

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 22, 2024

**CASE:** 2024-00374SA

**Citation:** Simmons v. Thunder Bay Condominium Corporation No. 8, 2024 ONCAT 130

Order under section 1.47 of the *Condominium Act, 1998*.

**Member:** Dawn Wickett, Member

**The Applicant,**

Toni Simmons

Self-Represented

**The Respondent,**

Thunder Bay Condominium Corporation No. 8

Represented by Kirstynn-Dawn Taniwa, Agent

**Hearing:** Written Online Hearing – July 26, 2024 to August 17, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] The Applicant is a unit owner in the Respondent, Thunder Bay Condominium Corporation No. 8 (“TBCC 8”).
- [2] The parties were previously before the Tribunal and the issues in dispute were resolved by way of settlement agreement 2023-00633N (the “SA”) issued on April 23, 2024.
- [3] The Applicant brings this application alleging TBCC 8 breached terms 6.2, 6.3, 6.4 and 6.5 which read:
  2. The Respondent confirms that a noise emanating from the ventilation fan in the changeroom in the pool area below the Applicant’s unit, has been addressed by proper maintenance of the fan elements, following investigation and consequent actions taken by the Respondent. The Respondent shall undertake to establish a regular maintenance schedule of the fan elements.
  3. The Respondent has agreed to the following remedies in order to address

the noise issue identified as emanating from the operation of the pumps involved in the circulation of water in the pool:

(i) Continuation of regular Inspection of the mechanical aspects of the condominium's pool operation and investigate visual and audio records of nightly noise emanating from the pool and pump areas.

(ii) Undertake to address the steps required to eliminate or diminish or regulate the offending noise, once identified, in a manner that is in keeping with the corporation's budgetary considerations and wishes of the members of the condominium.

4. The investigation of sound coming from the Applicant unit's wall between her unit and a stairwell has been investigated as thought to perhaps be coming from the MUA unit in the room on the other side of the stairwell. That initiative led to the replacement of filters in the unit. No further related action of a mechanical nature is identified or required at this time with respect to that MUA unit.
5. A remaining nuisance issue is described by the Applicant as a 'humanly-generated' noise (voices and radio) perceived by the Applicant as coming from the pool area, during the late night or early morning hours. This complaint has not been confirmed by any in-situ camera evidence examined by the Respondent. Without documented verification of the source of the remaining nuisance noise complaint, the Respondent agrees to continue to work with the Applicant (who shall continue to keep a log of such noises occurring during unreasonable hours), to mitigate the source of the noise. It is understood by the parties that this investigation may include the consideration of restriction of access to the pool during certain hours (i.e. 11:00 p.m. - 7:00 a.m.) if necessary; a process that may involve changes in locking mechanisms and notification and discourse with the members. The parties agree to a timely conclusion of the investigation of the remaining noise complaint, within the a period of 30 days from the signing of this Settlement Agreement, prior to any necessary involvement of the membership and/or amendments to the Rules.

[4] TBCC 8 denies it breached the terms of the settlement agreement. TBCC 8's position is that it has complied with all terms.

[5] For the reasons that follow, I find TBCC 8 has not breached the terms of the SA, and the application is dismissed without an order for costs.

## **B. ISSUES & ANALYSIS**

[6] The Applicant submitted voluminous documentation in support of her position.

Some of the documentation (relating, amongst other things, to neighbour's taps, bathroom repairs, hot water issues, alleged harassment, and pet issues) was not relevant to the issues in dispute, and therefore are not addressed in this decision. The Applicant also submitted evidence pertaining to the issues in dispute prior to the SA being issued which are not relevant to this application. The only issue before me to determine is whether TBCC 8 breached the terms of the SA.

**Issue No. 1: Did TBCC 8 breach term 6.2 of the SA?**

- [7] Term 6.2 of the SA requires TBCC 8 to establish a regular maintenance schedule for the common elements pool's ventilation fan.
- [8] TBCC 8 submits that the ventilation fan was replaced, and a regular maintenance/inspection schedule has been implemented. It is inspected every Tuesday and Friday during the weekly pool inspections.
- [9] The Applicant did not provide any evidence to challenge TBCC 8's evidence that they have implemented a regular maintenance schedule for the ventilation fan.
- [10] Based on the evidence before me, I find TBCC 8 has not breached term 6.2 of the SA as it has implemented a regular maintenance schedule for the ventilation fan.

**Issue No. 2: Did TBCC 8 breach term 6.3 of the SA?**

- [11] Term 6.3 requires TBCC 8 to (a) continue regular inspection of the mechanical aspects of the pool operation and investigate visual and audio records of nightly noise emanating from the pool and pump areas, and (b) take steps to eliminate or diminish or regulate identified offending noises that are in keeping with the corporation's budgetary considerations and wishes of the members of the condominium.
- [12] The Applicant submits that the mechanical noises emanating from the pool increased after the SA was issued by the Tribunal. The Applicant did not provide specific details, dates or times about the noise she believes has been emanating from the mechanical aspects of the pool. In support of her position, she provided undated copies of reports she sent to the Municipal Enforcement Office describing numerous concerns about repairs and fire safety issues. In the reports, the Applicant identified concerns of noise emanating from the taps in the pool area, and the machine room.
- [13] The Applicant's documentary evidence was submitted in a manner that proved difficult to understand and follow. It was undated or partially dated, contained irrelevant information and issues, as well as pool related problems/issues that

occurred prior to the SA. The Applicant may not have understood that any pool maintenance issues prior to the date of the SA cannot be considered during this hearing given they are deemed to have been resolved by the terms of the SA. The only determination for this hearing, is whether TBCC 8 breached those terms. To resolve some of the challenges in understanding the Applicant's evidence, I asked her direct questions about her concerns in relation to the specific terms of the SA she believes TBCC 8 breached. The Applicant's responses again were not clear, lacked specific details about the alleged noise emanating from the mechanical operation of the pool, and contained partial dates (no year).

- [14] TBCC 8 submits that all mechanical and chemical testing of the pool and its operating system is completed twice weekly. Any issues or deficiencies found during these inspections are addressed immediately as to ensure ongoing compliance with the Health Unit standards.
- [15] TBCC 8 submits that the pool pump and HVAC do not make any significant sound. The sound can only be heard when standing in the room where both mechanical items are housed.
- [16] Following the June 10, 2024, special owner's meeting, TBCC 8 provided the Applicant with one of the director's personal phone numbers so that she could call whenever noises were heard. The director agreed that upon receiving a call from the Applicant, they would investigate the concerns. TBCC 8 submits the Applicant never called the director to complain about noise emanating from the mechanical aspects of the pool. Notably, in response to my questions, the Applicant stated: "I refused to give them the satisfaction of calling or sending an email."
- [17] In response to the Applicant's reports to the Municipal Enforcement Office, TBCC 8 submits that it received one telephone call from the Fire Prevention Officer who advised he had no issues with the building's protocols. TBCC 8 further submits that it did not receive any calls from the municipal by-law office in response to the Applicant's reports.
- [18] TBCC 8's evidence demonstrates that it has taken all necessary steps to comply with the SA by ensuring regular inspections of the pool's mechanical system, and addressing any identified issues that may be revealed during the inspections. Further, to ensure the Applicant's noise complaints were investigated, TBCC 8 provided her with direct access to a director who was willing to accept her telephone calls and investigate the noise complaints. However, the Applicant admitted that she refused to call or email her concerns. If the Applicant is unwilling to communicate her noise complaints to TBCC 8, it is then unreasonable to expect it to investigate and resolve her concerns as required by the terms of the SA.

[19] In assessing the evidence of both parties, I prefer that of TBCC 8 as it is clear, concise and detailed. The Applicant's evidence, as previously mentioned, was difficult to follow and understand which affects its reliability. Based on the evidence, I am not able to find that TBCC 8 breached term 6.3 of the SA as alleged by the Applicant.

**Issue No. 3: Did TBCC 8 breach term 6.4 of the SA?**

[20] Term 6.4 of the SA states that no further action of a mechanical nature is identified or required with respect to the MUA unit which was thought to be the cause of sound entering the Applicant's unit wall between her unit and the stairwell.

[21] While the Applicant alleges TBCC 8 has breached this term because of ongoing concerns about noise, there is no requirement in this term for TBCC 8 to take any action. Rather, this term is a statement detailing what steps TBCC 8 took to remedy the Applicant's noise complaint. As such, I find TBCC 8 has not breached term 6.4 of the SA.

**Issue No. 4: Did TBCC 8 breach term 6.5 of the SA?**

[22] Term 6.5 requires TBCC 8 to work with the Applicant to mitigate the source of human generated noises (voices and radio) alleged to come from the pool area during the late night and early morning hours. The parties understood that the investigation into the source of the noise may include consideration of restricting access to the pool during certain hours, and if necessary, change the locking mechanisms. The parties agreed that the conclusion of the investigation into the noise would conclude within 30 days of the date of the SA, prior to any necessary involvement of the membership and/or amendment to the Rules.

[23] Since the date the SA was issued, the Applicant filed twenty-four noise complaints with TBCC 8. The alleged offending noises occurred between April 26, 2024, and May 28, 2024. Some noise complaints did not have details, while others indicated the noise stemmed from loud banging, shouting, weights being dropped, loud radio, yelling, loud machine, air horn and slamming doors. All the Applicant's complaints allege that the noise occurred at various times between 11:45pm and 6:30am. The Applicant confirmed that she has not filed a noise complaint since May 28, 2024.

[24] The Applicant alleges that TBCC 8 did nothing to address her complaints. To mitigate the noise issue, the Applicant wants TBCC 8 to lock the pool doors to restrict access during the overnight hours.

[25] TBCC 8 provided a copy of the noise log it created to track and manage the Applicant's complaints. The noise log matches the dates of the complaints filed by the Applicant. The log indicates that upon receipt of each complaint, TBCC 8 reviewed audio video (motion activated) footage of the pool area. None of the complaints were verified, and no activity was recorded during the middle of the night. As the Applicant's noise complaints were not verified, TBCC 8 found no reason to lock or restrict access to the pool during overnight hours.

[26] Having reviewed the evidence before me, I find TBCC 8 has not breached term 6.5 of the SA. In making this finding, I considered the fact that TBCC 8 has demonstrated that it has investigated each of the Applicant's noise complaints by reviewing audio video footage. The Applicant's complaints were not verified, leading to TBCC 8 finding no reason to restrict member's overnight access to the pool by locking the doors. Further, the SA does not stipulate that TBCC 8 is required to lock the pool doors or change the locking mechanisms. Rather, the SA identifies these as possible options to address noise complaints.

**C. COSTS**

[27] Neither party requested an order for costs.

**D. ORDER**

[28] The Tribunal Orders that:

1. The application is dismissed without an order for costs.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: August 22, 2024