

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 16, 2023

CASE: 2023-00354N

Citation: Arulpiragasam v. Nguyen, 2023 ONCAT 174

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

Member: Brian Cook, Member

The Applicant,

Shanmugaraj Arulpiragasam

Self-represented

The Respondent,

Quynh Nguyen

Self-represented

The Intervenor,

York Condominium Corporation No. 14

Represented by Addy Chan, Agent

Hearing: Written Online Hearing – August 30, 2023 to November 2, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Shanmugaraj Arulpiragasam and Quynh Nguyen are owners and occupiers of their respective units in York Condominium Corporation No. 14 (YCC 14). The units are townhouses, and each has a small backyard. The backs of their two units face each other with the lengths of the two backyards between them.
- [2] Mr. Arulpiragasam says that he is subject to unreasonable noise from Mr. Nguyen's unit and backyard. The noise results from social events which sometimes include amplified music.
- [3] Mr. Nguyen agrees that family members and friends sometimes gather at his unit or backyard for social events. He says there are usually 8 to 10 people in attendance.

- [4] The hearing was conducted in writing and with a video conference call on October 10. At the video conference, John Le was present to assist with the translation of Mr. Nguyen's evidence and submissions. He is a family friend of Mr. Nguyen and has been present at some of the social events that Mr. Arulpiragasam complains of in this case. He added some comments on behalf of Mr. Nguyen. In the context of this case, where all the parties are self-represented and translation was required, I allowed Mr. Le to take on these different roles.
- [5] There was initially some confusion about who the proper respondents are in this case. Mr. Arulpiragasam was not sure if Mr. Nguyen lived in the unit or if it was rented to tenants. During the proceeding, it was clarified that Mr. Nguyen does live in the unit and accepts responsibility for the activities of others living in the unit.

B. ANALYSIS

Applicable legislation and governing documents

- [6] Section 117(2) of the *Condominium Act, 1998* (the "Act") reads in part as follows:

117(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...

- [7] The YCC 14 declaration includes the following, at paragraph B.3:

Owners, their guests, visitors and servants shall not create or permit the creation of a nuisance by creating or permitting any improper noises in their units or by creating or permitting anything that will disturb or interfere in any way with other owners or those having business with them.

Video evidence

- [8] In support of his allegations of unreasonable noise, Mr. Arulpiragasam submitted two short videos, each less than a minute. They were taken from his backyard by cell phone. They show a social gathering in Mr. Nguyen's backyard. In the video, a sound amplification system can be seen to be in use. The audio recording of the event includes conversation which cannot be heard clearly over the sound of music.
- [9] On behalf of Mr. Nguyen, Mr. Le suggested that the video should not be allowed

as evidence because it had been taken without consent. He suggested that the videotaping was a form of trespassing.

- [10] Mr. Nguyen and other family members complained that Mr. Arulpiragasam is always spying on them, watching their activities, and sometimes recording or photographing them. Mr. Arulpiragasam had a security camera aimed at their unit. They complained to the police about this, and the police told Mr. Arulpiragasam to redirect the camera to cover only his own property, which he said he has done.
- [11] The issue before me is the admissibility of the short videos submitted as evidence. There is no law in Canada that deals with video taking in all circumstances. Considerations include whether there was an expectation of privacy, and if the video was taken for sexual purposes or some other improper purpose. In this case, the social gatherings are in the backyard of Mr. Nguyen's unit, which is clearly visible from Mr. Arulpiragasam's unit. The videos are of short duration and their purpose is to document the noise that Mr. Arulpiragasam experiences. I find that there is no reason to exclude the video evidence.

The noise that Mr. Arulpiragasam experiences

- [12] The noises that Mr. Arulpiragasam complains of are related to social gatherings. The gatherings occur inside the unit and in the backyard. While Mr. Arulpiragasam objects to the noise from gatherings that are held indoors, the greatest impact is from the gatherings in the backyard.
- [13] Based on Mr. Arulpiragasam's evidence, including the video evidence, the noise results from people socializing, including talking and laughing, and also noise from amplified music.
- [14] In a written submission, Mr. Nguyen indicated that when there is amplified music, they use a small portable speaker, which is about 8 inches high. However, in the videos, it is apparent that they also sometimes use a much larger and more powerful amplification system. This equipment is used especially for karaoke, which Mr. Nguyen and his family and friends enjoy. At the video conference call, Mr. Nguyen stated that this equipment belongs to a friend who brings it over when they are having a karaoke party. He initially said that they had used this equipment three times in 2023 but then realized that this has happened up to five times in 2023, including some occasions when it was used inside the unit.
- [15] Mr. Arulpiragasam has complained to the City of Toronto about the noise and two bylaw officers visited the condominium on July 3, 2023, and measured sound levels from inside Mr. Arulpiragasam's unit while a social event was occurring in

Mr. Nguyen's backyard.

[16] The notes from the visit include the following entry:

At 9:01 PM, starting Source reading loud karaoke music can be seen and heard which is clearly audible at this time when standing 2nd floor bedroom of the complainant.

[17] The officers took sound level measurements, but the results provided are difficult to interpret. A device was used that measures sound levels in decibels (db). DbA and dbC are scales that provide different ways of measuring the sound based on the frequency (high or low pitch). The decibel scale is logarithmic. A small increase in the decibel level can result in a significant increase in the sound level. An increase of 3 db, for example translates to a doubling of the sound intensity.

[18] The bylaw refers to a limit of 50 db(A) or 65 db(C) between 11:00 pm and 7:00 am or 65db(A) or 70db(C) between 7:00 am and 11:00 pm.

[19] The reading was done at 9 pm and the noise was measured at 68.8db(A) and 74.7db(C), somewhat exceeding the limits for that time of 65db(A) and 70 db(C). However, the bylaw requires a measurement of sound over a ten-minute period. The music was paused after five minutes of testing, so a full ten-minute reading was not done.

[20] As noted in the officer's notes, the noise was measured from inside Mr. Arulpiragasam's second floor bedroom and the noise was coming from Mr. Nguyen's backyard.

[21] The bylaw officers wrote a letter to Mr. Nguyen advising that the noise may be in excess of the limits allowed by the bylaw and asking that "appropriate action" be taken to comply.

[22] Mr. Arulpiragasam's evidence is that he has not been disturbed by noise coming from Mr. Ngyuen's unit since this application was filed in August 2023, which was shortly after the visit from the bylaw officers.

[23] Mr. Nguyen submits that it is not unreasonable for family and friends to gather at his home for social events and for special occasions like Canada Day and birthdays. His experience is that Mr. Arulpiragasam is unfairly harassing his family with complaints of noise. Mr. Nguyen submits that no one else has complained of noise from his family, a fact confirmed by Mr. Chan, the condominium manager.

C. CONCLUSION

- [24] Section 117(2) of the Act, quoted earlier, establishes a two-part question for assessing noise complaints. The first part is whether the noise is unreasonable. The second part is whether the noise results in a nuisance, annoyance, or disruption.
- [25] I accept that the noise from social gatherings at Mr. Nguyen's unit may be heard in Mr. Arulpiragasam's backyard and inside his unit. I accept that Mr. Arulpiragasam experiences the noise as an annoyance or disruption. I accept that other members of his household may also experience the noise as an annoyance or disruption, including Mr. Arulpiragasam's daughter who, according to Mr. Arulpiragasam finds that the noise can interfere with her studying.
- [26] Some amount of noise is inevitable when people are living in close proximity to each other. It would not be reasonable to insist that neighbours make no noise or that they refrain from having social gatherings. I agree with Mr. Nguyen that it is not unreasonable for family members and friends to gather at this home for social gatherings, whether inside the unit or in the backyard. When groups of people socialize, some amount of noise will result from conversations, laughter, and other ordinary social interactions. This sort of noise can be disruptive and annoying for neighbours, especially those who are particularly sensitive to noise. However, this sort of noise is not "unreasonable noise" within the meaning of section 117(2) of the Act.
- [27] However, amplified sound can result in noise that is unreasonable. On the basis of the evidence before me, I find that the amplified music and karaoke that is sometimes a feature of social gatherings at Mr. Nguyen's unit is unreasonable, if it is played at a high volume.
- [28] Ultimately, these neighbours need to find ways to respect the rights of the other. Mr. Arulpiragasam needs to respect Mr. Nguyen's right to have social gatherings at his unit and to accept that these may result in some noticeable noise and that this is a reality of living in proximity with others. Mr. Nguyen needs to consider the impact that noise from social gatherings may have on others. This is particularly important with regard to amplified music or karaoke and events in the backyard. There may be a role for the board of directors or the condominium manager in facilitating communication between the neighbours.
- [29] In conclusion, I find that Mr. Arulpiragasam has experienced unreasonable noise resulting in annoyance or disruption as a result of social gatherings held in Mr. Nguyen's unit when amplified music or karaoke is played at loud volumes. Mr. Nguyen is ordered to ensure that amplified music or karaoke is not played at unreasonable levels, especially for events held in the backyard. Mr. Arulpiragasam

in turn must accept that his neighbours are entitled to have social gatherings including in their backyard and that this may result in some noise that he may find intrusive but that is not unreasonable.

[30] The Tribunal's Rule 48.1 provides that if a party is successful in a case that proceeds to Stage 3, the other party will generally be ordered to pay the Tribunal fees. In this case, Mr. Arulpiragasam has paid \$150 in fees. Mr. Nguyen is required to pay Mr. Arulpiragasam \$150.

D. ORDER

[31] Mr. Ngyuen is ordered to comply with paragraph B.3 of the declaration and ensure that the sound levels from amplified music or karaoke are not unreasonably loud.

[32] Under Rule 48.1 of the Tribunal's rules, Mr. Nguyen shall pay \$150 to Mr. Arulpiragasam, representing the Tribunal filing fees. The payment shall be made within 30 days of the date of this decision.

Brian Cook
Member, Condominium Authority Tribunal

Released on: November 16, 2023