Corrected Decision
This decision was amended to update the spelling of the Applicant's Counsel name.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 16, 2024
CASE: 2024-00028N
Citation: Wentworth Standard Condominium Corporation No. 382 v. Marrazzo, 2024 ONCAT 157

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

Member: Nicole Aylwin, Member

The Applicant,
Wentworth Standard Condominium Corporation No. 382
Represented by Erik Savas, Counsel

The Respondent,
Mark Marrazzo
Self-Represented

The Intervenors,
Bernice Addezi
Represented by Robert Fedak, Agent

Sonya Addezi
Represented by Robert Fedak, Agent

Hearing: Written Online Hearing – May 15, 2024 to October 1, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Wentworth Standard Condominium Corporation No. 382 ("WSCC 382" or the "Applicant") submits that the Intervenors, Bernice Addezi and her daughter, Sonya Addezi, who are tenants in the unit of the Respondent owner, Mark Marrazzo, have repeatedly breached the provisions in its governing documents that prohibit unreasonable noise and nuisance, as well as s. 117(2) of the *Condominium Act,*

1998 (the “Act”). They alleged the Intervenors have breached these provisions in two different ways: a) by creating unreasonable noise in their unit that is affecting other unit owners' quiet enjoyment of their property; and, b) by engaging in disruptive conduct in the common elements of the condominium.

[2] They further submit that Mr. Marrazzo has failed to take all reasonable steps to ensure his tenants comply with the noise and nuisance provisions in the Applicant’s governing documents and s. 117 (2) of the Act.

[3] WSCC 382 requests an order that the Intervenors comply with noise and nuisance provisions of the governing documents and s. 117(2) of the Act, and that Mr. Marrazzo take all reasonable steps to ensure their compliance. They also request that the Respondent and Intervenors be jointly and severally liable for all WSCC 382’s legal costs in connection with this application.

[4] The Intervenors deny that they are causing unreasonable noise and nuisance and take the position that the Applicant has unfairly targeted them and is pursuing baseless complaints. They have asked the Tribunal to dismiss this application and make an order requiring the Applicant to donate the amount of $5000 to a charity.

[5] Mr. Marrazzo also disputes WSCC 382’s allegations that his tenants are making unreasonable noise and takes the position that he has not failed to take the appropriate steps to get his tenants to comply with the governing documents, because they already are. He has requested costs in the amount of $4500.

[6] For the reasons set out below, I find that the Intervenors are not complying with the provisions in the Applicant’s governing documents related to noise and nuisance and are carrying on activities in their unit that are creating unreasonable noise in breach of s. 117 (2) of the Act. However, I do not find that their behavior in the common elements, which may have been noisy and disruptive, amounts to nuisance. I further find that Mr. Marrazzo has not met his obligation to take all reasonable steps to ensure his tenants comply with the Act and the governing documents and order Mr. Marrazzo to pay WSCC 382 $4500 in costs.

[7] Before my review and analysis of the evidence, I want to clearly state what this case is **not** about. The issues of noise and nuisance are not the only issues between these parties. The parties and their witnesses referred to various other disputes or incidents between them, such as an issue with the hot water in the building, parcel deliveries (or lack thereof) by concierge staff, complaints about the behavior of other unit owners who are not party to this case, and issues related to how the Intervenors have treated staff members of the Applicant (i.e. allegations of threatening and harassing behavior). There was also a substantial amount of

evidence offered on what I will refer to as the “common element incidents,” and while I do address these incidents below, I do so only insofar as they directly relate to the claims of noise and nuisance. I do not make any finding on the allegations related to issues of harassment or who was at fault in relation to these incidents, these issues are not properly before me. I will, only address the evidence and submissions relevant to my analysis and the issues to be decided by me. Those issues are:

1. Are the Intervenors, Bernice and Sonya Addezi, carrying on an activity which results in the creation or continuation of any unreasonable noise that is a nuisance, annoyance or disruption, contrary to section 117(2)(a) of the Act and the governing documents of the Applicant?

2. Has the Respondent, Mark Marrazzo, failed to comply with the provisions in the governing documents and section 119(2) of the Act related to his responsibilities for his tenants?

3. Is any party entitled to costs? If so, in what amount?

B. PROCEDURAL MATTERS

[8] There were two preliminary motions made at the outset of this hearing. The first was a motion by WSCC 382 to disqualify Robert Fedak as the representative for the Intervenors and Respondent. WSCC 382 asserted that Mr. Fedak did not qualify as a representative under the Tribunal’s Rules of Practice. The second was a motion from the Intervenors for an early dismissal based on the grounds that the case was unlikely to succeed. All parties provided submissions on the two motions, and after reviewing the submissions I provided full reasons for my decisions on the first motion in a Motion Order[1], and the second in an order made within the context of the hearing.

[9] In brief, regarding the first motion, I determined that Mr. Fedak could represent the Intervenors but not the Respondent. Mr. Marrazzo was then provided with time to designate another representative; he chose to represent himself.

[10] Regarding the second, I determined that there was no evidence to demonstrate that the case should be dismissed for any of the reasons set out in Rule 19.1 of the Tribunal’s Rules of Practice. Thus, the hearing proceeded.

C. ISSUES & ANALYSIS

[1] Wentworth Standard Condominium Corporation No. 382 v. Marrazzo, 2024 ONCAT 75

Issue No. 1: Are the Intervenors carrying on an activity which results in the creation or continuation of any unreasonable noise that is a nuisance, annoyance or disruption, contrary to the governing documents of the Applicant and section 117(2) (a) of the Act?

[11] WSCC 382 has two applicable rules related to noise and nuisance. They are as follows:

> Rule 2(1): 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.
>
> Rule 2(2) No noise shall be permitted to be transmitted form 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 the expenses herby incurred in abating the noise (including reasonable solicitor fees).

[12] Section 117(2) (a) of the Act, also prohibits the carrying on of an activity or the permitting of an activity that results in the creation or continuation of unreasonable noise. It reads:

> (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. 2015, c. 28, Sched. 1, s. 102.

[13] As noted in the introduction, WSCC 382 alleges that the Intervenors have breached these provisions in two different ways. First, by creating unreasonable noise in their unit that is affecting other unit owners' quiet enjoyment of their

property – more specifically the unit owner of the unit next to them. Second, by engaging in disruptive and noisy conduct in the common elements of the condominium. I will deal with each separately as the evidence related to each is quite distinct.

Are the Intervenors creating unreasonable noise in their unit that breaches WSCC 382 Rule 2(1) and 2(2) and s. 117(2) of the Act?

[14] According to WSCC 382, beginning in approximately June of 2023, the Intervenors have been disrupting the peaceful enjoyment of the unit next to them, which is owned by Ilya Kovalko.

[15] According to the witness testimony of Mr. Kovalko, prior to June of 2023, Mr. Kovalko and his partner, who also lives in the unit, had little issue with the noise. However, beginning in June 2023 this changed. Mr. Kovalko testified that he and his partner began to hear frequent banging on the shared wall between the units, screaming at the shared wall that was directed at Mr. Kovalko and his partner, and very loud music played frequently (multiple times a day) often for hours at a time. As part of his testimony Mr. Kovalko submitted and testified to the details of a log he had kept of the noise. The log details the times and dates of a significant number of what Mr. Kovalko refers to as “noise incidents”. It also provides details about what noises were heard (i.e. banging, music, yelling, etc.)

[16] He submits that the noise being created by the Intervenors often wakes him and his partner up at night, and that it disturbs them during working hours (when working from home). Finally, in his witness statement Mr. Kovalko suggests that the noise making has become deliberate and that the Intervenors are now intentionally making the noises to disturb and intimidate him and his partner in retaliation for him making complaints about the noise.

[17] According to WSCC 382, staff investigated several of the noise complaints made by Mr. Kovalko. Nick Gardiner, who works full time as the Site Manager for the Applicant, provided testimony that over 20 complaints were made to the Concierge and/or WSCC 382 staff, between August 2023 and April 2024. He further testified that on several occasions, various staff went up to the unit to investigate and were able to verify the complaints. On several occasions, he went himself to investigate the complaints and he could hear the noise from the hallway, without even entering the unit. Thus, he found the complaints to be valid and concluded that the noise emanating from the Intervenors’ unit was unreasonable.

[18] The Intervenors take the position that Mr. Kovalko’s complaints are unfounded and that WSCC 382 is conspiring with Mr. Kovalko to target them for an ‘unknown’

reason. However, the Intervenors speculate that it could be in retaliation for Sonya Addezi ending a personal relationship with Mr. Gardiner, and/or for making a complaint to the police about an incident they believed to have taken place in Mr. Kovalko's unit.

[19] They offer these allegations as evidence that the testimony provided by Mr. Kovalko and Mr. Gardiner is not credible. I disagree. This dispute has clearly escalated tensions and animosity between the Intervenors, Mr. Kovalko, and WSCC 382 staff. This has led to discourteous behavior between neighbours (on both sides), and at times less than professional communications sent by staff. However, Mr. Kovalko's testimony is detailed, specific, and is supported not only by his written log of complaints dating back nearly a year, but also by emails he sent to the corporation over the past year that are consistent with his testimony. There are also video recordings of some of the noises heard by Mr. Kovalko in his unit that confirm his testimony of the banging noises he has heard.

[20] There is also no evidence that Mr. Gardiner is not credible. His testimony is also detailed, and the evidence he provides about when staff received complaints corresponds to several of the instances recorded in Mr. Kovalko's log. He has also been forthcoming about facts that would seem to support some of the Intervenor's arguments, such as the fact that to his knowledge Mr. Kovalko is the only unit to have complained about the noise, and that the Intervenors have also made noise complaints about noise coming from Mr. Kovalko's unit (although he notes staff were never able to verify these complaints). There is also evidence that other staff members investigated and confirmed the noise form the Intervenors unit, calling into question the accusation that Mr. Gardiner is targeting the Intervenors.

[21] Beyond attempting to discredit the testimony of Mr. Kovalko and Mr. Gardiner, the Intervenors offer little evidence that they are not responsible for the noise. They did provide a very short statement from another unit owner who lives across the hall, who wrote that they had never heard unreasonable noise emanating from the Intervenors' unit. They also submitted a screen shot of a text exchange with a different neighbour in which the writer of the texts indicates she has not heard any music coming from the Intervenors' unit. I give little weight to this evidence as it is vague and there is no way to verify the authenticity of the text exchange. Further, I note that even if I were to accept both the signed statement and the text exchange as true, it is not evidence that Mr. Kovalko's complaints are false. Mr. Kovalko has been very clear about the fact that the noise emanates through the wall he shares with the Intervenors – a detail that could explain why another neighbour (such as one whose unit is not directly connected to the Intervenors but across the hall) may not be experiencing the same noise as Mr. Kovalko. And, while Bernice

Addezi testified to the fact that she has lived in the building for five years and prior to June of 2023 there had been no noise complaints made against her unit, I note that the evidence provided indicates that the complaints began when her daughter moved (back in) in with her in or around the time of August of 2023. A history without complaints is not evidence that current complaints are unsubstantiated.

[22] Finally, the Intervenors submit that they have made many noise complaints about Mr. Kovalko's unit and that these complaints are evidence that they are not the ones making noise. They also suggest that the videos they provided of music coming from different units shows that they are not making the noise. While I agree with the Intervenors that the videos show that other units on the floor have played music loud enough to be heard from the hallway, these are not in and of themselves evidence that the Intervenors are not causing noise that is a nuisance. These videos are not dated, nor was testimony provided to suggest that the music recorded was a noise they were being blamed for. The argument appears to be that the fact that others also make noise, serves to cast doubt on the fact that the Intervenors are making the noise. Even if I accept that the Intervenors have experienced some noise emanating from Mr. Kovalko's unit (which is not an issue before me) and others on the floor have played loud music on occasion, this is not evidence that the Intervenors are not responsible for the noise complained of by Mr. Kovalko.

[23] Based on the above, I find that it is more likely than not that the Intervenors are the source of the noise (i.e. the loud banging, loud music, yelling and screaming) complained of by Mr. Kovalko. And, given its regularity, persistence, often extended duration, and the fact that the noise is often made in the overnight hours, I find the noise is more than a trivial interference; it constitutes a nuisance that disturbs the quiet enjoyment of other unit owners, specifically Mr. Kovalko. Consequently, I find the Intervenors have not complied with WSCC 382's governing documents and s. 117 (2) of the Act and I will order the Intervenors to immediately comply with the governing documents of the corporation, and that they cease to play music at a volume that can be heard outside of their unit, particularly between the hours of 10pm-7am. They must also refrain from any activity that results in banging on the common wall between the units. Finally, I will order that within 14 days of the date of this decision, that they provide written confirmation to Mr. Marrazzo and WSCC 382 that they have read this decision and will comply with the rules.

Have the Intervenors engaged in disruptive conduct on the common elements that constitutes a nuisance and breaches WSCC 382 Rule 2(2)?

[24] The Applicant asserts that the Intervenors have engaged in “disruptive” behavior, including shouting and yelling in the common elements that causes unreasonable noise and disturbs the use of the enjoyment of the common elements by others. According to WSCC 382 this behavior is connected to two incidents (“common elements incidents”) witnessed by staff members of the Applicant; one that occurred on July 23, 2023, when Sonya Addezi and another resident got into a verbal altercation (that included some yelling) over an interaction between their respective dogs. The second occurred on June 1, 2024, when there was a confrontation between the Intervenors and the same resident in the courtyard of the building that continued into the lobby. Both parties offered extensive recounting of these incidents and provided submissions and evidence on who was at fault and the reasons why these incidents occurred (with both the Intervenors and the Applicant providing justifications for their responses/behavior). What the parties do agree on is that these incidents occurred; where they disagree is in who is responsible for these incidents and what the consequences of them ought to be. Both parties have also accused the other of harassment.

[25] What precipitated these incidents and why any of the involved parties acted in the way they did is not for me to address. Nor is the issue of whether the behavior constitutes harassment (of the staff or others) properly before me. What I have been asked to determine is whether the conduct constituted a breach of either s. 117(2) of the Act or WSCC 382’s Rule 2(1) [2]

[26] What the evidence before me demonstrates is that during these incidents, the Intervenors (either Bernice or Sonya Addezi) did behave in a manner that could be considered disruptive. They engaged in yelling and screaming (at times profanities) both in the courtyard and in the lobby of the condominium. However, I do not find that the Intervenors conduct itself, as documented in the evidence before me, constitutes a nuisance. To support a claim of nuisance, the interference must be substantial; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. Here, there has been only two incidents which have occurred over a year apart, making them relatively infrequent and while the yelling and screaming no doubt created some noise, given the fact that there has only been two incidents, and the fact that each incident was of short duration, I find that the noise created does not rise to the level of a nuisance in this case.

[27] This is not to say that the conduct of the Intervenors has not been at times inappropriate or difficult for the WSCC 382’s staff to manage. Living in a

[2] Rule 2 (2) does not apply as it speaks only to transmission of noise between units; it does not deal with noise in the common elements.

condominium community requires respect, civility and consideration of neighbours and condominium staff which is something that the Intervenors may need reminding about.

Issue No. 2: Has the Respondent, Mark Marrazzo, failed to comply with the provisions in the governing documents and section 119 (2) of the Act related to his responsibilities for his tenants?

[28] Section 119(2) of the Act requires that the owner of a unit ensure that any occupier of their unit complies with the Act and the governing documents of the corporation and take all reasonable steps to ensure they do so. It reads:

> 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.

[29] WSCC 382 submits that Mr. Marrazzo has failed to take such reasonable steps to ensure that his tenants, the Intervenors, comply with the Act and Rule 2(1) and 2(2).

[30] Most of the evidence provided by the Applicant on this issue are emails that WSCC 382's staff traded with Mr. Marrazzo about the general behaviour of his tenants, both towards staff and other residents (behavior that the Applicant alleges constitutes harassment) and emails relating to the common element incidents. It is very clear that the Applicant wanted Mr. Marrazzo to take steps to evict the Intervenors for this behavior and that eviction is what they considered to be the most "reasonable step." As I have not found that the behavior of the Intervenors in relation to the common elements incidents constitutes a breach of the Applicant's rules or s.117(2) of the Act, I do not need to address the question of whether Mr. Marrazzo has failed to enforce these provisions in relation to the behavior associated with these incidents, nor will I address it in relation to issues not properly in front of me (i.e. alleged breaches of other rules).

[31] However, since I have found that the Intervenors are creating unreasonable noise that is a nuisance in their unit which is disturbing the quiet enjoyment of others, I will address the questions of Mr. Marrazzo's obligations under s. 119 (2) of the Act in relation to that noise.

[32] Mr. Marrazzo submits that he was aware of the noise complaints made by Mr. Kovalko. He states he was sent an email about these complaints on September 22, 2023. The evidence also shows that he was sent a letter from the Applicant's counsel on October 6, 2023, asking Mr. Marrazzo to ensure his tenants refrained

from creating a noise and nuisance in the unit and common areas (among other requests).

[33] However, it is Mr. Marrazzo's position that while he did speak to his tenants about the complaints in 2023 (this is confirmed by both Bernice and Sonya Addezi's testimony), after speaking with them he determined the complaints were not valid and thus did not see the need to take any further steps to ensure compliance. He also testified that he spoke with the Intervenors about the governing documents and advised them of the rules verbally.

[34] It is not clear from the evidence provided by any party how much information Mr. Marrazzo was provided about the noise complaints as they occurred. There is no evidence that Mr. Marrazzo was provided with the incident reports in real time, or that any correspondence detailing the complaints or describing the types of noises complained of, their frequency etc., was provided to him in a timely manner. So, I do not find it unreasonable that Mr. Marrazzo initially took limited steps, i.e. simply speaking to his tenants about the noise complaints and reminding them of the rules.

[35] However, Mr. Marrazzo, testified that in April of 2024 he was provided with several of the documents submitted into evidence in this hearing, including the detailed log Mr. Kovalko kept of the noise complaints, as well as emails that noted that staff members other than Mr. Gardiner (who Mr. Marrazzo alleges is untrustworthy) verified noise complaints. Yet, despite being presented with this more detailed evidence, Mr. Marrazzo continued to deny that his tenants were responsible and attempted to place blame on the others (i.e. other units, the complainant, and the corporation). While I appreciate that not every owner and corporation will agree on the 'facts' of noise complaints, in this case the evidence eventually provided to Mr. Marrazzo, should have been enough for him to take the complaints more seriously and take further action beyond simply a verbal reminder to his tenants of the rules. Yet, he continued to deny the validity of the complaints.

[36] An owner cannot choose to simply ignore noise complaints about his tenants and leave the enforcement of the governing documents and the Act solely to the corporation, but, in this case, this is what Mr. Marrazzo chose to do. I am not persuaded that he took reasonable steps to ensure his tenants complied with the Applicant's noise rules once presented with detailed evidence of the noise complaints, their frequency and intensity, and that they had been verified on several occasions by various staff members. In fact, there is no evidence that he took any steps, beyond the early and initial reminders to his tenants to follow the rules, to encourage compliance.

[37] Accordingly, now that there has been a finding of unreasonable noise (which should put an end to Mr. Marrazzo's doubt) to ensure that going forward Mr. Marrazzo complies with his obligations under s. 119 (2) of the Act, I will order, under s. 1.44 (1) 7 of the Act that Mr. Marrazzo take all reasonable steps to ensure that the Intervenors comply with the Applicant's Rule 2(1) and 2(2) and s. 117(2) of the Act. These steps include:

a. Within seven days of receiving notice of a noise complaint that involves the Intervenors, Mr. Marrazzo must provide the Intervenors with written notice of the noise complaint. The written notice should detail the complaint (it does not need to identify the complainant) and remind the Intervenors of the rules and specifically request their compliance. The notice must also remind the Intervenors that failure to comply with the rules and the Act could lead to further enforcement measures being taken. Mr. Marrazzo will also be required to provide WSCC 382 with a copy of this notice no later than seven days after delivering the notice to the Intervenors.

b. Within 30 days of this decision, Mr. Marrazzo must schedule a meeting with the Intervenors to review the findings of this decision, the Applicant's noise rules and s. 117(2) of the Act and discuss ways that the tenants can ensure compliance (for example turning down the music). Mr. Marrazzo will be required to provide the Applicant with written confirmation that this meeting took place no later than seven days after the meeting.

Issue No. 3: Is any party entitled to costs?

[38] All parties requested costs. The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act.

[39] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding."

[40] Section 1.44 (2) of the Act states that an order for costs "shall be determined ...in accordance with the rules of the Tribunal".

[41] 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.

[42] The Tribunal’s Practice Direction: Approach to Ordering Costs, also provides guidance regarding the awarding of costs. In this Practice Direction, the Tribunal outlines some of the factors the Tribunal may consider in deciding whether to order costs under Rule 48. These factors include the conduct of a party or its representative in the hearing, whether the parties attempted to resolve the issues before the case was filed, the provisions of the governing documents, and whether the parties had a clear understanding of the potential consequences for contravening them. The Tribunal may also consider whether the costs incurred are appropriate and proportional to the nature and complexity of the issues in dispute.

[43] The Respondent and Intervenors were not successful in this case. They are not entitled to costs.

[44] WSCC 382 has requested costs in the amount of $24 051.47 (inclusive of HST) on a full indemnity basis and that the Respondent and Intervenors be held jointly and severally responsible for these costs.

[45] As has been previously stated by this Tribunal, the courts and the Tribunal have articulated the principle that in some cases it may be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner.

[46] As I have determined that the common elements incidents do not constitute a nuisance, this is not a matter on which the Applicant was successful.

[47] However, on the issue of the noise, as noted above, I have found the Intervenors are not complying with the Applicant’s governing documents or the Act, and that Mr. Marrazzo did not take all reasonable steps to deal with this non-compliance. Rather, despite being made aware (via legal letter in October of 2023) that he could be held liable for the costs associated with the Applicant having to enforce compliance, he left all enforcement action up to the Applicant, which resulted in costs incurred for participating in this proceeding. In this case, it would be unfair for other unit owners to be responsible for the bad behavior of one unit owner’s tenants. I also find that the indemnification provisions in the Applicant’s declaration

have some relevance.[3]

[48] However, it is also well-established law that an award of costs is discretionary and that condominium corporations must act reasonably and judiciously when incurring legal and compliance costs. I do not accept that the legal fees claimed here are proportional to the nature and complexity of the issues in this hearing which were straightforward. While there were two preliminary motions that were addressed that added time and expense, one of these was made by WSCC 382. Weighing the factors above, I find a cost award of $4500 appropriate.

[49] Regarding the question of who should pay the costs, I find that Mr. Marrazzo will be solely responsible for the costs. This is because the evidence indicates that due to the severely strained relationship between the Intervenors and the Applicant's staff there was little to no direct contact between these parties, for perhaps good reason. Thus, Mr. Marrazzo was the primary conduit through which the Applicant could seek enforcement, and in any event Mr. Marrazzo, as the unit owner is ultimately responsible for ensuring that his tenants complies with the governing documents of the corporation and the Act.

[50] I will also order that Mr. Marrazzo reimburse WSCC 382 for its Tribunal fees in the amount of $200.

D. ORDER

[51] The Tribunal Orders that:

1. Pursuant to s. 1.44 (1) 1 of the Act the Intervenors shall immediately comply with the Applicant's Rule 2(1) and 2(2) and s. 117(2) of the Act and cease any activity that creates unreasonable noise that is a nuisance. Specifically, they should cease playing music at a volume that can be heard outside of their unit, particularly between the hours of 10pm-7am. They must also refrain from any activity that results in banging on the common wall between the units.

2. Pursuant to s. 1.44 (1) 7 of the Act:

[3] Article II, s. 2 reads: Each Owner, including the Declarant, shall pay to the Corporation its proportionate share of the common expenses, as may be provided for by the By-Laws and the assessments and collection of contributions toward common expenses may be regulated by the Board pursuant to the By-Laws. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, on in any by-law or rues in force from time to time by any Owner, or by members of his 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.

a. Within 14 days of the issuance of this decision, the Intervenors will provide Mr. Marrazzo and the Applicant with written confirmation that they have read the decision and understand their responsibility to comply with the Applicant's governing documents and the Act.

b. Within seven days of receiving notice of a noise complaint that involves the Intervenors, Mr. Marrazzo must provide the Intervenors with written notice of the noise complaint. The written notice should detail the complaint (it does not need to identify the complainant) and remind the Intervenors of the rules and specifically request their compliance. The notice must also remind the Intervenors that failure to comply with the rules and the Act could lead to further enforcement measures being taken. Mr. Marrazzo is also required to provide the Applicant with a copy of this notice no later than seven days after delivering the notice to the Intervenors.

c. Within 30 days of the date of this decision, Mr. Marrazzo must schedule a meeting with the Intervenors to review the findings of this decision, the Applicant's noise rules and s. 117(2) of the Act and discuss ways that the tenants can ensure compliance (for example turning down the music, etc.). Mr. Marrazzo will be required to provide the Applicant with written confirmation that this meeting took place no later than seven days after the meeting.

3. Within 30 days of the date of this Order, Mr. Marrazzo shall pay to the Applicant costs in the amount of $4500 for legal costs and $200 for Tribunal fees, pursuant to s. 1.44 (1) 4 of the Act and the Rules of the Tribunal.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: October 16, 2024