



Civil Resolution Tribunal

Date of Original Decision: September 2, 2020

Date of Amended Decision: September 9, 2020

File: ST-2019-010438

Type: Strata

Civil Resolution Tribunal

Indexed as: *Morgan v. The Owners, Strata Plan 704*, 2020 BCCRT 979

B E T W E E N :

TERENCE MORGAN and MARISA GAIGA

APPLICANTS

A N D :

The Owners, Strata Plan 704

RESPONDENT

AMENDEDⁱ REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicants Terence Morgan and Marisa Gaiga (owners) jointly own unit 303, which is strata lot 15 in the respondent strata corporation The Owners, Strata Plan

VIS 704. This dispute is about a newly installed elevator that the owners allege is causing excessive noise in unit 303.

2. Although the strata has done some remediation work, the owners say the strata has failed to properly maintain and repair the elevator, causing an ongoing unreasonable level of noise. The owners say the noise interferes with their quiet enjoyment of their strata lot.
3. The owners seek an order requiring the strata to mitigate elevator noise to the levels recommended in Canadian Mortgage and Housing Commission (CMHC) and British Standard 8233 (BS8233) guidelines, throughout unit 303.
4. The owners also claim:
 - a. \$10,000 in damages for their loss of quiet use of their strata lot,
 - b. reimbursement of \$1,260 they paid to BAP Acoustics for a noise level report, and
5. The strata says it has reasonably addressed the owners' noise concerns. The strata says has reduced the noise through several means, including adjusting the elevator's in-tank muffler, and completing 7 recommendations for corrective action recommended by its acoustic engineer expert, RWDI. The strata denies liability. The strata also says the owners' claim was filed prematurely and is an abuse of process, because it has not completed some planned sound reduction measures.
6. The owners represent themselves, through a joint submission. The strata is represented by strata council member RL.
7. For the reasons given below, I find that the strata failed to meet its *Strata Property Act* (SPA) section 72 obligation to repair and maintain the new elevator installation. I find that the strata must employ further sound dampening measures to address sound transfer into unit 303, and that the strata must pay the owners \$3,500 in damages.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
9. The CRT 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.
10. 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 the parties and witnesses questions and inform itself in any way it considers appropriate.
11. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
12. CRT documents incorrectly show the respondent's name as The Owners, Strata Plan, VIS 704. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 704. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

ISSUE

13. The issues in this dispute are:
- a. Is the elevator noise in unit 303 excessive or unreasonable?
 - b. Must the strata take further sound-remediation steps involving the elevator?
 - c. Was the strata significantly unfair in how it dealt with the owners' noise complaints?
 - d. Are the owners entitled to the claimed \$10,000 in damages?
 - e. Must the strata reimburse the owners the \$1,260 they paid for sound testing?

FACTS AND EVIDENCE

14. The owners and the strata both provided extensive submissions and evidence in this dispute. I have read all of these materials, but I only refer to those I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant owners must prove their claims on a balance of probabilities.
15. The strata consists of a 5-storey building constructed in 1978 using steel-reinforced concrete framing. At the time of construction, a direct acting buried hydraulic cylinder elevator was installed.
16. According to the strata plan, unit 303 is on the 3rd above-ground floor. The original elevator system was installed in a central column in the middle of the building, such that the elevator room walls back onto parts of 5 strata lots per floor. The strata plan marks the elevator room and elevator shaft as common property (CP).
17. The owners bought unit 303 in July 2016, and moved in.
18. In September 2017, the strata received an Elevator Condition and Planning Report from Apex Elevator (APEX). APEX recommended a complete elevator modernization within 1-3 years, including a muffler for the elevator's pump unit.

19. On November 16, 2017, a special general meeting (SGM) was held. The strata owners passed a $\frac{3}{4}$ vote resolution approving the elevator modernization project up to a cost of \$260,000, through a \$115,385 special levy and a payment of \$144,615 out of the CRF. The SGM minutes mention that the project budget includes “unforeseen contingency expenses.” As I interpret sound dampening as either a component of the elevator modernization project or an unforeseen contingency, I find that this approved budget included sound dampening features, if needed.
20. On December 6, 2017, the strata council wrote to APEX to say that the owners had agreed to carry out “a full modernization of our elevator system with the exception of cab interior improvements and painting/re-cladding of hall doors and frames.” The strata council asked that Apex oversee project and arrange “for additional specialist expertise as required.”
21. Prior to the elevator modernization, no noise readings were taken. That is, there is no record of the noise levels emitted by the original elevator. However, I accept the owners’ uncontested evidence that they did not hear elevator noise in unit 303, until after the new elevator was installed.
22. The elevator modernization project started in June 2018. Phase 1 involved replacing the existing assembly with a new submersible hydraulic pump and tank unit, cathodic protection, and a rupture control safety valve required by code and seismic regulations.
23. The elevator was out of service for Phase 1 from June 4 to 19, 2018.
24. On June 20, 2018, the owners emailed strata council reporting hearing noise from the elevator that they did not hear previously. Strata council forwarded the concern to APEX.
25. On June 21, 2018, JG, an APEX engineer, replied that he would review things the next day and access unit 303 to confirm how the noise was being transferred.

26. On June 21, 2018, JM, strata council member, emailed the owners to that the contractors working on the elevator had suggested adding insulation to the cover of the elevator pump and the ceiling of the room. JM wrote that these changes “should reduce the noise.”
27. On June 23, 2018, SO from West Coast Elevator (WCE) emailed JM to say that he had “pumped up the tank muffler” which made “some” difference.
28. On June 25, 2018, APEX provided the strata with a brief report reviewing the installation of the elevator cylinder and tank unit following a June 22, 2018 site visit. In it, APEX identified that there was a “noise transference” deficiency noticed from the new tank unit up to the third floor.
29. APEX recommended the following corrections:
 - a. Loosen hold down nuts for the tank unit,
 - b. adjust piping so it does not touch the tank unit,
 - c. inflate the bladder on the hydraulic silencer,
 - d. isolate the hydraulic piping at the mounts.
30. APEX also wrote that, after those adjustments, elevator noise would be monitored so that “other options” could be reviewed.
31. On September 9, 2018, the owners again wrote to strata council about the ongoing elevator noise. The same day, JM replied to say that strata council would forward the owners’ email to the companies involved in the elevator work.
32. On September 11, 2018, the owners wrote to AM, strata council member, asking the council to consider “enhancing isolation between the tank, hydraulic piping, cab rails etc. and the steel anchoring rods that attach them to concrete walls and floors”. The owners wrote that they had read some case studies about structural noise transmission stating that installation of an isolation pad under a metal retaining bracket itself does not efficiently prevent vibration/noise transmission

through metal anchoring rods into a concrete floor or wall. The owners asked if strata council could obtain WCE's expert feedback on these questions.

33. On September 12, 2018, the applicants wrote to JM explaining that before the new elevator installation, they did not hear any elevator noise in the bedrooms or living room. However, as of September 12, 2018, they continued to hear undue elevator noise in all rooms of unit 303.
34. On November 29, 2018, the applicants wrote to strata council again to say they had not heard back about the problem of elevator noise heard throughout unit 303.
35. On December 2, 2018, AM replied to say that the strata council had asked APEX to attend a meeting and bring sound measuring equipment, records of measurements taken at an earlier stage of modernization, and the relevant CMHC guidelines.
36. On December 5, 2018, the strata council met with MC of Apex Elevators. AM noted that APEX had said that the elevator pump would be quieter after replacement, but it was now noisier. MC said that they would be checking "viable options." MC said that "vibration" was down, but "airborne noise from the tank unit may be the issue".
37. Then APEX took noise measurements in unit 303. Based on strata council's minutes of the December 5, 2018 meeting, the readings were 43-43.8 decibels in unit 303 when the elevator was running. The minutes record that, earlier in the modernization process, sound levels in unit 303 had been recorded at 48-52 decibels.
38. MC suggested a "sound-absorbing cover to insulate around the tank might be worthwhile."
39. On January 11, 2019, strata council prepared a summary of its assessment about the elevator installation and noise concerns. The summary included observations that:

- i. WCE had corrected a squealing noise when the elevator passed each floor,
 - ii. the operational sound level from the elevator machine room remained a problem, noticeably louder and more intrusive than prior to modernization, and continued to be heard in unit 303 and other adjacent areas.
- 40. On January 12, 2019, JM wrote to the owners to say that APEX and WCE were working on lowering the noise levels.
- 41. In March 2019, strata council recorded in minutes that the elevator renovation was “nearly finished”. A “squealing noise” had been eliminated.
- 42. On March 19, 2019, MC from APEX emailed AM and JM attaching a sketch of sound mitigation concept involving construction of 4 independent panels with good acoustical qualities to insulate the elevator.
- 43. On March 23, 2019, SO of WCE wrote to strata council and APEX suggesting that, for soundproofing, a new wall be built within the elevator room, and then new drywall could hang off J clips that isolate drywall from the studs, and a door vent with insulation. APEX’s MC wrote that he liked the idea, which I find was the form of acoustical isolation that was drawn in the March 19, 2019 sketch.
- 44. On April 11, 2019, the owners wrote to strata council again asking for a resolution of elevator noise levels in unit 303.
- 45. On April 12, 2019, AM replied to say that the strata council was “expecting a formal refined proposal from APEX to address the noise issue imminently.”
- 46. Also on April 12, 2019, AM received an email from MC at APEX saying that a “better sketch” and pricing for their acoustic containment concept would be provided.
- 47. On April 24, 2019, AM wrote to MC at APEX and SO at West Coast following up on his request for a detailed proposal to address the noise issue. SO wrote back

that his contact now unavailable and he was unsure when they would again be available.

48. On April 29, 2019, strata council held a meeting. Mr. Morgan was in attendance. The minutes record that the elevator modernization project was virtually complete and that the “noise emitted” by the elevator was “slightly greater than expected”. The minutes say that “A practical and inexpensive method to reduce the noise from the Elevator Machine Room when the elevator is under load is being sought from APEX.”
49. Around the same time, strata council distributed a poll to all owners asked if they had any concerns with the elevator modernization project. Out of 23 sets of owners, only the applicant owners raised concern about the noise from the elevator room. The emails show that strata council suggested that the noise issue was not a priority, since only the owners were complaining.

BAP Acoustics June 14, 2019 Expert Report (BAP Report)

50. On June 3, 2019, ED of BAP Acoustics conducted a site visit at unit 303 and prepared a report for the owners, who paid \$1,260 for the BAP Report.
51. ED is a Professional Engineer with 10 years of employment as a practicing acoustic consultant. Based on these qualifications, I find he is qualified to provide expert opinion on acoustics issues arising from elevator installations in a strata building. I accept his opinion, as discussed further below, that elevator noise levels in unit 303 were above recommended levels, and that further mitigation should be pursued.
52. ED writes that there are no municipal, provincial or federal guidelines for noise associated with elevators in residential buildings. There is BS 8233 titled “Guidance on sound insulation and noise reduction in buildings” which sets out maximum noise level limits from elevators of 25 decibels for a bedroom and 30 decibels for a living room. BS 8233 says that these are upper guideline values and

that “...every effort should be made in the design of lift systems and components to minimize noise and vibration at source such that lower levels result in practice.”

53. ED’s calibrated sound meter measured noise levels in the master bedroom at 27 decibels, and 30 decibels in the second bedroom, when the elevator was running.
54. ED offered his expert opinion that because the elevator noise exceeded the BS 8233 criteria by in the master bedroom and second bedroom, further mitigation should be pursued to reduce the elevator noise’s impact on unit 303.
55. ED noted that the elevator’s hydraulic tank and associated piping and conduit had not been properly isolated from the building structure, so that that noise insulation through padding and isolation was not working as it should. Specifically, the pads were not “appropriately selected for this application” and the bolts were installed in direct physical contact with the building structure.
56. ED recommended that the “structure-borne sound transmission” be reviewed by a qualified acoustic engineering professional” to provide recommendations to properly isolate the elevator pump and its associated components from the building structure. ES estimated the cost of such a report at \$1,500.
57. On June 17, 2019, the owners emailed strata council the BAP report, and requested a hearing to address the issue of reducing elevator noise in unit 303.
58. On June 24, 2019, SO of WCE wrote to strata council to say that WCE would come in to correct two clamps that were lacking rubber isolation on the top of the bracket below the nut. SO also wrote that he was not clear about where noise transfer was coming from given that the tank unit was not bolted to the floor. SO wrote that the tank had to be secured in some way due to seismic requirements.
59. On July 3, 2019, a strata council hearing was held about the owners’ concerns of elevator noise. Afterwards, strata council recorded its view that the sound isolation of the tank could be improved. Strata council agreed to follow up with WCE and arrange for ES from BAP and someone from WCE to review the mountings in the elevator room, with two council members present.

60. On July 6, 2019, strata council noted the elevator noise matter remained a work in progress. Strata council recorded that it was looking forward to recommendations from the “joint review of the elevator machine room installation”.
61. On July 9, 2019, the owners emailed strata council to say that ED, as their expert, was unwilling to communicate with the strata council directly because he had been retained by the owners.
62. On July 10, 2019, BS from WCE wrote to AM to say that it had addressed the “minor items” noted in the BAP Report. BS then wrote that if noise issues still existed, then a sound specialist should propose a sound-proofing methods for the elevator machine room or other areas of the building.
63. On July 11, 2019, strata council decided to engage RWDI, a professional acoustical engineering firm, to “conduct an independent investigation into the situation and provide appropriate recommendations.”
64. On August 9, 2019, AM wrote to the owners to say that, as recommended in the BAP report, RWDI had been engaged to assess the elevator noise, and to provide strata council with a “summary of approaches that may be considered for reducing the elevator operational noise in unit 303...”

RWDI Elevator Noise Assessment – September 6, 2019

65. On August 16, 2019, RWDI made a site visit to unit 303. PT, a qualified acoustician, prepared RWDI’s report.
66. RWDI’s September 6, 2019 report refers to an American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) recommendation of 35 dB maximum noise from HVAC in living areas of condominiums. However, RWDI writes that the ASHRAE criteria is not appropriate for elevator noise, which is intermittent. Instead, RWDI recommended using the CMHC 177.021 guidance in “Qualification of the Degree of Acoustic Comfort Provided by Multi-Dwelling Buildings – Phase II” which recommends a maximum elevator noise level of NC 20 within residences.

67. The RWDI report states that upon testing on August 16, 2019, elevator noise levels exceeded NC 20 in unit 303, being 30 decibels/NC 26 in the unit 303 bedroom, and 33 decibels/NC 27 in the unit 303 office/second bedroom.
68. RWDI took measurements of elevator noise with the bedroom doors open. Elevator noise in the bathroom was recorded at 40 dBA/NC 38.
69. RWDI commented that the elevator noise observed in unit 303 was probably due to “structure-borne transmission” rather than airborne transmission. Because this is consistent with ES’s opinion, I find that the elevator noise is likely due to structure-borne transmission.
70. RWDI recommended that, to reduce elevator noise in units 203 and 303, the strata should conduct a vibration study and then address all identified vibration paths.
71. RWDI laid out possible transmission paths that may be responsible for the structure-borne elevator noise in unit 303 as follows:
 - a. vibration isolation pads between the floor slab and steel brackets supporting the hydraulic fluid pipe, but the brackets are bolted to the floor slab, essentially short-circuiting the isolation pads,
 - b. steel bracket in the elevator shaft bolted to the floor slab without vibration isolation pads,
 - c. the hydraulic pipe was wrapped with some sort of foam insulator where the pipe exits the tank, but vibration was still felt along the pipe downstream from the tank,
 - d. no vibration isolation between the conduit box and the elevator machine room wall,
 - e. vibration could be felt along the less sealant portion of the wall,
 - f. velocity valve coupled to the floor slab by the flange that supports the hydraulic piston, causing noted vibration, and

- g. the elevator guiderails were not vibration isolated from the elevator shaft walls, though these were not typically a significant pathway for vibration transmission.
72. On September 12, 2019, RWDI proposed that the strata obtain a vibration study for \$3,500. RWDI noted that it could not “guarantee” site measurements would identify the vibration transfer path to the structure.
73. RWDI explained that it would then be available to discuss vibration isolation recommendations with a supplier or vibration isolation projects, as Stage 2 of this work, if the strata approved, at an additional unspecified cost.
74. On September 23, 2019, the owners wrote to strata council that, since June 20, 2018, the strata had failed to take appropriate steps to identify the source of the structure-borne elevator noise and provide appropriate vibration isolation.
75. On September 30, 2019, AM emailed SO and asked that WCE “undertake corrective action on an urgent basis to address all 7 (seven) of the potential elevator structural noise conduction paths identified” in the RWDI report.
76. On October 11, 2019, strata council's then lawyer emailed the applicants that it had engaged WCE to carry out some work “...simple enough” that it would not require the “assistance or oversight of RWDI.” The strata stated that further noise testing would be conducted to determine the impact of those noise reduction measures. If the fixes by WCE did not resolve the issue, the strata’s lawyer wrote that it remained committed to finding a reasonable solution.
77. On November 8, 2019, RWDI provided a proposal to repeat elevator noise measurements impacting unit 303 and compare them to previously measured levels, following vibration isolation the strata said had been put in place by WCE, for \$2,500.
78. On November 14, 2019, WCE invoiced the strata \$730.80 for “seismic modifications made to elevator equipment to satisfy noise assessment”.

79. On December 19, 2019, Acoustics West Contracting Ltd. installed an acoustic sound barrier around the elevators hydraulic oil pump tank. The strata paid \$1,462.65 for this sound barrier.
80. On December 27, 2019, SO of WCE emailed the strata council itemizing the steps taken to reduce the elevator noise as follows:
- i. installation of complete rubber mat covering the connection of the floor to the pump unit
 - ii. rubber isolation around the hydraulic oil line and pipe clamps bolted to walls,
 - iii. removal of concrete wall where oil line had direct contact with concrete wall
 - iv. isolation between floor and hydraulic oil line pipe stand, and
 - v. centre oil line coming out of pump unit to ensure no physical contact between oil line and pump unit.

RWDI Follow-Up Noise Measurements – January 14, 2020

81. On January 8, 2020, RWDI returned to remeasure elevator noise levels in unit 303. The purpose of the follow-up visit was to evaluate if elevator noise levels had decreased following mitigation measures.
82. Again, measurements were performed with doors open. The noise levels were:

	Elevator Noise Levels	Elevator Noise Levels	Average Background Noise Levels	Average Background Noise Levels
	January 2020	August 2019	January 2020	August 2019

	NC	dBA	NC	dBA	dBA	dBA
BATHROOM	35	41	38	40	22	24
MASTER BEDROOM	26	30	26	30	21	21
GUEST BEDROOM	24	30	27	33	21	21

83. Although noise levels had decreased in the bathroom and guest bedroom, the master bedroom noise levels had not improved. RWDI noted that the noise levels in both bedrooms were still 4-6 points higher than their recommended criterion of NC 20.
84. On January 26, 2020, AM emailed SO at WCE with a report that the elevator was “currently making a long tone “squeak/squawk” noise when going up” and requesting that issue be addressed.
85. On March 4, 2020, BY of ACR Fuller, a supplier of rubber linings, provided SO at WCE and strata council with options to try a natural rubber mat for the elevator unit, for \$300-\$400 or to have the unit lifted off the ground on a set of rubber pucks with gaskets on the bolted connections and then placing an “egg carton” type noise dampening contraption under the unit.
86. On March 12, 2020, SO of WCE emailed strata council to say that “...it may be possible to try some fairly substantial changes at considerable expense, with no guarantee that they will accomplish any noise reduction.” SO went on to say that WCE were “not experts in noise control”, and had done what WCE reasonably could to address the noise issue. I pause here to find that WCE is, on its own evidence, not an expert in noise control. I prefer the expert opinions of RWDI and BAP on acoustic issues.

87. The strata provided a chart of “Elevator Noise Abatement Costs” totalling \$9,954.45. On it, the strata indicates that there is a \$1,356 pending expense to have Acoustics West install noise panels, and \$2625 pending to pay RWDI for another set of follow-up noise measurements.
88. On March 17, 2020, strata council authorized Acoustics West Contractors Ltd. to supply and install suitable acoustic panels to the elevator machine room to attenuate noise emitted from the pump room. The cost was \$1,291.00 plus GST. The strata says the installation of these acoustic panels was then delayed due to the COVID-19 pandemic.

POSITIONS OF THE PARTIES

89. The owners say the new elevator creates excessive and unreasonable noise, and that the strata’s duty under SPA section 72 includes a duty to rectify equipment that creates excessive noise. The owners submit that the strata’s failure to remediate the elevator noise is unreasonable, as the strata has the financial means to make the necessary repairs. From this I infer a submission that the strata’s actions were significantly unfair to the owners.
90. The strata says it has met its duty to maintain the elevator by taking various sound reducing steps, and that the elevator is not excessively or unreasonably noisy. The strata says it responded to the owners’ noise complaints in a timely and appropriate manner and must balance the interests of all owners. The strata relies in part on the fact that other owners within the same building did not complain about noise.

Is the elevator noise in unit 303 excessive or unreasonable?

91. I find that the elevator causes excessive and unreasonable noise in unit 303, at least up to January 2020 when RWDI most recently took noise readings.
92. In asserting that the elevator noise is reasonable, the strata says that it has taken many steps to reduce the noise, and that it had yet to install the Acoustics West

panels or to account for WCE's further remediation attempts by the time the owners filed their dispute. However, the strata does not have expert opinion that noise levels recorded in unit 303 from the elevator are within generally accepted standards for bedrooms in a dwelling.

93. The strata submits that I should apply the ASHRAE standard that 35 decibels or less is acceptable HVAC noise in living spaces. I decline to do so, because ASHRAE addresses HVAC noise, not elevator noise. CMHC 177.021 and BS 8233 address elevator noise in multi-family dwellings, which is the very issue in dispute.
94. I place significant weight on the BAP Report, obtained by the owners in June 2019. I have found that the BAP report is expert evidence as contemplated in tribunal rule 8.3, as the qualifications of ED, the consulting engineer, are set out in the report. The report indicates, and I accept, that ED has expertise in acoustical engineering. He conducted a site visit, took specific sound measurements within unit 303, and set out the methodology of his sound testing, including the equipment the precise locations used. ED also compared his sound readings to BS 8233 to explain his conclusions. Based on the BAP Report, I find that the unit 303 noise levels exceeded BS 8233 criteria due to structural transmission from the elevator, as of June 2019.
95. I also accept RWDI's two expert opinions about noise in unit 303, as they also meet the criteria set out in CRT rule 8.3. RWDI writes that CMHC sets a guideline of NC 20. In August 2019, RWDI recorded NC 26 (30 decibels) in the unit 303 master bedroom and NC 27 (33 decibels) in the office/second bedroom while the elevator was running. Measured against the BS 8233 standards, I find these noise levels are also excessive.
96. In January 2020, RWDI conducted follow-up sound measurements in unit 303 and found noise levels in both bedrooms still exceeded their NC 20 criterion.
97. Therefore, I find that noise readings in unit 303 exceed the CMHC and BS 8233 guidelines for elevator noise in multi-family dwellings as of January 14, 2020.

Based on RWDI's January 14, 2020 report, I find that elevator noise in unit 303 remains excessive.

Should the CRT order the strata to mitigate elevator noise levels to CMHC and BS 8233 maximum levels or less in all areas of unit 303?

98. Under section 72 of the SPA, the strata has a duty to repair and maintain CP and common assets. The strata acknowledges this duty includes ensuring that the elevator does not create unreasonable noise: *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113.
99. However, the strata cautions that it must also be the “guardian of the communal purse” by choosing reasonable repairs within budgetary constraints. I agree to the extent that the strata is not obliged to choose the best or most expensive repair: *Kayne v. The Owners, Strata Plan LMS 2374*, 2013 BCSC at paragraph 184. Having said that, the strata is obliged to conduct reasonable repair and maintenance.
100. Under section 164 of the SPA and section 123(2) of the CRTA, I have authority to make findings and make orders to remedy significantly unfair actions by a strata corporation. The British Columbia Court of Appeal has considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was confirmed in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164, and can be stated as follows:
- i. What is or was the expectation of the affected owner or tenant?
 - ii. Was that expectation on the part of the owner or tenant objectively reasonable?
 - iii. If so, was that expectation violated by an action that was significantly unfair?
101. In *Chen*, the vice chair found that an owner reasonably expected that she would not have to endure unreasonable noise from the hot tub pumps, and that the

strata's failure to fix the noise was significantly unfair to the owner. In applying the same analysis to the facts before me, I find the owners reasonably expected not to have to endure unreasonable elevator noise, and the strata's actions were significantly unfair because it failed to sufficiently mitigate the noise.

102. I find the strata has failed to meet its duty under SPA to maintain CP and common assets. The strata argued that there was no "guarantee" that the noise reduction measures would improve the situation further, referring to advice from WCE. As well, the strata referred to RWDI's advice that there was no guarantee that vibration paths would be identified, if a vibration study were conducted. I find that the strata must address the elevator noise to the BS8233 and CMHC standards used by BAP and RWDI. The lack of a 100% guarantee that recommended measures will mitigate the noise does not excuse the strata's obligation to use reasonable efforts to do so.
103. I find that the strata's actions have been significantly unfair because the owners first complained about the noise the day after the new elevator was put into service. Although APEX recommended installing an insulating cover for the elevator pump on June 21, 2018, and again 6 months later in December 2018, and again in March 2019 with a sketch, the strata failed to order that this recommendation be implemented until September 30, 2019.
104. On December 19, 2019, an acoustic blanket type barrier was installed. The strata plans for acoustics panels to be installed, as authorized on March 17, 2020, but which still have not been installed. Even considering some modest delay for the COVID-19 pandemic, I find that the strata failed to fully implement the early acoustic insulation barrier recommendation for 2 years. The strata submits that installing acoustic insulation was scheduled around a fire detection upgrade. I find this does not justify the 2-year delay.
105. Even with the strata's other sound reducing efforts, I find the 2-year delay in implementing this central and repeated recommendation to be unreasonable.

106. The strata also declined to have a vibration study conducted, despite the recommendation by RWDI. Instead, the strata instructed WCE to address any possible vibration paths noted in RWDI's September 12, 2019 report. However, WCE's email report on its work does not include:

- a. vibration isolation between the conduit box and the elevator machine room wall, or
- b. vibration isolation of the velocity valve.

107. I therefore infer that vibration isolation of these items was not completed, despite RWDI's recommendation. For these reasons, I find the strata failed to incorporate acoustic insulation of the tank, whether through a box, blanket, panels or some combination, in a timely way.

108. I order the strata to take the following steps, within 120 days of this decision, to meet its SPA section 72 obligations:

- i. have the planned acoustic panels installed,
- ii. have a contractor attend to vibration isolation of the velocity valve, and between the conduit box and elevator wall, if this has yet to be done, and
- iii. have sound testing repeated, to determine whether the two bedrooms and bathroom inside unit 303 are at or below NC20.

109. After the abatement work is complete, the strata must also obtain an engineering report from a qualified professional confirming that the elevator noise throughout unit 303 is within both the CMHC 177.021 and BS 8233 guidelines. If the work listed above does not bring the elevator noise within these guidelines, the strata must take additional steps to reduce noise transfer into unit 303, until the levels meet the guidelines, with this result achieved within 12 months of this decision: see the non-binding but relevant analysis in *Bartos et al v. The Owners, Strata Plan BCS 2797*, 2019 BCCRT 1040 at paragraph 97.

Are the owners entitled to damages for unreasonable elevator noise?

110. The owners seek general damages for the strata's significant unfairness under SPA section 164. The owners did not expressly argue the tort of noise nuisance although the strata made submissions that raise it. Section 123(2) of the CRTA says the tribunal may make an order directed at strata corporation if necessary to prevent or remedy a significantly unfair action or decision. Thus, the tribunal has an authority equivalent to section 164 to make orders to remedy significant unfairness.
111. I find that the strata's actions in dealing with the owners, particularly in their delay adding appropriate acoustic isolation despite repeated recommendations to so, was significantly unfair and left the owners to experience ongoing unreasonable elevator noise. I accept the owners' evidence that the noise interfered with their quiet enjoyment of unit 303.
112. I find that the unreasonable noise took place between July 2018, when I find acoustic dampening could have been installed, and July 2020, when strata council agreed to have it done. This is a period of 2 years.
113. In *Chen*, the vice chair awarded an owner \$4,000 in damages for 2.5 years of unreasonable noise emitting from 2 CP hot tub pumps. By analogy, I find that the owners are entitled to \$3,500 in damages for 2 years of unreasonable elevator noise.
114. I dismiss the owners' claim for additional damages for Mr. Morgan's psoriasis. He did not provide medical opinion evidence proving the psoriasis flare ups were probably caused by increased elevator noise.
115. I also dismiss the owners' damages claim about saleability and value of unit 303. I find that they did not prove that the noise issue impacted their unit's value or saleability, nor to what extent.

Must the strata reimburse the owners for the BAP Acoustics Report?

116. The owners claim reimbursement of \$1,260 for the BAP testing and report.

117. I find that in the circumstances it was reasonable for the owners to obtain the BAP Report. When the owners commissioned the BAP Report, a year had passed since their initial noise complaint. The strata had yet to address the excessive elevator noise. The strata had also taken the position that because no other strata lot owners made noise complaints, fixing the noise might not be a priority.

118. In part, I relied on the BAP Report in deciding this dispute. It provides relevant expert opinion. Since the owners were successful, I find the strata must reimburse them \$1,260 for the BAP Report.

CRT FEES, EXPENSES AND INTEREST

119. Under section 49 of the CRTA, and the 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. I therefore order the strata to reimburse the owners for \$225 in CRT fees.

120. The *Court Order Interest Act* (COIA) applies to the CRT. The owners are entitled to pre-judgement interest on the \$4,760, being \$3,500 in damages and \$1,260 for the BAP Report, from June 14, 2019, which is when I find they paid for the BAP Report, to the date of this decision. This equals \$113.67.

121. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners. I find that this includes any prorated assessment of the strata's legal fees associated with this dispute, to be paid from the CRF. It is unclear whether this money has been paid. If it has, I order the strata to reimburse any prorated assessment (the owners' share of legal fees) to the owners.

ORDERS

122. I order that, within 30 days of this decision, the strata pay the owners a total of \$5,098.67, broken down as:

- a. \$3,500 in general damages,
- b. \$1,260 as reimbursement for the BAP report,
- c. \$113.67 in prejudgment interest under the COIA, and
- d. \$225 in tribunal fees.

123. I order that, within 120 days of this decision, the strata arrange for repairs to further abate the elevator noise in unit 303, including:

- a. install the planned acoustic panels,
- b. isolate the velocity valve, and between the conduit box and elevator wall.

124. I order that after the abatement work is complete, the strata must obtain an engineering report from a qualified professional, such as RWDI or BAP, to confirm that the elevator noise throughout unit 303 is within both the CMHC 177.021 and BS 8233 guidelines. If the work listed above does not bring the elevator noise within these guidelines, the strata must take additional steps to reduce noise transfer into unit 303, until the levels fit within the guidelines, with this end result achieved within 12 months of this decision.

125. The owners are also entitled to post-judgment interest under the COIA.

126. Under sections 57 and 58 of the CRTA, a validated copy of the CRT'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 an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Julie K. Gibson, Tribunal Member

ⁱ Amendment Notes: An amendment has been made to paragraph 98 to correct a typographical error, under the authority in section 64 of the *Civil Resolution Tribunal Act*.