

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 28, 2022

**CASE:** 2022-00374N

**Citation:** Bridglall v. York Condominium Corporation No. 202, 2022 ONCAT 132

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

**Member:** Laurie Sanford, Member

**The Applicant,**

Aroma Bridglall

Represented by Xavier Bridglall, Agent

**The Respondent,**

York Condominium Corporation No. 202

Represented by Rosemary Kelly, Condominium Manager

**The Intervenor,**

Jose and Sarah Lozada

Self-Represented

**Hearing:** Written Online Hearing – June 20, 2022 to November 10, 2022

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Aroma Bridglall is a unit owner in York Condominium Corporation No. 202 (“YCC 202”). She complains that, since Jose and Sarah Lozada have moved into the unit above hers, and in particular since they replaced the carpet on the floor with vinyl flooring, she has experienced persistent vibration and noise. She says the vibration and noise are being transmitted clearly into her unit and are loud enough that they are affecting her health and her job performance. She wants YCC 202 to take whatever action is necessary to lessen the noise and vibration to a reasonable level. Mr. and Ms. Lozada say that they followed the YCC 202 specifications and complied with the renovation agreement when they installed their new flooring and since then have added scatter and area rugs and underpadding in an effort to minimize the noise. They contend that the noise in their unit is the normal everyday noise that one should expect from a family of four young children. They point out that their neighbours on their floor do not complain of excessive noise. Mr. and Ms. Lozada note that they too have complained on one occasion to YCC 202 of noise at night disrupting their sleep.

[2] YCC 202 has done little investigation into the source of the noise or its

transference to Ms. Bridglall's unit. Security has made a number of visits to Mr. and Ms. Lozada's unit and a couple to Ms. Bridglall's. In no case did YCC 202 security report excessive noise. The usual response to Ms. Bridglall's complaints was for YCC 202 security to stand outside the closed door of the Lozada's unit and to listen for noise for periods of three to five minutes. Security reports noise at reasonable levels on these visits.

- [3] YCC 202 has taken a number of positions during this hearing. It says that Ms. Bridglall became accustomed to an unusual degree of silence in her unit because the previous owners of the unit above her were elderly and were rarely there. It also speculated, without evidence, that Ms. Bridglall might be unusually sensitive to noise given a recent bout with Covid-19. YCC 202's position is that any noise experienced by Ms. Bridglall is the normal living noise to be expected in a condominium. It takes the view that Ms. Bridglall has unrealistic expectations and says it will not conduct any further investigation until Ms. Bridglall provides it with documentation showing that the noise and vibration she experiences are a nuisance. It is prepared to conduct an acoustical investigation of Ms. Bridglall's unit if she agrees to pay for the test if the results show noise within reasonable levels.
- [4] For the reasons set out below, I find that Ms. Bridglall has proven, on a balance of probabilities, that the noise and vibration she experiences in her unit rise to the level of a nuisance. I am satisfied that noise and vibration are being transmitted very clearly into Ms. Bridglall's unit. In the words of a report commissioned by Ms. Bridglall, "The level of the incoming noise is the same as if the noise source was in the same apartment." While some at least of the noise appears to be originating in Mr. and Mrs. Lozada's unit, it is not clear why the noise is being heard so loudly in Ms. Bridglall's unit. The Lozadas appear to be taking the steps reasonable parents of young children would take to decrease the volume of noise within their unit.
- [5] Interestingly, at least five unit owners in the same riser, or stack, of YCC 202 have complained to YCC 202 about noise since the beginning of the year, including Ms. Bridglall and the Lozadas. Four of these complaints are from contiguous units. In January, 2022, YCC 202 sent out a letter to all unit owners in the riser suggesting that the residents were experiencing increased noise due to Covid restrictions keeping adults and children at home and it called for patience. It is not possible on the evidence before me to determine why noise and vibrations are being transmitted so clearly into Ms. Bridglall's unit. The situation calls for further investigation. I am directing YCC 202 to investigate and determine the source of the noise that is being transmitted to Ms. Bridglall's unit 1512 and experienced there by her as a nuisance. I am also directing YCC 202 to develop a remediation plan to lessen that noise to a reasonable level and to assess the success of the plan.

## **B. BACKGROUND & PROCESS**

- [6] This hearing first began in April, 2022 between Ms. Bridglall and YCC 202. It was

adjourned until the end of June to permit Mr. and Ms. Lozada to be joined as third parties. Since then, the hearing has been further delayed due to the vacation and work schedules of the parties.

- [7] Neither Ms. Bridglall nor Ms. Kelly, the condominium manager, chose to give evidence. However, in their various submissions, including their closing submissions, they made extensive assertions of fact. Mr. and Ms. Lozada did give testimony under affirmation. They also made factual assertions in submissions during this hearing. Under subsection 1.39(1) of the *Condominium Act, 1998* (the “Act”), the Tribunal has the obligation to “adopt the most expeditious method of determining the questions arising before it that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on matters in the proceeding.” In view of the delay in these proceedings, I decided that the most expeditious way to proceed in accordance with subsection 1.39(1) was to treat assertions of fact made in submissions, as unaffirmed statements. These statements were weighed accordingly in assessing their credibility and reliability.
- [8] The parties contested some of the evidence proffered by other parties and accusations and counter-accusations were exchanged. I will deal only with disputed evidence that directly and materially relates to the issues I must decide. I will only address those accusations that are too serious to overlook.
- [9] Both Ms. Bridglall and Ms. Lozada made exaggerated statements. Ms. Bridglall reported continuous noise all day into the night in one of her complaints. Ms. Lozada stated that every time something was dropped or fell in her unit, there was a pounding on the floor from Ms. Bridglall’s unit. Both Ms. Bridglall and Ms. Lozada complained of hostile interactions between their households. At the same time, YCC 202 made a number of unsubstantiated claims and speculations about why Ms. Bridglall might be experiencing noise in her unit. In reaching my decision, I relied on those claims and statements which were corroborated by other evidence or which flowed as a matter of probability from my findings.

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

[10] The Issues in this case may be summarised as follows:

1. Does the noise and vibration experienced by Ms. Bridglall constitute a nuisance?
2. If so, what should be done and who should do it?

#### **Issue 1 – Does the noise and vibration experienced by Ms. Bridglall constitute a nuisance?**

[11] Paragraph 117(2)(a) of the Act prohibits activity within a condominium unit or in the common elements if that activity results in “any unreasonable noise that is a nuisance.....”. Reading paragraph 117(2)(b) of the Act together with section 26 of

Regulation 48/01, vibration is also a prescribed nuisance if it is unreasonable. What constitutes an “unreasonable” noise or vibration is not defined.

[12] YCC 202 has two Rules relating to noise. These Rules state:

27. No noise caused by any instrument or other device or otherwise howsoever caused, including noise caused by any pet, which in the opinion of the board or manager disturbs the comfort or quiet enjoyment of the property by another owner shall be permitted.

28. No one shall make or permit any improper noises on the property or do anything that will annoy or disturb or interfere in any way with other owners.

[13] The parties introduced The Toronto Municipal Code, Chapter 591, Noise, which applies to YCC 202. The Code prohibits unreasonable and persistent noise. An “unreasonable noise” is defined as “Any noise that would disturb the peace, rest, enjoyment, comfort and convenience of a reasonable person in the circumstances. Unreasonable noise does not include commonplace household or workplace sounds such as sound from furniture being moved, children playing or people engaged in conversation.”

[14] Ms. Bridglall says that she has lived in various condominiums for over 20 years and in YCC 202 for over six years. In the past, she says, she has lived in condominium units under families with young children and has raised two children herself “in similar environments”. Ms. Bridglall says she is familiar with the level of noise that might be expected of a family with young children and has “rarely” had to complain about noise. She says she does not expect “absolute silence” and does expect “acceptable ‘basic living’ noises”. However, she says that what she is experiencing goes beyond that.

[15] According to Ms. Bridglall, the previous owners of the unit above hers were “snowbirds” and resided in the unit about 200 days a year. She got to know them, she says, and did not have an issue with noise from their unit. She says that it was not until the Lozadas moved in and replaced the existing carpet with vinyl flooring that the problems began. Mr. Bridglall, her son and her agent in this hearing, described the noise levels as clearly discernable and including the adults’ walking patterns, running and jumping of the children, flushing of the toilet and murmured conversations. Even the opening and closing of the balcony sliding door is clearly audible, according to him. Mr. Bridglall said that they are awoken when the residents upstairs get out of bed to check on the children at night. Mr. Bridglall said, “Our lives are now controlled by their actions – we relax when they do – thankful for the peace and quiet, and endure living through the rest as though we were an integral part of their family.” He says that they can no longer use their living and dining room during dinner time due to the “banging and fighting and screaming” from the upstairs residents. Both Mr. and Ms. Bridglall said they initially went up to the Lozada’s unit to request the noise level be lessened but before long they were greeted with hostility and they began to make complaints to YCC 202 and to pound on the ceiling when the noise became bad enough. They said that

the noise often increased as a result of their banging on the ceiling.

- [16] Ms. Bridglall introduced testimony from two witnesses, both of whom testified to the noise they experienced when visiting Ms. Bridglall. One witness testified to sitting at the dining room table and hearing “a tremendous amount of noise coming from the apartment above hers. The noise caused enough vibrations that they could be felt by placing my hand on her dining room table and produced some dust falling from her ceiling. The noise and vibrations continued intermittently for the entire of my stay which was around 3 hours long.” The second witness described a visit to Ms. Bridglall from around 2:30 pm to a little after 6:00 pm. This witness’ testimony was that starting about an hour into the visit, “there was this racket coming from the unit above her. The noise was appalling/loud noise like a door or something being slammed shut and reopen repeatedly. Also, there were kids screaming and jumping and very loud hitting of items on the floors in the living/dining and first bedroom areas. . . . This went on for a good hour or more then died down and started up again a little later.”
- [17] Ms. Bridglall rented an acoustical reading device and recorded the sound levels in her unit for a period of a week. Ms. Bridglall introduced a graphic read-out from the device. Mr. Bridglall said the readings showed noise levels above 90 decibels, which, he said was about the same volume as “hair dryers, lawn mowers and power tools”. However, Ms. Bridglall provided no evidence about how to use the device to obtain accurate results and no evidence that these instructions were followed. No evidence was provided about where the recording device was placed or how it was activated. It was not possible to determine from the graphs provided what the duration of the noise was at the various volumes nor could I determine which noises were coming from Ms. Bridglall’s unit and which from elsewhere. No independent evidence, whether in the form of third-party reports or published documents, was produced about how to interpret the results. For these reasons, I can give no weight to these sound level results.
- [18] Ms. Bridglall also retained the services of the Wolf Group, a private investigation agency. Wolf Group issued a report dated September 24, 2022 reporting on audio recordings they made on September 11, 12 and 14, 2022 from 5 p.m. to 7:30 p.m. and on September 17<sup>th</sup> from 7 a.m. to 8:30 a.m. The report says that audio recordings were made showing a noise level of 50 to 75 decibels. Wolf Group did not identify themselves as acoustical engineers and they did not specify where in Ms. Bridglall’s unit the recording device(s) were located. Wolf Group did not specify how they determined the noise level of the recordings they took nor did they specify the duration of the sound at various decibel readings. The report noted that the noises they recorded included “various sounds (regular residential noise), including voices, screams of children, flushing of water from the bathroom cistern, water noise from taps, loud steps, and rumbling of dishes.” The Wolf Group attached the audio recordings. The report continued, “The level of incoming noise is the same as if the noise source was in the same apartment.” The Wolf Group report reaches conclusions about the cause of the noise transference based on their consultations with “representatives of the construction industry”.

These conclusions are speculative and based on hearsay and I give them no weight. Similarly, it is not possible to give the reported noise levels much, if any weight, given the lack of verifiable information about how to assess the reliability of the data, or how to read and interpret it. What is helpful is the statement that the level of noise was the same as if the noise were coming from within Ms. Bridglall's unit. This statement was included in the Wolf Group report and appears to be as a result of the presence of the Wolf Group investigator in the unit. I accept the statement as credible. This statement supports Mr. Bridglall's position that the sound level is "as though we were an integral part of their family". It also corroborates the testimony of Ms. Bridglall's two witnesses.

- [19] Ms. Bridglall introduced statements from her doctor and her employer as to the effect the noise level is having on her health and job performance. However, both statements depend on Ms. Bridglall's statements for the conclusions reached and so add little to the body of evidence. Ms. Bridglall also made a complaint to the local municipal by-law enforcement but the complaint was not pursued beyond an initial discussion with YCC 202.
- [20] Ms. Bridglall says YCC 202 has done little or nothing to address her concerns and she asks that YCC 202 be ordered to take steps to lower the noise level to a reasonable level.
- [21] Ms. Lozada both made submissions and gave testimony. At the outset of the hearing, Ms. Lozada said that any noise that was coming from her unit was the normal noise of living with a family of three children and an infant. She said that none of her neighbours on their floor complained of the noise. Security reports that included visits to her home reported everyday noises, according to Ms. Lozada. Ms. Lozada said that she and Mr. Lozada renovated the unit by putting in vinyl flooring but that the complaints about noise began before then. The renovation was done in accordance with YCC 202's specifications, according to Ms. Lozada. Since the renovation, Ms. Lozada says, they have put down under-floor padding, under-carpet padding, including extra thick underlay in the living room, foam mats and area carpets to try and reduce the noise.
- [22] While the Bridglalls describe themselves as being polite during their visits to the Lozada's home to complain of the noise, Ms. Lozada experienced these visits differently. She says that the increasingly aggressive posture of whichever member of the Bridglall family visited her home scared her children. Ms. Lozada reported one incident where, in her complaint, someone from Ms. Bridglall's unit came to her front door at 10:30 at night, "yelling about noise and swearing". In another incident, security reports a verbal altercation between Ms. Bridglall and Mr. Lozada when, on December 20, 2021, Ms. Bridglall went upstairs to the Lozada's unit to complain about the noise. Ms. Lozada testified that she finds that the constant complaints and pounding on the ceiling from Ms. Bridglall's unit is taking a toll "mentally, emotionally, physically". Her testimony is that "as soon as something falls in our unit or drops, the banging from [Ms. Bridglall's unit] starts". Ms. Lozada testified that she too hears the sounds of "toilets flushing, water

running, sounds of items being dropped, furniture being moved around, thumping, scratching noises, and dragging sounds. I hear noises of running, ball bouncing, I hear many noises at any given time.” Ms. Lozada says that she too has complained to YCC 202 of nighttime noises on one occasion.

- [23] Ms. Lozada introduced testimony from other residents in YCC 202 who also note ongoing noises. One witness was from the five floors directly below Ms. Lozada’s unit, that is, in the same riser. This witness testified to hearing noises “all day, such as shuffling, footsteps, running, things dropping, banging, drilling and so on.” The witness continued “Yet, this is a normal thing . . . . We should be happy hearing any kind of movements knowing we have people around us especially after having 2 years of lockdown and Covid19. We can’t expect people to be walking on air or their tiptoe in their own homes.”
- [24] Not everyone in this riser has been quite so understanding. In addition to the single complaint about noise from Mr. and Ms. Lozada and the multiple complaints from Ms. Bridglall, the owners of units three other units in this riser have also complained, according to an Incidence Report by YCC 202 dated in February, 2022. While the nature of the complaints from two units was not disclosed in the hearing, four of the units are contiguous and are either directly above the Lozada’s unit or below Ms. Bridglall’s. In an email dated December 20, 2021, the resident of the unit directly below Ms. Bridglall’s, complains of being awoken twice by “these animals above me” who are thumping and driving her crazy. She says she is dreading her weekend off because she won’t be able to enjoy peace and quiet. This unit owner made a number of other noise complaints. In January, 2022, YCC 202 wrote a notice to the residents of the riser in which both Ms. Bridglall and the Lovadas live. The notice is headed “Without Prejudice” and refers to “several complaints/concerns” about loud noises from a unit in this riser. The notice refers to the requirements of the Covid-19 restrictions forcing more people to be at home and says, “And, unfortunately, those who were once living in a “quiet” building are only know [sic] “hearing” the daily activity of those in the surrounding units who now no longer have any option except to be at home.” The notice assures residents that YCC 202 takes complaints seriously and has a process for resolving them. The notice asks for the patience of residents. It should be noted that the notice to the unit owners was written about 18 months after the initial Covid-19 lock downs and school closures had occurred. By January, 2022 Covid-19 restrictions were no longer new.
- [25] Ms. Bridglall, in response to learning of the complaint from the unit below hers, said that the only noises from her unit were the normal living noises.
- [26] YCC 202 produced an engineer’s report dated May 27, 2022. The engineer expressed the opinion that the 8-inch concrete slab used between floors met Ontario Building Code standards. The engineer continued:

Please note, that the sound through the concrete floor slab will transmit, especially when hard objects are dropped and/or ongoing walking (ie. children

playing, etc.) occurs above.

There are many ways to help absorb the sound transmission through the concrete floor slab. The most common way to help the sound transmission is to utilize an underlayment under the installed floor (ie. laminate, vinyl, etc.) Based on the information provided, we understand that the Unit Owner above used an underlayment rated to STC 67/ICC 71 which further helps increase the STC levels for better reduction of the sound transmission into the unit below.

Neither the engineer nor anyone else retained by YCC 202 inspected the installation of the floor in the Lozada's unit. They relied on Ms. Lozada's report of the installation. It is relevant to note that Ms. Bridglall's noise complaints frequently referred to the sounds of things being dropped, of walking and children playing.

- [27] YCC 202 did minimal investigation of Ms. Bridglall's complaints. As noted above, it did not inspect the installation workmanship of the Lozada's new floor. After the installation and in response to Ms. Bridglall's complaints, Ms. Lozada reports that YCC 202 made several visits to her unit and made recommendations on noise reduction. There was also instance where a YCC 202 employee listened for noise at the doorway of Ms. Bridglall's unit and one recorded case of YCC 202 going into Ms. Bridglall's unit to listen to the noise for about five minutes. During that visit, according to the YCC 202 report, Ms. Bridglall advised them that the excessive noise had ceased. Ms. Bridglall denies that YCC 202 ever came inside her unit but I accept the report of YCC 202 about their visit. Generally, based on the security reports filed by YCC 202, the security officer would respond to Ms. Bridglall's complaints by standing outside the closed door of the Lozada's unit and listening for periods ranging from 3 to 5 minutes. The various reports refer to ordinary levels of noise. YCC 202 did no acoustical testing in Ms. Bridglall's unit and there is no evidence of acoustical testing anywhere else.
- [28] On February 24, 2022, the board of YCC 202 wrote to Ms. Bridglall advising her that she had been fortunate that the previous owners of the unit above hers were elderly and rarely there. The board advised her that the YCC 202 employees who had gone to her unit had determined that the noise was not excessive. She was warned against approaching the Lozadas again as this might open her to charges of harassment. The board also advised her that they had taken all reasonable steps to deal with her complaints. The board referred her to the local municipality or to this Tribunal if she wished to pursue the matter.
- [29] YCC 202 took a number of positions during the hearing concerning Ms. Bridglall's concerns. As noted above, it alleged that Ms. Bridglall had become accustomed to little or no noise from her previous upstairs neighbours who were elderly and seldom there. Ms. Bridglall disputes this, saying that her upstairs neighbours were in residence about 200 days a year. YCC 202 also alleged, without evidence, that Ms. Bridglall might be unduly sensitive to noise as a result of a recent bout of Covid-19. YCC 202 took the position that Ms. Bridglall was experiencing normal living noises and had unrealistic expectations. It alleges "without prejudice" that Ms. Bridglall is harassing and discriminating against the Lozadas on the grounds

of their young family. YCC 202 provided no evidence of discrimination. The term “without prejudice” which YCC 202 used as a heading in its notice to residents of the same riser and in its allegations of discrimination against Ms. Bridglall is a legal term. It is usually used in the context of settlement discussions and it means that an offer or concession is being made without prejudice to the offering party’s ability to take a different position or to retract the concession at a trial or hearing. It does not, as YCC 202 seems to believe, give any person or organisation immunity from legal consequence if serious and unsubstantiated allegations are made.

- [30] YCC 202 noted that the demographics of condominium residents is changing. It submits that more and more younger families are living in condominiums. The clear implication is that YCC 202 believes that residents must recalibrate their notions of what constitutes a reasonable level of noise. However, YCC 202 produced no case law to support the notion that the test for what level of noise constitutes a nuisance has changed. It might equally be said that the changing demographics impose an obligation on condominium builders and managers to re-visit their sound proofing specifications to ensure that a reasonable noise level can be maintained despite the changing demographics.
- [31] The rules of YCC 202 prohibit noise which, in the opinion of the board or manager, disturbs the comfort or quiet enjoyment of the property by another owner. In this case, YCC 202 is of the opinion that the noise in this case does not violate the rule. However, since YCC 202 has done no serious investigation of the noise complaints, their opinion has not been reasonably developed.
- [32] Under the Act, a noise that is unreasonable and constitutes a nuisance is also prohibited. The Tribunal has consistently held that for there to be a nuisance, there must be a “substantial and unreasonable” interference with the quiet enjoyment of the property.
- [33] Ms. Bridglall has demonstrated, on a balance of probabilities, that the noise she experiences is unreasonable, substantially interferes with her enjoyment of her unit and constitutes a nuisance. It is also in violation of YCC 202’s rule against noise that disturbs her quiet enjoyment of her unit. The evidence, which I accept, is that the noise Ms. Bridglall experiences sounds like it is coming from within her unit. It is not reasonable to expect Ms. Bridglall to acoustically share her unit with the young family living upstairs or with the residents of any other unit. It is not reasonable to have vibrations coming from the ceiling that can be felt by putting a hand on the dining room table. These are not intermittent incidents. Ms. Bridglall describes them as occurring daily and frequently at night. Two witnesses testified to hearing them off and on for periods of an hour or more. While I can give no weight to the Wolf Group’s acoustical measurements, I note that these measurements and those taken by Mr. Bridglall are consistent with the statements made by the Bridglalls and their witnesses.
- [34] I am also persuaded that the noise level within Mr. and Ms. Lozada’s unit is at a normal volume to be expected from a family of four children. Mr. and Ms. Lozada

appear to have taken reasonable steps to minimize the noise. It is noteworthy that there have been no noise complaints from their neighbours on the same floor. It is also noteworthy that unit owners on four contiguous floors in the riser where both Ms. Bridglall and the Lozadas live, have complained of noise.

- [35] YCC 202 takes the position that it has taken all reasonable steps to deal with Ms. Bridglall's concerns and it is now up to her to provide further documentation that what she is experiencing is excessive noise and vibration. At the conclusion of the hearing, YCC 202 repeated its offer to conduct acoustical testing inside Ms. Bridglall's unit if she would pay for the test if the results were within a normal range. It is not correct to say that YCC 202 has taken the reasonable steps necessary to identify the source of the noise and the cause of its being so clearly transmitted into Ms. Bridglall's unit. I conclude that it has conducted minimal investigation. The offer of acoustical testing is, in the vernacular, "too little, too late". Ms. Bridglall has demonstrated that the noise coming into her unit is a nuisance. It is too late for YCC 202 to contest that finding now.
- [36] Both Ms. Lozada and YCC 202 relied on the noise by-law from the City of Toronto and the exemption from the definition of "unreasonable noise" for the enumerated noises of day-to-day living. In this case, it is not necessarily noise within the Lozada's unit that is the problem. While Ms. Bridglall complains of the noise as coming from above, it is the clarity with which noise, from whatever source, is being transmitted to Ms. Bridglall's unit that constitutes the nuisance.

## **Issue 2 – What should be done and who should do it?**

- [37] What is causing the noise to be transferred so clearly into Ms. Bridglall's unit? There is simply not enough evidence to answer that question. Logic dictates that the next steps will involve conducting a professional investigation, preparing a remediation plan to address the findings of the investigation, determining who is responsible for implementing the plan and measuring the success or otherwise of the implementation.
- [38] There will be a degree of discretion in each phase of this process. While the investigation may be a simple matter of having acoustical engineers attend at both Ms. Bridglall's unit and at the Lozadas, the investigation may need to involve multiple units and may require simultaneous or sequential testing. Other experts may need to be involved. The investigation may yield only one obvious course of action. However, there may be several options, in which case, a decision will have to be made as to which action is taken first. Responsibility for taking the action will be found in the provisions of the Act and YCC 202's governing documents. However, someone will have to interpret those provisions and apply them in an even-handed manner. Finally, the success or otherwise of the action will need to be measured.
- [39] Of the parties to this action, it is YCC 202 which is best positioned to carry out the investigation, the development of a remediation plan, assignment of responsibility

and measurement of success. Under subsection 17(3) of the Act, YCC 202 has “a duty to take all reasonable steps to ensure that the owners . . . and the agents and employees of [YCC 202] comply with this Act, the declaration, the by-laws and the rules.” Subsection 119(3) of the Act gives YCC 202 the right to require an owner to comply with the Act and with YCC 202’s governing documents. YCC 202 also has, under subsection 17(1) of the Act, the duty to “control, manage and administer” the common elements of the condominium building. Inherent in these powers is the responsibility to balance the sometimes competing interests of individual unit owners.

- [40] In order to ensure the owners are complying with the Act and YCC 202’s governing documents, it is first necessary to determine the source of the problem. YCC 202 is best positioned to conduct investigations that may involve entry into the units of both Ms. Bridglall and the Lozadas as well as the possibility of investigation into other units. Similarly, YCC 202 is in the best position to determine, having regard to the interest of all unit owners, what actions, or sequence of actions, should be taken to address the transference of noise to Ms. Bridglall’s unit. YCC 202 will also be in the best position, in consultation with Ms. Bridglall, to determine if the actions taken have lowered the noise and vibration to a reasonable level.
- [41] YCC 202 has chosen not to conduct a meaningful investigation. Instead, it has devoted its resources to denying that there is a problem and suggesting, without evidence, that Ms. Bridglall has a medical problem that makes her unusually sensitive to noise or that, again without evidence, she is discriminating against the Lozadas on the basis of family status.
- [42] The lack of meaningful investigation by YCC 202 to date has exacerbated the problem. It has caused unnecessary distress to both Ms. Bridglall’s household and to the Lozada family. Both Ms. Bridglall and Ms. Lozada report increased stress as a result of this unresolved situation. Ms. Bridglall reports that her health and her job performance are suffering. Ms. Lozada speaks of the emotional toll the situation is taking on her and her children. Relations between the neighbours have soured.
- [43] Under subsection 1.44(1) of the Act, the Tribunal may make a variety of orders at the conclusion of a hearing, including, in subparagraph 1.44 (1) 1, “An order directing one or more parties to a proceeding to comply with anything for which a person may make an application to the Tribunal”. Under subparagraph 1.44(1) 7, the Tribunal may issue, “An order directing whatever other relief the Tribunal considers fair in the circumstances”.
- [44] Ms. Bridglall has asked that YCC 202 take whatever action is necessary to reduce the level of noise and vibration in her unit to a reasonable level. This will be a multi-step process. It is necessary now that YCC 202 move with dispatch to determine the reason that sounds and vibrations are being so clearly transmitted into Ms. Bridglall’s unit. In the circumstances of this case, it is appropriate to direct

YCC 202 to cause the results of the investigation to be reported to Ms. Bridglall and to the Lozadas. YCC 202 must also quickly develop a remediation plan that should include what actions are necessary and whose responsibility it is to take those actions. While the responsibility of the implementation of the remediation plan, and the costs of such action, will be determined by the provisions of YCC 202's governing documents and the Act, it is YCC 202 which must take the responsibility for initially assigning that responsibility. Finally, it is up to YCC 202 to measure the success of the action taken and to assign responsibility for any further action which might be required. In view of YCC 202's delay in acting on Ms. Bridglall's concerns, and the toll it has taken, it is appropriate and fair that the testing, the development of the remedial plan, the assignment of responsibility and the measurement of success will be at YCC 202's expense.

[45] In light of the Covid-19 pandemic and the limitations it has put in finding qualified experts across a range of activities, it is not possible to set a time limit in which YCC 202 must complete its investigations, develop a remediation plan, and measure its success. Given the distress that has been caused by YCC 202's inaction to date, it must be hoped that YCC 202 will now move with dispatch.

[46] Under Rule 48.1 of the Tribunal's Rules of Practice, January, 2022, it is customary for the unsuccessful party to pay the Tribunal filing fees of the successful party. Accordingly, I am directing YCC 202 to pay \$200 to Ms. Bridglall for her filing fees with the Tribunal.

#### **D. ORDER**

[47] By the authority of section 1.44 of the Act, the Tribunal Orders that:

1. YCC 202 will, in a timely manner, conduct a full investigation into the source of the sounds being transmitted into Ms. Bridglall's unit and the reasons why sound is being transmitted so clearly. In conducting this investigation, YCC 202 will accept that the current noise levels constitute a nuisance. The investigation, which may include one or more acoustical tests and may involve engineering reports, will be done at YCC 202's expense.
2. YCC 202 will promptly develop, in consultation with whatever expert advice is required, a remediation plan to reduce the noise and vibration being transmitted into Ms. Bridglall's unit to what the acoustical engineers determine will be a reasonable level. The development of the remediation plan will be at YCC's expense.
3. YCC 202 will cause the results of the investigative studies and the opinions and recommendations that support the remediation plan to be communicated in writing to YCC 202 and to the other parties in this action and to any other person affected by the remediation plan. This will be done at YCC 202's expense.

4. YCC 202 will apply its governing documents and the Act to determine who is responsible for the actions set out in the remediation plan and will advise the parties of this.
5. When the actions are completed, YCC 202 will, in consultation with Ms. Bridglall, determine if the actions taken have successfully lowered the noise and vibration being transmitted to Ms. Bridglall's unit to a reasonable level. If further action is required, YCC 202 will determine whose responsibility it is to take that action and will advise the parties of this. The measurement of the success of the remediation plan and the development, if necessary, of a plan for further action, will be at YCC 202's expense.
6. Within 30 days of the date of this order, YCC 202 will pay Ms. Bridglall the amount of \$200.

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Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: November 28, 2022