

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 9, 2023

CASE: 2023-00093N

Citation: Gamat et al. v. Toronto Standard Condominium Corporation No. 2745, 2023 ONCAT 169

Order under section 1.44 of the Condominium Act, 1998.

Member: Marisa Victor, Member

The Applicants,

Lylline Gamat, Marc Trinh, Meng Li, Vladimir Sakovets
Represented by Lylline Gamat, Agent

The Respondent,

Toronto Standard Condominium Corporation No 2745
Represented by Victor Yee, Agent

Hearing: Written Online Hearing – June 5, 2023 to October 10, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicants, Lylline Gamat (Gamat), Marc Trinh, Meng Li, Vladimir Sakovets, are unit owners in Toronto Standard Condominium Corporation No. 2745 (“TSCC 2745”) and they live on the 5th floor directly below TSCC 2745’s 6th floor gym. Gamat acted as the representative for the other unit owners. The Applicants state that the gym above their units is causing an unreasonable noise and vibration that interferes with the quiet enjoyment of their units.
- [2] TSCC 2745 was represented by Victor Yee (Yee), agent. Yee is President of the Corporation and also a unit owner of TSCC 2745. He is also a condominium lawyer who has appeared before this tribunal many times. TSCC 2745 states that the Applicants have failed to prove that there was unreasonable noise and vibration coming from the gym. TSCC 2745 states that even if the Applicants have proven that there is a nuisance, annoyance or disruption coming from the gym, TSCC 2745 has not permitted the activities that resulted in their creation or continuation. Finally, TSCC 2745 says that the Applicants have proposed solutions over which this Tribunal has no jurisdiction.

[3] For the reasons that follow, I find that:

1. The Applicants have established that the dropping of weights in the gym is causing noise and vibration that constitutes a nuisance, annoyance or disruption within the meaning of s. 117(2)(a) and (b) of *Condominium Act, 1998* (the “Act”).
2. TSCC 2745 has permitted the activity causing the continued violation of s. 117(2) of the Act and did not take reasonable steps to address the nuisance, annoyance or disruption.
3. The use of free weights in the gym will be restricted to the hours of 8 am to 9 pm to ensure compliance with s. 117(2) of the Act.
4. TSCC 2745 will reimburse the Applicants for their filing fees in bringing this application.

B. BACKGROUND

[4] TSCC 2745 is a relatively new apartment building. TSCC 2745’s original Declaration is dated November 19, 2019. TSCC 2745’s turnover meeting was held February 19, 2020.

[5] The gym hours have varied since the TSCC 2745 was occupied. These were as follows:

From	To	Gym Hours
June 5, 2019	March 17th 2020	6:00 AM to 11:00 PM
March 17th 2020	August 17th 2020	Closed due to COVID-19
August 17th 2020	August 31st 2020	7:00 AM to 9:30 PM (limited hours due to COVID-19)
August 31st 2020	September 18th 2020	8:15 AM to 8:15 PM (limited hours due to COVID-19)
September 18th 2020	July 19th 2021	Closed due to COVID-19
July 19th 2021	March 18th 2022	7:00 AM to 11:00 PM
March 18th 2022	January 16th 2023	6:00 AM to 11:00 PM
January 16th 2023	February 7th 2023	4:00 AM to 11:00 PM
February 7th 2023	Present	6:00 AM to 11:00 PM

[6] In October 2020, as a result of complaints, the builder, Empire Communities, hired an acoustical engineer to investigate the noises from the gym. The acoustical engineer recommended the installation of soundproofing products to the gym floor. The following soundproofing was installed to cover most of the gym floor:

1. DuraSOUND 2.75" rubber tile above the existing gym flooring; and
2. 1" thick bumpy rubber roll-out QTRBM Sound Installation under the rubber

[7] The Applicants filed an application on February 22, 2023, with the Condominium Authority Tribunal ("the Tribunal") because they believe that TSCC 2745 has not properly addressed their noise and vibration complaints.

C. ISSUES & ANALYSIS

[8] The issues are:

- a. Do the noise and vibration issues raised by the Applicants constitute nuisance, annoyance or disruption according to section 117(2) of the Act?
- b. Is TSCC 2745 permitting an activity to exist that results in the creation or continuation of unreasonable noise and vibration?
- c. If so, what remedies if any should be directed in this case?
- d. Should costs be awarded?

Issue 1: Do the noise and vibration issues raised by the Applicants constitute a nuisance, annoyance or disruption according to s. 117(2) of the Act?

[9] Section 117(2) of the Act states that:

(2) 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; or

(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.

[10] Section 26 of Regulation, O Reg 48/01 states that for the purposes of clause 117(2)(b) of the Act, a prescribed nuisance, annoyance or disruption includes odour, smoke, vapour, light and vibration. (emphasis added).

[11] In determining whether noise and/or vibration constitute a nuisance, annoyance or disruption, the Tribunal has established that such activities become unreasonable and a nuisance when the interference is substantial and not trivial and when there

is frequency and duration to the interference.¹ The time at which the noise and vibrations occur also matters. Finally, while the noise and vibration may not be continual, a loud unexpected banging noise that happens frequently but at irregular intervals, particularly when one might be sleeping or attempting to fall asleep can be disruptive.²

Applicants' Evidence and Submissions

[12] The Applicants state that their four witness statements show that the noise and vibration from the gym is on-going and consistent and that it impacts multiple unit owners. Three of the witnesses live in two units below the gym, a fourth witness lives on the same floor but her unit is under the cycle room. They complain of noises and vibrations consisting of:

1. Weights dropping early in the morning between 6 am and 8 am and late in the evening from 9 pm until the gym closes at 11 pm disrupting sleep.
2. Noise and vibration throughout the day from dropped weights disrupting work from home.
3. Complaints filed with TSCC 2745 dating back to 2020 but with the majority filed between January 2023 and June 2023.

Respondent's Evidence and Submissions

[13] TSCC 2745 filed evidence of its actions as a result of complaints made of noises and vibrations coming from the gym. TSCC 2745 reviewed its security footage in the gym and issued numerous compliance letters to persons identified by the security footage and key fob access to the gym. These letters each state that the unit holder has failed to abide by Rule 2 which states as follows:

No Owner or Resident shall create or permit the creation or continuation of any noise or nuisance which in the opinion of the Board or Property Manager may or does disturb the comfort or quiet enjoyment of the unit or common elements by other owners or their family members, tenants, guests, licensees, and invitees.

[14] These letters also indicate that individuals have been seen tossing weights to the ground from roughly 2 feet, dropping heavy dumbbells repeatedly, dropping

¹ *Carleton Condominium Corporation No. 132 v Evans*, 2022 ONCAT 97 at para 20.

² See for example *Reany v Waterloo Standard Condominium Corporation No. 670*, 2023 ONCAT 163 at paras. 19-26.

dumbbells hard enough to bounce, rebound upon impact and making noise. The compliance letters were sent to 11 different individuals since January 2023.

- [15] TSCC 2745 submits that the Applicants have the burden to prove there is a violation of the Act and that they have not done so.³ TSCC 2745 states that the only evidence of any noise and vibration comes from the Applicants' complaints and that this does not provide objective evidence of an unreasonable activities.⁴ TSCC 2745 submits that without acoustical evidence the Tribunal cannot conclude that there is unreasonable noise and/or vibration.
- [16] Further, TSCC 2745 states that the complaints stopped after soundproofing was added in 2020. The complaints did not begin again until the January 2023. That was when TSCC 2745, during a trial period, changed the gym hours to 4 am and 11 pm. TSCC 2745 says there were no complaints from the Applicants from March 18 2022 to January 16, 2023 when the gym hours were the same as they are now.
- [17] TSCC 2745 also takes the position that the noise and vibration issues are a balancing act. In essence, it states that the reasonableness of the activities is determined by a balance between those who live below the gym with the wishes of the rest of the unit owners who want to use the gym.
- [18] TSCC 2745 also states that the activities complained of are the usual noise and/or vibration of daily living and that the Applicants were aware when they purchased the units below the gym that the usual noise and vibration of daily living would include activities coming from the gym amenity.

Analysis

- [19] I find that the dropping of free weights in the gym creates unreasonable noise and related vibration that is a nuisance, annoyance or disruption within the meaning of the Act. This is particularly so in the early morning and late evening. The Applicants have shown that the loud and intermittent noise and vibration from dropped weights creates a substantial and not trivial interference that has lasted many months, if not years. These findings are based on the reasons that follow.
- [20] The Applicants filed affidavits from unit owners of the affected units about the noise, but that was not the only evidence filed. The Applicants also filed an affidavit from a neighbour who also lives on the 5th floor and whose unit is below the cycle room. She stated that she did not experience unreasonable noise from

³ *Abrecht v. Sheikh Al-Zoor*, 2023 ONCAT 49 at para. 25.

⁴ *Delia v. Ranches et al.*, 2022 ONCAT 127 at para. 23.

within her unit, but that she had visited the affected units and had heard weights dropping on the floor which she described as “constant thumps” especially below the free weight section of the gym. TSCC 2745 filed as evidence numerous compliance letters supported by security footage establishing that individuals were dropping “heavy weights” from a distance to the floor such that these weights would bounce and make noise and broke TSCC 2745’s rules regarding noise. Together these establish on a sufficiently objective basis that there were noises and associated vibrations coming from the dropping of free weights in the gym.

- [21] There is no requirement that the Applicants must produce an expert report, such as an acoustic report, in order to establish an unreasonable nuisance, annoyance or disruption. While such evidence would have been helpful, it is not required. The Tribunal has previously found that an unreasonable noise exists in absence of acoustic engineering reports.⁵
- [22] I also do not believe that the balance TSCC 2745 seeks to achieve relieves it of its duties under the Act. Section 117(2)(a) and (b) of the Act says that TSCC 2745 shall not permit any activity that is the cause of an unreasonable noise and/or vibration. This is not dependant on what the other unit owners in the building desire. TSCC 2745 cannot permit activities that breach s. 117(2) of the Act. In addition, it is not a binary scenario. There is nothing preventing the other unit owners from using the gym – what they cannot do is make unreasonable noise and vibrations by tossing, dropping or slamming free weights on the floor, particularly during hours when the unit holders below are sleeping.
- [23] I also do not find that TSCC 2745 was persuasive in its argument that the noises complained of could be coming from nearby construction or for other causes from within the building. The Applicants’ primary complaints are the noise and vibration coming from the gym and this is supported by TSCC 2745’s own security footage showing users of the gym dropping or slamming free weights onto the floor. I also find it persuasive that the Applicants’ neighbour complained of weight dropping noise, not other unrelated construction issues.
- [24] The Applicants have established that the noise and vibration coming from the free weights is beyond what should be reasonably expected in a residential context. I see no evidence to support TSCC 2745’s statement that the Applicants should have expected or agreed to noise and vibration from the gym that was significant enough to disrupt their sleep and breached TSCC 2745’s own rules regarding

⁵ See for example *Peel Condominium Corporation No. 312 v. Singh*, 2023 ONCAT 131.

noise.

- [25] I do agree, however, that the Applicants are not entitled to perfect quiet. The nature of apartment living is that they must be prepared to tolerate some noise and vibration, and this may include some activities from the gym amenity.⁶ The dropping of free weights in the early morning and late evening disrupts the sleep of the unit owners. It is also during a time when it would be expected that there would be less noise in the building. Indeed, TSCC 2745's rules are more stringent than the Act and require, at rule 2c), that no noise be transmitted from a Unit or a Unit's exclusive-use common elements to another Unit or another Unit's exclusive-use common elements between 11 pm and 7 am (emphasis added). The current gym hours are 6 am to 11 pm and at certain times they were from 4 am to 11 pm.
- [26] The only unreasonable noise and vibration established by the Applicants relates to the dropping of weights. The neighbour's affidavit noted that her unit was below the cycle room but that she was not experiencing unreasonable noise or vibration from the use of those machines. The compliance letters were sent to those dropping of free weights but there were no compliance letters filed showing issues with any other equipment in the gym.
- [27] The evidence therefore establishes that the dropping of weights is causing unreasonable noise and vibration and that these activities constitute a nuisance, annoyance or disruption. These activities are affecting the sleep and quiet enjoyment of several unit owners on the 5th floor.
- [28] The next question is whether TSCC 2745 has permitted the activities that are in violation of s. 117(2) of the Act.

Issue 2: Is TSCC 2745 permitting an activity to exist that results in the creation or continuation of unreasonable noise and vibration?

Applicants' Evidence and Submissions

- [29] The Applicants submit that TSCC 2745 has put up signs and issued warnings, but the noise continued. The Applicants state that TSCC 2745's efforts were not effective. Further, the Applicants state that complaints to management resulted in no attempts to resolve the noise. Instead, TSCC 2745 turned to issuing surveys on preferred gym hours rather than deal with the complaints.

⁶ *Zaman v. Toronto Standard Condominium Corporation No. 1643*, 2020 ONSC 1262 at para. 28.

Respondent's Evidence and Submissions

- [30] TSCC 2745 states that it has not permitted the noise-making activity. It says its governing documents prohibit noise. Further it has enforced its rules by issuing compliance letters to those responsible for dropping weights in the gym and will continue to do so. TSCC 2745 maintains that these letters were successful because it says there have been no repeat offenders. TSCC 2745 does not wish to take further action against those who have breached a rule on occasion, such as involving legal counsel, because it believes that is not reasonable and that such action would drive up legal costs. TSCC 2745 has also posted signs throughout the gym to remind users not to drop the weights.
- [31] TSCC 2745 submits that several hundred residents responded to TSCC 2745's survey and overwhelmingly demanded that TSCC 2745 maintain the gym's current operating hours of 6 am to 11 pm. TSCC 2745 states that it is required to achieve the greatest good for the greatest number of its unit owners.
- [32] TSCC 2745 submits that this Tribunal has no jurisdiction over allegations that the common elements are not sufficiently soundproofed. Nevertheless, it took steps to have the builder investigate the noise issues in 2020 and install soundproofing. TSCC 2745 submits that further soundproofing is not feasible because some of the gym equipment is almost touching the ceiling.

Analysis

- [33] I find that TSCC 2745 has been permitting activities that are in violation of s. 117(2) of the Act for the reasons that follow.
- [34] TSCC 2745 has taken some reasonable actions:
1. It facilitated the installation of soundproofing by the builder in 2020.
 2. It issued compliance letters against those persons observed dropping or slamming free weights onto the ground.
 3. It put up signs to inform gym users not to drop the free weights.
- [35] However, TSCC 2745 has not adequately explained why the use of heavy free weights is permitted at all given the noise and vibration issues they are causing. TSCC 2745's rules state that noise is not permitted between 7 am and 11 pm. At a minimum, TSCC 2745 has not adequately explained why the use of the free weights, the primary cause of the noise and vibration, is permitted between 6 am and 7 am and even earlier when the gym had a 4 am opening hour.

[36] In addition, TSCC 2745 has stated no further soundproofing is possible below the weight machines – but this does not explain why no further soundproofing is possible below the free weight section of the gym where there is no equipment close to the ceiling.

[37] Finally, and perhaps most importantly, TSCC 2745 does not seem to have done any investigation of its own into the noise and vibration issues. It relied on the work done by the builder in 2020 and simply refuted the complaints made by the unit owners. There was no evidence put before me that TSCC 2745 sent anyone to personally attend the units to determine the extent of the noise and vibrations and whether any of the efforts it has made has sufficiently remedied the noise and vibration coming from the gym. Nor did TSCC 2745 take any steps after 2020 to investigate the problem to determine why the noise of the free weights was being transmitted to the units below. A reasonable course of action would have been to investigate the noise, explore possible solutions, consider whether those solutions were viable, and implement those that were.

Issue 3: What remedies if any should be directed in this case?

[38] The Tribunal's powers at the end of a hearing are set out in s. 1.44 of the Act. The following powers are relevant to this application:

1.44.1 (1) Subject to subsection (4), in a proceeding before the Tribunal, the Tribunal may make any of the following orders:

1. An order directing one or more parties to the proceeding to comply with anything for which a person may make an application to the Tribunal.
2. An order prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action.

...

7. An order directing whatever other relief the Tribunal considers fair in the circumstances. 2015, c. 28, Sched. 1, s. 6. (emphasis added)

Applicants' submissions

[39] The Applicants' submissions were quite sparse, particularly with regard to the remedies they were seeking. However, they suggested several possible remedies:

1. Repair to the flooring or adding further soundproofing.
2. Reducing the hours of the gym to between 9 am and 9 pm.

3. Penalties against those who drop free weights such as a 6-month ban from the gym for any unit owner issued a third compliance letter for such behaviour.

Respondent's submissions

- [40] TSCC 2745 states that any repair to the floor is beyond the scope of this Tribunal's jurisdiction to order,⁷ because complaints about repair and maintenance of common elements are not currently within the Tribunal's jurisdiction.
- [41] TSCC 2745 also rejects the request to reduce the gym hours. It submits that the Tribunal does not have jurisdiction over a condominium's policies or operational procedures.⁸ The Board's reasonable decision about the gym's operating hours should be afforded deference – the Board's decision, even if it might not be perfect for everyone, is within a range of reasonable choices about the gym's operating hours.⁹
- [42] TSCC 2745 states that it is not opposed to increasing enforcement procedures against repeat offenders, however, it says again that this is outside the jurisdiction of the Tribunal to order.

Analysis

- [43] The Applicants have established a breach of s. 117(2) of the Act and are entitled to a remedy. Therefore, upon reviewing the evidence that is before me, pursuant to s. 1.44(1)(7) of the Act, I order the hours free weights may be used be restricted to mitigate the noise and vibrations coming from the gym, as explained below.
- [44] I disagree with TSCC 2745's position on the jurisdiction of the Tribunal to order certain remedies. This application was not about a repair to a common element, but instead about unreasonable noise and vibration. The Tribunal has the power to order TSCC 2745 to do what it considers fair in the circumstances. What is fair in the circumstances will depend on the facts of each case. The Tribunal may have the jurisdiction to order the remedies requested by the Applicants. However, I

⁷ *Sidhu v. Peel Condominium Corporation No. 426*, 2022 ONCAT 112 at para 34.

⁸ TSCC 2745 cited *Sidhu v. Peel Condominium Corporation No. 426*, 2022 ONCAT 112 at para 1. *Mariam Verjee v. York Condominium Corporation No. 43*, 2019 ONCAT 37 at para. 20. *Bogue v. Carleton Condominium Corporation No. 228*, 2021 ONCAT 67 at para. 25. *Rafael Barreto-Rivera v. Metropolitan Toronto Condominium Corporation No. 704*, 2020 ONCAT 7 at para. 7. *Kallini v. Toronto Standard Condominium Corporation No. 1598*, 2020 ONCAT 37 at para. 18. *Mehta v. Peel Condominium Corporation No. 389*, 2020 ONCAT 32 at para. 16.

⁹ *Zaman v. Toronto Standard Condominium Corporation No. 1643*, 2020 ONSC 1262 at para. 30.

decline to order what the Applicants have asked for given the reasons that follow.

- [45] The Applicants have not filed evidence to establish that the solutions they proposed would solve the problem. I have no information on the type of repair to the flooring that would potentially resolve the issues. There was no acoustical report that showed that additional soundproofing below the free weight section of the gym would result in any increased benefit. TSCC 2745 correctly notes that it is not gym hours that are causing the noise, but the dropping of free weights. Finally, given that there have been no individuals who have received more than a first compliance notice regarding the dropping of weights, it is hard to imagine how a rule regarding third-time offenders would reduce noise coming from the free weights.
- [46] Therefore, TSCC 2745 will only permit the use of free weights in the gym between the hours of 8 am and 9 pm. The Applicants proposed 9 am – 9 pm for the entire gym as one of their solutions. The evidence before me was that morning complaints were made before 8 am and evening complaints were made after 9 pm. Since the free weights are the only issue, it is fair to only restrict the use of free weights to these hours, not the entire gym. This will clearly help to prevent the unreasonable noise and vibration particularly in the early morning and late evening hours.
- [47] Beyond the above solution, I will not be ordering anything further. Soundproofing or repairs to the floor might offer a better solution, but I have no evidence before me to say they would work.
- [48] I also decline to order TSCC 2745 to change its compliance procedures. The evidence supports that TSCC 2745 is well aware of its obligations and has been acting appropriately with regard to enforcing compliance when a unit owner has been observed dropping weights and violating its governing documents.

Issue 4: Should costs be awarded?

- [49] The Applicants seek \$200 for the cost of their application. Since the Applicants have been successful in their application, I award them their costs of filing the application, pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

D. ORDER

- [50] The Tribunal Orders that:

1. TSCC 2745 will only permit the use of free weights in the gym between the

hours of 8 am and 9 pm.¹⁰

2. Within 30 days of this Order, and pursuant to Rule 48 of the Tribunal's Rules of Practice, the respondent shall reimburse the Applicants the Tribunal filing fee of \$200.

Marisa Victor
Member, Condominium Authority Tribunal

Released on: November 9, 2023

¹⁰ This is the time the Applicants asked that that the gym hours be restricted to.