



# Civil Resolution Tribunal

Date Issued: October 17, 2024

File: ST-2024-000109

Type: Strata

Civil Resolution Tribunal

Indexed as: *Abbrusci v. The Owners, Strata Plan BCS 2287*, 2024 BCCRT 1038

B E T W E E N :

MATTHEW ABBRUSCI

**APPLICANT**

A N D :

The Owners, Strata Plan BCS 2287

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This is one of two linked disputes about noise in a strata lot. The other dispute, SC-2023-006822, falls within the small claims jurisdiction of the Civil Resolution Tribunal (CRT), and involves different parties. So, I have written a separate decision for that dispute.

2. Matthew Abbrusci used to co-own a strata lot (SL36) in the respondent strata corporation, The Owners, Strata Plan BCS 2287 (strata). Mr. Abbrusci sold SL36 and moved out with his family in October 2023, after the strata lot owners directly below made numerous noise complaints about them. The downstairs owners are not parties to this dispute. Mr. Abbrusci says the strata mishandled the noise complaints, and wrongly fined him for bylaw violations. He asks for reimbursement of \$1,000 for fines, \$3,773 for legal fees, \$2,225 for mortgage fees, \$21,840 for realtor fees, \$15,900 for property transfer tax, \$1,100 for moving expenses, and \$13,000 for other financial lender fees. Mr. Abbrusci also requests \$5,000 for mental trauma. His claims total \$63,838.
3. The strata says it investigated the noise complaints, fined Mr. Abbrusci in accordance with its bylaws and the *Strata Property Act* (SPA), and did not treat him unfairly. It also says the damages Mr. Abbrusci seeks because of selling SL36 and moving were not reasonably foreseeable, and so are too remote.
4. Mr. Abbrusci is self-represented. The strata is represented by a person I infer is an authorized representative.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice and fairness.

7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.
8. In his final reply submissions, Mr. Abbrusci says the downstairs owners harassed him and violated his human rights. Mr. Abbrusci did not include the downstairs owners in this dispute, so I am not able to consider any claims against them. In any case, I note that there is no recognized tort of harassment in BC.<sup>1</sup>
9. Under CRTA section 123, 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.

## **ISSUE**

10. The issues in this dispute are:
  - a. Did the strata treat Mr. Abbrusci significantly unfairly, and if so, is he entitled to reimbursement of his paid bylaw violation fines?
  - b. Is Mr. Abbrusci entitled to the rest of his claimed damages?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, Mr. Abbrusci must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.
12. The strata was created in April 2007, under the SPA. It consists of a four-storey wood-framed building, with 43 residential strata lots. SL36 is on the top floor.

---

<sup>1</sup> *Anderson v. Double M Construction Ltd.* 2021 BCSC 1473

13. In January 2009, the strata filed what appears to be a full set of bylaws, but without explicitly revoking and replacing the SPA's Standard Bylaws. The strata filed various bylaw amendments after that, none of which apply to this dispute. I refer to the relevant bylaws as necessary below.
14. Mr. Abbrusci and his family moved into SL36 in September 2019. Almost immediately, the downstairs owners began complaining to Mr. Abbrusci, mostly about running, stomping, and thumping noise (the noise events). They did not complain to the strata until January 2023. In July 2023, the strata started fining Mr. Abbrusci for violating its noise bylaw.

***Did the strata treat Mr. Abbrusci significantly unfairly, and if so, is he entitled to reimbursement of his paid bylaw violation fines?***

15. Mr. Abbrusci says the strata unfairly enforced the noise bylaw against him.
16. The CRT has authority to make orders remedying a strata corporation's significantly unfair acts or decisions. The court has the same authority under SPA section 164, and the same legal test applies.<sup>2</sup> Significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable.<sup>3</sup>
17. The CRT has consistently found owners have an objectively reasonable expectation that a strata corporation will investigate bylaw complaints, and enforce its bylaws if there has been a proven contravention. This is because SPA section 26 requires a strata corporation to enforce its bylaws except in limited circumstances, such as if the breach is trivial.<sup>4</sup>
18. Here, I find the question of significant unfairness turns on whether there was a proven contravention of bylaws 3(1) and (3).

---

<sup>2</sup> *Dolnik v. The Owners, Strata Plan EPS 1433*, 2023 BCSC 113

<sup>3</sup> *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173

<sup>4</sup> *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270

19. Bylaw 3(1) prohibits strata lot occupants from using a strata lot in a way that causes 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. Bylaw 3(3) sets the strata's quiet hours from 11pm to 7am.
20. In SC-2023-006822, I explained that in the strata context a nuisance is a substantial and unreasonable interference with an owner's use and enjoyment of their property. I also noted that while the primary focus in a nuisance inquiry is on the impact of the interference on the party making the allegation, the conduct of the party alleged to have caused the nuisance may also be relevant.
21. The strata says it investigated the downstairs owners' complaints by reviewing their noise recordings, decibel readings, and noise log, considering the observations of two strata council members who attended the downstairs strata lot, and hearing from both the downstairs owners and Mr. Abbrusci about the noise allegations. The strata says based on all this, it determined Mr. Abbrusci repeatedly breached bylaws 3(1) and (3). So, it says it was entitled to fine Mr. Abbrusci for the bylaw violations.
22. First, the noise recordings. The strata did not submit samples of these, but the evidence shows strata council members reviewed the recordings and readings when the downstairs owners submitted them to support their complaints. Mr. Abbrusci had the opportunity to review and comment on the recordings as part of the evidence in SC-2023-006822. So, I find there is no prejudice in considering them in this dispute.
23. The 21 recordings the downstairs owners submitted in SC-2023-006822 captured clear, audible noise from SL36 above. I find the recordings showed the noise was substantial, in that it was more than an annoyance or a "trifling interference".<sup>5</sup> So, the question is whether the noise was also unreasonable.

---

<sup>5</sup> *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, at paragraph 22

24. It is well-established that subjective noise complaints alone are insufficient to prove unreasonable noise. Instead, people complaining about noise must prove with objective evidence that the noise is intolerable to an ordinary person. This is to guard against the risk that a particular person may be unusually sensitive to noise.<sup>6</sup> So, I find the complaints from the downstairs owners are insufficient on their own to show the noise complained of was unreasonable.
25. While I have found the recordings showed the noise was substantial, I find they do not establish it was unreasonable. This is because it is difficult to determine how loud noise from a video is, especially with no audible background noise, as was the case here.
26. Some of the recordings included evidence of decibel readings. However, as I said in SC-2023-006822, I find the decibel readings unreliable. This is because while the World Health Organization's Guidelines for Community Noise (WHO guidelines) recommend that continuous daytime noise not exceed 35 decibels, the background noise in the recordings averaged 40 to 45 dB, with intermittent running and thumping noise ranging much higher. I found in SC-2023-006822 that the background noise was soft to the point of being inaudible, even when listening to the recordings with earbuds at full volume. Here, as before, I find the discrepancy between the WHO guidelines and the decibel readings for the background noise recordings significant. So, without evidence that the decibel app used by the downstairs owners was properly calibrated, I put no weight on the readings.
27. Next, the noise log. The strata submitted a 12-page log that the downstairs owners kept of the noise events from January to October 2023. The log contained near-daily entries. The windows in which the noise happened ranged from 90 minutes to two and a half hours. The noise events were mostly described as intermittent, but sometimes also as carrying on for a few minutes or almost continuously. Most entries were for a single day, though there were multiple entries for some days. Generally, the entries recorded that running and thumping occurred in the morning,

---

<sup>6</sup> *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024

between about 7 and 9am, and in the evening, between 5 and 8pm. While some of the entries recorded occurrences earlier than 7am, I find most of them showed the noise happened outside of the strata's quiet hours of 11pm to 7am, when Mr. Abbrusci and his wife would be getting the children ready for school or daycare, or preparing for dinner and bed.

28. In *Williams v. The Owners, Strata Plan BCS 184*, a vice chair found that short bursts of loud noise, including running and thumping, are expected and ordinary sounds in a multi-family living situation.<sup>7</sup> He went on to say, "an ordinary person understands this reality and can tolerate a certain amount of intrusive or annoying noises during the day".<sup>8</sup> While previous CRT decisions are not binding on me, I agree with this reasoning, and I apply it here. I find a reasonable person understands and accepts that young families likely make more noise than other residents, and so tolerates somewhat more noise. Even considering the frequency of the noise events, I find most of them were intermittent bursts of noises, which happened during the day or evening when families with young children would be performing necessary and typical daily activities. Overall, I find the log does not demonstrate the noise events would have been intolerable to an ordinary person given their timing and the context in which they were occurring.
29. I turn to the strata council members' observations. The strata submitted a statement from ZS, who attended the downstairs strata lot on March 11, 2023. ZS described the noise they heard as "very loud thumping (that) surpassed acceptable levels and was undeniably disruptive". I note strata council minutes of a May 22, 2023 meeting show ZS was present for about 35 minutes, and heard "intermittent heavy footsteps and children running for approximately 20 seconds in total".
30. The strata also submitted an email from one of the downstairs owners that referenced a council member, CD, attending their strata lot for 20 minutes on February 2, 2023, and saying they would be "pissed" if they had to hear that noise. I find what CD was reported to have said is hearsay evidence. However, I accept it

---

<sup>7</sup> *Williams v. The Owners, Strata Plan BCS 184*, 2023 BCCRT 684

<sup>8</sup> See *Williams*, at paragraph 38

because there is a recording of the conversation where CD said they would “pissed” in evidence in SC-2023-006822, which again, Mr. Abbrusci had access to.

31. I find the strata council members’ observations confirm the noise was more than an annoyance, and I accept they establish occasional intrusive or disturbing noise. However, I find they are insufficient to establish noise of sufficient frequency and duration, accounting for the time of day (morning or late afternoon and early evening) and the nature of the conduct (getting ready for work and school, getting ready for dinner and bed), to be unreasonable. That is, I find the observations do not prove the noise complained of was intolerable to an ordinary person living below a young family in a strata building. I note the evidence shows Mr. Abbrusci invited strata council members to attend SL36 and observe his family’s conduct in the mornings, but there is no evidence any council members attended. The strata did not explain why no one attended SL36 during its investigation. Given the other evidence the strata considered, I find it would have been reasonable for members to attend SL36 to ensure a fair and balanced investigation, and to provide context for the strata’s decision-making.
32. In February 2023, the strata manager advised the strata to retain a sound engineer to conduct testing. The strata says testing did not take place because the strata and the downstairs owners could not agree on a testing methodology. In August 2023, the strata again contacted the downstairs owners to request access to their strata lot to conduct professional sound testing. The strata’s letter says that based on legal advice it received, “this is a necessary step in obtaining objective evidence that the noise is unreasonable”. I find that given the other evidence available and considered by the strata during its investigation, professional testing would likely have been helpful in these circumstances to establish whether the noise was unreasonable. There is no evidence the downstairs owners consented to the testing as requested, and that professional testing was ever performed.
33. For the reasons above, I find the strata’s investigation failed to establish a proven contravention of bylaws 3(1) and (3). So, I find the strata treated Mr. Abbrusci

significantly unfairly by unjustly enforcing those bylaws against him. I order the strata to reimburse Mr. Abbrusci \$1,000 for the fines he paid.

***Is Mr. Abbrusci entitled to the rest of his claimed damages?***

34. I turn to Mr. Abbrusci's claims for expenses he incurred in connection with selling and moving out of SL36. The strata says these expenses are too remote, because they were not reasonably foreseeable.
35. In *Radcliff v. The Owners, Strata Plan KAS1436*, the court found that SPA section 164 is "in essence an equitable oppression remedy" and that "courts have broad discretion in crafting equitable remedies because they seek to ensure fairness".<sup>9</sup> As the CRT has the same authority as the courts in relation to remedying significant unfairness, I find the same reasoning applies.
36. In *Hill v. The Owners, Strata Plan KAS 510*, the court found a strata corporation treated an owner significantly unfairly by failing to repair structural defects in the common property in a timely manner.<sup>10</sup> This negatively affected the owner's basement. The court awarded damages on the basis that the owner should be placed "in the same position she would have been in had the Strata Corporation repaired the Structural Defects in a timely manner".
37. I take the same approach here. If the strata had not unfairly enforced bylaws 3(1) and (3) against Mr. Abbrusci, would he have avoided the selling and moving expenses he claims? I find he would not. My reasons follow.
38. As noted above, Mr. Abbrusci typically responded to the bylaw violation letters in writing. However, there is no evidence he mentioned the possibility of selling SL36 and moving because of the noise complaints, or because of the strata's handling of those complaints. In addition, Mr. Abbrusci provided evidence that he sold SL36 for \$560,000 and bought his new home for \$895,000. I find the significant price difference suggests the two properties were not comparable, and that Mr. Abbrusci

---

<sup>9</sup> *Radcliff v. The Owners, Strata Plan KAS1436*, 2014 BCSC 2241 (upheld on appeal)

<sup>10</sup> *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1752

likely had other reasons for moving. In these circumstances, I find it unproven that the expenses Mr. Abbrusci claims for selling SL36 and moving flow from the strata's significantly unfair treatment. So, I dismiss Mr. Abbrusci's claims for legal fees, mortgage fees, realtor fees, property transfer tax, moving expenses, and other financial lender fees. I note Mr. Abbrusci did not provide evidence of the claimed moving expenses, so I would not have awarded those in any event.

39. Finally, the \$5,000 for mental trauma. Mr. Abbrusci says the strata's significant unfairness caused him and his wife constant worry, and prevented them from enjoying their home. In *Sadaati v. Moorhead*, the court found the mere presence of psychological upset does not prove compensable mental injury.<sup>11</sup> Instead, a person must show the disturbance they suffered is "serious and prolonged and rise(s) above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept".<sup>12</sup> It is not necessary to prove this with expert evidence, such as a medical report, though it may make it easier. Here, however, I find Mr. Abbrusci did not show the worry and upset that he suffered rose to the level of mental injury. To the extent this part of Mr. Abbrusci's claim relates to harm his wife suffered, she is not a party to this dispute, and so I find he has no standing (authority) to make a claim on her behalf. I dismiss Mr. Abbrusci's claim for mental trauma.

## **CRT FEES, EXPENSES AND INTEREST**

40. 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. As Mr. Abbrusci was partly successful, I order the strata to reimburse him half his CRT fees, which is \$112.50. Neither party claimed dispute-related expenses, and Mr. Abbrusci explicitly waived any claims for interest.

---

<sup>11</sup> *Sadaati v. Moorhead*, 2017 SCC 2, at paragraph 37

<sup>12</sup> *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9.

## ORDERS

41. I order that within 14 days of Mr. Abbrusci providing a mailing address to the strata, the strata reimburse Mr. Abbrusci a total of \$1,112.50, including \$1,000 for paid bylaw violation fines, and \$112.50 for CRT fees.
42. Mr. Abbrusci is also entitled to post-judgment interest under the *Court Order Interest Act*.
43. I dismiss the balance of Mr. Abbrusci's claims.
44. This is a validated decision and order. 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.

---

Megan Stewart, Tribunal Member