

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 9, 2023

CASE: 2022-00681N

Citation: S. v. Merdiu et al., 2023 ONCAT 112

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

Member: Dawn Wickett, Member

The Applicant,

K. S.

Represented by G. S., Agent

The Respondents,

Bahtijar Merdiu,

Represented by Jasmine Merdiu, Agent

Firdeze Merdiu,

Represented by Jasmine Merdiu, Agent

Avon Merdiu,

Represented by Jasmine Merdiu, Agent

Jasmine Merdiu,

Self-Represented

The Intervenor,

Peel Condominium Corporation

Represented by Jake Fine, Counsel

Hearing: Written Online Hearing – May 10, 2023 to July 28, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in Peel Condominium Corporation (“PCC”). The Respondents are also unit owners. The Respondents’ unit is located directly above the Applicant’s.

[2] The Applicant brings this application to the Tribunal alleging the Respondents

create unreasonable noise and vibration which interferes with the quiet enjoyment of their unit. The Applicant seeks an order requiring the Respondents to comply with the provisions in PCC's governing documents relating to noise. The Applicant also seeks an order requiring PCC to fulfill its obligations under the *Condominium Act, 1998* (the "Act") and its governing documents, specifically to enforce the provisions relating to noise. Further, the Applicant seeks to be reimbursed \$200 for the cost of filing this application with the Tribunal.

- [3] The Respondents joined the case but never participated in Stage 2-Mediation or the hearing.
- [4] During the hearing, the Applicant and the Intervenor resolved their issues in dispute. On consent of the Applicant and the Intervenor, their agreed terms are included in Schedule A attached to this decision.
- [5] For the reasons that follow, I find the Respondents have created and continue to create unreasonable noise and vibration contrary to section 117(2) of the Act, and PCC's rule 5 (1) and (2). Further, I find it appropriate to order the Respondents to reimburse the Applicant the fee incurred for having filed this application with the Tribunal.

B. PRELIMINARY ISSUE

- [6] The Applicant's agent requested that they be allowed to act both as a witness and the Applicant's agent during the hearing. The Applicant's agent submitted that the Applicant has limited technological abilities and suffers from health issues which impacts their ability to independently participate in the hearing.
- [7] In response to this request, the Intervenor's counsel provided submissions. The only concern submitted was the possibility of evidence being tainted, which potentially could prejudice their client, PCC.
- [8] The Respondents did not provide any submissions.
- [9] As the Respondents did not provide any submissions on the issue, to make my determination, I considered the submissions of the Applicant, the Intervenor and the CAT Practice Direction: Active Adjudication.
- [10] Though possible prejudice was noted by the Intervenor's counsel, prior to my ruling, the Applicant and Intervenor's counsel advised me that they had reached an agreement which resolved the issues between them. This agreement made the Intervenor's submissions on this point moot.
- [11] Though they did not participate, I did consider whether there would be any prejudice to the Respondents. Seeing no prejudice to the Respondents, I determined that to ensure the Applicant's ability to meaningfully participate in this hearing it was appropriate to allow the Applicant's agent to also participate as a witness in this hearing.

C. ISSUES & ANALYSIS

Issue No. 1: Have the Respondents created unreasonable noise and vibration?

- [12] The Applicant testified that since 2011 they have experienced unreasonable noise and vibration emanating from the Respondents' unit. The noise consists of yelling, foul language and loud music. The vibration stems from heavy walking, running, stomping and jumping, primarily from the Respondents' children who visit weekly. The Applicant testified that the noise and vibrations occur almost daily between the hours of 7:00am and 11:00pm.
- [13] The Applicant testified that the noise and vibrations emanating from the Respondent's unit interfere with their ability to enjoy their unit and impact the quality of their daily living. The Applicant cannot enjoy watching television, listening to prayers or focus on reading and writing. The Applicant testified that the noise and vibration cause them to experience headaches and panic attacks. Further, the Applicant described the impact of the noise and vibration as "torture" making it very difficult to live in their unit.
- [14] Since 2011, the Applicant has made complaints to PCC about the noise and vibration. PCC has tried to resolve the issue with no success. To date, PCC has issued compliance letters and engaged in a mediation session with the parties. The mediation session produced a settlement agreement dated September 5, 2012, in which the Respondents agreed to stop producing unreasonable noise and vibrations. Despite this agreement, the noise continued and does so until the date of this hearing.
- [15] Copies of the letters sent by PCC to the Respondents are on file and dated as follows:
- May 23, 2014, November 14, 2016, June 25, 2018, July 27, 2018, September 10, 2018, April 14, 2020, September 3, 2020, and September 15, 2020
- [16] In addition to the above enforcement measures, PCC also had acoustical testing completed on July 10, 2018. A copy of the report was provided as evidence and indicates that resilient underlayment or additional carpeting may not resolve the Applicant's complaints, and that the issue should be addressed through administrative means. The report further indicated that the noise as complained about by the Applicant could not be recreated during the testing; however, the engineer did listen to a recording provided by the Applicant which included thumping type noises and what sounded like "muffled loud speech."
- [17] Further to PCC's attempts to resolve the noise issue, the Applicant and their agent sent multiple letters and emails to the Respondents requesting that they stop producing unreasonable noise and vibration. The Applicant has also called the police four times to report noise complaints. The police were called November 19, 2020, Labour Day weekend 2020, July 17, 2022, and on one other occasion but

the Applicant could not recall the date. In addition to calling police, the Applicant called the municipal by-law to complain about the noise. Despite having contacted the authorities, the noise and vibration issue never resolved. No charges or fines were imposed.

- [18] In support of their position, the Applicant entered in evidence several noise logs dated 2017 to 2022, and two audio recordings. I have listened to the recordings and heard muffled speech, yelling and thumping.
- [19] The Applicant's agent resides with the Applicant. Their witness testimony confirmed that of the Applicant and elaborated on some of the details.
- [20] The Applicant's agent testified that the noise and vibration issues started when the Respondents moved into the unit above. Prior to this, the Applicant and their agent never experienced issues with noise and vibration.
- [21] The Applicant's agent stated that the noise and vibration interfere with their sleep and daily activities. Over time, this has contributed to physical and mental health symptoms that impact their personal, professional and social life.
- [22] The Applicant's agent testified that whenever they leave the Applicant's unit for a prolonged period, their functioning improves, and deteriorates again upon return to the unit.
- [23] Having reviewed the evidence before me, I find the Respondents create unreasonable noise and vibration constituting a nuisance contrary to the corporation's governing documents, specifically rules 5 (1) and (2) which state:
1. No one shall create or permit the creation or continuation of any noise, odour or other nuisance which, in the opinion of the Board or the Manager, does or may disturb, annoy or interfere with the comfort or quite *[sic]* enjoyment of the units or common elements by other Owners and/or Residents. No one shall obstruct or interfere with the rights of any Owner.
 2. No noise (including music from an instrument or other source) or odour which is an annoyance, nuisance or disruption to other Owners or Residents shall be permitted to be transmitted from one unit to another or from one balcony, patio or terrace to another or to the common elements. If the Board determines that any noise or odour is being transmitted to another unit or balcony, terrace or patio or the common elements and that such noise or odour is an annoyance or a nuisance or disruptive, then the Owner and/or Resident of such unit shall at his/her expense take such steps as shall be necessary to abate such noise or odour to the satisfaction of the Board. If the Owner and/or Resident of such unit fails to abate the noise or odour, the Board may take such steps as it deems necessary to abate the noise or odour and the Owner shall be liable to the Corporation for all expenses incurred in abating the noise or odour (including legal fees).
- [24] I make this finding based on the Applicant's evidence which is credible and compelling. The Applicant and their agent clearly articulated the frequency and

duration of the unreasonable noise and vibration emanating from the Respondents' unit. In support of their claim that that the disruptions are almost daily, the Applicant provided detailed noise logs, two audio recordings and copies of numerous emails sent to PCC about the ongoing concerns for noise and vibration. The Applicant's supporting evidence demonstrates a pattern of unrelenting noise and vibration emanating into their unit from the Respondents' unit, which undoubtedly interferes with the Applicant's comfort and quiet enjoyment. Further, the enforcement measures taken by PCC against the Respondents support the Applicants assertions of unreasonable noise.

[25] I will issue an order under section 1.44 (1) of the Act directing the Respondents to comply with PCC's rules 5 (1) and (2).

Issue No. 2: Costs

[26] The Applicant seeks an order for the Respondents to reimburse the fee they paid to file this application. The Applicant has tried many times to resolve the issues in dispute prior to filing this application. All previous attempts were unsuccessful. As such, the Applicant sought to have this matter addressed through Tribunal proceedings.

[27] The Tribunal's Rule 48.2 states:

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.

[28] As the Applicant was successful in this application, I am ordering the Respondents to reimburse the Applicant \$200 for the fee paid to file this application.

D. ORDER

[29] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act, Bahtijar Merdiu, Firdeze Merdiu, Avon Merdiu and Jasmine Merdiu shall comply with PCC's Rules 5 (1) and (2).
2. Under section 1.44 (1) 4 of the Act, within thirty (30) days of this Order, Bahtijar Merdiu, Firdeze Merdiu, Avon Merdiu and Jasmine Merdiu shall pay K.S. \$200 for the cost of filing this application.

[30] On consent of the parties, K.S and PCC, their agreement, attached as Schedule A to this decision, is incorporated into and forms part of this Order.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: August 9, 2023

Schedule A

1. The Intervenor shall use reasonable efforts to investigate any complaints of noise with respect to the Respondents' unit by the Applicant. Both the Applicant and the Intervenor acknowledge and understand that third-party contemporaneous evidence is required in order to validate any noise complaints and the Parties shall work together to find suitable methods which accommodate the needs of the parties in order to achieve same;
2. The Parties acknowledge that they have settled this matter outside the Tribunal and the Applicant shall not seek any award or order against the Intervenor within the Tribunal, however the Applicant may proceed with its matter as against the Respondents only;
3. The Tribunal shall not make any adverse finding against the Intervenor;
4. The Parties shall bear their own costs, including any filing costs attributable to the Tribunal. This provision shall not preclude the Applicant from seeking costs against the Respondents;
5. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic means shall be equally effective as delivery of manually executed counterpart thereof.