

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** July 4, 2024

**CASE:** 2024-00011N

**Citation:** Gagne v. 1213295 Ontario Ltd. et al., 2024 ONCAT 97

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**

Lynn Gagne

Represented Marc Thibault, Agent

**The Respondents,**

1213295 Ontario Ltd.

Represented by Ron Hu, Agent

Yasleny Martinez

Represented by Ron Hu, Agent

Carleton Condominium Corporation No. 133

Represented by Sheila MacDonald, Agent

**Hearing:** Written Online Hearing – April 1, 2024 to June 14, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] Lynn Gagne (the “Applicant”) is the owner of a unit of Carleton Condominium Corporation No. 133 (“CCC 133” or the “corporation”). Ms. Gagne alleges that, contrary to s. 117 (2) (a) of the *Condominium Act, 1998* (the “Act”), she is experiencing unreasonable noise from the unit above hers. That unit is owned by Respondent 1213295 Ontario Ltd. which is represented by Ron Hu and shall be referred to as “Mr. Hu’s unit” in this decision. Mr. Hu’s unit is occupied by Respondent Yasleny Martinez and Ms. Martinez’ mother.

[2] Ms. Gagne alleges that the flooring in Mr. Hu’s unit does not have a sound-dampening underlay and that she is disturbed by Ms. Martinez’ activity on a daily basis. She further alleges that CCC 133 and 1213295 Ontario Ltd. have failed to

adequately investigate her complaints and to take appropriate action to address the noise, in violation of sections 119 (1) and 119 (2) of the Act respectively.

- [3] Ms. Gagne requests the Tribunal order CCC 133, at its cost, to conduct an inspection of the flooring in Mr. Hu's unit to determine whether a sound-dampening underlay is present and, if one is not present, to arrange for testing by an acoustical engineer to determine if the unit's flooring meets the sound transmission standards set out in the *Ontario Building Code* (the "OBC"). If it is found that there is no underlay present or if an existing underlay does not meet the current OBC standards, the Respondents would be ordered to install one that does. She further requests that the Tribunal order CCC 133 to issue a formal letter of apology for its failure to investigate her complaints and to deliver a copy of this letter to each owner of the corporation.
- [4] Ms. Gagne requests reimbursement of the Tribunal fees she has paid. While this case was being heard, she placed her unit up for sale; the unit had not been sold as of the date the hearing concluded. She also requests reimbursement of costs associated with that sale, the amount of which would be determined when the unit is sold.
- [5] All of the Respondents in this matter are requesting that the application be dismissed on the basis that there is no evidence that Ms. Gagne is experiencing unreasonable noise. Mr. Hu also requests that the Tribunal order Ms. Gagne to cease her harassing behaviour towards Ms. Martinez. He further requests that 1213295 Ontario Ltd. and Ms. Martinez both be awarded \$2000 as compensation for damages. CCC 133 requests no costs in this matter.
- [6] For the reasons set out below, I find that the evidence does not establish that the noise Ms. Gagne reports hearing is unreasonable and I order her application be dismissed. I also order Ms. Gagne to immediately cease hitting her ceiling and/or communicating directly with Ms. Martinez and/or the principals of 1213295 Ontario Ltd. Finally, I order no costs in this matter.

## **B. BACKGROUND**

- [7] Ms. Gagne took possession of her unit of CCC 133 on June 30, 2023. Her testimony is that she immediately began to hear noise from the unit above hers. On July 13, 2023, she sent an e-mail to Robert Jolin, CCC 133's superintendent, asking what could be done to address the issue:

I hear absolutely everything from unit [redacted]. I hear them talk, walk, music even hear them PEE. Last night I thought they were coming through the ceiling. Their headboard was knocking so hard on the wall (LOL) but not

appreciated since unit [redacted] banged on the ceiling thinking maybe it was me making the noise (only wish).

Mr. Jolin's testimony is that he notified Sheila MacDonald, CCC 133's condominium manager, of Ms. Gagne's complaint and sent a copy of it to Mr. Hu. Mr. Hu testified that he responded to Mr. Jolin and advised that the sounds Ms. Gagne complained about were those of "everyday living" but that he would bring them to his tenants' attention.

- [8] On July 15, 2023, Ms. Gagne again wrote to Mr. Jolin asking if he had heard from the owners. On July 16<sup>th</sup>, she wrote him:

I'm just about to go knock on there [*sic*] door ... if they don't stop banging on the floor. It's not going to be pretty if I do. They need a written warning. I own they rent.

Mr. Jolin advised Ms. Gagne not to contact the tenants. On July 17<sup>th</sup>, he advised that he had heard back from the owners who had contacted the tenants and that he expected the situation would improve.

- [9] On July 18, 2023, Ms. Gagne e-mailed Ms. MacDonald, apparently in follow-up to an e-mail she had sent the previous day. Ms. Gagne acknowledged that Mr. Jolin had told her the owners had been contacted but asked Ms. MacDonald for confirmation that CCC 133 required the installation of a sound-dampening membrane under replacement flooring.

- [10] On July 22, 2023, Ms. Gagne again e-mailed a noise complaint to Mr. Jolin. Mr. Hu testified that Mr. Jolin contacted him that day. Mr. Hu's July 23, 2023 response suggested that Ms. Gagne create a log of the noise she was hearing.

- [11] On August 8, 2023, Ms. Gagne wrote to Ms. MacDonald and requested the name of the individual to whom her lawyer should write in order to resolve the noise issue. Ms. MacDonald responded the next day advising that the communication should be sent to the corporation's board of directors. Ms. Gagne responded the next day. She noted that she heard "absolutely everything" from the unit above hers and that she was "100% sure the acoustic membrane wasn't installed when the flooring was redone." In follow-up e-mails, Ms. MacDonald replied that the corporation had a record of a request to replace the flooring in 2011 and that she assumed the board approved it then but she could not confirm that the required membrane had been installed.

- [12] On August 27, 2023, Ms. Gagne again e-mailed Ms. MacDonald and advised that

her lawyer was now involved. She asserted that the flooring in Mr. Hu's unit was improperly installed and that, in violation of CCC 133's rules, the tenants had a washing machine in the unit but the board had done nothing. She further noted that the air conditioning was noisy. Mr. Jolin testified that with the permission of the tenants, he tested the fan coil system in their unit that day and found it to be operating normally. However, he did not visit Ms. Gagne's unit to assess the noise she was reporting.

- [13] On August 29, 2023, Ms. Gagne's lawyer sent a letter to CCC 133's board of directors requesting either documentary proof that the flooring in Mr. Hu's unit had the proper acoustical membrane installed or that the corporation undertake an inspection of the flooring to make that determination. He further noted that the air conditioning was noisy.
- [14] On September 18, 2023, Ms. Gagne e-mailed Ms. MacDonald asking when a specialist would be retained to inspect the flooring of Mr. Hu's unit. She also wrote to Juliana Li, the property manager of that unit, and to Mr. Hu, enclosing a copy of her lawyer's letter. In her letter to Ms. Li, Ms. Gagne asked what would be done to address what she referred to as improperly installed flooring. Ms. Li responded on September 22, 2023 and suggested that Ms. Gagne was hearing the noise of day-to-day living and that she might not be suited to condominium living. She ended by requesting that Ms. Gagne not correspond again unless she provided detailed information about the noise she was hearing which could then be objectively assessed. Mr. Hu also responded on September 22, 2023, noting that he believed the reported noise was that of day-to-day living.
- [15] On September 24, 2023, Ms. Gagne wrote to Jane Graine, the president of the corporation, and advised that the noise the evening before "started at 6 pm and ended at 9:45 pm. Drilling banging walking hard. Loud talking." Arrangements were made for Ms. Graine to meet with Ms. Gagne. Further correspondence indicates that arrangements were also being made for a decibel recorder to be placed in Ms. Gagne's unit.
- [16] A meeting was held with Ms. Gagne, her representative Marc Thibault, Ms. Graine and CCC 133 director Ray Chevrier on September 26, 2023. It was agreed that a decibel recorder would be placed in Ms. Gagne's unit while she was travelling, notwithstanding that on October 11, 2023, Ms. Gagne advised that the decibel reading was unnecessary and that a floor inspection was required. The decibel reader was placed in Ms. Gagne's unit on the weekends of October 20 to 23 and October 27 to 30, 2023.
- [17] On November 4, Ms. Graine visited Ms. Gagne in her unit. Ms. Graine testified that

she could hear the residents above talking while she was in the unit. Ms. Gagne's testimony is that Ms. Graine stated that this was "not normal."

[18] On December 12, 2023, a further meeting was held with board members and Ms. Gagne. According to Ms. Graine, Ms. Gagne became upset and left the meeting before any next steps could be determined. Mr. Thibault's testimony is that Ms. Gagne left the meeting after the corporation representatives advised that the decibel readings did not indicate there was a problem and that nothing more could be done.

[19] On Christmas Day, Ms. Gagne e-mailed Ms. Graine and stated she had been hearing "extreme noise all day long". She also wrote the tenants of the unit above hers, placing the note on their car window:

I have been living under you since June 30, 2023 and it's been hell. I hear absolutely everything from your unit.

The note then describes the noises she heard, including a vibrating bed and states that she had to knock on the ceiling several times because of the noise. She states that the tenants, in particular, Ms. Martinez, have no respect for their neighbours. Ms. Martinez sent a copy of this letter to Mr. Hu.

[20] On December 30, 2023, Ms. Gagne also wrote to Mr. Hu:

The issue with your tenants and flooring is still ongoing. The daughter living in your unit is total evil. The mother and (dog) no problem I barely hear her during the day when I am working from home but when the daughter gets home from work and weekends come around the noise level coming from your unit is unbearable.

She also expressed her concern about the corporation:

Not sure if you know what's going on in this building. Mismanagement of funds, bad property management by Apollo Management (Sheila MacDonald), Corrupt Board of Directors. Lazy Superintendent that we're not sure what he does but has a free apartment and a salary to go with it.

She then stated that she could "guarantee" that no acoustical membrane had been installed when the flooring in his unit had been replaced and asked him to address the situation.

[21] On December 31, at 11:43 p.m. Ms. Gagne wrote Ms. Graine stating that "the daughter is out of control... the noise level is just getting worse. Her electric bed is on high. She's stomping around on purpose to keep me awake". Ms. Martinez'

testimony is that she had family visiting to celebrate New Year's Eve but that no one was deliberately making noise.

[22] On January 2, 2024, Mr. Hu responded to Ms. Gagne. He noted that she had made defamatory remarks about his tenant and asked that she cease and desist what could be construed as harassment.

[23] Also, on January 2, 2024, Ms. MacDonald, in an e-mail to Mr. Thibault, asked that Ms. Gagne create a log "of the dates, times, locations, and types of noises heard so that we can investigate her complaints further." I note Ms. MacDonald states she is "again" asking for this log; however, no previous correspondence requesting a log was entered as evidence in this matter.

[24] On January 3, 2024, Mr. Thibault e-mailed Ms. MacDonald and stated the noise Ms. Gagne was hearing is "pretty much every evening from six to 11; most mornings starting at 6 a.m., every weekend Friday evening to late and all day Saturday and Sunday". He stated that the board had been dismissive of Ms. Gagne's complaints and asked that the flooring in Mr. Hu's unit be inspected. On January 6, he again wrote Ms. MacDonald and stated that at 7:40 p.m. the tenants were running a motorized machine and that the evening before Ms. Martinez "ran her vibrating bed from 9:30 p.m. to almost 2 a.m." On January 7, 2024, in another e-mail to Ms. MacDonald, Mr. Thibault stated that after he sent an e-mail the previous evening, Ms. Martinez turned on her vibrating bed. He also stated that a motorized machine was running "non-stop" in her living room.

[25] On January 10, 2024, at 7:20 a.m., Ms. Gagne e-mailed Ms. MacDonald and Ms. Graine stating:

I'm sure you get a great night sleep every night. Well I don't ever since the tenant upstairs decided to get a motorized bed. This morning 6 a.m. bed on full blast since she knows it wakes me up.

Thirty minutes later she sent a second e-mail:

She is now running a motor in the living-room again it's 7:47 am. I can't take much more of this. This woman upstairs has issues. It's been noisy since 5:55 a.m.

[26] On January 11, 2024, Ms. Gagne filed her application with the Tribunal.

[27] Also on January 11, 2024, Ms. MacDonald wrote Ms. Gagne and requested that she maintain a noise log which would assist the corporation in identifying the source of the noise. She further advised that the corporation was obtaining quotes for a

“professional sound engineering review” which she explained would take place over a 48-hour period during which Ms. Gagne would be required to be absent from her unit. CCC 133 subsequently obtained two quotes for the testing. However, the testing was not conducted.

[28] On January 16, 2024, Ms. MacDonald, with the occupants’ permission, conducted an unannounced inspection of Mr. Hu’s unit. Ms. MacDonald testified that she saw no washing machine or motorized bed. She noted that furniture had floor protectors under it and that there were some area rugs placed in the unit.

### **C. ISSUES & ANALYSIS**

[29] On May 8, 2024, when the parties posted their proposed cross-examination questions, it came to my attention that Ms. Gagne might have placed her unit up for sale; one of Mr. Thibault’s questions indicated that Mr. Hu had contacted Ms. Gagne’s real estate agent. In response to my question, Mr. Thibault confirmed that the unit is for sale. I advised him that if the unit was sold, Ms. Gagne would no longer have standing in this matter and it would be dismissed. CCC 133 then requested that I dismiss the case, submitting that Ms. Gagne’s complaints are specific to her. I did not do so because it is unknown when or if the unit will be sold.

[30] The issues to be decided in this matter are:

1. Is the Applicant experiencing an unreasonable noise contrary to section 117 (2) (a) of the Act or the condominium corporation’s governing documents?
2. Are the Respondent tenant and the Respondent unit owner violating the Act and/or the governing documents of CCC No. 133?
3. Has the Respondent condominium corporation fulfilled its obligations to take reasonable steps to enforce compliance with the Act and the governing documents of CCC No. 133?
4. What orders, if any, should the Tribunal make?
5. Should there be an award of costs?

[31] Nine witnesses testified in this matter. Much of their testimony and the parties’ submissions referred to the behaviour and/or alleged motivation of the parties. Ms. Gagne asserts that the Respondents were dismissive of her concerns. The Respondents assert that Ms. Gagne’s behaviour towards them was disrespectful and uncooperative. That there is a significant level of distrust and friction between the Applicant and the Respondents was evident throughout this proceeding, particularly

in the cross-examination questions initially proposed by the parties. While I have reviewed and considered all of the evidence submitted in this matter, in this decision, I refer only to the evidence most relevant to the issues to be decided. I have not considered Issue 4 separately; rather, I include the orders to be made when I address the other issues.

**Issue 1: Is the Applicant experiencing unreasonable noise contrary to section 117(2) of the Act or the condominium corporation's governing documents?**

[32] Section 117 (2) (a) of the Act states:

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;

Similarly, Article IV 1. (d) of CCC 133's declaration states:

No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that would constitute a nuisance.

The Act does not define 'nuisance'. In its decision in *Carleton Condominium Corporation No.132 v. Evans, 2022 ONCAT 97 (CanLII)*, summarizing *Antrim Truck Centre Ltd. V. Ontario (Transportation) 2013 SSC 13 (CanLII)*, the Tribunal wrote at paragraph 20:

...it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

[33] As set out in the "Background" section above, Ms. Gagne alleges that on a daily basis she is hearing footsteps, conversations, vibration, air conditioning, and plumbing sounds from Mr. Hu's unit which disturb her quiet enjoyment of her own unit. In particular, she highlights sounds which she believes are from a motorized bed and a washing machine.

[34] Ms. Gagne alleges that the sounds she hears are caused by the activity of Respondent Yasleny Martinez because they occur when Ms. Martinez is at home. She further alleges that she hears this activity because the replacement flooring in



Mr. Hu's unit does not have the sound-dampening underlay required by CCC 133's rules. Ms. MacDonald confirmed that the corporation's rules are set out in its Policy and Procedure Manual (rev. June 2023) which, under "Floor Coverings", states:

Wall-to-wall carpeting combined with acoustic underlayment is the preferred covering for sound insulation between units. If you are planning to install laminate flooring, the underlayment must meet an IIC-STC rating of 60 or higher. These ratings determine how well the underlayment will dampen sound. STC stands for Sound Transmission Class and IIC stands for Impact Isolation Class. Ratings are measured in decibels.

Noise complaints resulting from altered flooring in a unit may result in the corporation taking corrective action if it's found that approved sound insulation was not installed. Noise complaints, in accordance with the City noise by-laws from altered flooring, could result in the removal or covering of newly altered floors at the owner's expense. This could apply whether flooring was approved or not. Note: Residents must realize we live in a multi-unit residence and therefore some noise is to be expected during regular hours.

Neither Mr. Hu nor CCC 133 could confirm that the required underlay is in place; the flooring in Mr. Hu's unit was replaced before 1213295 Ontario Ltd. purchased the unit. CCC 133, which has changed condominium management firms since the flooring was installed, could only find a request to replace the flooring in its records.

- [35] Ms. Gagne requests that the Tribunal order that the flooring in Mr. Hu's unit be inspected to ascertain if the required underlay is in place and if so, whether it meets OBC standards. I note that the STC standard of 50 set out in the OBC is in fact less rigorous than CCC 133's rule and that the OBC sets no IIC standard.
- [36] The Tribunal's jurisdiction is established in Ontario Regulation 179/17 and does not extend to disputes about flooring. Notwithstanding what her correspondence indicates is Ms. Gagne's firm belief that the absence of a sound-dampening underlay is the cause of the sounds she hears, the issue in this matter is whether she is experiencing unreasonable noise that is a nuisance, annoyance or disruption. Addressing flooring may form part of a remedy if it is found that flooring deficiencies are the cause of the transmission of unreasonable noise.
- [37] To substantiate her position that she is experiencing unreasonable noise from Mr. Hu's unit, Ms. Gagne submitted a noise log and approximately five hours of audio recordings which were made in March and early April, 2024.
- [38] Ms. Gagne's noise log was presumably compiled in response to Ms. MacDonald's

January 11, 2024 request that a log be created to assist the corporation in identifying the types and potential source of the noise she had reported hearing. The log, which Ms. Gagne acknowledges was largely created from memory after-the-fact, is non-specific and contains entries which begin on July 4, 2023. The following extract is illustrative of the daily entries of the sounds Ms. Gagne recorded hearing in her “living area” which she defines as her living room, dining room, kitchen, two bedrooms and bathroom:

Friday Sept 8, 2023 from 6:00 a.m. to 11:00 p.m.: Footsteps, Conversation, Air Conditioner, Urination, Flushing

Friday Sept 8, 2023 from 5:30 p.m. to 11 p.m.: Footsteps, Conversation, TV, Air Conditioner, Urination, Flushing

Saturday Sept. 9, 2023 from 6:00 a.m. to 11:00 p.m.: Footsteps, Conversation, TV, Air Conditioner, Urination, Flushing

Sunday Sept. 20, 2023 from 6:00 a.m. to 10:00 p.m.: Footsteps, Conversation, TV, Air Conditioner, Urination, Flushing

The log entries are essentially identical until December 16, 2023, when “Motorized Bed” is added to the list of sounds. The log is slightly more specific after January 11, 2024 but still notes the times sound is heard as spanning hours in length. The exception is one date when Ms. Gagne notes the exact time she was awakened by what she indicates is a “motorized bed.”

- [39] Ms. Gagne undoubtedly created the log to prove her point that she hears sounds on an ongoing basis from Mr. Hu’s unit. However, its non-specificity serves to undermine its evidentiary value; it defies credulity that the noise she alleges she hears is both constant and pervasive throughout her unit.
- [40] I have carefully reviewed the audio recordings submitted by Ms. Gagne. These were submitted together with an explanation of what the recorded sound represents. Ms. Gagne testified that they were made by placing a recorder very close to the ceiling of her unit. I find that the recordings also have very limited evidentiary value. While sound is audible, there is no decibel reading or other control value by which to gauge its intensity and, on the majority of the recordings, the nature of the recorded sounds is unclear. Moreover, the fact that the recorder was placed close to the ceiling would not be reflective of how Ms. Gagne would actually perceive the sound.
- [41] I acknowledge that the sound of running water can be heard on the recordings and, on the recording dated March 12, 2024, a conversation in Spanish can be heard,

which is consistent with Ms. Graine's testimony that she heard conversation while she was in Ms. Gagne's unit on November 4, 2023. Similarly, both Mr. Thibault and Ms. Gagne's brother, Michel Gagne, testified that they had heard sounds from above when visiting Ms. Gagne. While the fact that Ms. Graine heard a conversation while in Ms. Gagne's unit and the recording of a conversation suggest that there may be excessive sound transmission to Ms. Gagne's unit, it is unknown whether those conversations were at a "normal" or exceptionally loud level. The fact that only one conversation is recorded does undermine Ms. Gagne's log which indicates that these are heard daily and constantly.

- [42] There is no evidence to indicate that Ms. Martinez is carrying on activities which are creating excessive noise. Notwithstanding Ms. Gagne's log entries, Ms. Martinez testified that she has no motorized bed or washing machine, has ceased using her dishwasher, does not run the fan coil system in her unit because the unit is sufficiently insulated, and that there is no other machinery in her unit which could potentially create a vibration sound. She also testified that both she and her mother, conscious of Ms. Gagne's complaints, wear only soft-soled shoes at home and that there are area rugs in both bedrooms. Further, Mr. Jolin testified that he views security tapes daily and has seen Ms. Martinez doing laundry weekly in the building's laundry room. Ms. MacDonald's testimony is that she did not find either a motorized bed or a washing machine when, unannounced, she inspected Mr. Hu's unit on January 16, 2024.
- [43] It is possible that activities which are themselves reasonable can result in the creation of unreasonable noise. CCC 133 did measure the sound in Ms. Gagne's unit in October, 2023. Accompanied by Ms. Graine and Mr. Thibault, board member Ray Chevrier placed a decibel recorder in the unit over two weekends, times which Ms. Gagne has indicated the noise she experiences is constant. Mr. Chevrier testified that the testing was done to determine if there was a problem, in which case the board would approach Mr. Hu to have the flooring in his unit investigated.
- [44] The results of CCC 133's testing were recordings of sound measuring between 30 and 40 decibels when the recorder was placed in the dining room on the first weekend and approximately 40 decibels when placed in the living room on the second weekend. Mr. Chevrier's assessment of the results is that the recorded levels did not exceed "normal ambient noise" of 40 decibels. The Internet source he included in his witness statement referred to "urban ambient noise" which is undefined; therefore it is unknown if this refers to an accepted standard for an indoor residential environment. I note that Ms. Gagne questions whether the tenants in Mr. Hu's unit were at home during the testing periods.

- [45] Both Mr. Chevrier and Mr. Hu suggested that the sounds Ms. Gagne reports hearing are those of day-to-day living in an older building and therefore are to be expected. Mr. Chevrier noted that CCC 133 was built in the 1970's and that its mechanical systems are aging and becoming noisier as they do. Mr. Hu suggested that the building has poor acoustics and in his closing submission went so far as to include illustrations of how plumbing sounds would travel in a multi-residential building.
- [46] The results of the decibel recordings taken in October, 2023 suggest that the sound level in Ms. Gagne's unit is not excessive although I note that Mr. Chevrier, while trained and working in construction-related areas, has no specific training in acoustics and is not professionally qualified to interpret them. I place no weight on Mr. Chevrier and Mr. Hu's personal opinions about the building and its systems.
- [47] On January 11, 2024, Ms. MacDonald advised Ms. Gagne that the corporation was obtaining quotes for professional acoustical testing. Mr. Chevrier testified that the corporation received two quotes; one for approximately \$3,000 and the second for approximately \$6,000. He explained that in addition to measuring and assessing the noise level in Ms. Gagne's unit over a 48-hour period, the second firm would also measure the IIC/STC rating of the floor assembly in Mr. Hu's unit. In February, 2024, Mr. Thibault directly contacted the first firm and also received a proposal for testing. However, neither party proceeded.
- [48] It is unfortunate that professional acoustical testing, which would have provided objective evidence of the noise levels in Ms. Gagne's unit, did not take place in this case. I do not doubt that Ms. Gagne is annoyed and disturbed by the sounds she reports hearing. This is demonstrated by the e-mails she sent to Ms. MacDonald and Ms. Graine in which she expresses considerable frustration. However, that she may find the sounds to be annoying and/or disturbing does not mean that they are unreasonable; an individual's perception of noise is necessarily subjective.
- [49] The onus is on the Applicant to provide evidence of unreasonable noise; Ms. Gagne has failed to do so. I find that there is insufficient objective evidence to enable me to conclude that the sounds she reports hearing exceed those which a reasonable person could expect to hear in a multi-residential environment during daytime hours.

**Issue 2: Are the Respondent tenant and the Respondent unit owner violating the Act and/or the governing documents of CCC No. 133?**

- [50] Section 117 (2) (a) of the Act applies to both Ms. Martinez, the Respondent tenant, and to 1213295 Ontario Inc., the Respondent owner. The owner has a further obligation under the Act. Section 119 (2) states:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

As noted above in paragraph 34, Ms. Gagne alleges that Ms. Martinez' activities are the source of the noise she hears. However, I have found that the evidence does not support that Ms. Gagne is experiencing unreasonable noise in her unit. Therefore, I find that Ms. Martinez is not in contravention of s. 117 (2) (a) of the Act.

[51] With respect to 1213295 Ontario Ltd., the evidence is that Mr. Hu contacted the tenants immediately after receiving notification of Ms. Gagne's complaint from Mr. Jolin in July, 2023. Ms. Li's September 22, 2023 response to Ms. Gagne's September 18, 2023 letter, while expressing some frustration with Ms. Gagne, indicates that there was previous correspondence between the parties which was not filed in this matter. Ms. Li wrote:

I had already suggested to you back in July that you should document the specific date and time of the noises, the nature of noises, the duration of the noises and the noise decibel ratings (or sound recordings) so that their validity can be evaluated.

The correspondence and submissions of 1213295 Ontario Ltd.'s representatives indicate that in the absence of documentation of specific noise incidents, they believe the sounds Ms. Gagne reports are those of day-to-day living in an older building. Ms. Martinez' testimony indicates that she was made aware of the nature of the complaints and made efforts to curb potential sources of noise, arguably to the extent of overly restricting her own day-to-day activity. What 1213295 Ontario Ltd. did not do was inspect the unit's flooring to determine if a noise-dampening underlay was in place; however, in this circumstance, there was no obligation for it to do so. Therefore, I also find that 1213295 Ontario Ltd. has not contravened s. 119 (2) of the Act.

[52] Mr. Hu requested that the Tribunal order Ms. Gagne to cease what he described as harassment of Ms. Martinez. The evidence is that in a July 22, 2023 note to Mr. Jolin, she advised that she had to knock on her ceiling because of noise above her. Similarly, in a September 24, 2023 note to Ms. Graine, she wrote that she had to "knock hard on the ceiling with a broom stick 3 times." In another e-mail to Ms. Graine dated November 4, 2023, she indicated she had knocked on the ceiling three times. In her Christmas Day note to Ms. Martinez, while stating that Ms. Martinez was disrespectful, she wrote "you sound like a herd of cows". In her December 30, 2023 note to Mr. Hu, she described Ms. Martinez as "total evil". In the same note, she indicates that she had knocked on the ceiling nine times. Ms. Martinez testified

that on April 21, 2024, she and her mother were both awakened by Ms. Gagne knocking on her ceiling, although Ms. Gagne denies she did so on that date.

- [53] Ms. Gagne's correspondence and her behaviour towards Ms. Martinez doubtlessly has contributed to the obvious friction between the parties. Ms. Li's September 22, 2023 response to Ms. Gagne's September 18, 2023 letter, in which she indicated that Ms. Gagne might not be suited to condominium living, and Mr. Hu's "cease and desist" letter in response to Ms. Gagne's Christmas Day note also contributed to that friction. However, Ms. Gagne should have been logging and reporting specific noise incidents to CCC 133, not knocking on her ceiling. I am ordering her to immediately cease both this practice and any direct communication with 1213295 Ontario Ltd.'s representatives and its tenants.

**Issue 3: Has the Respondent condominium corporation fulfilled its obligations to take reasonable steps to enforce compliance with the Act and the governing documents of CCC No. 133?**

- [54] Section 117 (2) (a) of the Act applies to a condominium corporation as well as to individual owners. In addition, s. 119 (1) of the Act states:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

In this case, the issue is not in fact whether the corporation has enforced compliance as it has not been determined that there is a violation of s. 117 (2) (a) of the Act. Rather, the question is whether CCC 133 took appropriate steps to investigate Ms. Gagne's complaints.

- [55] The evidence is that Ms. Gagne initially reported her concerns to superintendent Robert Jolin in July, 2023. He in turn advised Ms. MacDonald and contacted the representatives of 1213295 Ontario Ltd. He further testified that he went to Mr. Hu's unit and heard no excessive sound. He also tested the fan coil system and found it to be operating normally. It is Ms. Gagne's contention that after this initial response, CCC 133 did not make reasonable efforts to investigate her complaints.
- [56] Notwithstanding the evidence that Ms. Gagne sent e-mails to Ms. MacDonald in the latter part of July and early August, 2023, there is no evidence of any investigative efforts by CCC 133 after Mr. Jolin's initial contacts with 1213295 Ontario Ltd until after Ms. Gagne's lawyer's letter was sent on August 29, 2023. While Ms.

MacDonald did write to Ms. Gagne on September 18, 2023 to assure her that the board of directors was listening to her concerns and advised that “these things take time”, she outlined no further steps the corporation would be taking.

- [57] CCC 133 did convene a meeting on September 26, 2023 with Ms. Gagne and subsequently performed its own decibel recordings on two weekends in October, 2023. It appears that CCC 133 then relied on those recordings as evidence that Ms. Gagne was not experiencing unreasonable noise. While Ms. Graine visited Ms. Gagne’s unit on November 4, 2023, there is no evidence of any further action by the corporation until a second meeting was held on December 12, 2023. Ms. Graine’s November 4, 2023 visit was in fact the only time that any representative entered Ms. Gagne’s unit to gauge the sounds she was reporting hearing. Ms. MacDonald’s testimony is that this is because they were not invited.
- [58] On January 2, 2024, Ms. MacDonald wrote to Mr. Thibault and asked Ms. Gagne to maintain a noise log. Mr. Thibault responded with a series of somewhat non-specific daily e-mails outlining the noise Ms. Gagne had heard. On January 11, 2024, Ms. MacDonald sent the log request to Ms. Gagne. She also advised that the corporation was requesting quotes for professional acoustical testing although it did not proceed to retain a firm after Ms. Gagne filed her application with the Tribunal. On January 16, 2024, Ms. MacDonald inspected Mr. Hu’s unit.
- [59] Both Ms. Graine and Ms. MacDonald indicated that Ms. Gagne was perceived to be “difficult to deal with” and “disrespectful” (Ms. Graine) or “defiant” and “disrespectful” (Ms. MacDonald in the corporation’s closing submission). I acknowledge that much of Ms. Gagne’s correspondence is combative in tone. And the evidence is that the corporation was receiving correspondence from both Mr. Thibault and Ms. Gagne which was variously addressed to Mr. Jolin, Ms. MacDonald, individual board members and the full board, notwithstanding that Ms. MacDonald requested that all correspondence be sent to her to avoid confusion, something which Mr. Thibault refused to do.
- [60] While I have noted that some of CCC 133’s investigative steps were somewhat delayed, I find that the corporation did make reasonable efforts to investigate Ms. Gagne’s complaints and I issue no order in this regard.

#### **Issue 5: Should the Tribunal award costs?**

- [61] Ms. Gagne has requested that the \$200 she paid in CAT fees be reimbursed. She has also requested compensation for damages. 1213295 Ontario Ltd. and Ms. Martinez have also requested compensation for damages.

[62] Rule 48.1 of the Tribunal's Rules of Practice states that if a CAT member makes a final decision that the unsuccessful party will be required to pay the successful party's CAT fees unless the member decides otherwise. I have found that the evidence does not indicate that Ms. Gagne is experiencing unreasonable noise. Therefore, Ms. Gagne is not entitled to reimbursement of her Tribunal fees.

[63] Ms. Gagne is also requesting that when her unit is sold, the Tribunal order the reimbursement of her real estate fees, legal fees and moving costs. She is also requesting reimbursement of the land transfer tax she paid when she purchased her unit at CCC 133. Mr. Hu requests that both 1213295 Ontario Ltd. and Yasleny Martinez be awarded \$2,000.

[64] Section 1.44 (1) (3) of the Act provides the Tribunal with the ability to order compensation for damages incurred as a result of an act of non-compliance. In this case non-compliance has not been proven; it has not been established that Ms. Gagne is experiencing unreasonable noise. Further, Ms. Gagne's requests all relate to her decision to sell her unit, a decision she made while this case was in process and before she knew its outcome. The other parties are not responsible for any expenses she either may incur or has incurred as a result of her decision. With respect to Mr. Hu's request that 1213295 Ontario Ltd. and Yasleny Martinez both be awarded \$2,000, no evidence to support this request was submitted. Therefore, I make no award in respect of either Ms. Gagne's or Mr. Hu's requests.

#### **D. ORDER**

[65] The Tribunal Orders that:

1. Ms. Gagne's application is dismissed without costs.
2. Ms. Gagne shall immediately cease hitting her ceiling and/or corresponding with either the representatives of 1213295 Ontario Inc. or its tenant, Yasleny Martinez.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: July 4, 2024