

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 24, 2023

**CASE:** 2022-00442N

**Citation:** Abrecht v. Sheikh Al-Zoor, 2023 ONCAT 49

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

**Member:** Stephen Roth, Member

**The Applicant,**

Rosemarie Abrecht

Self-Represented

**The Respondent,**

Abdul Qader Sheikh Al-Zoor

Self-Represented

**The Intervenor,**

Peel Condominium Corporation No. 98

Represented by Anthony Piacentini, Agent

**Hearing:** Written Online Hearing – September 1, 2022 to March 3, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] The Applicant, Rosemarie Abrecht, is the owner of a unit in Peel Condominium Corporation No. 98 (“PCC98”). She claims that she is experiencing unreasonable noise and nuisance from the unit directly above her. The Respondent, Abdul Qader Sheikh Al-Zoor, owns the above unit, which he shares with his wife and university-aged son. The Applicant’s complaints include noise and vibration from running, jumping, thumping, banging, and the screaming/playing of young children. Ms. Abrecht asked this Tribunal to order the Respondent to cease making unreasonable noise and causing a nuisance, which is prohibited by the *Condominium Act, 1998* (“the Act”) and PCC98’s governing documents.
- [2] PCC98 participates as an Intervenor in accordance with the CAT Rules of Practice and supports the Applicant’s position.

- [3] The Respondent's position is that this application should be dismissed. He submits that at no time has he or anyone else in his unit created any noise, nuisance, annoyance, or disruption in violation of the Act or the condominium's governing documents.
- [4] For the reasons set out below, I find that the evidence does not show that there is either unreasonable noise or nuisance or a violation of PCC98's governing documents and dismiss Ms. Abrecht's application.

## **B. ISSUES & ANALYSIS**

### **Issue No. 1: Is the Respondent creating an unreasonable noise, nuisance, annoyance or disruption in violation of the Act or condominium's governing documents?**

- [5] Ms. Abrecht claims that Abdul Qader Sheikh Al-Zoor is causing unreasonable noise and nuisance contrary to either section 117(2) of the Act or PCC98's Rule 13.

- [6] 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.

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation. 2015, c. 28, Sched. 1, s. 102.

- [7] PCC98's Rule 13 states, in part:

a) Owners and their families, guests, visitors, servants or agents shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the Board or the Property Manager, may or does disturb the comfort or quiet enjoyment of the units or Common Elements by other owners or their respective families, guests, visitors, servants or persons having business with them.

- [8] Ms. Abrecht testified that she had resided alone and peacefully in her unit for twelve years, until early 2022 when renovations commenced in the Respondent's unit. On April 14, 2022, the Applicant reported that disturbing renovation noise

from the Respondent's unit continued until midnight and well past 6:00 pm as permitted by the Rules. However, Ms. Abrecht's testimony confirms that her ongoing complaint is not about construction noise. With hindsight, she testified that what she was hearing and attributed at first to renovation activity was "the start of what would become normal activity and behaviour for unit 502." She complained of the noise to Mr. Piacentini, PCC98's condominium manager, who advised her that the Respondent had shown proof of a proper noise barrier installation under the new flooring that was installed in his unit. He suggested that she maintain a "noise log," which she did. The log is in evidence. The Applicant provided two recordings as evidence of the noise coming from the Respondent's unit, one taken from her balcony, and one from outside the Respondent's door in the hallway. She acknowledged challenges recording disturbances from within her unit through the concrete ceiling of her unit, which is why she hesitated using interior recordings. She described the disturbance as an unrelenting pattern of thumping, pounding, running and reverberation from the unit above her, which occurred days and evenings.

- [9] She testified that on April 24, 2022 she heard loud voices, clattering and a child running and squealing. Later in the evening, at 9:32 pm, she made a recording of a child "yelling loudly" while standing in front of the Respondent's unit. I have listened to the twenty-seven-second recording. A young child's voice, perhaps toddler age, can be heard. The child appeared to be singing and while louder than a speaking tone, not atypical for a young child. I do not characterize it as yelling. I do characterize it as a sound that neighbours or households where there are young children must be prepared to tolerate.
- [10] Soon after, on May 2, 2022, a meeting between the parties occurred in an attempt to try and resolve Ms. Abrecht's complaints. Ms. Abrecht testified that nothing changed after the meeting, and she continued to endure "romper room activity", "heavy heeled" adult footsteps at all times of the day, reverberation, thumping and thudding on a daily basis. She took a forty-eight second recording on June 26, 2022 of what she described as sounding like a snare drum from the Respondent's unit, while trying to relax on her balcony. I have listened to the daytime recording. At about the 10 second mark, intermittent banging of unknown origin, intermixed with a young child's voice lasts for about thirty seconds and then stops. It is unclear if either a door or window are open in the Respondent's unit. I cannot determine from the audio whether the banging is on a drum. A reasonable inference is that a young child was banging on something, more likely banging a toy on a table. Importantly, the noise lasts for 30 seconds and then stops.
- [11] Anthony Piacentini, employed as PCC98's condominium manager by Goldview

Property Management Ltd., provided testimony. He acknowledged the Applicant's noise complaint about the Respondent's unit. He notified the Respondent of the complaint, which he believed another resident corroborated. He testified that this other unnamed resident made a verbal complaint about the noise. It is not evident whether this resident made the complaint on his/her own volition or if there was an invitation. In cross-examination, Mr. Piacentini stated that he initially approached this other unnamed resident and she said that they hear mainly noise from children coming from the unit. He has not heard from this other owner again. He testified there have been no other complaints. The unnamed resident was not a witness in this hearing.

- [12] By email on April 26, 2022, Mr. Piacentini advised the Respondent to stop excessive noise, especially in the evenings. He directed the Respondent to "control any children visiting the unit" from making excessive noise. After the parties met on May 2, 2022, and the noise issue continued, he sent the Respondent a letter asking what steps were being taken to mitigate the noise. He sent the Respondent a further letter dated July 4, 2022 advising the Respondent of the excessive noise, and suggested installing area rugs. He warned the Respondent the matter may escalate to a CAT complaint. In response, he received an email from the Respondent dated July 5, 2022 replying that "no carpet will be installed." After listening to the Applicant's audio recordings, he formed the opinion that the noise from the Respondent's unit was excessive.
- [13] Mr. Piacentini testified that "by watching/listening" to the recordings made by the Applicant, he concluded that the noise the Applicant complained of "was excessive." His answers in cross-examination indicate that his conclusion was based on the recordings taken outside the interior of the Applicant's unit. I have insufficient evidence to conclude that Mr. Piacentini formed an opinion that either of section 117(2) of the Act or Rule 13 were contravened based on his observations or recordings from the interior of the Applicant's unit.
- [14] The Respondent testified that he lives with his wife and university-aged son in the unit. Another adult son, Omar, stays with him on an extended basis. He testified that he moved to this location to be close to his children and grandchildren. He acknowledged that his grandchildren visit him frequently, during the week and every weekend. He testified that the "saga" of noise complaints started as soon as he moved into the unit. He confirmed that no television or musical instruments are in the unit or other activities that would disturb neighbours. He stated that he is usually present when the grandchildren visit. He described the complaints as arising from "normal" activities which he believes are his "liveable" right and that the Applicant's complaints are exaggerated. Despite this, he testified that he has

attempted to control the movement of the children after 9:00 pm, reduce family visits, and prevent the children from playing and raising their voices. He considers the Applicant's "major complaint" as related to his grandchildren moving around the unit when they visit, including the occasional sleepover. He stated that he has lived in condominium buildings most of his life and has never received complaints of this nature. He installed brand-new flooring with a sound barrier rated IIC 72, which was approved by PCC98 and exceeded the condominium's sound-proofing requirement. He questions why the Applicant recorded from outside his door, and not from within her own unit if the noise was excessive. Also, he believes the Applicant is upset about everyday activities, such as moving dining room chairs, people maneuvering through the unit and the sliding of the windows. He testified he has tried his best to "keep the children quiet but cannot 100% control the kids."

- [15] The Respondent's adult son, Fayez Sheikh Alzoor, provided testimony and confirmed that his children, which he described as "little ones," visit his parents, but neither he, his wife nor his children have resided in the unit on either a temporary or full-time basis. He testified that he visits every weekend and sometimes during the weekdays. His children stay overnight infrequently.
- [16] Omar Sheikh, also the Respondent's son, provided testimony and stated that he does not reside in the unit. However, he acknowledged extended temporary visits, given his remote working arrangement in western Canada. He attended the meeting between the parties and observed the Applicant say that the children, including their "steps" were the source of excessive noise. He testified that she asserted that "we should better control our kids" and should not "be playing around in the unit creating noise." Mr. Shiekh stated that the activity is "normal", and that horseplay is not encouraged and that they work very hard to reduce the children's movements.
- [17] I accept Ms. Abrecht's testimony that she enjoyed an extended period living below the unit now occupied by the Respondent, which she considered peaceful. While no testimony was led to describe that unit's occupants prior to the arrival of the Respondent, it is clear that unit 502 became a busy unit after the Respondent moved in. In addition to the three main occupants, it is evident that Omar Sheikh resides in the unit for extended periods. Also, Fayez Sheikh and his young children visit frequently, including every weekend and sometimes during the week. As a result, at least seven people, and seven sets of feet including children's, are living and moving through the unit frequently.
- [18] I have fully reviewed the Applicant's "noise log" covering the period from April 4 to August 8, 2022, which details dates, times and descriptions of the impugned

activity. While I will not repeat every complaint, the following list reflects the vast majority of the complaints: vibrations, thumping, dragging chair, kids running, water off and on in spurts, rumbling, heavy steps, kids screaming, dragging furniture, adults laughing, crying kids, playing with toys, water surge, male voices, patio doors moving back and forth, traffic in and out, rolling activity, clacking of items on the floor, “whiny kid”, slam of cupboard, “thump thump-is this a sofa bed?” and vibrating pipes.

[19] The Applicant did not enter into evidence any of the recordings she made from within her unit of the noise, subject of her complaint. In explaining why she did not provide interior recordings to Mr. Piacentini, she testified, “I also explained the challenges I encountered recording through the concrete ceiling of my unit which is why I had hesitated using interior recordings as evidence of the disturbances.” Supported by the Applicant’s evidence, I find that these recordings did not persuasively demonstrate the noises as nuisance or violation of Rule 13. The Applicant’s explanation is that the concrete ceiling in her unit makes it difficult to capture the noise on her phone. She used the same phone to make the audio recordings that she did submit as evidence which, as noted, were made from locations outside of her unit. In effect, the Applicant’s explanation for why the recordings inside her unit are not adequate to capture the noise she complains of, suggest the ceiling in her unit is a somewhat effective noise barrier, and that the noise within her unit is not as audible or loud as the noise heard from outside her unit. Therefore, the Applicant’s evidence and explanation actually undermine the Applicant’s claims in this case. However, I accept that vibration or rattling may disrupt without having a noise component.

[20] The Tribunal has consistently held that nuisance requires a “substantial and unreasonable” interference with the quiet enjoyment of the property. While the noise being experienced by Ms. Abrecht may be distressing to her, the evidence in this case does not lead me to conclude that the level rose to that of nuisance as per the Act, or a violation of Rule 13.

[21] The Applicant refers me to Tribunal case *TSCC No. 1791 v. Franklin, 2022 ONCAT 96* (“Franklin”) and specifically the following passage:

In any condominium where walls are shared, some noise transmission between units is to be expected. However, in this case, the evidence demonstrates an ongoing pattern of loud noise emanating from Mr. Franklin’s unit during hours when a reasonable unit owner would expect relative quiet from their neighbours.

[22] The facts in Franklin are distinguishable from those before me. In Franklin, the noise included loud music, television sounds and banging between 10pm and

7am. Complaints included “loud music late at night” and “TV and/or music that is so loud” that it disturbed other’s sleep. In the matter before me, most of the complaints are in daytime and evening hours, not when people typically sleep.

- [23] The Applicant submits that the ceilings are concrete and that the sound travels “differently” vertically than it does horizontally. Because her unit is under the Respondent’s, she submits that she is subjected to prolonged noise and reverberation. The Applicant concedes that she does not know “what actual activities” are producing these noises. No expert evidence, including engineering or sound testing reports are before me.
- [24] The Intervenor, PCC98 takes the position that the Respondent is causing an unreasonable nuisance. However, PCC98 acknowledges that the Respondent is entitled to have visitors to his unit. PCC98 submitted that that the Respondent should have acoustic testing completed to confirm if the renovation was done properly. However, the Intervenor did not rebut the Respondent’s evidence that PCC98 approved the renovation in accordance with its specifications. The Intervenor has not taken the position that the Respondent failed to comply with the standards set by the condominium corporation. Without evidence to the contrary, I cannot conclude that the Respondent has failed to comply with the condominium requirements.
- [25] PCC98 argues that the noise levels heard in the hallway are excessive. However, that is not the issue in this case. The Applicant is not complaining about noise in the common element hallway, but the noise she experiences within her unit. The Intervenor further submits that the Respondent has failed to provide any clear evidence showing that he and his family have not been causing excessive noise. However, this argument misplaces the evidentiary burden. The Applicant has brought this CAT case. It is the Applicant’s burden on a balance of probabilities to prove her case. It is not the Respondent’s burden to disprove.
- [26] The Respondent characterizes the noise as emanating from normal daily activities. He denies playing instruments, loud music, or having parties. Indeed, no such allegations have been made. He emphasized that the Applicant’s noise log includes complaints of laughing, walking and moving chairs, which are normal activities.
- [27] The Respondent referred me to *Delia v. Ranches et al.*, 2022 ONCAT 127 (“Delia”). It is submitted that this case is similar to the case before me. In Delia, the Applicant complained about banging and moving furniture. The Tribunal dismissed the case as there was no objective evidence of unreasonable noise, such as from an acoustical consultant.

[28] The Respondent also referred me to *Lee v. Wong et al.*, 2022 ONCAT 147 (“Lee”). The noise complaints included pushing of chairs around, slamming of legs down, heavy footsteps, walking in high heels, and loud bodily and shower noises. In dismissing the case, the Member stated:

Therefore, while I accept that Ms. Lee’s experience has been disturbing for her and that she may be hearing a noise in her unit, there is very little objective evidence that the noise she is experiencing is beyond that of what might be considered usual noises of daily living. And, while different individuals may have different sensitivities to such noises, an individual’s level of tolerance is not an objective marker of “unreasonableness”. The evidence in front of me does not support a finding that Mr. Wong or Ms. Poh are generating noises at the intensity, frequency or duration described by Ms. Lee and there is no evidence to substantiate Ms. Lee’s complaint that the noises she hears are unreasonable.

[29] While I find that the noises are that of everyday living and are not unreasonable, the Respondent is urged to consider the impact of certain activities that may impact the Applicant. I characterize almost all the activities complained of in both the Applicant’s testimony and her “noise log” as regular and expected activities in a busy household with young children. Residing in an apartment-style complex, whether condominium or otherwise, comes with the inherent possibility of neighbours who live in a variety of circumstances. Some may have families with young children who will be active and inevitably create some noises of the kind complained of in this case. This is to be expected and, unless becoming unreasonably excessive, tolerated. I have no evidence that when the Respondent’s grandchildren visit, they are generally involved in activities falling outside of acceptable and expected behaviour.

[30] In her reply submissions, the Applicant referred me to the case *Bridglall v. York Condominium Corporation No. 202*, 2022 ONCAT 132 (“Bridglall”) in support of her request that I order PCC98 conduct an investigation into the transmission of sounds from the Respondent’s unit. In *Bridglall*, the Applicant’s claim was against the condominium corporation from the outset, and she requested specific relief from it: to take action to lessen noise and vibration in her unit. Though the Tribunal found that the family with four young children living above the Applicant was not creating noise beyond a reasonable level, it also found that the Applicant, living in her unit, was subject to noise that was substantial and unreasonable. However, in the case before me, I made no finding of a substantial and unreasonable noise. It is an important distinction that here, PCC89 is an Intervenor, added to the case as required by the Rules of Practice. The Applicant did not make a claim against PCC89. Even if I was to conclude that PCC89 ought to investigate further (which I have not), it would be contrary to the basic principle of procedural fairness to



require PCC98 to undertake an investigation when they had no prior notice that such relief might be requested.

[31] The Applicant directed me to Bridglall to persuade me to order an investigation; however, the finding by the Tribunal that the noise level was what was expected from a family of four is consistent with the finding in both Lee and my finding in the case before me.

[32] In conclusion, I find that the Respondent is not in violation of either section 117(2) of the Act or PCC98's governing documents.

### **Costs**

[33] 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 during 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.

I award no costs. The Applicant was not successful, and on that basis, I decline to award her CAT filing fees. The Respondent did not make submissions or seek costs. Except for supporting the Applicant receiving her CAT filing fees, the Intervenor did not seek costs and I do not award any.

### **C. ORDER**

[34] The Tribunal Orders that:

1. The application is dismissed.

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Stephen Roth  
Member, Condominium Authority Tribunal

Released on: March 24, 2023