Civil Resolution Tribunal

Date Issued: June 2, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Ruthe v. The Owners, Strata Plan BCS 1023*, 2020 BCCRT 605

B E T W E E N :

GARRY RUTHE

APPLICANT

A N D :

The Owners, Strata Plan BCS 1023

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about enforcement of a strata corporation's noise bylaw.

2. The applicant, Garry Ruthe (owner), owns strata lot 28 (SL28) in the respondent strata corporation, The Owners, Strata Plan BCS 1023 (strata).

3. The owner bought SL28 in June 2018, and has occupied it since July 2018. He says that since then, the occupants of the strata lot above him (unit 27) have been very noisy. He says he repeatedly informed the unit 27 occupants and the strata about the noise problem, but nothing changed. He says he requested that the strata hire an acoustics firm to perform sound testing, but the strata took no action.

4. The owner requests $1,750 for soundproofing, $4,000 in general damages for noise nuisance, and $1,000 for legal expenses. In his submissions to the tribunal, he also asks for an order that the strata arrange and pay for sound testing.

5. The strata says the dispute should be dismissed. It says it fully investigated the owner's noise complaints and addressed the issue with the unit 27 occupants. It says it is enforcing its bylaws, but cannot stop all noise transfer.

6. The owner is self-represented in this dispute, and the strata is represented by a strata council member. The unit 27 occupants are not parties to this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

8. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in

court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

10. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

Preliminary Issues

11. The owner's requested remedies changed during the course of the tribunal facilitation process. In his dispute application, he requested an order that the strata stop or reduce the noise from unit 27. After facilitation, he instead requested damages and reimbursement of legal expenses. Although the Dispute Notice was not amended, I find the strata had notice of the change in requested remedies, and sufficient opportunity to respond when providing evidence and submissions. So, I find no procedural fairness problem in considering the amended remedies raised during facilitation.

12. In his submissions and evidence, the owner discussed 2 sources of noise: footfalls and floor noise from upstairs, and noise from drainpipes. However, elsewhere in his submissions the owner clarified that he does not wish to include the drainpipe noise issue in this dispute, as the complaint is still in progress and the strata had not yet responded. For that reason, I find this dispute involves only footfall and flooring-related noise.

ISSUE

13. The issues in this dispute are:

    a. Did the strata fail to enforce its noise bylaw in relation to the owner's complaints about footfall and flooring-related noise?

    b. If so, what remedies are appropriate?

BACKGROUND

14. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities.

15. The strata was created in 2004, and consists of 83 strata lots constructed in 4 phases. The owner's SL28 was constructed around 2005, as part of phase 3. It is located in a 3-story building, with several other strata lots. The strata plan shows that SL28 is located on the building's main floor. Unit 27, the alleged source of the noise, is above SL28.

16. The strata filed a set of consolidated bylaws with the Land Title Office in November 2015. I find these bylaws apply to this dispute.

17. The strata's noise bylaw is bylaw 8.1. It says, in part, that a resident or visitor must not use a strata lot in a way that is a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with another person's right to use and enjoy their strata lot.

18. The emails in evidence show the following chronology of events:

    a. July 18-19, 2018 – owner emailed property manager inquiring whether the strata had a flooring bylaw. The property manager said there was not.

    b. July 23, 2018 – owner emailed property manager, stating that he had asked about flooring due to noise. He said he had talked to the occupant of unit 27, J, about heavy footfalls at 5:30 am most mornings. The owner said J told him they had installed new tile and flooring. The owner wrote that he could hear others occasionally, which was reasonable, but the footfall noise was unreasonable. He said he wanted to "understand a reasonable approach to having a quieter neighbour".

    c. July 23 to August 27, 2018 – owner and property manager corresponded about flooring and noise. The property manager said the owner should let him

know if he wanted to submit a formal complaint. The owner said he believed the soundproofing above was inadequate.

d. August 30, 2018 – owner said he wanted to move forward with a formal complaint, and asked what details were required. The property manager said to provide detailed logs of noises, with type, time, and duration. The owner responded that since he had moved in, there was clear foot noise from above, which was most disturbing from 4:30 to 5:30 most weekday mornings. He said the noise was worst over his bedroom, and on August 30 there was foot noise at 1:00, 3:00, and 4:30 am that woke him up.

e. August 31, 2018 – property manager said he had informed council about the complaint, and it would be discussed at the next council meeting.

f. September 26, 2018 – owner asked for an update.

g. November 2, 2018 – owner said he had heard nothing from council. He said the noise had reduced a bit, and was now later in the morning, but was still occurring. He suggested that the SL27 occupants should minimize stomping, heavy-footing walking, and kids running for extended periods. He also wanted them to put felt under tables and chairs, and be extra diligent about noise during "quiet time", especially in their kitchen area which was above the bedrooms in SL28.

19. The evidence before me indicates that the strata did not respond to the owner's emails after August 31, 2018. On February 12, 2019, the owner's lawyer wrote to the strata, citing bylaw 8.1, and stating there was continuous, unreasonable noise from unit 27. The lawyer demanded that the strata investigate the owner's noise complaints, including by hiring a sound transmission engineer to conduct sound tests.

20. The strata responded with a March 1, 2019 letter, stating that it would send a bylaw warning letter to unit 27 "regarding the unreasonable noise emanating from this unit." The strata asked that the owner provide more specific information about the noise. The strata also said that since the noise had not yet been fully described or

quantified by the owner, it was up to the owner to hire and pay for a sound engineer.

21. The owner requested a council hearing, which was held on May 21, 2019. The owner also sent the strata a detailed noise log, showing times and some descriptions of the noises on May 5 and 6, 2019. The log shows decibel readings, which I infer from the owner's evidence that he took using a hand-held sound meter. On May 21, 2019 ,the owner also sent a list of noise incidents from March 27 to May 21, 2019, with times and descriptions.

22. The owner emailed the property manager on June 13, 2019 stating that he had not received a response following the hearing. The owner said they had discussed his willingness to soundproof his bedrooms, but he expected the strata to follow up about noise issues in areas with wood flooring in unit 27. He said that for example, the previous weekend there had been heavy footsteps for almost 2 hours that not even a loud movie could drown out, and this was common during evenings and weekends. The owner said that since the strata had taken no action, he would continue to document noise, and would follow up with an acoustic engineering firm.

23. The property manager replied by email. He said the council suspected the noise might be "ordinary living" noise, and had therefore postponed taking action. The property manager wrote that the council thought the owner should sound-proof his strata lot if he wished, at his own cost. The property manager concluded by stating that the owner should let him know when he had the acoustic engineering results, and the council would follow up according to that report. At the owner's request, this information was repeated in a formal letter dated June 19, 2019.

24. The owner continued to provide noise logs to the strata. On July 3, 2019, he requested that the strata cooperate with the sound testing, including arranging unoccupied access to units 27 and 29 above him. The property manager replied that he would forward the request to the council for discussion and action.

25. The strata did not specifically respond about the testing request, other than to say the owner must pay for it. The parties continued to correspond about the noise, and

the owner attended another council meeting. In a September 4, 2019 email, the owner said he expected the strata to address the noise from plumbing in or near his bedroom walls, as well as flooring noise. The property manager replied on September 16, stating that he would provide the strata's plan in the next couple of days. The property manager did not respond further, and on October 12, 2019, the owner filed this dispute with the tribunal.

REASONS AND ANALYSIS

Did the strata fail to enforce its noise bylaw in relation to the owner's complaints about footfall and flooring-related noise?

26. For the following reasons, I find the strata has failed to reasonably enforce its noise bylaw.

27. Under section 26 of the SPA, a strata corporation must enforce its bylaws, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). I find the evidence provided by the owner establishes that the noises he complained of were not trivial. This evidence includes noise logs and decibel readings showing frequent occurrences over time, and his statements about how the noises interrupted his sleep.

28. A strata may investigate bylaw contravention complaints as it sees fit, provided it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148).

29. The BC Court of Appeal considered how to determine whether a strata's action is "significantly unfair", as contemplated in the SPA, in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated by the BCSC in *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28:

    a. What is or was the expectation of the affected owner or tenant?

b. Was that expectation on the part of the owner or tenant objectively reasonable?

c. If so, was that expectation violated by an action that was significantly unfair?

30. Based on SPA section 26, I find the owner had an objectively reasonable expectation that the strata would investigate his noise complaint, make a decision about whether bylaw 8.1 had been breached, communicate that decision to him, and take action to enforce the bylaw if it found a breach. Based on the evidence before me, I find the strata did not take any of these steps in a reasonable amount of time, and was therefore significantly unfair in how it dealt with the owner's noise complaint.

31. Specifically, the owner filed his formal noise complaint on August 30, 2018. The evidence before me shows that the strata did not respond to the complaint, other than to say the council would discuss it. After the owner's lawyer wrote to the strata on February 12, 2019, the strata said on March 1, 2019 that it would send a bylaw warning letter to unit 27. However, the strata did not do so until 8.5 months later, on November 4, 2019. While the strata's correspondence suggested it was waiting for the owner to provide more specific information describing and quantifying the noise, the evidence shows that the owner did so by at least May 21, 2019. Also, I find the owner's previous email of August 30, 2018 contained sufficient information for the strata to investigate the complaint.

32. The strata says it took reasonable steps in a reasonable timeframe to address the issues raised by the owner, and work towards a suitable resolution. It says it fully investigated the complaint, and addressed the issue with the owner's neighbours. It says it sent official notices to owners about noise, and warned that bylaw infraction letters and fines could follow.

33. I find the strata has not provided evidence to support this submission. For example, it did not provide evidence that it contacted the neighbours, or what was said. It did not provide copies of notices to other owners, other than the November 4, 2019 warning letters to the occupants of the 2 strata lots above the owner. Those notices

were not sent until after the owner filed his dispute with the tribunal, and did not specifically refer to bylaw 8.1 or its wording.

34. Also, I find the text of the November 4, 2019 letters does not support the conclusion that the strata had previously worked with the neighbours to investigate the noise, or to reduce it. Rather, in its letters, the strata recommended that the neighbours reduce noise by not wearing shoes, placing area rugs, and using felt pads. The letter said that if the complaints continued, "further investigation and enforcement steps may be taken". I find that this wording, and the absence of evidence to the contrary, suggests that the strata had not previously taken significant investigation or bylaw enforcement action. This was despite the fact that the owner had continuously requested that the strata act since filing his formal complaint 14 months earlier.

35. The strata says that some council members attended SL28, and heard no noise. The owner admits this, but says the neighbours were not home at the time of the visit. He also says the purpose of the visit was to discuss the issues, not specifically to investigate the sound. I find that a single visit was not a sufficient investigation of the owner's noise complaints.

36. The strata appears to have unofficially concluded that there was no noise bylaw breach, and that the owner's complaints were baseless. In a November 12, 2019 email to the council, the property manager wrote that the owner had a "pattern of being super-sensitive to noise, to a fault." However, there is no indication in the evidence before me that the strata ever communicated that position, or any decision about the bylaw complaint, to the owner. After the owner's hearing before council on May 21, 2019, the strata did not respond until June 13, 2019, when the owner requested a response. This is contrary to SPA section 34.1(3), which says that if the purpose of the hearing is to seek a decision, the council must provide a written decision within 1 week. I find that the purpose of the hearing was to request a decision about whether there was a noise bylaw breach, and how the strata would enforce the bylaw. Therefore, I find that the strata violated SPA section 34.1(3) by not providing a decision within a week of the hearing.

37. In its submissions, the strata says it engaged a sound engineer to test noise levels at its own expense, but the owner refused to provide access to his strata lot so the testing could occur. The owner denies this, and says the testing did not occur because he had to arrange to vacate SL28 for 48 hours during the testing, and because the offer of testing occurred during the tribunal's facilitation phase and negotiations ended without settlement.

38. I find the evidence and submissions confirm that the strata did not attempt to arrange sound testing until after the tribunal dispute was filed. I therefore find that this negotiation does not establish that the strata took sufficient steps to investigate and enforce its bylaws from August 30, 2018, when the formal complaint was sent, to the time the owner filed this tribunal dispute on October 12, 2019.

39. For these reasons, I find the strata's actions in dealing with the owner's noise complaint were significantly unfair. I will now consider what remedies are appropriate.

Remedies – Sound Testing

40. In his submissions, the owner requests an order that the strata hire an engineer to conduct noise testing, at its expense. I find that remedy is appropriate in this case, for the following reasons.

41. In his August 2018 emails to the strata, the owner said that in his opinion, the soundproofing between his strata lot and the units above was inadequate. Based on the evidence before me, I find the strata never specifically responded to that assertion, investigated the soundproofing, or measured the noise transfer levels. The strata appears to have relied in part of statements from the owner and former owner of 2 other strata lots. These owners say they received no noise complaints during their time in the strata. I am not persuaded by these statements, since there was no statement provided from any previous owner of SL28 or unit 27.

42. I find that the noise logs and decibel level readings provided by the owner are not sufficient evidence to prove that the soundproofing is inadequate, or that the noise

bylaw was breached. This is in part because the owner is not an expert in structural or sound engineering, and is not objective. However, as explained above, I find the noise logs and decibel readings are sufficient to establish that the strata had a duty under SPA section 26 to investigate and enforce its bylaws.

43. Since the strata failed to do so, I find the most appropriate remedy is to order the strata to arrange and pay for noise transfer testing, and a report, by a qualified sound-testing professional. I would ordinarily order the testing to be completed within a specific number of days. However, due to the COVID-19 pandemic and the need to go inside strata lots, I instead order that the testing be completed as soon as is reasonably possible, and within no more than 6 months from the date of this order.

44. Within 14 days after the sound-testing professional provides their report, the strata must provide the owner with a copy of the report and its written decision about whether bylaw 8.1 was breached. Under the law, the test is whether a reasonable person would find the noise excessive or unreasonable. The strata may want to obtain the sound-testing professional's assistance in establishing whether the level of noise transfer into SL28 is unreasonable based on objective standards.

45. If the strata determines through its investigation that a bylaw contravention has occurred, the SPA requires it to take steps to address the contravention, whether by imposing fines or taking remedial action under SPA section 133. If the strata determines that no contravention has occurred, it should have some objective evidence on which to base its conclusion: see *Tollasepp v. The Owners, Strata Plan NW 2225*, 2020 BCCRT 481.

Is the owner entitled $1,740 for soundproofing?

46. The owner requests an order that the strata pay $1,740.00 for the cost of soundproofing part of his strata lot.

47. I find that the owner has not met the burden of establishing that this remedy is necessary or appropriate in the circumstances. As discussed above, there is no

expert or objective evidence before me to establish that the existing soundproofing is inadequate. The owner provided a quote for $3,492.43 for materials for soundproofing the SL28 ceilings, and a diagram showing a soundproofing design for his bedroom ceilings. However, it is unclear who recommended the materials, and the soundproofing design diagram appears to have been taken from a website. There is no expert opinion before me confirming that this soundproofing plan would be effective in reducing the sound transfer into SL28.

48. For these reasons, I do not order payment of soundproofing expenses as part of this dispute. However, as stated above, if the strata's investigation establishes a noise bylaw violation, the strata must take steps to address the violation. This may include taking remedial action under SPA section 133, such as by installing soundproofing.

49. It is also open to the owner to install soundproofing at his own expense, although he is not obligated to do so.

Is the owner entitled to $4,000 in general damages?

50. The owner requests $4,000 in general damages, for failing to address his noise complaints in a timely manner, negative impact on his sleep due to noise, and loss of peaceful enjoyment of his strata lot.

51. I find the owner has not established entitlement to damages. As explained above, while I find his noise logs and decibel readings are sufficient to establish a need for further investigation, they are not sufficient to establish that a bylaw breach has occurred. I note that it was open to the owner to provide additional evidence, such as witness statements, or structural engineering reports to establish his assertions about inadequate soundproofing. The owner provided noise recordings. However, I find these unpersuasive since I do not know the method of recording, or what audio levels were used in the recording. I find there is no way to objectively assess how loud the recorded noises are based on the sound recordings.

52. For these reasons, I dismiss the owner's claim for damages.

Reimbursement of legal fees

53. The owner requests reimbursement of $1,000 in legal expenses. He provided an invoice for $899.13 in legal fees.

54. Tribunal rule 9.4(3) says that except in extraordinary circumstances, the tribunal will not order one party to pay another party's legal fees in a strata property dispute. I find the circumstances of this dispute are not extraordinary. Rather, I find this is a fairly typical strata noise dispute, of the type the tribunal routinely decides. There was not an unusually large amount of evidence or submissions, and the issues in the dispute were not unusually complex.

55. I also note that the invoice shows the owner incurred the legal fees several months before filing his tribunal dispute. Therefore, they are not truly dispute-related expenses.

56. For these reasons, I dismiss the owner's claim for reimbursement of legal fees.

TRIBUNAL FEES AND EXPENSES

57. As the owner was partially successful in this dispute, in accordance with the CRTA and the tribunal's rules I find he is entitled to reimbursement of half his tribunal fees, which equals $112.50. Other than the owner's claim for legal fees, which I addressed above, neither party claimed dispute-related expenses. I therefore order no reimbursement of expenses.

58. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

ORDERS

59. I order the following:

    a. The strata must arrange and pay for noise transfer testing, and a report, by a qualified sound-testing professional. The testing be completed as soon as is

reasonably possible, and within no more than 6 months of the date of this order.

b. Within 14 days after the sound-testing professional provides their report, the strata must provide the owner with a copy of the report and its written decision about whether bylaw 8.1 was breached.

c. Within 30 days of this decision, the strata must reimburse the owner $112.50 for tribunal fees.

60. The owner is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

61. Under sections 57 and 58 of the CRTA, a validated copy of the tribunal's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia, if it is a order for financial compensation or return of personal property under $35,000. Once filed, a tribunal order has the same force and effect as an order of the court that it is filed in.

Kate Campbell, Vice Chair