

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 10, 2024

CASE: 2023-00427N

Citation: Peel Standard Condominium Corporation No. 954 v. Skoczylas, 2024 ONCAT 9

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Peel Standard Condominium Corporation No. 954

Represented by Natalia Polis, Counsel

The Respondent,

Blazej Skoczylas

Self-Represented

Hearing: Written Online Hearing – September 19, 2023 to December 15, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Peel Standard Condominium Corporation No. 954 (“PSCC 954”) brought an application to the Condominium Authority Tribunal (the “Tribunal”) for an order directing the Respondent, Blazej Skoczylas, (the “Respondent”), the owner of a unit in PSCC 954, to comply with s. 117 (2) of the *Condominium Act, 1998* (the “Act”) as well as various provisions in its declaration and rules relating to noise. PSCC 954 alleges that the Respondent is creating excessive noise by playing loud music which is a nuisance interfering with the comfort and quiet enjoyment of residents of other units. PSCC 954 also seeks indemnification of its legal costs incurred in seeking compliance both before and in this hearing.
- [2] The Respondent does not deny that he plays music in his unit; he practices “DJ sets”, though rarely after 10 pm, and further states that he is not creating an unreasonable noise and has been responsive to requests, when made, to reduce the volume of his music.
- [3] At the outset of this hearing, the Respondent raised a myriad of issues, generally

related to ineffectual management of PSCC 954, including a dispute related to a request for records which resulted in an application to the Tribunal being subsequently filed by the Respondent, poor governance practices and the conduct of PSCC 954's Counsel. Lengthy submissions were often made on these issues at the beginning of the hearing. However, the Respondent, who was self-represented, did ultimately, and respectfully, follow direction given by me to the effect that those issues were either not before me in this case or outside the Tribunal's jurisdiction and therefore not relevant to the issues before me (though he briefly referenced some of these issues in his final submissions). He then focussed on the issues to be decided – whether there was unreasonable noise emanating from his unit contrary to s. 117(2) of the Act and/or PSCC 954's governing documents. I note here that PSCC 954 alleged there has also been excessive noise resulting from the Respondent playing his television loudly and creating loud banging noises; however, no evidence was provided about any noise other than loud music. While I have reviewed all of the evidence, in this decision I will only comment on that which was relevant to the issues to be decided by me.

- [4] At the conclusion of the hearing, and after closing submissions, the Respondent advised that he has moved out of the unit and listed it for sale. At time of release of this decision, I have received no information that the unit has been sold.
- [5] For the reasons set out below, I find that the Respondent has contravened s. 4.1 (a) of the PSCC 954 declaration and its Rules 2 (a) and (b), as well as s. 117 (2) of the Act. The Respondent shall reimburse PSCC 954, as compensation, \$1,135.09 as well as costs pursuant to Rule 48 of the Tribunal's Rules of Practice in the amount of \$4,000.

B. ISSUES & ANALYSIS

Issue No. 1: Is the Respondent in breach of s. 117 (2) of the Act and PSCC 954's governing documents, specifically the provisions that prohibit unreasonable noise or nuisance?

- [6] The relevant provisions of the governing documents are as follows:

Declaration

4.1 (a) No Unit shall be occupied or used ..., in such a manner ... that will unreasonably interfere with the use or enjoyment by other owners of the Common Elements or their respective Units ...

Rules – 2. Quiet Enjoyment

(a) Owners and their families, guests, visitors, servants and agents shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the Board or the 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 and persons having business with them.

(b) No noise shall be permitted to be transmitted from one Unit to another. If the Board determines that any noise is being transmitted to another Unit and that such noise is an annoyance or a nuisance or disruptive, then the Owner of such Unit shall at his expense take such steps as shall be necessary to abate such noise to the satisfaction of the Board. If the Owner of such Unit fails to abate the noise, the Board shall take such steps as it deems necessary to abate the noise and the Owner shall be liable to the Corporation for all expenses hereby incurred in abating the noise (including reasonable solicitor's fees).

- [7] PSCC 954 submitted evidence documenting noise complaints, which included incident reports prepared by various security staff, a “complete investigation log” which provided a summary of those reports, as well as witness statements from several of the security staff. Endrin Kumbara, the condominium manager, and Kevin Trayling, the owner of the unit directly above the Respondent's, also provided witness statements. Based on the evidence, it appears that Mr. Trayling was the principal complainant; Mr. Kumbara stated that 90% of the complaints were from him.
- [8] Between January 2022 and July 11, 2023, the incident reports and investigation log indicate that approximately 70 complaints of excessive noise from the Respondent's unit were made. Mr. Kumbara stated that all reports were disclosed in evidence except for the two incidents of October 6 and 7, 2023, which were also complaints made by Mr. Trayling. The majority of the incidents occurred between 5 and 10 pm, though a few complaints were made as early as 2:30 pm. Mr. Kumbara testified that there were no noise complaints between midnight and 7 a.m. The reports prepared by staff were detailed and appear to have been completed almost contemporaneously to the various incidents. To the extent that the evidence at the hearing – in particular that of Mr. Kumbara and Mr. Trayling – was inconsistent with those reports, I prefer the documentary evidence.
- [9] The evidence of Mr. Kumbara and Mr. Trayling appeared to be somewhat exaggerated. For example, Mr. Kumbara stated that there were 94 complaints by 13 different units/residents/owners. A careful review of the incident reports and the log does not support that assertion about the number of complaints, nor does his statement that Mr. Trayling was the complainant 90% of the time support the statement about the number of complainants. I also note that no evidence from

other residents was submitted. Similarly, Mr. Trayling's testimony that he has endured excessive noise from the Respondent's unit about five out of seven days, with loud music lasting between four to six hours on average (between 4 and 10 pm straight) was not supported by the reports and logs, nor was his assertion that at one point the noise emanating from the Respondent's unit disturbed his quiet enjoyment 64 days in a row. Though Mr. Trayling stated he did not report every instance of loud music, he did state that he called the front desk 90% of the time.

- [10] What the investigation logs do reveal is that in the majority of instances when security personnel attended at the Respondent's unit, they could hear loud music (in particular, bass) in the hallway outside his door. However, on some occasions, they heard no or minimal sound. The logs also show that on several occasions when security staff asked Mr. Trayling for permission to enter his unit to experience the noise he complained of, he denied them access. The Respondent, when told that the music was disturbing others, did usually lower the volume. That is not to say that he did not express frustration on occasion when the complaints were made before 9 pm. As he pointed out in his evidence, PSCC 954 did not have a rule about "quiet hours" so, from his perspective, he was practicing his trade as a DJ, which he was not precluded from doing during acceptable times of the day. I do point out here that local noise by-laws, referenced by the Respondent, are not determinative of reasonableness in terms of when music may be played, nor is the opinion expressed by Mr. Kumbara in his evidence that a condominium unit is no place to practice or record DJ sets determinative.
- [11] While the fact that it is likely that only one resident was complaining might point to personal acrimony between neighbours, the logs do indicate that loud bass music was emanating from the Respondent's unit. As noted above, the Applicant submitted no witness statements from anyone other than Mr. Trayling, which means there is no clear evidence of any complaints from residents who shared a hallway with the Respondent. However, loud music was verified by the security staff. The Respondent submitted that the level of noise was not objectively measured by decibel recordings and therefore cannot be said to be unreasonable. Decibel readings may lend weight to evidence of unreasonable noise but are not, depending on the fact situation, required. The sheer number of occasions on which PSCC 954 staff were required to attend and ask the Respondent to lower the volume gives credence to the allegation of unreasonable noise.
- [12] I also accept, based on the evidence and on a balance of probabilities, that there were multiple occasions on which Mr. Trayling's quiet enjoyment of his unit was disturbed. Likely not on as many occasions as he and Mr. Kumbara allege, but

nevertheless on multiple occasions.

- [13] To find that the noise was a nuisance, I must conclude that it was substantial and an unreasonable interference with another owner's quiet enjoyment. To meet the requirement for substantial, the frequency and duration of the interference is an important consideration. The time of the noise may also be a consideration. As the Tribunal stated in *Toronto Standard Condominium Corporation No. 1791 v. Franklin*, 2022 ONCAT 96 ("Franklin"), at paragraph 27, noise which may be tolerable or expected during the day may be intolerable and a nuisance in the overnight hours when people are asleep.
- [14] Here, the music was not being played during the overnight hours; it was rarely played after 10 pm. Nor does the evidence indicate that it was of any sustained duration; but it was frequent. Though the evidence may not rise to level of "nuisance" as legally interpreted, it is the frequency of occasions on which security did attend and have to ask the Respondent to turn down the music volume that persuades me that the Respondent, by playing his music loudly, did create an annoyance contrary to s. 117 (2) and Rule 2 (a). The Respondent may have believed he should be able to play his music and practice his DJ sets before 9 pm but based on the number of visits by security staff, he knew that his music was disturbing others.
- [15] While I have found that the Respondent did create an annoyance, I do not accept PSCC 954's submission that the Respondent had no intention of adhering to the principles of condominium living. For the most part, he responded appropriately to requests to turn down the volume; he believed that by not playing music after 10 pm he was being respectful of others. As was emphasized by PSCC 954 in their various letters to the Respondent about the noise complaints, living in close proximity with neighbours requires a great deal of consideration of others. And that applies equally to all residents – both Mr. Trayling and the Respondent. As Counsel for PSCC 954 stated in submissions, the nature of a condominium is that in return for advantages gained through communal ownership of certain elements, some degree of control over what can be done is given up. The Respondent cannot play his music at such a level as to disturb the quiet enjoyment of others, nor can Mr. Trayling expect absolute quiet at 5 pm. Communal living requires cooperation and understanding from all parties.
- [16] Having found that the Respondent was in violation of provisions in the governing documents regarding noise and s. 117 (2) of the Act, I will make an order that the Respondent immediately comply. In making this order, I recognize that the order may be moot as the Respondent appears to have moved out. But with no evidence

before me that the unit has been sold, there remains a possibility that the Respondent may move back into the unit.

ISSUE 2: Is PSCC 954 entitled to an order for indemnification of costs incurred in seeking compliance, including the costs of this proceeding?

[17] PSCC 954 wrote numerous letters to the Respondent requesting that he comply with the rules and “keep noise at minimum levels”. In addition, PSCC 954’s Counsel sent two letters to the Respondent on April 19 and September 22, 2022, requesting compliance, and advising that PSCC 954 was seeking payment of the legal costs incurred for said letters in the amount of \$468.95 and \$666.14, respectively. In those letters, Counsel cited both Rule 2 (b), and s. 2.2 of the declaration which states:

....any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any By-Laws or Rules in force from time to time by any Owner, or by members of his or her family and/or their respective tenants, invitees or licensees shall be borne and paid for by such Owner and may be recovered by the Corporation against such Owner in the same manner as common expenses.

[18] By September 2022, PSCC 954’s management had written five letters seeking compliance in addition to these legal letters. The Respondent was well aware that his music was disturbing at least one resident. While I have some concern that management seemed to accept Mr. Trayling’s numerous complaints about loud music with no investigation into what was actually being heard in his unit, I will award these costs to PSCC 954 pursuant to s. 1.44 (3) of the Act. The Respondent was duly informed about these cost consequences and the amount claimed is not unreasonable.

[19] Regarding the legal costs of the CAT proceeding, the Tribunal’s authority to make orders is set out in s. 1.44 of the Act. Section 1.44 (2) of the Act states that an order for costs “shall be determined in accordance with the rules of the Tribunal.” 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 in the course of 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.

- [20] PSCC 954 has been successful in that I have made the order it requested; therefore, in accordance with Rule 48.1, I will order that the Respondent reimburse the \$200 Tribunal fee paid by PSCC 954.
- [21] PSCC 954 is also seeking costs of this proceeding in the amount of \$14,521.63 as set out in its bill of costs.
- [22] While the principle that it can be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner has been clearly articulated by the courts and this Tribunal, it is also well-established law that an award of costs is discretionary. Whether the costs claimed are appropriate and proportional to the nature and complexity of the issues in dispute is an important consideration. An award for full indemnity is relatively unusual. The Tribunal has also stated in its jurisprudence that, in effect, the cost associated with the condominium corporation's carrying out its duty to enforce compliance under the Act and its governing documents is reasonably anticipated to be part of the common expenses paid by all owners.
- [23] In this case, the Respondent, as noted by PSCC 954's Counsel, did participate fully in the hearing. And it is true that in numerous instances he did post messages at inappropriate times in the Requests tab on the CAT-ODR platform and did not follow the Tribunal's directions. However, he was also responsive when re-directed, and it was me, as the Adjudicator, who was required to respond, not PSCC 954's Counsel. Any extra work as a result was largely borne by the Tribunal. I cannot conclude, as submitted by Counsel, that the Respondent's conduct was unreasonable or for an improper purpose. As a self-represented party, he sought to "defend" himself and vigorously advocated on his own behalf. I do not fault him for that. The Respondent did not cause undue delay or complications.
- [24] In some cases, the Tribunal has awarded the entirety of the legal costs; in particular, when the Tribunal has found a "willful" disregard of the rules. While I have found that the Respondent has been noncompliant regarding noise, I would not characterize him as willfully disregarding the rules. There were many incidents recorded, letters sent, and a view clearly expressed by Mr. Kumbara that the Respondent "is not suitable to live in this condominium", but the particular facts here, as set out above, mitigate against such a conclusion.
- [25] Regarding the legal costs claimed of \$14,521.63, I am not persuaded that these

are proportional to the nature and complexity of the issues in dispute. The Respondent's various submissions did create some additional work, but as stated above, that was generally borne by the Tribunal. PSCC 954 has cited *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 ("Psofimis") in its submissions, a case frequently cited by condominium corporations when requesting full indemnity. Counsel also cited *Metropolitan Toronto Condominium Corporation No. 1240 v. Debnath*, 2023 ONCAT 56 ("Debnath") in which substantial indemnity (50%) was awarded. In both cases, the respondents did not participate, which generally makes for a more streamlined hearing process for an applicant; however, the amount claimed in Psofimis was approximately \$3,900 and in Debnath approximately \$5,700, substantially lower than the amount claimed here.

[26] This case bears more similarity to the Franklin case, a contested case, both in terms of the issues in dispute – unreasonable noise and nuisance (though in Franklin the complaints were documented as coming from several residents and frequently after midnight) – and in terms of Mr. Franklin's and his representative's conduct in the hearing. The legal costs claimed were approximately \$17,000. In paragraph 48, the Tribunal stated:

... in summary, taking into account the fact that despite being well aware of the rules, his duty to comply with them, the noise complaints against him, the impact of his behavior on his neighbors and the potential cost consequences of failing to comply, Mr. Franklin has continued to make noise that is a nuisance in violation of TSCC 1791's declaration and rules. I have also taken into account that while, generally, as per CAT Rule 48.2 the Tribunal will not order one party to be reimbursed for the other parties legal fees and disbursements, in this case some of the behavior of Mr. Franklin and his counsel did result in additional work being required although not nearly enough to justify the awarding full costs, of \$17796.38, particularly given when proportionality and complexity is considered: the issues in this case and the hearing were not complicated. Weighing all of the factors above, I award costs in the amount of \$3500.

[27] Weighing the evidence in this case and factors referenced above, I find that an award for legal costs pursuant to Rule 48.2 in the amount of \$4,000 is appropriate.

C. ORDER

[28] The Tribunal orders that:

1. The Respondent, Blazej Skoczylas, shall comply with s. 4.1 (a) of PSCC 954's declaration and its Rule 2 (a), and, without limiting the generality of this

order, that Blazej Skoczylas shall not create excessive noise by playing music at high volumes.

2. Pursuant to s. 1.44 (1) 3 of the Act, and within 30 days of this Order, Blazej Skoczylas shall pay PSCC 954 compensation in the amount of \$1,135.09 in respect of legal fees and expenses it incurred.
3. Pursuant to s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, and within 30 days of this Order, Blazej Skoczylas shall pay \$4,200 to PSCC 954 for its costs in this matter.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: January 10, 2024