



Civil Resolution Tribunal

Date of Original Decision: June 30, 2021

Date of Amended Decision: July 6, 2021

File: SC-2021-005163

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chu v. Sefat*, 2021 BCCRT 723

B E T W E E N :

YANG CHU and FELIX TAN

APPLICANTS

A N D :

SEYED MOHSEN HASHEMI SEFAT and HIRAD ABBASPOUR

RESPONDENTS

AMENDEDⁱ REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a small claims dispute about noise-related nuisance in a strata building.
2. The applicants Yang Chu and Felix Tan jointly own a strata lot (unit 1902) on the floor below a strata lot (unit 2002) co-owned by the respondents Seyed Mohsen Hashemi Sefat and Hiran Abbaspour.

3. The applicants say the respondents caused unreasonable noise that disrupted their sleep and caused them to take 3 personal days off work.
4. The applicants claim \$3,200 in noise-related nuisance damages and \$795 as compensation for the 3 days off work. They also seek an order that the respondents stop using their strata lot in way that causes nuisance to others.
5. The respondents deny causing unreasonable noise in unit 2002. They ask me to dismiss the dispute.
6. The applicants are represented by primary applicant Yang Chu. The respondents are represented by primary respondent Seyed Mohsen Hashemi Sefat.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 and small claims under section 118 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.
8. 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.
9. 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.

10. Under section 123 of the CRTA and the CRT rules, in resolving a strata 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.
11. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

Do the claims fall under the CRT's strata or small claims jurisdiction?

12. Initially the strata was also named as a respondent in the Dispute Notice. However, the applicants withdrew their claim against the strata. As a result, the only remaining claims in this dispute are against the individual respondents. There is a related strata dispute between the strata and Mr. Sefat, which I have decided separately in dispute file ST-2020-007694.
13. After I asked the parties for submissions about whether the remaining claims fell under the CRT's strata property jurisdiction, the applicants asked that this dispute be decided as a CRT small claims dispute. The respondents disagreed. I decided to direct that this dispute be moved to small claims. I explain the reasons for my direction below.
14. Section 121 gives the CRT jurisdiction over a claim "in respect of" the SPA and sets out the scope of the CRT's strata property jurisdiction.
15. By contrast, CRTA section 118 gives the CRT jurisdiction to resolve a claim for damages based in tort, meaning an act or omission that gives rise to an injury or harm to another under civil law, such as negligence. Section 118 gives the CRT jurisdiction over claims for damages that are not "in respect of" the SPA. Claims under section 118 must also have a monetary value of \$5,000 or less: *Tribunal Small Claims Regulation*, section 3.

16. Under CRTA section 1(2), if the CRT may validly categorize a claim as either small claims or strata property, the claim must be adjudicated under the strata property jurisdiction. In other words, the CRT may adjudicate a claim involving just 2 strata lot owners under its small claims jurisdiction only if the CRT determines that the claim is outside of its strata property jurisdiction.
17. The distinction between these 2 CRT jurisdictions is important because the scope of each area is different, along with the remedies available, the applicable monetary limit, and the court processes that may follow a CRT decision. For strata property disputes there is no monetary limit and a party may request the B.C. Supreme Court judicially review the CRT decision. For small claims disputes, there is a \$5,000 monetary limit and a party may file a Notice of Objection, which effectively nullifies the CRT decision. Once a Notice of Objection is filed, an applicant's option is to have the matter heard afresh by the Provincial Court: *Alameer v. Zhang*, 2021 BCCRT 435 at paragraph 17.
18. Based on the Dispute Notice I find the claims are between strata lot owners for noise nuisance. They are tort claims, not claims in respect of the SPA. I find these claims fall within the CRT's small claims jurisdiction rather than its strata jurisdiction.

ISSUES

19. The issues in this dispute are whether the respondents must:
 - a. Pay the applicants \$3,200.00 for noise nuisance damages,
 - b. Pay the applicants \$795.00 for 3 days off work, and
 - c. Stop using their strata lot in a manner that causes nuisance to others.

EVIDENCE AND ANALYSIS

20. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.

21. The strata filed the applicable bylaws at the Land Title Office (LTO) on January 22, 2019. Bylaw 5.1(b) prohibits a resident or visitor from using a strata lot in a way that causes unreasonable noise.
22. The applicants claim that the respondents created excessive noise, after 10 pm and before 7 am, by playing overly loud music and having gatherings in unit 2002, on at least 16 different occasions. The applicants say this disrupted their sleep. They say that sometimes the noise caused them to leave to sleep at a relative's home.
23. Mr. Sefat provided an email to the strata on April 21, 2020, denying creating unreasonable noise. In submissions, he mentioned the applicants interrupted his girlfriend while she watched a movie on one occasion. There is no counterclaim and so I find the details of this interruption event irrelevant. Mr. Sefat also submits that the applicants' accusations of unreasonable noise are "not a fair representation of what took place."
24. Nuisance occurs in the strata context when there is a substantial, non-trivial interference with an owner's use and enjoyment of their property, and that interference is unreasonable (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). The test is an objective one, measured with reference to a reasonable person occupying the premises. In strata living, "...a certain amount of give and take is necessary among neighbours and between users, both of the strata lots and of the common property" (*Sauve v. McKeage et al.*, 2006 BCSC 781).
25. It is not necessary that 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 the non-binding but persuasive decision in *Torok v. Amstutz et al*, 2019 BCCRT 386, at paragraph 47). For the following reasons, I find the evidence establishes that the respondents caused noise-related nuisance to the applicants.

26. Mr. Sefat's evidence does not respond specifically to the multiple individual incidents of unreasonable nighttime noise, despite him acknowledging loud music in some of his own text messages to the applicants. By contrast, the applicants' evidence of undue noise coming from the strata lot at night is thorough and includes several sound recordings, emails to the property manager written when the noise was observed, text messages with the respondents about the noise while it was happening, and statements from other strata residents.
27. I find that the noise documented by the applicants occurred after 10 pm and before 7 am, often over several hours, when I find it reasonable to expect that residents of a multi-unit building conduct themselves quietly so that others can sleep. I find that this interference caused the applicants to have problems sleeping on those evenings.
28. The applicants provided some recordings showing a live measurement of the sound levels taken outside unit 2002's closed door. The sound recorded is loud conversation and repetitive music with a significant bass component. Although decibel readings are not necessary to establish a claim in noise-related nuisance, in *Suzuki v. Munroe*, 2009 BCSC 1403, the BC Supreme Court referred to World Health Organization (WHO) guidelines that say noise may cause disturbance in a bedroom at 30 dBA (decibels weighted based on human hearing) and annoyance in outdoor living areas at 50-55 dBA. While the WHO guidelines are not in evidence before me in this dispute, I find the *Suzuki* reasoning helpful in considering whether the noise was reasonable.
29. In submissions, the applicants refer to the Burnaby Noise or Sound Abatement Bylaw 1979 (2018), which limits noise between 10pm to 7am to 45dBA. The applicants' noise recordings show noise over 50 decibels at some times, which I find is an unreasonable volume at night in a multi-unit residential building. While I do not have evidence of technical reliability of the applicants' sound volume measurement device, I accept the uncontested readings as one element establishing unreasonable noise.
30. Based on the whole of the applicants' evidence, and given the noise's character, volume, and its occurrence during nighttime hours, I find that there was unreasonable noise coming from the respondents' strata lot on the following dates in 2020: February

24, March 28, April 10, April 11, April 12, April 17, May 2, May 5, May 6, May 9, May 11, May 18, May 19, June 13, June 14, July 4, August 2, August 10, and August 26. I find that the applicants' sleep was disturbed on at least 16 different occasions, due to the noise-related nuisance. I find that unreasonable noise that amounted to a repeated interference with the applicants' use and enjoyment of their strata lot.

31. Turning to damages, the applicants seek \$200 in damages per noise incident, for 16 incidents of noise.
32. In determining the appropriate damages award, I have considered several other CRT decisions involving noise-related nuisance: *Torok v. Amstutz et al*, 2019 BCCRT 386, *Moojelsky v. The Owners, Strata Plan K 323 et al*, 2019 BCCRT 698, *Bobiash v. The Owners, Strata Plan BCS 2656 et al*, 2019 BCCRT 670, *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238, *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361, *Tollasepp v. The Owners, Strata Plan NW2225*, 2020 BCCRT 481 and *Tran v. the Owners, Strata Plan VIS 6828*, 2021 BCCRT 28. The damages awarded in those CRT decisions ranged from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of droning and living noise
33. In *Tran*, the CRT awarded \$2,000 for occasional unreasonable early morning noise, with some sleep disturbances, over a 7-month period. I find the damages rationale in *Tran* applicable here. At the time of CRT submissions, the applicants had been complaining of noise for about 7 months. Here, the noise complained of is mainly loud music, rather than loud activities as in *Tran*. The noise here does not occur every night, but when it does it disrupts the applicants' ability to sleep over several hours. I find an award of somewhat more than that in *Tran* is warranted for the long duration of each noisy event and the late night hours. I set damages at \$2,500.
34. I turn to the applicants' claim for \$795.00 in damages for 3 days off work, broken down at \$265 per day. I dismiss this claim because the applicants did not provide evidence from an employer that they took 3 days off due to the noise-related nuisance, or that the days should be valued at \$265 each.

35. I find it unnecessary to order the respondents to stop using their strata lot in a manner that causes nuisance to others, because the strata already has bylaws prohibiting unreasonable noise and fine enforcement scheme. As well, section 118 of the CRTA limits the CRT's ability to order someone to do something to specific circumstances that are not present here.

CRT FEES, EXPENSES AND INTEREST

36. 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 respondents to reimburse the applicants for CRT fees of \$125. The applicants did not claim other dispute-related expenses.

37. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgement interest on the \$2,500 from August 26, 2020, the date of the last noise violation to the date of this decision. This equals \$9.52.

ORDERS

38. I order that within 30 days of the date of this decision, the respondents pay the applicants a total of \$2,734.52, broken down as:

- a. \$2,500 in damages for noise-related nuisance,
- b. \$9.52 in pre-judgement interest under the COIA, and
- c. \$225 in CRT fees.

39. The applicants are also entitled to post-judgement interest under the COIA.

40. 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.

Julie K. Gibson, Tribunal Member

ⁱ *Amendment Notes*: Under the authority in section 64 of the CRTA, I amended paragraphs 7, 10, 23 and 32 to correct inadvertent typographical errors and minor omissions.