



Civil Resolution Tribunal

Date Issued: March 27, 2024

Files: SC-2023-002363
and SC-CC-2023-004161

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Farber v. Corbisiero*, 2024 BCCRT 318

B E T W E E N :

EFIM FARBER and LIOUBOV ROUDNEVA

APPLICANTS

A N D :

LIDIA CORBISIERO

RESPONDENT

A N D :

EFIM FARBER and LIOUBOV ROUDNEVA

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. These 2 linked small claims disputes are about alleged noise nuisance. I find they are a claim and a counterclaim involving the same parties, so I have issued a single decision for both disputes.
2. Efim Farber and Lioubov Roudneva (the applicants) live in unit 209 in a strata building. Lidia Corbisiero lives in unit 308 directly above them. The units have identical floor plans.
3. In dispute SC-2023-002363, the applicants say Mrs. Corbisiero made unreasonable noise in her unit at night between January 2022 and March 2023. They say the noise regularly disrupted their sleep and damaged their personal and professional lives and general well-being. They claim \$5,000 in damages for the loss of quiet enjoyment of their home and disrupted sleep.
4. Mrs. Corbisiero denies making the noise as alleged. She admits that she played music in her unit at night on 3 separate occasions, but she says she only did so to drown out the noise the applicants were making in their unit so that she could sleep. She says she stopped playing music at night after being told to do so by the strata and the police.
5. In dispute SC-CC-2023-004161, Mrs. Corbisiero says the applicants have been making unreasonable noise in unit 209 since December 2021. She claims \$5,000 in damages for the nuisance. She also asks for an order that Mrs. Roudneva stop deliberately creating noise nuisance at night.
6. The applicants deny Mrs. Corbisiero's allegations.
7. All parties are self-represented.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution*

Tribunal Act (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

9. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
10. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
12. I was initially unable to open some of the applicants' evidence. The applicants resubmitted this evidence, and I have considered it in my decision. Mrs. Corbisiero was given an opportunity to respond to the newly submitted evidence. Her only response was 2 emails she sent to the strata on January 5, 2024 and March 22, 2024 complaining of continuing night noise disturbances from the applicants. I reviewed these emails, but I find they do not change the outcome of these disputes, so I did not seek further submissions from the parties about them.

ISSUES

13. The issues in this dispute are:

- a. Did Mrs. Corbisiero cause a noise nuisance to the applicants, and if so, what is an appropriate remedy?
- b. Did the applicants cause a noise nuisance to Mrs. Corbisiero, and if so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

14. As the applicants in this civil proceeding, Mr. Farber and Mrs. Roudneva must prove their claims on a balance of probabilities, which means more likely than not. Likewise, Mrs. Corbisiero must prove her counterclaim to the same standard. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
15. The applicants say that between February and April 2022, Mrs. Corbisiero played loud music in her unit at night, which disturbed their sleep. They also say that between December 2022 and March 2023 Mrs. Corbisiero made knocking sounds at night that disturbed their sleep.
16. Mrs. Corbisiero says she first heard knocking noises coming from the applicants' unit in December 2021, which disturbed her sleep. She says that since that time, the applicants have been making unreasonable knocking and banging noises in their unit throughout the day and at night 3 or 4 times per week, and sometimes several times each night. She says the noise stopped at the beginning of October 2023 but started again in early November 2023.
17. On April 27, 2022, the parties met informally with their strata council to discuss their ongoing noise complaints. After this meeting, the strata visited both units to investigate the noise complaints but found it could not determine the cause of the noise.

Did Mrs. Corbisiero cause a noise nuisance to the applicants, and if so, what is an appropriate remedy?

18. In the strata context, a nuisance is a substantial and unreasonable interference with an owner's use and enjoyment of their property (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64). The test is objective and is measured with reference to a reasonable person occupying the premises (see *Sauve v. McKeage et al.*, 2006 BCSC 781). The objective requirement guards against those with abnormal sensitivity or unreasonable expectations (see *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024).
19. The applicants submitted a log of the alleged noise disturbances from Mrs. Corbisiero's unit with entries on 37 separate dates between February 2022 and March 2023. The log shows 11 entries between February 23, 2022 and April 26, 2022 of loud music coming from Mrs. Corbisiero's unit, and 26 entries between December 12, 2022 and March 31, 2023 of knocking sounds coming from Mrs. Corbisiero's unit. The applicants' emails to the strata in evidence generally support the timeline of alleged noise disturbances in their log.
20. First, I address the loud music. The evidence shows the applicants phoned the police to complain about Mrs. Corbisiero playing loud music at night on April 11, 15, and 22, 2022. The police records in evidence support that Mrs. Corbisiero's music could be heard from the applicants' unit, and from the hallway outside her door. Mrs. Corbisiero did not open her door to the police on any of these 3 occasions. The applicants submitted audio recordings from April 11 and 15, 2022, in which I find music can clearly be heard. One of the recordings was taken while the police officer was present.
21. Mrs. Corbisiero admits to playing music at night on 3 occasions in April 2022. She says she played the music on low volume out of desperation to drown out the applicants' knocking noises so that she could sleep. She said she did not intend to disturb the applicants with the music.

22. On April 15, 2022, Mrs. Corbisiero left a note on the outside of her front door which said, "Playing music this night to conceal bangs to the walls by my neighbors below of the unit #209". The attending police officer left a handwritten note below which said, "This is the RCMP! Your music is too loud for 5pm! Don't be a rude neighbor." Based on the surrounding evidence, I find the time in the police officer's note was incorrect, and they actually meant 5:00 a.m. Mrs. Corbisiero says she left the note on her door knowing that the applicants would call the police. I find this is strong evidence that she knew her music was too loud and that the applicants would be able to hear it from their unit.
23. Mrs. Corbisiero submitted a different version of the note on which there is additional handwriting stating, "bangs 137, 245, 412 April 15/22 Good Friday". Though she does not expressly say so, based on the surrounding circumstances and evidence, I find Mrs. Corbisiero wrote this to indicate the times she says she heard the applicants banging on that date. I address Mrs. Corbisiero's noise nuisance claim separately below. However, even if the applicants were making a noise nuisance on that date as Mrs. Corbisiero alleges, I find that was not a valid reason for her to play music unreasonably loudly during the night when other residents of the building were sleeping.
24. On balance, I am satisfied that on April 11, 15, and 22, 2022, Mrs. Corbisiero played music in her unit at night that was loud enough to disturb the applicants' sleep. I find the noise was an unreasonable and substantial interference with the applicants' quiet enjoyment of their unit, so I find it was a nuisance.
25. The applicants allege that Mrs. Corbisiero played loud music at night on 8 other occasions in 2022, but I find there is insufficient objective evidence to prove these allegations. The applicants submitted several audio recordings that are undated. While music can be heard in the background, it is not clear from the recordings alone that the music was coming from Mrs. Corbisiero's unit. Even if it was, it is not clear whether these audio recordings were taken on one of the 3 dates in April on which the applicants phoned the police, or on other dates. For these reasons, I find the

applicants have failed to establish that Mrs. Corbisiero caused a noise nuisance by playing loud music at night on any dates other than April 11, 15, and 22, 2022.

26. Next, I address the knocking noises the applicants say Mrs. Corbisiero made at night in her unit between December 2022 and March 2023. As noted above, the applicants' log has 26 entries of knocking sounds coming from Mrs. Corbisiero's unit between December 12, 2022 and March 31, 2023. Mrs. Corbisiero says the log is false because she could not possibly have had the energy to be awake and knock as frequently as the log suggests. She says the extensive log the applicants kept is actually all noise Mrs. Roudneva made in order to frame her. I address Mrs. Corbisiero's noise nuisance claim separately below.
27. The applicants submitted an audio recording that contains fragments of recordings between December 2022 and April 2023. Though none of the individual fragments are dated, light knocking noises can clearly be heard, and a voice in the background states the times of each of the fragments. The applicants say they used the "Sound Meter" app on their phone to record the noise, but they did not provide any of the measurements they obtained from the app to indicate the noise level. It is also unclear from the recording where the noise was coming from.
28. On March 2, 2023, the strata emailed the applicants notifying them that it had listened to their recordings, but some were of such bad sound quality that it could not make any assessment. For the recordings with better sound quality, the strata council unanimously found that it could not determine whether the knocking was coming from Mrs. Corbisiero's unit, or whether it was caused by a human hand.
29. It is unclear whether the recordings the applicants submitted in this dispute are the same recordings the strata referred to in its March 2, 2023 email. However, I come to the same conclusion as the strata about the recordings in evidence in this dispute. I find they are insufficient to establish that Mrs. Corbisiero caused the knocking noises, or that the noise was unreasonably loud.

30. The applicants say that shortly after the CRT accepted their claim on March 28, 2023, they stopped hearing night noises from Mrs. Corbisiero's unit. They say this is proof that Mrs. Corbisiero caused the night noises. I disagree. I find that without reliable, objective evidence, the applicants have failed to establish that Mrs. Corbisiero caused a noise nuisance by knocking during the night between December 2022 and March 2023.
31. In summary, I find the applicants have established that Mrs. Corbisiero caused a noise nuisance on April 11, 15, and 22, 2022, by playing unreasonably loud music in her unit at night. I find the noise nuisance disturbed the applicants' sleep on those dates.
32. The CRT has previously awarded damages for noise-related nuisance, ranging from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of living noise. See for example *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238 and *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361. In *Yang*, a tribunal member awarded \$500 for 3 proven incidents of unreasonably loud balcony noise that included yelling and profanity. In *Chu v. Sefat*, 2021 BCCRT 723, a tribunal member awarded \$2,500 for loud music that disrupted the applicant's sleep on 16 occasions over a 6-month period.
33. I find the interference the applicants experienced was less serious and substantial than what occurred in *Chu*, and more similar to the circumstances in *Yang*. I say this because as in *Yang*, the applicants have only proven 3 instances of noise disturbances. The applicants say their disturbed sleep has negatively affected their personal and professional lives and general well-being. However, they provided no evidence that the noise nuisance on the 3 dates in April 2022 caused them any specific medical or other problems, aside from disturbed sleep on those dates. Considering the nature, frequency, and duration of Mrs. Corbisiero's proven incidents of noise nuisance, I find the applicants are entitled to \$500 in damages.

Did the applicants cause a noise nuisance to Mrs. Corbisiero, and if so, what is an appropriate remedy?

34. Mrs. Corbisiero says the applicants bang on their ceiling during the day when she is doing laundry, taking a shower, vacuuming, or preparing food in her home. She says she always does these activities between 9:00 a.m. and 9:00 p.m. She says she wears soft shoes and has thick carpet in her living, dining, and bedrooms. She also says her kitchen floor has 2 layers of vinyl floor with tiles on top, and the kitchen furniture has felt protectors under each leg. Mrs. Corbisiero says that at night the applicants often wake her up by knocking or banging the bedroom wall. She says the bangs and knocks are more frequent on weekends and holidays when Mr. Farber is not working.
35. In support of her claim Mrs. Corbisiero submitted a note she slipped under the applicants' door in December 2021, and several emails she sent the strata and the City of White Rock in May and December 2022 complaining of knocking noises coming from the applicants' unit. While these communications are consistent with Mrs. Corbisiero's version of events, they are not objective evidence that the applicants made unreasonable noise. As noted above, in April 2022 the strata found it was unable to determine the source or cause of the alleged noise nuisance.
36. Between January 14, 2022 and April 14, 2023, Mrs. Corbisiero phoned the police at least 4 different times to complain about the noise she says the applicants were making in their unit. However, I find the police records in evidence do not prove that the applicants made unreasonable noise on any of those dates. The records show that the attending police officer on January 14, 2022, could not hear any sounds while in Mrs. Corbisiero's unit, and appeared to have awoken the applicants when they investigated. The officer's notes from that visit indicate they believed the noise complaint was unfounded. I find the remaining police records in evidence are unhelpful in determining whether the applicants made any unreasonable noise on the dates of the complaints.

37. Mrs. Corbisiero says that after the noises first started in December 2021, she bought a powerful recorder. She says she started recording the applicants' noises, especially at night, but she was unable to continue doing so because she found it too difficult to wake up to stop and start the recording in the night given the medication she was taking and her weak physical state. She did not submit any recordings into evidence.
38. Overall, I find it is entirely possible that Mrs. Corbisiero has been hearing intermittent nightly knocking noises since December 2021 as she alleges. However, I find there is no objective evidence to prove that the noise has been unreasonably loud, or that the applicants caused the noise.
39. I note that even if Mrs. Corbisiero could prove the applicants caused a noise nuisance, I could not order Mrs. Roudneva to stop making unreasonable noise at night, as Mrs. Corbisiero requests. An order for someone to do or stop doing something is known as "injunctive relief". With limited exceptions that do not apply here, under section 118 of the CRTA, orders for injunctive relief are outside the CRT's small claims jurisdiction.
40. Mrs. Corbisiero says the ongoing noise caused by the applicants has disturbed her sleep, causing her to suffer many significant mental and physical health problems. She says all of this has worsened her ability to cope with a personal tragedy she experienced in January 2023. She says she has had to wear earplugs at night, but those have caused her hearing problems. She submitted photos of the earplugs and some of the medications she says she is taking for her various ailments.
41. I acknowledge that Mrs. Corbisiero has been experiencing mental and physical health difficulties which she says are caused by the noise. However, even if she could prove that the applicants caused a noise nuisance, I find the medical evidence she submitted is insufficient to establish that the noise caused or worsened any of her health problems.
42. For these reasons, I dismiss Mrs. Corbisiero's counterclaim.

43. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$500 owing calculated from April 22, 2022, which is the date of the last proven noise nuisance, to the date of this decision. This equals \$31.77.
44. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicants were somewhat successful, I find they are entitled to reimbursement of \$87.50, which is half their CRT fees. Since Mrs. Corbisiero was unsuccessful, I find she is not entitled to reimbursement of her CRT fees. None of the parties claimed any dispute-related expenses.

ORDERS

45. Within 30 days of the date of this order, I order Mrs. Corbisiero to pay the applicants a total of \$619.27, broken down as follows:
- a. \$500 in damages for the noise nuisance,
 - b. \$31.77 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
46. The applicants are entitled to post-judgment interest, as applicable.
47. I dismiss Mrs. Corbisiero's counterclaim.
48. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member