

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 4, 2023

CASE: 2023-00062N

Citation: Gan v. Yeomans, 2023 ONCAT 142

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Deborah Gan

Self-Represented

The Respondent,

Lisa Yeomans

Represented by Ian M. Shemesh, Paralegal

The Intervenor,

Kenora Standard Condominium Corporation No.17

Represented by Jo-Anne Haines, Agent

Hearing: Written Online Hearing – May 3, 2023 to September 21, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Disputes between neighbours in a condominium community are regrettable, but perhaps even more so when the condominium is a small one such as Kenora Standard Condominium Corporation No. 17 (“KSCC 17”), a stacked, eight-unit building. The Applicant, Deborah Gan is an owner of a lower-level unit in KSCC 17. Lisa Yeomans, the Respondent, resides in the unit above her. Ms. Gan alleges that the noise emanating from Ms. Yeomans’ unit is interfering with the use and quiet enjoyment of their home. She asks that Ms. Yeomans comply with the condominium declaration and rules relating to noise.
- [2] In response, Ms. Yeomans acknowledges that some noise complaints may be valid, but many were temporary in nature, such as when they were building furniture and installing shelving units, and states that while some noise may result from her current physical challenges which cause her to be unsteady on her feet,

the noise is not excessive and does not create a nuisance. She points to issues in the construction of the building as the root cause of any noise transfer. KSCC 17, the Intervenor, acknowledges a “minimal impact noise transfer” is heard in the lower units in the building but asserts that the other three lower units do not experience the noise to the level of interference which the Applicant does, which they state is the result of unreasonable noise caused by Ms. Yeomans.

B. BACKGROUND

- [3] KSCC 17 was registered as a condominium in March 2021. The relevance of this is that a Tarion Warranty Corporation performance audit was completed in March 2022. In that audit, engineers identified several building deficiencies including: “Upper unit to lower unit sound transmission between floor separation is excessive. There is concern that the floor is not constructed as per the drawings.”. Jo-Anne Haines, KSCC 17’s board president stated in submissions that this issue is being addressed through their Tarion warranty process.
- [4] The Tarion performance audit also identified that north window wells created a safety hazard without a form of barrier around them to prevent people from falling in. This finding is relevant to the factual context in this case because Ms. Yeomans did fall in a window well in April 2021 and suffered injuries. This has led to a civil action. Ms. Yeomans alleges that because of her injuries she has had to use a walker, then a cane and must wear orthopedic shoes for management of a foot condition which may be noisier than a regular shoe. She states that a consequence of her injuries is unsteadiness causing her to fall and/or drop things, and thus possibly creating noise.
- [5] While I note these matters for factual context, I will make no findings regarding building compliance with the Ontario Building Code or about construction design and safety measures though the Respondent offered opinion evidence from a layperson witness without related expertise and made submissions on these issues. The Tribunal has no jurisdiction to decide such matters.
- [6] I also note that when she filed her application with the Tribunal, the Applicant identified odour and smoke issues in addition to noise. In submissions, Ms. Gan stated that the smoke and odour issues have subsided. Therefore, the sole issue left to be decided is related to noise.

C. ISSUES & ANALYSIS

Is the Respondent carrying on an activity which results in the creation or continuation of any unreasonable noise that is a nuisance, annoyance or disruption, contrary to s. 117(2) of the *Condominium Act, 1998* (the “Act”)?

- [7] In addition to this section of the Act, several provisions of KSCC 17’s governing documents have been referred to in this hearing. Section 4.02(2) of the declaration states that “No owner shall use or permit to be used, or shall do or permit to be done in or upon, a Unit ...anything that results in any noise or odor being emitted or transmitted to any other Unit...which may constitute a nuisance or be disruptive or an annoyance to anyone using or occupying any other Unit...”. Rule C.1 states that “ ...Quiet Time is between the hours of 11 pm and 7 am during which no person shall conduct an activity inside or outside a Unit which is audible within any other Unit or shall disturb the quiet or peace of any other Unit...”.
- [8] During the hearing, evidence was provided by the Intervenor which alleged violations of other condominium rules. These were not at issue before me and this evidence was not considered. I will only refer to the evidence and submissions relevant to my analysis and the issues to be decided in this case.
- [9] Ms. Gan provided KSCC 17 with a log of sounds she and her husband were hearing, between December 31, 2021, and May 2023. The log was initiated at the request of KSCC 17. There is no evidence before me that the noises were ever verified by the board though three friends of Ms. Gan gave evidence of a few occasions when they were in her unit and heard sounds. A review of the log reveals that the most consistently noted items were sounds of banging, crashing, drilling, dropping of items, stomping or thumping. These sounds were most often heard in the daytime, but there were many occasions when sounds were heard after 11 pm and in the early morning hours. Ms. Gan stated that often the noise would cause she and her husband to wake up, disturbing their sleep. The logs do indicate that these sounds were ongoing through the time period noted above. One of Ms. Gan’s friends gave evidence that she had been in the unit and heard sounds similar to someone crashing or falling to the ground, or to the movement and dropping and slamming of objects. This witness stated that the noise was sufficient to startle her and was disruptive to their visits such that she rarely visits at the Applicant’s place anymore.
- [10] KSCC 17 wrote several letters to Ms. Yeomans in 2022, advising her of the noise complaints it was receiving from the Applicant. In their letter of January 23, 2022, they proposed that she consider options that dampen sounds. In April 2022, the board wrote again, advising that Ms. Gan was continuing to report a level of noise that was a barrier to their reasonable enjoyment of their unit. In this letter, the

board noted that they were not suggesting that regular walking and vacuuming and other day to day acts of living were creating unreasonable noise, but certain sounds like walking with heeled or hard soled shoes sounds were disturbing. The suggestion was made to limit indoor footwear to soft soled shoes or slippers. In this letter, they also stated that “we appreciate that you have tried to put down area rugs in order to muffle the noise”. In submissions, Ms. Haines stated that this statement was based on information provided to them by Ms. Yeomans herself.

- [11] In December 2022 the board wrote to Ms. Yeomans again, stating that the “Excessive noise from your unit continues to unreasonably interfere with the use and enjoyment of the units of other owners and occupants. We ask that you avoid shouting, that you refrain from wearing hard-soled footwear while in your unit, that you use soft toys for your pet and that you observe the 11 pm to 7 am quiet time.”
- [12] In her evidence, Ms. Yeomans has acknowledged building furniture and doing other light construction work, which she conceded are valid noise complaints, but are temporary and occasional events. She does have a small dog that does sometimes play with toys. She explained that her injuries from the fall at the condominium have resulted in unsteadiness on her feet causing her to fall down occasionally and clumsiness which causes her to drop things.
- [13] Ms. Yeomans stated that they have purchased hallway and living room rugs and were planning to get some for the bedrooms. She submitted as evidence a photo of an area rug in what appeared to be the living room. She also provided a photo of shoes which appear to be soft soled; however, she did note that the orthopedic shoes which she is supposed to be wearing for management of her diagnosed inflammatory foot condition may be noisier. A letter was provided from a chiropodist confirming a foot condition.
- [14] Despite measures taken – the rugs and the soft soled shoes- Ms. Gan contends that the noise has continued in frequency, often startling them wake in the night three to five times a week. Ms. Gan submitted that they are simply asking to have the issue resolved.
- [15] What I can reasonably infer from the evidence is that there is no apparent intention by Ms. Yeomans to create excessive noise. There is no evidence of activities thoughtlessly pursued to disturb her neighbours. The noises most often complained of - the sounds of things falling, crashing or dropping - are consistent with Ms. Yeomans’ evidence about her unsteadiness and clumsiness. Further, based on the evidence about the Tarion warranty issues, some of the noises, on a balance of probabilities, are likely exacerbated by the deficiencies identified. One would not reasonably expect to hear a small dog playing with its toys as noted by

the Applicant nor would one be as acutely aware of some of the noises of everyday living be as noted by the board. Other noises logged by Ms. Gan such as a child bouncing a ball on Christmas day, while they seemed like “absolute torture” for the hour or so noted by her, in context, they are not unreasonable and are noises likely amplified by the building deficiencies, which, hopefully, the Tarion process will serve to ameliorate.

[16] The question for me to decide is whether the noises most frequently heard are a nuisance, annoyance or disruption as alleged. They are not trivial, but are they substantial and unreasonable so as to constitute a nuisance? For Ms. Yeomans, they are a consequence of her current physical condition and activities of everyday living. For Ms. Gan, her experience of noise is real and very stressful. And while in no way diminishing her experience, her logs of daytime noises may well reflect a heightened sensitivity to any sound from Ms. Yeomans unit. Both their situations call for empathy.

[17] As noted above, while some of Ms. Gan’s complaints were corroborated by third parties, Ms. Yeomans through her evidence did support Ms. Gan’s contention that crashing, dropping and at times stomping noises are heard. In a communal living environment like a condominium, a certain amount of noise, and perhaps annoyance may be inevitable, and especially so when a condominium has identified noise transmission issues through its performance audit. But here, though some daytime noises may not be unreasonable or substantial, the noises during sleeping hours are. These do impact Ms. Gan adversely and with some frequency. Ms. Yeomans is aware, as made clear in the evidence, that sound is being transmitted. I find that the activities of Ms. Yeomans after 11 pm do constitute a nuisance and a violation of Rule C.1.

What is the appropriate remedy?

[18] This case presents a somewhat unusual circumstance in that it is unclear to what extent further measures taken by Ms. Yeomans can significantly mitigate the noise until the Tarion issues are resolved. And while one hopes that KSCC 17 is diligently pursuing resolution, that may take some time, which means that, as stated by Ms. Gan in her submissions, “civility, compromise and patience” are required, by all parties. So, just as it was incumbent on me, as the decision maker to balance the respective situations of the parties, cognizant of both the impact of the noise on Ms. Gan and the situation in which Ms. Yeomans finds herself, I have weighed the remedies which may mitigate the impact of noise creating activities while the Tarion issues are outstanding.

[19] Ms. Yeomans stated that she would be looking at area rugs in the bedrooms.

There was no evidence that this has been done. In terms of noises that occur in the night, laying of carpets in the bedrooms can muffle the sounds of falls, crashes or dropping of items. I will order that these be installed. In addition, Ms. Yeomans has stated that while the orthopedic shoes may cause more sound, she does have soft soled shoes as well which she frequently wears. In keeping with Rule C.1, the “quiet time” rule, I will order that Ms. Yeomans, if wearing shoes between 11 pm and 7 am, wear the soft soled shoes.

Costs

[20] Rule 48.1 of the Tribunal’s Rules of Practice provides that a successful party is entitled to a reimbursement of the Tribunal fees unless the Tribunal orders otherwise. In this case, Ms. Gan was successful. Ms. Yeomans did not participate in Stage 2 which led to this matter proceeding to Stage 3. The fees are \$200, and I will order Ms. Yeomans to pay them to Ms. Gan.

D. ORDER

[21] The Tribunal Orders that:

1. Pursuant to s. 1.44(1) 1 of the Act, Ms. Yeomans will, within 30 days of the date of this Order, bring herself into compliance with subsection 117(2) of the Act and with KSCC 17’s governing documents which relate to noise. Ms. Yeomans will do this by:
 - a. Installing appropriately sized carpets or rugs in the bedrooms of her unit; and
 - b. Wearing soft soled shoes in the unit between the hours of 11 pm and 7 am.
2. Pursuant to s. 1.44 (1) 4 of the Act, Ms. Yeomans will, within 30 days of the date of this Order pay the amount of \$200 to Ms. Gan, which is reimbursement of Ms. Gan’s filing fees with the Tribunal.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: October 4, 2023