

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 28, 2025

CASE: 2024-00089N

Citation: Turco v. York Region Standard Condominium Corporation No. 1273, 2025 ONCAT 35

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

Member: Roger Bilodeau, Member

The Applicant,

Nick Turco

Self-Represented

The Respondent,

York Region Standard Condominium Corporation No. 1273

Represented by Justin McLarty, Counsel

Hearing: Written Online Hearing – August 12, 2024 to February 4, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant (“Mr. Turco”) is a unit owner in the Respondent condominium corporation, York Region Standard Condominium Corporation No. 1273 (“YRSCC 1273”).
- [2] In this application, Mr. Turco alleges that YRSCC 1273 has allowed a situation to persist which has resulted in the creation or continuation of a nuisance in the form of unreasonable noise emanating from the unit above his, contrary to its governing documents and the Condominium Act, 1998 (“Act”). He therefore seeks an order that YRSCC 1273 must take steps to put an end to the nuisance caused by the noises emanating from the unit above his.
- [3] In addition, Mr. Turco disputes the chargebacks that were imposed upon him by YRSCC 1273 as a result of legal letters that were addressed to him for breaching the noise provisions of YRSCC 1273’s governing documents. He therefore seeks

an order for the reimbursement of those chargebacks on the basis that the allegations contained in those letters were not adequately proven and were not subject to a proper investigation. He also seeks an order that YRSCC 1273 should install proper soundproofing between his unit and the unit above his, as well as an order for YRSCC 1273 to use a sound level meter to determine noise levels and the source of noise if and when future complaints are made about noise coming from his unit or neighboring units.

- [4] YRSCC 1273 takes the position that it has taken Mr. Turco's complaints seriously and that it took reasonable steps to address his noise complaints in regard to the unit above his. In its view, this application is in retaliation to the chargebacks which were levied against him by YRSCC 1273 for breaching the noise provisions of its governing documents. YRSCC 1273 also states that the type of structure and nature of its building is such that he cannot expect or be entitled to absolute quiet because some noise transmission between units which results from everyday life in a multi-unit building is to be expected. In addition, YRSCC 1273 is of the view that the chargebacks incurred by Mr. Turco for breaching the noise provisions of its governing documents were warranted and are consistent with its governing documents. As such, YRSCC 1273 asks for a dismissal of his application and seeks an order for costs payable by Mr. Turco.
- [5] For the reasons that follow, I find that YRSCC 1273 has allowed a situation to persist which has resulted in the creation or continuation of a nuisance in the form of unreasonable noise emanating from the unit above Mr. Turco's, contrary to its governing documents and the Act, and that it did not seek compliance from the occupants of the unit above in regard to its nuisance rules. I therefore order YRSCC 1273 to arrange a meeting with Mr. Turco to address his complaints of unreasonable noise from the unit above, as well as producing minutes of that meeting for both parties.
- [6] I also find that YRSCC 1273 did not adequately investigate all complaints of unreasonable noise emanating from Mr. Turco's unit. As a result, I order YRSCC 1273 to reimburse the amount of \$601.73 to Mr. Turco, being one half of the total cost of the compliance letters which were addressed to Mr. Turco by the lawyers for YRSCC.
- [7] Finally, I order YRSCC 1273 to pay to Mr. Turco the sum of \$100, being one half of the fee paid by Mr. Turco to file this application. I make no other order as to costs.

B. BACKGROUND AND POSITIONS TAKEN BY THE PARTIES

- [8] Mr. Turco works in his home as a producer and editor of sound recordings. He alleges that he has experienced unreasonable noise from the unit above his for the past four years and that it has significantly disrupted his work. He complains that YRSCC 1273 has not sufficiently investigated or addressed his complaints about that noise. In regard to any noise produced in his unit, he maintains that the sound level of his recordings is always at a conversational level or similar to background music and that it is always turned off between the hours of 11 pm to 9 am.
- [9] Mr. Turco alleges that at various times, the occupants of the unit above his produce banging, crashing, running, loud music and other intrusive noises at various hours, starting as early as 7:00 am and sometimes extending until 4:00 am. For their part, the occupants of the unit above have complained on numerous occasions to YRSCC 1273 about unreasonable noise which they allege was produced by Mr. Turco. YRSCC 1273 asserts that it has taken adequate steps in response to Mr. Turco's complaints. As is often the case in most other condominium governing documents, YRSCC 1273's Declaration and Rules provide that whether or not there is unreasonable noise being produced in one unit or another is to be determined by the Manager and/or the Board.
- [10] Mr. Turco states that he initially reported his noise complaints about the unit above to Ms. Carole Borowski, YRSCC 1273's condominium manager (the "condominium manager") via email on or about June 23rd, 2021. Following subsequent complaints and providing her with evidence of the noise which he alleges was coming from the unit above his, Mr. Turco claims that she assured him that she would address the matter with the occupants and landlord of the unit above his but that in his view, no such action has ever been taken, with no resolution of the matter to this day.
- [11] Based on the evidence, Mr. Turco appears to have an acrimonious relationship with the occupants of the unit above his and no relationship whatsoever with the owner of that unit. From all accounts, Mr. Turco has had a difficult relationship with the condominium manager and other members of her staff. On the other hand, he appears to have had a courteous and pleasant relationship with the security personnel of YRSCC 1273.
- [12] According to Mr. Turco, the condominium manager has not responded to many of his calls or messages and although she did meet with him about his complaints, counsel for YRSCC 1273 confirmed that she did not arrange a joint meeting with him and the occupants (and owner) of the unit above in regard to his complaints.
- [13] On another note, there is conflicting evidence in regard to whether the security personnel of YRSCC 1273 were advised by the condominium manager at a point

in time to stop reporting noise complaints made by Mr. Turco. In that regard and be that as it may, YRSCC 1273 takes the position that it was reasonable for it to stop producing complaint reports after several years of receiving complaints from Mr. Turco and to instead simply investigate and keep a log of those complaints. YRSCC 1273 also states that it followed the same approach vis-à-vis the noise complaints received from the occupants of the unit above that of Mr. Turco.

- [14] As a final point, the owner and occupants of the unit above are not parties to this case. Mr. Turco states that he did not name them as parties due to threats made against him by one of the adult occupants of that unit. This assertion was not tested or proven in this case, and I advised Mr. Turco on more than one occasion that proceeding in such a manner would limit the type of order which I can make in this case, given the absence of these parties.
- [15] All of the above has led to this application in which I must decide the issues set out below, with the focus being on a) whether there is unreasonable noise constituting a nuisance, annoyance, or disruption emanating from the unit above that of Mr. Turco; and b) whether more needs to be done by YRSCC 1273 to address that situation, as may be the case.
- [16] Mr. Turco has produced a significant amount of documentary evidence and witness statements, as well as audio recordings, in support of his position that the unit above produces unreasonable noise. For the purposes of arriving at my decision, I have considered all evidence presented by both parties, as well as their respective submissions. However, I will only refer to the portions which I deemed relevant to reach my decision.

C. ISSUES & ANALYSIS

Issue no 1: Has YRSCC 1273 allowed an activity to be carried out that resulted in the creation or continuation of a nuisance in the form of unreasonable noise emanating from the unit above that of Mr. Turco, contrary to its governing documents and the Act, and whether more needs to be done by YRSCC 1273 to address that situation, as may be the case?

- [17] There is a long history between the parties in this case, with many steps along the way. Mr. Turco has sent numerous and lengthy emails to the condominium manager about his complaints of unreasonable noises emanating from the unit above his. He has called her and met with her, as well as with members of her staff. He has also met on a regular basis with the security personnel of the building, sometimes alone and sometimes with one of the adult occupants of the unit above. In sum, Mr. Turco has been relentless in his pursuit of the quiet

enjoyment of his unit and is of the view that YRSCC 1273 has not done enough to address his complaints.

- [18] For its part, YRSCC 1273 is of the view that it has responded in a reasonable manner to Mr. Turco's allegations. YRSCC 1273 states that its agents did visit Mr. Turco's unit on a few occasions to assess his claims of noise emanating from the unit above. According to YRSCC 1273, they concluded that there was some noise transmission into Mr. Turco's unit but that they were "lifestyle" noises that are to be expected in a multi-unit environment.
- [19] In her evidence and during cross-examination, the condominium manager stated that she tried her best to respectively assist Mr. Turco and the occupants of the unit above in regard to their complaints directed at each other. At a given point in time, she appears to have thrown up her arms in frustration in trying to make Mr. Turco understand that the nature of the building, its construction and the usual noises of everyday life in a multi-unit building are such that he cannot expect total peace and quiet. In her words, 'she had no time to act as a school teacher' vis-à-vis the two complaining parties.
- [20] During cross-examination, I sensed her exasperation, as well as the pressure of her other responsibilities in YRSCC 1273's condominium complex of 186 units which she oversees. I am persuaded that her exasperation was caused at least in part by the sheer number of messages, calls and complaints which were submitted to her by Mr. Turco. She then went so far as admitting that in the end, she had not done her job properly in terms of addressing Mr. Turco's complaints, as if she was simply giving up and fed up with the entire matter involving Mr. Turco and the occupants of the unit above. For the record, I also wish to point out that a substantial portion of this unfortunate situation took place during the COVID pandemic, with the resulting additional pressure and constraints brought on by that event.
- [21] I was also struck by the evidence of Mr. Gaurav Gahlot, a member of YRSCC 1273's security personnel who dealt on a regular basis with Mr. Turco's noise complaints and that of the occupants above. I accept his statement to the effect that both Mr. Turco and the occupants of the unit above his were 'equally involved in this.' In other words, I accept his evidence that both Mr. Turco and the occupants of the unit above each produced unreasonable noises which affected the other at various times since 2021.
- [22] I have also assessed several recordings made by Mr. Turco of noises emanating from the unit above his. Although the condominium manager did respond to some of his complaints and did visit his unit to assess some complaints, I am not

persuaded that she and her staff did an adequate investigation of his complaints and that they too quickly dismissed the noise emanating from the unit above as being produced solely by normal everyday life in a multi-unit residential community. In support of my view and as mentioned above, there is evidence that some of Mr. Turco's complaints were logged by the security personnel but not reported to her. Although I can appreciate that Mr. Turco's complaints were numerous, they appear to have led the condominium manager to give less, rather than more attention, to his complaints.

[23] As in all cases of this nature, YRSCC 1273 has a responsibility to ensure that unit owners and occupants comply with the Act and the governing documents. It cannot simply take a step back and remove itself from Mr. Turco's complaints before their resolution because it takes the position that the complaints are repetitive or frivolous. It had a duty to adequately investigate all complaints and work towards a resolution, which in this case was to address the claim of unreasonable noise transmitting into Mr. Turco's unit from the unit above.

[24] In light of all the above, I find that YRSCC 1273 did not properly investigate Mr. Turco's noise complaints and did not seek compliance from the occupants above his in regard to its nuisance rules. I therefore order YRSCC 1273, within 30 days of this decision, to arrange a meeting with Mr. Turco in regard to his complaints. In that regard, I am mindful that the relationship between the condominium manager and Mr. Turco has been difficult and sometimes tense. I therefore also order that YRSCC 1273 must be represented at that meeting by its condominium manager, its supervisor of security services and a member of its Board. YRSCC 1273 must then prepare a record of the meeting, especially to include the steps that will be taken to address Mr. Turco's complaints about noise emanating from the unit above.

[25] I cannot make an order directed at the owner and occupants of the unit above Mr. Turco's because they are not parties to this case. On the other hand, the abovementioned representatives of YRSCC 1273 should also consider holding a separate meeting with Mr. Turco, as well as with the owner and occupants of the unit above, which YRSCC 1273 conceded was not done.

[26] I wish to add that YRSCC 1273's role in regard to investigating complaints such as those in this case and enforcing its rules could be better supported by taking all steps to assist owners and occupants of the units gain a better understanding of the fact that in a multi-residential property like this one, residents will inevitably experience some noise from other units and that each resident may be the cause of such disturbances. For their part, each resident must take care not to create

unwanted noise and must exercise tolerance and patience with respect to the ordinary noises that arise from day-to-day living in their community.

Issue no 2: Has YRSCC 1273 responded reasonably to the complaints of noise allegedly caused by Mr. Turco and should YRSCC 1273 reimburse Mr. Turco for the cost of two (2) letters addressed to him by the lawyers for YRSCC 1273?

- [27] On January 4, 2024, the lawyers for YRSCC 1273 addressed a letter to Mr. Turco to advise him that YRSCC 273 had received several complaints of excessive loud noise coming from his unit and that these complaints 'include, but are not limited to, loud music and loud bass noises'. The letter then states that Mr. Turco is in breach of Article IV.1(a)(ii)(c) of YRSCC 1273's Declaration and Section 8 of its Rules and that he must cease such noise immediately. The letter goes on to advise Mr. Turco that YRSCC 1273 will take steps to enforce compliance with the governing documents if the situation continues, without further notice to him. The letter also states that he is responsible for the cost of that letter.
- [28] A second letter was sent to Mr. Turco on January 18, 2024 as a reminder because of continuing similar complaints received by YRSCC 1273. Shortly thereafter, Mr. Turco did pay the total amount for the cost of those two letters, namely the sum of \$1,203.45, mainly because he feared the imposition of a lien in that amount on his unit, even though he disagreed with the contents of both letters. He now disputes that there were any excessive noises coming from his unit and claims that YRSCC 1273 did not properly investigate those allegations. As a result, he also claims that YRSCC 1273 must reimburse him for the chargebacks flowing from the cost of those two letters. Upon review of the matter, I have determined that the chargebacks are allowed by YRSCC 1273's governing documents and I see no concern in that regard.
- [29] The issue of complaints about loud noise coming from Mr. Turco's unit appears to have reached a breaking point in or about mid-November 2023, at which time the condominium manager wrote an email to Mr. Turco on November 17, 2023 about new complaints in regard to loud noise from his unit. In her message, she states that she will immediately refer this matter to YRSCC 1273's lawyers and that Mr. Turco will bear the cost of that process. In other words, she did not meet with him before or after sending that message and apart from the security personnel having recorded the complaints, there is no evidence that she or members of her staff conducted an investigation of the various complaints made by other residents.
- [30] In addition, the condominium manager could not provide an exact number of the complaints related to noise from Mr. Turco's unit. I am also struck by two recordings (exhibits A-24 and A-25) submitted in evidence by Mr. Turco which

reflect loud music emanating from a unit close to his. It is therefore possible that the source of some noise complaints was not Mr. Turco's unit, but rather a neighbouring unit. As mentioned above, I also found that Mr. Gahlot's evidence was very credible and I accept his evidence that both Mr. Turco and the occupants of the unit above each produced unreasonable noises which affected the other at various times since 2021.

- [31] In his submissions, Mr. Turco also alleges that the Noise Bylaw of the City of Markham applies to this situation and that he only needs to refrain from making noise between the hours of 11 pm and 9 am, in accordance with that Bylaw. He also refers to similar or related bylaws of other municipal bodies in the surrounding area in support of his position. As a final point, he states that one member of YRSCC 1273's security personnel told him that music could be played between the hours of 11:00 pm and 9:00 am.
- [32] In response, YRSCC 1273 takes the position that the City of Markham's Noise Bylaw does not apply to determining whether a nuisance exists under its governing documents, including in this case.
- [33] It is unfortunate that a member of YRSCC 1273's security staff alluded to the hours of 11 pm to 9 am as the time when music cannot be played, as referenced in the Noise Bylaw of the City of Markham, but that does not change the fact that Mr. Turco is bound by YRSCC 1273's governing documents and the Act in regard to noise complaints in the context of YRSCC 1273's environment.
- [34] To conclude this issue, the evidence supports the fact that at least some complaints of loud noise emanating from Mr. Turco's unit were substantiated. On the other hand, I am doubtful that each and every complaint was properly investigated by YRSCC 1273 before the two compliance letters were addressed to Mr. Turco. I have also reviewed the contents of and the cost of those two letters and I am satisfied that the charges for those two letters were reasonable.
- [35] In the circumstances of this case and based on all of the above, I find that both parties are equally at fault on this point and I therefore order YRSCC 1273 to reimburse Mr. Turco in the sum of \$601.73, being one-half of the total amount of the cost of the compliance letters.

Other Remedies sought by Mr. Turco

- [36] A decibel reader was not used to assess noise levels of any of the complaints in this matter and Mr. Turco claims that such a tool should have been used to properly investigate the noise complaints made against him by other residents. In

response, YRSCC 1273 argues that in any case, such decibel readings alone do not establish whether a nuisance is or is not being created for the purposes of compliance with YRSCC 1273's governing documents. Notwithstanding the positions taken by the parties, I note that this point was not addressed in the Stage 2 Summary and Order and as a result, I decline to make any order in that regard.

[37] On the other hand, such a tool could ostensibly be used in the future as a way to assist the parties in determining if future noises are an issue, especially after YRSCC 1273's meeting with Mr. Turco to determine next steps. I will therefore leave it to the parties to make that determination, as well as deciding who should bear the costs of such a tool, as may be the case.

[38] As a final claim, Mr. Turco's argues that YRSCC 1273 should pay for the installation of effective sound proofing between his unit and the unit above. His basis for that request seems to be that the noises emanating from the unit above are impacting his ability to work in his unit, which in turn has led to conflict with the occupants of that unit. On the other hand, there is no indication or evidence that there is some deficiency in the common elements between Mr. Turco's unit and the unit above that is resulting in undue noise transmission. Notwithstanding the positions taken by the parties on this point, I also note that this claim was not addressed in the Stage 2 Summary and Order and as a result, I decline to make any order in that regard.

Costs

[39] YRSCC 1273 seeks an order to recover its costs in this matter but did not submit any details nor any amount in that regard. For his part, Mr. Turco seeks an order for YRSCC 1273 to reimburse the fee (\$200) to file this application.

[40] Rule 48.2 of the CAT Rules of Practice ("CAT Rules") provides that:

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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense."

[41] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" ("Practice Direction"), states that a determination of costs, including indemnification, shall consider:

(i) whether a party's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

(ii) the conduct of all parties and representatives requesting costs;

(iii) the potential impact an order for costs would have on the parties;

(iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[42] In addition, I have also considered the fact that neither party was fully successful in regard to their respective claims. In light of those factors and even if YRSCC 1273 had submitted a detailed request for costs, I therefore decline to order any costs in this matter, in keeping with the general rule set out in Rule 48.2 of the CAT Rules.

[43] As a final point and in accordance with Rule 48.1 of the CAT Rules, I order YRSCC 1273 to pay to Mr. Turco one half of the fee (\$200.00) which he paid to file this application. This reflects the fact that both parties were partially successful in regard to their claims.

D. CONCLUSION

[44] As has been stated in other cases, living in a multi-unit residential condominium community implies that all concerned parties, i.e. unit owners, tenants, condominium staff and its board of directors, will make every effort to work together to ensure the best possible implementation of the rules found in a condominium corporation's governing documents, for the benefit of all. I sincerely hope that all parties in this case will proceed on that basis from hereon in. In addition, and as required, they should also consult the CAO Guide on Communication and Conflict Resolution (available on the CAO website), if they have not already done so.

E. ORDER

[45] The Tribunal orders that:

1. Under section 1.44 (1) 2 of the Act, YRSCC 1273 will:

- a. within 30 days following delivery of this decision, arrange a meeting with Mr. Turco in regard to his complaints about unreasonable noise emanating from the unit above his, to be attended by its condominium manager, its supervisor of security services and a member of its Board;
 - b. within 15 days following that meeting, YRSCC 1273 will prepare a record of that meeting for all parties; and
 - c. within 30 days following delivery of this decision, reimburse the amount of \$601.73 to Mr. Turco, being one half of the total cost of the compliance letters which were addressed to Mr. Turco by the lawyers for YRSCC 1273.
2. Under section 1.44 (1) 4 of the Act, YRSCC 1273 will pay to Mr. Turco the sum of \$100, being one half of the fee paid by Mr. Turco to file this application, within 30 days of this decision.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: February 28, 2025