



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lal v. The Owners, Strata Plan BCS2869*, 2020 BCCRT 1189

B E T W E E N :

RYAN LAL and VICKEY SARVJIT SAHOTA

APPLICANTS

A N D :

The Owners, Strata Plan BCS2869 and ANDREW
SOORIYAKUMARAN

RESPONDENTS

A N D :

ANDREW SOORIYAKUMARAN

APPLICANT BY COUNTERCLAIM

A N D :

RYAN LAL and VICKEY SARVJIT SAHOTA

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. The applicants, Ryan Lal and Vickey Sarvjit Sahota own a strata lot located on the 15th floor of the respondent strata corporation, The Owners, Strata Plan BCS2869 (strata). Respondent, Andrew Sooriyakumaran, owns a strata lot directly above Ms. Sahota and Mr. Lal.
2. Ms. Sahota and Mr. Lal claim that Mr. Sooriyakumaran's strata lot has created excessive noise since 2017. Ms. Sahota and Mr. Lal say that Mr. Sooriyakumaran owes damages for creating a nuisance. Ms. Sahota and Mr. Lal also request an order requiring Mr. Sooriyakumaran to soundproof his floor and refrain from making excessive noise in the future. Ms. Sahota and Mr. Lal also say the strata owes damages for failing to investigate their noise complaints and enforce its bylaws. Ms. Sahota and Mr. Lal request damages of \$6,000 against Mr. Sooriyakumaran and the strata. They also request an order that the strata perform professional noise testing.
3. Mr. Sooriyakumaran denies these claims. He says that he has not made any excessive noise. The strata also denies the claims. It says it reasonably investigated the noise complaints but it was unable to determine the source of the noise.
4. Mr. Sooriyakumaran filed a counterclaim against Ms. Sahota and Mr. Lal that says they created a nuisance by making frequent, unfounded complaints against him. Mr. Sooriyakumaran requests nuisance damages of \$1,750 and an order preventing Ms. Sahota and Mr. Lal from contacting him. Ms. Sahota and Mr. Lal say their complaints were appropriate.
5. Ms. Sahota, Mr. Lal and Mr. Sooriyakumaran are self-represented. The strata is represented by its strata council president.

JURISDICTION AND PROCEDURE

6. 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.

7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Does Mr. Sooriyakumaran owe Ms. Sahota and Mr. Lal nuisance damages for making excessive noise? If so, how much?
 - b. Is Mr. Sooriyakumaran required to soundproof his strata lot?
 - c. Should Mr. Sooriyakumaran be ordered to refrain from making excessive noise?

- d. Did the strata treat Ms. Sahota and Mr. Lal significantly unfairly by failing to investigate noise complaints or enforce its bylaws?
- e. Does the strata owe Ms. Sahota and Mr. Lal damages for treating them unfairly? If so, how much?
- f. Should the strata be required to conduct professional sound testing?
- g. Does Ms. Sahota and Mr. Lal owe Mr. Sooriyakumaran owe nuisance damages for making unfounded noise complaints? If so, how much?
- h. Should Ms. Sahota and Mr. Lal be ordered to not contact Mr. Sooriyakumaran?

EVIDENCE AND ANALYSIS

- 11. In a civil claim such as this, Ms. Sahota and Mr. Lal must prove their case on the balance of probabilities. Mr. Sooriyakumaran has the same burden on his counterclaim.
- 12. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
- 13. The strata was formed in 2008. The strata consists of 191 residential strata lots in a 17-story building.
- 14. The strata filed a complete set of bylaws with the Land Title Office in 2008, with subsequent amendments which are not relevant to this dispute. The relevant bylaws are as follows:
 - Bylaw 4(1) says a resident must not use a strata lot in a way that causes a nuisance or hazard to another person, that causes unreasonable noise or unreasonably interferes with another person's right to use and enjoy the property.
 - Bylaw 28 says the strata may fine an owner or tenant a maximum of \$200 for each bylaw violation.

Did Mr. Sooriyakumaran's strata lot make excessive noise?

15. Ms. Sahota and Mr. Lal claim that Mr. Sooriyakumaran's strata lot has been creating excessive noise since 2017. They say the noises occur at all hours, and most frequently between 10 pm to 7 am. They say the noises have grown louder over time. They say the noises are heard from their kitchen, dining area, bedrooms and bathrooms. Ms. Sahota and Mr. Lal describe the noise as drilling, tapping, hammering, clunking and rolling sounds.
16. Ms. Sahota and Mr. Lal provided a statement from former guests, RL and MM who say they heard loud thumping and rattling sounds in Ms. Sahota's and Mr. Lal's strata lot in January 2017. They said the noise was intermittent but persistent and it was clearly coming from the strata lot above them.
17. Ms. Sahota and Mr. Lal provided a statement from CP, a former site manager and now the strata property manager. CP used to live in a strata lot next to Ms. Sahota's and Mr. Lal's strata lot. CP says then when they lived there, they heard a drilling and knocking which sounded like it was coming from a strata lot above. CP says the noise did not bother them or keep them awake. CP says they went to the 16th floor with Ms. Sahota several times in April 2019 to investigate the noise. CP says they spoke with the owner of the strata lot beside Mr. Sooriyakumaran and he denied making the noise. CP says they were unable to hear the noise while on the 16th floor.
18. Ms. Sahota and Mr. Lal also provided a statement from MO, the strata's site manager since March 2019. MO says Ms. Sahota complained of loud noise from Mr. Sooriyakumaran's strata lot on April 22, 2020. MO says he went to the 16th floor at 2:00 pm and 4:45 pm that day but he did not hear any loud noise. MO says he returned to the 16th floor on April 23, 2020 at 10:00 am, 2:00 pm and 4:45 pm but he did not hear any loud or "factory" noises. MO says he went to Ms. Sahota's strata lot on May 19, 2020 in response to a noise complaint. He says he heard a minor clunk sound but he did not think the noise was unreasonable. MO also said he heard a scraping and clunking sound in Mr. Lal's bedroom but MO said the noise was not unreasonable.

19. Ms. Sahota and Mr. Lal also provide multiple video and audio recordings. The media files show clunking noises allegedly in their strata lot. However, Ms. Sahota and Mr. Lal did not provide any measurements showing the decibel level of the sounds. I find the recordings 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.
20. Ms. Sahota also provided a log of noise from June 2, 2020 to August 3, 2020. I do not find the noise log helpful since it only noted incidents occurring after this dispute started.
21. Mr. Sooriyakumaran denies making unreasonable noise. He says that he does not make any loud noises in the strata lot and he has never heard the noises Ms. Sahota and Mr. Lal complain of.
22. Mr. Sooriyakumaran says that Ms. Sahota came to his strata lot on December 12, 2019 complaining of noise. Mr. Sooriyakumaran says he invited her into the strata lot and showed her that there was no noise coming from his strata lot.
23. Mr. Sooriyakumaran provided a statement from DT, his former roommate from 2015 to November 2019. DT says that during the time he resided there, he did not notice Mr. Sooriyakumaran behave in a manner that would cause noise or disturbances.
24. Mr. Sooriyakumaran provided a statement from AC and DL, Mr. Sooriyakumaran's immediate neighbours since June 2019. AC and DL said that they never heard a drilling, hammering or clunking sound. They say that they occasionally hear a tapping or soft thumping noise but the noise did not come from Mr. Sooriyakumaran's strata lot. They say that they have not heard any noise coming from Mr. Sooriyakumaran's strata lot.
25. Mr. Sooriyakumaran also provided a statement from EN, another immediate neighbour. EN says he has not heard any noise from Mr. Sooriyakumaran's strata lot. EN says he does hear tapping, drilling rolling sounds about once or twice a month.

However, EN says these sounds come from above, not from Mr. Sooriyakumaran's strata lot.

26. In consideration of all of the evidence, I find that Ms. Sahota and Mr. Lal have not met their burden of proving that Mr. Sooriyakumaran has been making unreasonable noise. I accept that Ms. Sahota and Mr. Lal have heard clunking noises in their strata lot. However, they have failed to prove the noise is unreasonable. None of the witnesses, other than Ms. Sahota and Mr. Lal and their family, said the noise was loud enough to be disturbing. Further, Ms. Sahota and Mr. Lal did not provide any decibel measurements to objectively measure the volume of the noise. In addition, I find that Ms. Sahota and Mr. Lal have failed to prove that the noise came from Mr. Sooriyakumaran's strata lot. Although Ms. Sahota and Mr. Lal say the sound came from above, none of the witnesses, other than their own guests, heard the noises coming from Mr. Sooriyakumaran's strata lot.
27. For the above reasons, I find that Ms. Sahota and Mr. Lal have not proved that Mr. Sooriyakumaran has been making unreasonable noise. So, I dismiss Ms. Sahota's and Mr. Lal's claim against Mr. Sooriyakumaran for nuisance damages. For the same reason, I also dismiss their request for an order requiring Mr. Sooriyakumaran to soundproof his strata lot.
28. I also dismiss Ms. Sahota's and Mr. Lal's request for an order requiring Mr. Sooriyakumaran to refrain from making excessive noise. Further, even if Ms. Sahota and Mr. Lal had proved that Mr. Sooriyakumaran had created a nuisance, I would not grant this remedy because I find this is a form of injunctive relief to restrict Mr. Sooriyakumaran's future conduct which the CRT does not generally grant (see for example, *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379).
29. So, I dismiss Ms. Sahota's and Mr. Lal's claims against Mr. Sooriyakumaran.

Did the strata treat Ms. Sahota and Mr. Lal significantly unfairly?

30. Ms. Sahota and Mr. Lal claim the strata also owes damages because it did not investigate their noise complaints and enforce its bylaws.

31. Ms. Sahota and Mr. Lal made numerous noise complaints about Mr. Sooriyakumaran's strata lot. Ms. Sahota and Mr. Lal provided copies of 20 email complaints from February 17, 2018 to April 22, 2020. Specifically, Ms. Sahota and Mr. Lal sent email complaints on the following dates:

- February 17, 2018
- April 15, 2018
- December 10, 13 and 21, 2018
- January 16, 2019
- March 10 and 23, 2019
- April 15 and 29, 2019
- September 18, 2019
- October 1, 2019
- December 12, 16 and 17, 2019
- January 5, 13 and 24, 2020
- March 30, 2020
- April 22, 2020

32. The strata says it reasonably investigated noise complaints against Mr. Sooriyakumaran's strata lot. The strata says that it sent a bylaw warning letter to Mr. Sooriyakumaran's strata lot and is neighbouring strata lot after receiving Ms. Sahota's and Mr. Lal's February 17, 2018 noise complaint. The strata says that Mr. Sooriyakumaran denied making any noise on February 28, 2018.

33. The strata says it sent a bylaw warning to a strata lot neighbouring Mr. Sooriyakumaran's strata lot on January 19, 2019 in response to Ms. Sahota's and Mr.

Lal's continued noise complaints. The strata did not send a second bylaw warning to Mr. Sooriyakumaran because he had previously denied making the noise.

34. The strata says the noise complaints were discussed with Ms. Sahota at a January 17, 2020 council meeting. The strata says that council member offered to visit Ms. Sahota's strata lot to investigate the noise but she did invite them. However, Ms. Sahota says that she did invite the strata to come to her strata lot but they do not go. This is supported by Ms. Sahota's January 24, 2020 email inviting the strata council to go to her strata lot to investigate the noise. I find that Ms. Sahota and Mr. Lal did make their strata available for investigations but the strata did not go other than MO's visit on May 19, 2020.
35. The strata says that MO, site manager, visited the 16th floor 5 times to investigate but he did not hear the noise. Further, Mr. Sooriyakumaran continued to deny making the noise.
36. The strata says that it did not issue bylaw fines because it did not have a sufficient basis to determine that Mr. Sooriyakumaran's strata lot was the source of the noise. The strata says it was never able to find the source of the noise.
37. Section 26 of the SPA says that a strata corporation must enforce its bylaws and rules, 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). The strata council has some discretion over whether to enforce its bylaws in certain circumstances, but that discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced. A strata corporation need not enforce a bylaw, even if there is a clear breach, where the effect of the breach on other owners is trifling (see *Ranchod v. The Owners, Strata Plan KAS 2112*, 2019 BCCRT 1001).
38. 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). 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) Further, section 27(2) of the SPA states that the owners may not interfere with council’s discretion to determine, based on the facts of a particular case, whether a person has breached a bylaw, whether a person should be fined, or the amount of the fine.

39. The CRT has jurisdiction to determine claims of significant unfairness because the language in section 164 of the SPA is similar to the language of section 123(2) of the CRTA (formerly section 48.1(2)), which gives the tribunal authority to issue such orders. (See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119.)
40. The courts and the tribunal have considered the meaning of “significantly unfair” in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. *In Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
41. The British Columbia Court of Appeal has also 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 restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 at paragraph 28:

The test under s. 164 of the Strata Property Act also involves objective assessment. [*Dollan*] requires several questions to be answered in that regard:

- 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?

42. I find Ms. Sahota and Mr. Lal had an expectation that the strata would investigate their noise complaints to determine whether the strata's bylaws were being contravened. I find that expectation was objectively reasonable given the strata's duty to investigate complaints of possible bylaw contraventions.
43. For the reasons that follow, I find that the strata has not taken reasonable steps to address Ms. Sahota's and Mr. Lal's noise complaints. The strata argues that bylaw fines were not issued because it could not determine the source of the noise was not determined. Based on the neighbours' witness statements and the lack of evidence showing that the noise was coming from Sooriyakumaran's strata lot, I find the strata acted reasonably in exercising its discretion to not issue bylaw fines against Mr. Sooriyakumaran's strata lot. However, I find that the strata did not act reasonably by failing to investigate the noise complaints.
44. MO entered Ms. Sahota's and Mr. Lal's strata lot one time and heard a noise. MO said the noise was not unreasonably loud but there is no evidence the strata conducted any objective measurement of the noise. Further, although MO says they went to the 16th floor 5 times in April 2020 to check for noise, the strata has not provided any evidence describing how MO investigated noise on the 16th floor. Despite repeated noise complaints over 2 years, I find that the strata did not perform an objective examination of the complaints. I find that this was not a reasonable investigation of the noise complaints.
45. For these reasons, I find the strata's actions in dealing with Ms. Sahota's and Mr. Lal's noise complaints were significantly unfair. I will now consider what remedies are appropriate.

Should the strata be required to perform professional sound testing?

46. Ms. Sahota and Mr. Lal request an order that the strata conduct professional sound testing, at its expense. I find that remedy is appropriate for the following reasons.
47. As discussed above, I find the video and audio recordings are not sufficient evidence to prove that the noise bylaw was breached. However, I find Ms. Sahota's repeated

complaints, with multiple witnesses confirming that they heard some noises too, is sufficient to establish that the strata had a duty under SPA section 26 to investigate compliance with its bylaws.

48. 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 within 90 days of the date of this order. The sound test should test the noise transference in Ms. Sahota's and Mr. Lal's strata lot and Mr. Sooriyakumaran's strata lot.
49. Within 14 days after the sound-testing professional provides their report, the strata must provide Ms. Sahota and Mr. Lal with a copy of the report and its written decision about whether bylaw 4(1) was breached by Mr. Sooriyakumaran. Under the law, the test is whether a reasonable person would find the noise excessive or unreasonable.
50. 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.

Are Ms. Sahota and Mr. Lal entitled to \$6,000 in general damages?

51. Ms. Sahota and Mr. Lal request \$6,000 in general damages, for failing to address their noise complaints and causing a loss of peaceful enjoyment of their strata lot.
52. I find Ms. Sahota and Mr. Lal have not established an entitlement to damages. As explained above, while I find their complaints are sufficient to establish a need for further investigation, they are not sufficient to establish that a bylaw breach has occurred since Ms. Sahota and Mr. Lal have not provided sufficient evidence to prove that the noise was unreasonably loud or the source of the noise.
53. For these reasons, I dismiss Ms. Sahota's and Mr. Lal's claim for damages.

Did Ms. Sahota's and Mr. Lal's noise complaints create a nuisance?

54. Mr. Sooriyakumaran says Ms. Sahota and Mr. Lal made frequent, unfound complaints to the strata, 4 complaints to the police and verbal complaints directly to him and his partner. Mr. Sooriyakumaran says these noise complaints breached bylaw 4(a).
55. Bylaw 4(a)(iii) prevents owners from using a strata lot in a way that unreasonably interferes with the rights of others to use and enjoy their strata lot. Ms. Sahota and Mr. Lal do not deny making noise complaints. They say the complaints were appropriate because excessive noise was originating from Mr. Sooriyakumaran's strata lot .
56. Bylaw 4(a) says an owner must not "use a strata lot, the common property or common assets" in a way that causes a nuisance. The SPA defines a strata lot as a lot shown on a strata plan. Common property is defined as the part of land and buildings shown on a strata plan not part of a strata lot. Common assets are defined as property held by the strata. In considering these definitions, I find making noise complaints is not a "use [of] a strata lot, the common property or common assets" within the scope of bylaw 4(a). So, I find that Mr. Sooriyakumaran has failed to prove that Ms. Sahota and Mr. Lal breached the bylaws and I dismiss his claim for damages.
57. For the same reason, I also dismiss Mr. Sooriyakumaran's request for a "no contact" order. Further, even if Mr. Sooriyakumaran had proved that Ms. Sahota and Mr. Lal breached the bylaws, I would find this to be a personal remedy outside the CRT's jurisdiction as it does not fall within the scope of section 121(1) of the CRTA.

CRT FEES AND EXPENSES

58. 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. Since Ms. Sahota and Mr. Lal were partially successful in their dispute against the strata, I order the strata to reimburse one-half of Ms. Sahota's and Mr. Lal's CRT fees. This equals \$112.50.

59. Ms. Sahota and Mr. Lal also request reimbursement of \$95.36 for the cost of electronic measuring equipment. Ms. Sahota and Mr. Lal provided a May 23, 2020 invoice proving this expense. However, I am not satisfied that this expense was useful in resolving this dispute because Ms. Sahota and Mr. Lal did not provide any measurements taken with this device. So, I dismiss the request for reimbursement of dispute-related expenses.
60. Since Mr. Sooriyakumaran's counterclaim was not successful, I dismiss his claim for reimbursement of CRT fees.
61. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Ms. Sahota and Mr. Lal.

ORDERS

62. I order the strata to pay Ms. Sahota and Mr. Lal the sum of \$112.50 as reimbursement of the CRT fees within 30 days of the date of this order.
63. Ms. Sahota's and Mr. Lal are entitled to post-judgement interest under the *Court Order Interest Act*.
64. I order the strata to arrange and pay for noise transfer testing, and a report, by a qualified sound-testing professional within 90 days of the date of this order, to test the noise transference in Ms. Sahota's and Mr. Lal's strata lot and Mr. Sooriyakumaran's strata lot.
65. I order the strata to provide Ms. Sahota and Mr. Lal a copy of the report and its written decision about whether bylaw 4(1) was breached by Mr. Sooriyakumaran within 14 days after the sound-testing professional provides their report.
66. Ms. Sahota's and Mr. Lal's claims against Mr. Sooriyakumaran are dismissed.
67. Mr. Sooriyakumaran's claims against Ms. Sahota and Mr. Lal are dismissed.
68. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the

order can be enforced through the British Columbia Provincial Court 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.

Richard McAndrew, Tribunal Member