

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 27, 2023

CASE: 2022-00642N

Citation: Toronto Standard Condominium Corporation No. 2136 v. Longhurst et al.,
2023 ONCAT 30

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

Member: Mary Ann Spencer, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2136
Represented by Ava Naraghi, Counsel

The Respondent,

Jasmine Longhurst
No one appeared

The Intervenor,

Shane Artis
No one appeared

Hearing: Written Online Hearing – January 17, 2023 to February 22, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2136 (“TSCC 2136”) requests the Tribunal order the Respondent, Jasmine Longhurst, and the Intervenor, Shane Artis, to comply with its rules respecting noise and to indemnify it for its legal costs and expenses in this matter pursuant to the indemnification provisions in its declaration.
- [2] Ms. Longhurst is the owner of a unit at TSCC 2136 which is currently occupied by Shane Artis and his partner and two children. TSCC 2136 alleges that the occupants are creating unreasonable noise which is interfering with the quiet enjoyment of other residents in violation of section 117 (2) of the *Condominium Act, 1998* (the “Act”), Article 24 (b) of the corporation’s declaration, and the corporation’s Rules I. 1. and I. 4. respecting noise. It further alleges that in

violation of section 119 (2) of the Act and Article 24 (d) of the declaration, Ms. Longhurst has failed to take reasonable steps to ensure the occupants' compliance.

- [3] For the reasons set out below, I find that Mr. Artis has failed to comply with the provisions of the Act and with TSCC 2136's declaration and rules respecting noise and unreasonable interference with the quiet enjoyment of other residents and I order him to do so. I also find that Ms. Longhurst has failed to take reasonable steps to obtain Mr. Artis' compliance in violation of an owner's obligations set out in the Act and in TSCC 2136's declaration and I order her to take such steps. I further order Ms. Longhurst and Mr. Artis, jointly and severally, to pay costs of \$7,400.81 within 30 days of the date of this decision.

B. BACKGROUND

- [4] Evidence in this hearing was provided by Amanpreet Kaur, the site administrator of TSCC 2136's condominium management services provider, and by a resident neighbour whose unit shares a demising wall with Ms. Longhurst's unit.
- [5] Ms. Kaur testified that Ms. Longhurst's unit is currently occupied by Ms. Longhurst's son, Shane Artis, and his partner and two children. The resident neighbour testified that she heard Mr. Artis and the other occupants move into the unit on July 3, 2022. While it is unknown whether Ms. Longhurst has formally leased her unit to Mr. Artis which, in accordance with s. 83 of the Act, would require her to provide notification to the corporation, the evidence is that she has failed to respond to two written requests from TSCC 2136 asking her to register the unit's occupants with the corporation.
- [6] Ms. Kaur testified that in early July, 2022, TSCC 2136 began to receive complaints about unreasonable noise, including yelling, screaming, banging and door slamming, emanating from Ms. Longhurst's unit. Both witnesses testified that there had been a history of noise from the unit when it was previously occupied by Mr. Artis from late 2020 to February, 2021.
- [7] Neither Ms. Longhurst nor Mr. Artis participated at any stage of the Tribunal's three stage process. When they failed to join the Stage 3 – Tribunal Decision proceeding, I asked Tribunal staff to contact them. Neither responded to voice messages or e-mails from staff. TSCC No. 2136 confirmed the dates and manner of delivery of the notices of application to the Tribunal and I am satisfied that both Ms. Longhurst and Mr. Artis were properly notified. I note that Mr. Artis did upload his contact information to the CAT-ODR system but subsequently failed to participate further although he was given ample opportunity to do so. Therefore,

the hearing in this matter proceeded without the participation of Ms. Longhurst and Mr. Artis and my decision is based solely on the evidence and submissions of TSCC 2136.

C. ISSUES & ANALYSIS

[8] The issues to be addressed in this matter are:

1. Are the Intervenor and other occupants of the Respondent's unit creating unreasonable noise in violation of the Act and of TSCC 2136's governing documents and, if the Tribunal finds they are, what order(s) should the Tribunal issue?
2. Has the Respondent taken reasonable steps to ensure the occupants of her unit comply with the provisions of the Act and TSCC 2136's governing documents and if the Tribunal finds she has not, what order(s) should the Tribunal issue?
3. Should an award of costs be assessed?

Issue 1: Are the Intervenor and other occupants of the Respondent's unit creating unreasonable noise in violation of the Act and of TSCC 2136's governing documents and, if the Tribunal finds they are, what order(s) should the Tribunal issue?

[9] Counsel for TSCC 2136 submits that Mr. Artis and the other occupants of the Respondent's unit are in violation of section 117 (2) of the Act which 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 or the assets, if any, of the corporation;

Counsel further submits that Mr. Artis and the other occupants have failed to comply with Article 24 (b) of TSCC 2136's declaration, which states:

No Unit shall be occupied or used by anyone in such a manner, and no condition shall be permitted to exist in any Unit or portion of the Units, which is likely to damage the Property or Building (or any part thereof), injure any person, unreasonably interfere with the use or enjoyment by other Owners of the Common Elements and the other Units, or which may result in the cancellation (or threat of cancellation) of any policy of insurance obtained or maintained by the Corporation or in the increase of premiums for such insurance

policies or of any deductible portion under such policies. Owners, their families, guests, visitors and servants shall not create or permit the creation or continuation of any noise or nuisance which, in the opinion of the Board of Directors or the Manager, may or does disturb the comfort or quiet enjoyment of the property by other owners, their families, guests, visitors, servants and persons having business with them.

Further, Counsel submits that the unit occupants are also in violation of Rules I. 1. and I. 4. of TSCC 2136's rules dated March 2, 2020 which state:

1. Residents shall not create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the property by other owners, their families, guests, visitors, servants and persons having business with them.

4. No noise, odour or offensive action shall be permitted to be transmitted from one Unit to another, or to the common elements. If the Board determines that any such noise, odour or offensive action is being transmitted to another Unit or to the common elements and that such noise, odour or offensive action is an annoyance or a nuisance or disruptive, then the Owner of such Unit shall, at his own expense, take such steps as shall be necessary to abate the noise, odour or offensive action to the satisfaction of the Board. If the Owner fails to abate the noise, odour or offensive action, the Board shall take such steps as it deems necessary to enforce this rule or abate the noise, odour or offensive action and the Owner shall be liable to the Corporation for all costs incurred by the Corporation in enforcing the rule and abating the noise, odour or offensive action, including legal fees on a solicitor and his or her own client basis, and which costs shall be collectible pursuant to the Corporation's indemnification provisions in its declaration and pursuant to Rule IX, 1, herein.

[10] TSCC 2136 submitted letters of complaint it received from other individuals residing on the same floor as the Respondent's unit and reports prepared by its security staff as evidence of ongoing incidents of unreasonable noise originating in Ms. Longhurst's unit.

[11] As noted above in paragraph five, Mr. Artis and the other occupants apparently moved into Ms. Longhurst's unit on July 3, 2022. On July 11, 2022, Ms. Kaur e-mailed Ms. Longhurst and indicated that the corporation had received complaints about what she described as 'screaming' coming from that unit on both July 5 and 7, 2022. The e-mail set out the corporation's noise rules and requested Ms. Longhurst's compliance. On August 2, 2022, a letter was sent by e-mail to Ms. Longhurst from condominium manager Adela Bertien which indicated the

corporation had received complaints about excessive noise incidents on July 18, 2022 and August 1, 2022. The letter again set out the corporation's noise rules and asked Ms. Longhurst to take steps to "stop the yelling and shouting immediately and permanently." The letter also noted that if the noise continued, legal steps could be taken and Ms. Longhurst could be held responsible for the associated costs. Ms. Bertien also requested that Ms. Longhurst register the unit's occupants with the corporation.

- [12] The incident reports prepared by security which TSCC 2136 submitted as evidence do not correspond directly to the dates cited in the July 11, 2022 and August 2, 2022 correspondence sent to Ms. Longhurst. The incident report dated July 18, 2022, which is referred to in the August 2, 2022 letter, indicates that TSCC 2136 security staff confirmed excessive noise coming from the Respondent's unit at 9:30 p.m. A further incident was confirmed by security on August 22, 2022. The report of that incident indicates that security staff felt unsafe speaking to Mr. Artis who reacted to their intervention aggressively.
- [13] Ms. Bertien sent a further letter to Ms. Longhurst on August 25, 2022, again requesting compliance. She again asked that the occupants be registered with the corporation. This letter noted that TSCC 2136 would file an application with the Tribunal if the noise continued. The corporation submitted its application to the Tribunal on October 2, 2022.
- [14] The corporation submitted further incident reports about excessive noise from the Respondent's unit dated October 14, 2022 and October 21, 2022 as evidence. The October 14th report indicates that security was advised by a neighbour that they had called the police because of fighting heard in Ms. Longhurst's unit. However, when security staff attended the floor, they could not verify the noise. The October 21st report records two calls from different neighbours to security about noise at different times. Security noted that one of the occupants left the Respondent's unit before they could investigate the first call. In response to the second call, security confirmed the noise and noted that they could hear loud abusive language coming from the unit while they were at the elevators. Security spoke to Mr. Artis who indicated he would lower his voice. However, security then heard more loud language as Mr. Artis then complained to the other occupant about the fact security had been required to attend.
- [15] TSCC 2136 received written complaints about noise created by the occupants of the Respondent's unit on November 21, 2022 and December 6, 2022. The November 21st letter, from a resident living across the hall from Ms. Longhurst's unit, notes that they had heard noise when the occupants previously lived in the

unit and states they are “back to their regular screaming matches” since moving back in. The letter indicates the complainant heard “major screaming sessions” in September, October and November which could be heard while they were inside their unit and that they considered calling the police a number of times due to the “volume and aggression” of the incidents. This complainant also noted that “they also scream about their issues in the hallway.”

- [16] The December 6, 2022 complaint, from a resident who had only moved to the floor a few days earlier, states they could hear screaming and fighting while inside their unit on December 2, 2022 and they had called police. The corporation’s security incident report dated December 2, 2022 indicates they had received calls from multiple residents living on the floor of Ms. Longhurst’s unit and had subsequently confirmed the noise.
- [17] The final incident report submitted by TSCC 2136 is dated January 15, 2023. Security again confirmed they heard screaming when they went to Ms. Longhurst’s unit but were advised all was “okay” when they spoke to Mr. Artis.
- [18] TSCC 2136 submitted a noise log maintained by the neighbour who shares a demising wall with the Respondent’s unit as evidence. This log records 60 incidents on different dates between July 5, 2022 and February 7, 2023. The duration of the incidents, which occurred at various times during the day including after 11 p.m., ranges from seven minutes to “on and off” for over six hours. The incidents are consistently described as yelling, screaming and fighting. The neighbour recorded the majority of these incidents and the recordings were also submitted as evidence. I note that audio/video recordings are of limited evidentiary value in determining whether there is unreasonable noise unless they indicate a decibel level or there is some other benchmark by which to objectively judge the volume of the sound. However, notwithstanding that limitation, my review of the recordings does allow me to conclude that yelling/screaming can be clearly heard in the neighbour’s unit.
- [19] Counsel for TSCC 2136 submits that the noise created by Mr. Artis and the other occupants of the Respondent’s unit substantially interferes with the quiet enjoyment of other residents and comprises a nuisance. In its decision in *Carleton Condominium Corporation No.132 v. Evans, 2022 ONCAT 97 (CanLII)*, summarizing *Antrim Truck Centre Ltd. V. Ontario (Transportation) 2013 SSC 13 (CanLII)*, the Tribunal wrote at paragraph 20:

...it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement

for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

[20] TSCC 2136's evidence of Mr. Artis' violation of its noise rule is not disputed given that neither he nor Ms. Longhurst chose to participate in this proceeding. While only a few of the incidents logged and recorded by the resident neighbour witness were substantiated by security incident reports, the log the neighbour maintained persuades me that the frequency and the duration of disruptive noise created by the occupants of the Respondent's unit rises to the level of nuisance.

Notwithstanding that I cannot objectively determine the sound level from the recordings submitted into evidence, the fact that the recordings do indicate that yelling/screaming could be heard within the neighbours' unit persuades me that the disruption is not trivial.

[21] This is not a case of an occasional domestic dispute being overheard by neighbours; sixty disruptions over a seven-month period is a significant and substantial interference. Further, the November 21, 2022 complaint letter submitted to the corporation by another resident on the Respondent's floor also indicates that there were numerous incidents over a three-month period. Based on this evidence, I find that Mr. Artis and the occupants of the Respondent's unit are in violation of section 117 (2) of the Act and TSCC 2136's noise rules I. 1. and I. 4. I also find they are unreasonably interfering with the use and enjoyment of other residents of the common elements and their units in violation of Article 24 (b) of TSCC 2136's declaration. Therefore, I will order their compliance with these provisions.

Issue 2: Has the Respondent taken reasonable steps to ensure the occupants of her unit comply with the provisions of the Act and TSCC 2136's governing documents and if the Tribunal finds she has not, what order(s) should the Tribunal issue?

[22] Counsel for TSCC 2136 submits that Ms. Longhurst has failed to take steps to ensure the occupants of her unit comply with the provisions of the Act and TSCC 2136's governing documents.

[23] Section 119 (2) of the Act sets out the requirement that owners and occupiers of units comply with the Act, the declaration, by-laws and the rules of a corporation:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

Article 24 (d) of TSCC 2136's declaration states:

An Owner shall comply, and shall require all occupants, tenants, invitees and licensees of his/her Unit to comply, with the Act, the Declaration, the By-laws, the Rules and the by-laws of the City of Toronto or the requirements of any other governmental authority with jurisdiction.

[24] TSCC 2136 sent Ms. Longhurst e-mails on July 11, 2022, August 2, 2022 and August 25, 2022, all of which requested her compliance with the noise-related provisions of its rules. The August 2nd and August 25th e-mails enclosed letters from the corporation. In addition to e-mail, the August 25, 2022 letter was mailed to Ms. Longhurst and a copy was hand-delivered to her unit for the information of Mr. Artis. I note that Ms. Longhurst's address for service on record with the corporation is her unit at TSCC 2136. Given she failed to inform TSCC 2136 of a change in that address, there may be some doubt as to whether or not she received the corporation's letters. However, it is Ms. Longhurst's responsibility to ensure her address for service is provided to the corporation.

[25] Ms. Longhurst did not respond to any of the corporation's correspondence and, as the evidence set out above in paragraphs 14 to 18 indicates, the noise emanating from her unit continued up to the time that witness statements in this proceeding were due. Given neither she nor Mr. Artis participated in this proceeding, there is no evidence before me of any efforts made by Ms. Longhurst to address the numerous noise complaints. Therefore, I find that she has failed to take reasonable steps to ensure the compliance of Mr. Artis and the other occupants of her unit with the provisions of the Act and TSCC 2136's governing documents which relate to noise and unreasonable interference with the quiet enjoyment of other residents. I will order her to take such steps.

Issue 3: Should an award of costs be assessed?

[26] Pursuant to Article 51 of its declaration and to the provisions of rules I. 4 and IX dated March 3, 2020, TSCC 2136 is requesting that the Tribunal order Ms. Longhurst to pay costs of \$8,680.37, comprised of \$150 in Tribunal filing fees, and \$8,530.37 in legal fees. Article 51 of the declaration states:

Each Owner shall indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability (including any legal fees and expenses associated with any claim or action) which the Corporation may suffer or incur as a result of any act or omission of such Owner or of his/her servants, agents, tenants, family, Invitees or licensees that gives rise to or is connected in any way to damage, loss or injury to the Common Elements (or portion of the

Common Elements) or to any Unit, except for any loss, costs, damage, injury or liability actually insured against by the Corporation. All payments to be made by the Owner, as set out in this paragraph, are deemed to be additional contributions toward the Common Expenses payable by such Owner and are recoverable as such.

[27] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (1) 4 states that the Tribunal may make “an order directing a party to the proceeding to pay the costs of another party to the proceeding.” Section 1.44 (2) states that an order for costs “shall be determined...in accordance with the rules of the Tribunal.” The cost-related rules of the Tribunal’s Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party’s CAT fees unless the CAT member decides otherwise.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements (“costs”) incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party’s behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[28] TSCC 2136 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order the payment of \$150 in costs in respect of the Tribunal fees it paid.

[29] TSCC 2136 requests that the \$8,530.27 it incurred in legal fees be reimbursed on a full indemnity basis. While Rule 48.2 is clear that legal fees are not generally awarded, I am guided by the Tribunal’s “Practice Direction: Approach to Ordering Costs” which, among the factors to be considered, includes the conduct of all parties and representatives; whether the parties attempted to resolve the issue in dispute before the CAT case was filed; the potential impact an order for costs would have on the parties; and, the provisions of the governing documents and whether the parties had clear understanding of the potential consequences for contravening them.

[30] I have also reviewed the cases to which Counsel for the Applicant referred me. In *York Condominium Corporation No. 229 v. Rockson*, a case in which the corporation had documented over 90 noise incidents and sent numerous legal letters requesting compliance, and, in which Mr. Rockson did not participate, the Tribunal awarded 100% of the applicant corporation’s requested legal costs. The

Tribunal noted “it would be neither reasonable nor fair if the owners whose quiet enjoyment of their premises was disrupted by what I can only described as Mr. Rockson’s wilful refusal to comply with YCC 22”s noise rules were to be liable for the corporation’s cost of obtaining Mr. Rockson’s compliance.”

- [31] Counsel also referred me to the Tribunal’s recent decision in *Toronto Standard Condominium Corporation No. 2804 v Micoli et al.*, 2023 ONCAT 21 (CanLII), a case in which the Tribunal found that the Respondent owner should bear a substantial portion of the legal costs because “... it is reasonable to consider that his lack of reasonable efforts to address his client’s misconduct placed the entire burden of enforcement, including the costs of this case, on the shoulders of the Applicant – or, in other words, on the shoulders of all of the other owners in the condominium...” I note that the proportionality of the legal fees requested was a consideration in the Tribunal’s determination of the cost award.
- [32] As the two cases cited above note, if a condominium corporation’s costs are not awarded, they are ultimately borne by all of the corporation’s owners. In the circumstances of this case, I find that an award of legal costs is warranted. There is no evidence before me of any efforts made by either Ms. Longhurst or Mr. Artis to resolve the noise issue created by the occupants of Ms. Longhurst’s unit. Ms. Longhurst failed to respond to the e-mails and letters sent to her by TSCC 2136 on July 11, August 2 and August 25, 2022 and did not participate in this matter. The August 25, 2022 letter was also delivered to Mr. Artis who, while he posted his contact information on the CAT-ODR system, also failed to participate. Further, Ms. Longhurst was made aware of the consequences of failing to act; the August 2, 2022 letter advised her that she would be responsible for legal costs if the corporation was required to take further action. The August 25, 2022 letter advised that the corporation could file an application with the Tribunal if she continued to fail to address the noise issue.
- [33] I have reviewed the legal fees accrued by TSCC 2136 in this proceeding and I find them to be generally reasonable and proportionate to the complexity of this case. The majority of the 36.4 hours claimed were performed by a student-at-law or a junior lawyer. However, I find that the time spent to prepare the case submission and witness statements is somewhat high given there were only two relatively short witness statements submitted. In this regard, I note that the submitted evidence included a significant number of audio and video recordings, not all of which were required to support this case and whose evidentiary value could have been more closely assessed. Therefore, I will order a cost award of \$7,250.81, the amount TSCC 2136 requested on a substantial indemnity basis.

[34] The disturbing noise in this case was caused by Mr. Artis and the other occupants of Ms. Longhurst's unit and I find that he should be held liable for a portion of the cost award. However, it was and remains Ms. Longhurst's responsibility to ensure compliance with the corporation's governing documents. It was her failure to take steps to address the noise which required the corporation to submit its application to the Tribunal. Therefore, I am ordering Mr. Artis and Ms. Longhurst, jointly and severally, to pay costs of \$7,400.81 to TSCC No. 2136, comprised of \$150 in Tribunal filing fees and \$7,250.81 in legal fees.

D. ORDER

[35] The Tribunal Orders:

1. Under section 1.44 (1) of the Act, Shane Artis and the occupants of the Respondent's unit at TSCC No. 2136 shall immediately comply with section 117 (2) of the Act, Article 24 (b) of TSCC 2136's declaration and Rules I. 1. and I. 4. of its rules dated March 2, 2020 and cease screaming, yelling, banging on walls and slamming doors.
2. Under section 1.44 (1) 1 of the Act, Jasmine Longhurst shall immediately comply with section 119 (2) of the Act and Article 24 (d) of TSCC 2136's declaration and take all reasonable steps to ensure the compliance of Shane Artis and the other occupants of her unit with section 117 (2) of the Act, Article 24 (b) of TSCC 2136's declaration and Rules I. 1. and I. 4. of its rules dated March 2, 2020.
3. Under section 1.44 (1) 4 of the Act, within 30 days of the date of this Order, Shane Artis and Jasmine Longhurst are jointly and severally required to pay costs of \$7,400.81 to Toronto Standard Condominium Corporation No. 2136.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: February 27, 2023