successful in this application, I will not award costs to him.

**D. ORDER**

[31] The Tribunal Orders that:

1. The application is dismissed.

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Jennifer Webster  
Member, Condominium Authority Tribunal

Released on: November 21, 2022