



# Civil Resolution Tribunal

Date Issued: September 29, 2020

File: ST-2019-010969

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ramos v. The Owners, Strata Plan NW 1975*, 2020 BCCRT 1103

B E T W E E N :

JOHN RAMOS

**APPLICANT**

A N D :

The Owners, Strata Plan NW 1975

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This dispute is about noise complaints. The applicant, John Ramos, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 1975 (strata). Mr. Ramos says the strata failed to investigate his complaints about noise from strata lot 12 (SL 12) which is directly above his. Mr. Ramos also says the strata council was biased and favoured the owner of SL 12 since she is a strata council

member. He seeks a refund of \$8,400 in strata fees due to loss of enjoyment for the past 4 years.

2. The strata denies Mr. Ramos' claims and says it took reasonable steps to investigate the noise complaints including issuing bylaw notices and conducting informal sound tests. It says it determined that the noise from SL 12 was not unreasonable, and it will not be taking any further action. It also says the owner of SL 12 was not involved in the strata council's response to Mr. Ramos' claims.
3. Mr. Ramos is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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.

## PRELIMINARY ISSUES

8. The strata objects to late arguments and evidence submitted by Mr. Ramos and says they should be excluded. I disagree. I have discretion under the CRTA and the CRT's rules to accept evidence I consider relevant, as referenced above. The strata had the opportunity to review the late submissions and respond to them, which the strata did. I therefore find there is no actual prejudice to it in allowing the late evidence, and I do so.
9. Mr. Ramos claims the strata council is biased and there is a conflict of interest since the owner of SL 12 is also a strata council member. I find his claim against strata council members arises from section 31 of the *Strata Property Act* (SPA) which states that each council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
10. In *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner that the strata council members had acted improperly in the management of the strata's affairs. The court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under SPA section 32 (see paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the CRT's jurisdiction, as set out in CRTA section 122(1)(a).
11. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court found that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31.
12. These court decisions are binding upon me. Following *Wong* and *Sze Hang*, I find the CRT has no jurisdiction to decide the owners' section 31 claim as set out above.

13. Under section 10(1) of the CRTA, the CRT must refuse to resolve a claim that it considers is not within its jurisdiction. For all these reasons, I refuse to resolve the owners' claims against the strata council members.

## **ISSUE**

14. Has the strata acted reasonably in addressing Mr. Ramos's noise complaints?

15. Is the noise in contravention of the strata's bylaws?

16. Is Mr. Ramos entitled to damages?

## **EVIDENCE AND ANALYSIS**

17. In a civil proceeding such as this, Mr. Ramos as the applicant must prove his claims on a balance of probabilities. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In this decision, witnesses and others are identified by their initials, which are known to the parties.

### ***Background***

18. The strata was created in 1982. It consists of a 39 year old wood-frame 4-storey building that contains 12 strata lots. Mr. Ramos has owned and lived in strata lot 8 (SL 8) since 2005. SL 8 is located under strata lot 12 (SL 12). SG purchased SL 12 in 2015 and is the current owner.

19. The strata initially filed bylaws with the Land Title Office in December 2001. The relevant parts of the bylaws applicable to this dispute are summarized as follows:

- "Noise" - Any noise or disturbance that affects the quiet enjoyment of a strata resident is not allowed and any resident that violates this rule will be given a warning letter by the strata council. A \$50 fine can be levied against the offending unit.

- Bylaw 3(1)(b) – An owner or occupant must not use a strata lot in a way that causes unreasonable noise.

20. In February 2018, the strata filed amended “Noise” bylaws in the Land Title Office so that any unreasonable noise or disturbance was not allowed. The amendment also noted that living in a wood-frame building came with some noise transfer between floors and walls and that the strata was not able to eliminate everyday noise due to daily living activities. The amendment defined “unreasonable” to mean “not reasonable; beyond what can be accepted; clearly inappropriate, excessive or harmful in degree or kind”.

### ***Owner’s noise complaints***

21. Since 2006, Mr. Ramos regularly notified the strata council about noise from SL 12. Mr. Ramos limited his claims in this dispute to his noise complaints since 2018. From January 2018 to May 2020 Mr. Ramos emailed the strata council dates and times that he heard noise from SL 12. He described the noise as knocking, dropping objects on the floor repeatedly, heavy bass music, stomping, jumping, running, and loud voices.
22. On January 6 and January 10, 2018 Mr. Ramos emailed the strata about rapid knocking, heavy bass music, and stomping sounds from SL 12. On January 11, 2018 the strata issued SG a bylaw complaint letter. In her response, SG advised she had placed rugs in her hallways, living room, and bedroom to try to minimize the noise and had allowed strata council members to test for noise from her unit in the past.
23. The strata notified Mr. Ramos about SG’s reply. In response, Mr. Ramos asked the strata council to hold a “court type meeting” with SG where all persons would have to testify under oath. The strata council refused and advised Mr. Ramos to start a claim with the CRT.
24. On January 17, 2018, Mr. Ramos emailed the strata that night club level music and heavy bass sounds were coming from SL 12. He also called the RCMP.

25. On January 26, 2018, a strata council member responded that Mr. Ramos had been complaining about the same noise issues for every owner over the last 10 years, and the complaints did not constitute “unreasonable noise”. The strata council member also stated that the noises Mr. Ramos was describing were basic everyday living sounds. They also stated that Mr. Ramos worked shifts and could not expect the building to be silent when he was on a different schedule from everyone else.
26. In March 2018, Mr. Ramos emailed the strata several times about the noise from SL 12 which he said was deliberate. He also stated that he had been hearing noise since SG moved in around August 2015.
27. In a March 14, 2018 email to Mr. Ramos, the strata stated the following:
- It investigated Mr. Ramos’ complaints a few years ago and conducted a noise test.
  - Based on Mr. Ramos’ complaints and SG’s response, the noise was everyday living and not outside normal acceptable levels.
  - Noise was expected in older wood-frame buildings.
  - Over 80% of SG’s floors were covered with area rugs and she did not wear shoes indoors.
  - No other owner complained about the noise.
  - The strata followed bylaws and the SPA and the noise was not unreasonable.
  - Mr. Ramos could install soundproofing in his strata lot.
  - Mr. Ramos should start a claim with the CRT if he was dissatisfied.
28. Mr. Ramos responded that soundproofing would cost \$12,000 and requested that a strata member come to his strata lot to observe the noise. Mr. Ramos did not explain how he arrived at this amount. He again requested a court type hearing before the strata council which the strata denied.

29. Mr. Ramos sent similar noise complaints to the strata in July, August, and October 2018.
30. Mr. Ramos' noise complaints were discussed at the July 3, 2018 strata council meeting. The strata council determined the noises were not "unreasonable" and that no further action would be taken.
31. In January 2019 Mr. Ramos sent 3 more emails to strata, some of which contained dates and times that he heard noise from SL 12. He also called the RCMP twice. In his emails, Mr. Ramos stated that SG hired someone to make noise when she was not home and used a GPS to track him. He also stated that SG knew when he had visitors and would stop making noise at those times.
32. Mr. Ramos' noise complaints were discussed during the January 7, 2019 strata council meeting. According to the minutes from the meeting, the strata council determined that the noise was not "unreasonable". The strata sent Mr. Ramos a letter dated January 14, 2019 in which it stated that it spoke to SG and it did not feel the noise from her strata lot was unreasonable. It also cited bylaw 3(1) and again suggested that Mr. Ramos could file a claim with the CRT.
33. Mr. Ramos emailed additional noise complaints to the strata from February until July 2019, some of which provided dates and times that he heard noise. He described the noise as throwing or dropping objects on the floor, stomping, knocking, and bumping noises, loud voices, and the sound of a person running. He says he called the RCMP as well.
34. In August 2019 Mr. Ramos requested a SPA section 34.1 hearing about the ongoing noise. He asked that SG be suspended from the strata council. His request was discussed at the September 19, 2019 strata council meeting and declined. The strata council directed Mr. Ramos to file a claim with the CRT. The strata says the strata council took into consideration Mr. Ramos' "lengthy history" of noise complaints and subsequent investigations when it made its decision, although this was not recorded in the minutes.

35. In November 2019 Mr. Ramos requested a meeting with the strata council so they could watch audio-video recordings he made of the noise in his strata lot. The strata council again declined his request. It notified him that there were no other options available and that it had exhausted all efforts to address his complaints. It advised him to file a claim with the CRT.
36. There was no evidence of further communications between the parties until April 2020. On April 2, 2020 the strata emailed Mr. Ramos that the noise he heard was similar to what all strata lots on the bottom floor hear, such as dropped objects, arguments, music, and singing. The strata did not explain what prompted this email.
37. On April 2, 2020 Mr. Ramos emailed the strata and informed it that he called the RCMP due to the noise. He described the noise he heard as objects being thrown on the floor and stomping. He also noted that the strata council denied his request for a section 34.1 hearing in August 2019 and refused to watch his recordings in September 2019. He stated that he wanted a “noise order” and for the strata to issue a strict warning to SG that she would be fined if she did not comply.
38. In response, the strata offered to have a professional engineer test for noise and stated the best solution was for soundproofing to be installed in SL 8. Mr. Ramos emailed the strata that a noise test was pointless.
39. On May 4, 2020, Mr. Ramos emailed the strata again about noise from SL 12. The strata suggested that Mr. Ramos call a strata council member when the noises were occurring so that the noises could be validated.
40. In its submissions, the strata says the strata council president attended at SL 8 3 separate times after Mr. Ramos contacted him. The strata says the strata council president stayed for approximately 15 minutes each time and did not hear any noise. I find this statement is hearsay and not reliable. While the CRT is permitted to accept hearsay evidence, in this case the strata did not provide a statement from the strata council president or the dates and times that the strata council president allegedly attended at SL 8 and so I give it little weight.



***Has the strata acted reasonably in addressing Mr. Ramos' noise concerns?***

41. Under section 26 of the SPA, the strata council has a duty to exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. When carrying out these duties, such as bylaw enforcement, the strata council must act reasonably. This includes a duty to investigate alleged bylaw violations, such as noise complaints.
42. The standard of care that applies to a strata council is not perfection, but rather “reasonable action and fair regard for the interests of all concerned” (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). I find the strata’s response to the applicant’s noise complaints was reasonable.
43. The strata says it spoke to SG several times before 2018 and sent her warning letters initially. It says in response, SG took steps to reduce noise such as using area rugs throughout her unit, and not wearing shoes indoors. The strata also says it conducted an informal noise test in 2016 by having a strata council member simulate noise in SL 12 while another strata council member remained in SL 8. It says the strata council member in SL 8 did not hear any unreasonable noise. Although Mr. Ramos acknowledged this event took place, he says that it was not reflective of the actual noise from SL 12 because it was prearranged and the strata council member walked around in a “normal” manner. Mr. Ramos did not explain how this would have affected the outcome of the test.
44. In March 2018, the strata suggested to Mr. Ramos that he install soundproofing materials. Also, in April 2020 it offered to have a professional noise engineer test for noise. Mr. Ramos refused both suggestions. I find that the strata made reasonable attempts to investigate the noise and that it was unable to continue without Mr. Ramos’ cooperation, which he refused to provide.

***Hearing and meeting requests***

45. As mentioned above, in August 2019 Mr. Ramos asked the strata to hold a hearing under section 34.1 of the SPA to discuss his noise complaints and his request that

SG be suspended from strata council. The strata refused his request and suggested he bring his dispute to the CRT. It says it had exhausted all efforts to address his complaints and there were no options available. Mr. Ramos also requested a meeting on November 22, 2019 to present a video recording he made of the noise. Again, the strata refused to meet with him and suggested he proceed to the CRT.

46. Section 34.1(1) of the SPA states an owner may request a hearing at a council meeting by stating in writing the reason for the request. Section 34.1(2) states that upon receipt of such a request the council must hold a council meeting to hear the application within 4 weeks after the request.

47. On its face, SPA section 34.1(2) is a mandatory provision, and does not give a strata an option to refuse a requested hearing. However, in *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11 the CRT reviewed the intent of section 34.1 and its legislative history. Although I am not bound by it, I find the reasoning in *McDowell* persuasive. I agree that a strata's decision to refuse an owner's hearing request can be justified in certain circumstances, including:

- The owner was not fined or penalized,
- The owner made previous requests and was granted a hearing,
- The owner outlined his demands, not simply the reason for the hearing request,
- The owner wished to discuss a number of strata wide governance issues not specific to him, and
- The reasons for the requests were with respect to the governance of the strata and would be more properly addressed at a meeting of the owners, or by majority direction of the owners.

48. Under the circumstances, I find the strata's decision to refuse to hold a hearing or to meet with Mr. Ramos was reasonable. The strata had provided its position to Mr. Ramos several times that the noises he complained about were everyday living

sounds and not unreasonable. It had also met with him on several occasions and Mr. Ramos had attended strata council meetings in the past to discuss his noise complaints. Also, I find based on Mr. Ramos' emails to the strata that the types of sounds he complained about had remained consistent so nothing new had arisen since the previous meetings.

***Is the noise in contravention of the strata's bylaws?***

49. As mentioned above, bylaw 3(1)(b) states an owner must not make unreasonable noise. In February 2018, the strata amended the bylaws and defined "unreasonable" to mean "not reasonable; beyond what can be accepted; clearly inappropriate, excessive or harmful in degree or kind".
50. The strata says that the noise described by Mr. Ramos was from daily living activities and not unreasonable, especially when considering that the building was 39 years old and had a wood frame. It also alleged other strata owners with bottom floor strata lots described similar sounds but did not describe them as unreasonable. Since the strata did not provide statements from any of the other owners, I give this allegation no weight.
51. Although I am not bound by it, I agree with CRT's observation in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, at paragraph 48 that the test for whether noise is unreasonable is objective rather than what the owner experiences. It is not necessary that the noise reach a particular decibel range in order for it to be considered unreasonable. Instead, the determination is objective and must be made based on a standard of reasonableness and on all of the relevant facts (see *Torok v. Amstutz*, 2019 BCCRT 386, at paragraph 47, although not binding).
52. The burden is on Mr. Ramos to prove the noise from SL 12 was unreasonable under both the 2001 bylaw and the February 2018 amendment. I find the amendment did not change or expand the meaning of "unreasonable" in the 2001 bylaw. Instead, I find it merely provided a clearer definition. I find based on the evidence before me that Mr. Ramos has not met this burden.

53. Mr. Ramos provided 8 video recordings that he says are of the noise in his strata lot coming from SL 12. While I can appreciate that Mr. Ramos may have heard noise when the recording was made, in 7 of the recordings I did not hear any discernable or loud sounds. I acknowledge this could be because Mr. Ramos used a different device and different audio settings than I did. The final recording dated November 18, 2019 was 14 seconds long and I heard a tapping or soft knocking sound for 6 seconds at the beginning of the recording. I find that I cannot determine how loud the playback is compared to the original recording and so I cannot determine if the sound was unreasonable, inappropriate, or excessive.
54. Aside from the recordings and his own observations, Mr. Ramos did not provide any other evidence of noise such as an expert report, or a statement from any other person. I find Mr. Ramos' statement that others have not heard noise because SG is deliberately quiet when she knows Mr. Ramos has guests is speculative. I also note that Mr. Ramos refused the strata's offer to have an audio test done of the noise in his strata lot.
55. Based on my reasons above, I dismiss Mr. Ramos' claims. I find as a result I do not need to address whether he is entitled to damages.

## **CRT FEES AND EXPENSES**

56. 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. Since Mr. Ramos was unsuccessful in this dispute, I dismiss his request for reimbursement of the CRT filing fees.
57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ramos.

## **ORDER**

58. I refuse to resolve Mr. Ramos' claim about strata council members being in a conflict of interest under section 10(1) of the CRTA.

59. I dismiss Mr. Ramos' remaining claims and this dispute.

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Rama Sood, Tribunal Member