



Civil Resolution Tribunal

Date Issued: June 19, 2023

Files: SC-2022-007475
and SC-2022-007504

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mete v. Masouleh*, 2023 BCCRT 515

B E T W E E N :

SELIM METE

APPLICANT

A N D :

FERESHTEH AHANI MASOULEH, FARHAD
SHEYKHZEYNALABEDINI, and FARHOUD SHEYKHZEYNALABEDINI

RESPONDENTS

A N D :

SELIM METE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. These 2 linked small claims disputes are between neighbours in a townhouse complex. I find the 2 disputes are a claim and a counterclaim involving the same parties. So, I have issued a single decision for both disputes.
2. The applicant and counterclaim respondent, Selim Mete, lives directly below the respondents and counterclaim applicants, Fereshteh Ahani Masouleh, Farhad Sheykhzeynalabedini, and Farhoud Sheykhzeynalabedini. As Farhad and Farhoud share the same last name, to avoid confusion I will refer to them by their first names, without intending any disrespect. Farhoud is Farhad and Mrs. Masouleh's adult son.
3. In Dispute SC-2022-007504, Mr. Mete says that the respondents have created unreasonable noise by frequently yelling, screaming, slamming doors, and exhibiting generally disruptive behavior at all hours of the day and night. Mr. Mete also says that the respondent Farhoud spit at him during the height of the COVID-19 pandemic, causing him distress. Mr. Mete claims a total of \$4,957.97, which includes \$3,150 in general damages and \$307.97 for wage loss related to the alleged nuisance, and \$1,500 in damages for the spitting incident.
4. The respondents deny Mr. Mete's allegations and say that Mr. Mete was the aggressor. They say Mr. Mete has verbally abused them, vandalized their property, and made false accusations about them to the police and their strata corporation. The respondents also say that Mr. Mete assaulted Farhoud by throwing a garbage bin at him. In Dispute SC-2022-007475, the respondents counterclaim \$5,000 for nuisance, mental and emotional distress, violation of privacy, and punitive and aggravated damages. The respondents did not otherwise break down their \$5,000 counterclaim.
5. Mr. Mete denies all of the respondents' allegations.
6. Mr. Mete is self-represented. Farhoud represents all of the respondents.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
8. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. The evidence in this dispute largely amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the evidence and submissions before me. I note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary, and I decided to hear this dispute through written submissions.
9. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Procedural history and matters outside the CRT's jurisdiction

11. The claims in these 2 disputes were initially raised in Dispute ST-2021-005585, commenced under the CRT's strata property jurisdiction. The parties later agreed to transfer these claims to the CRT's small claims jurisdiction, and the CRT issued new Dispute Notices. It is undisputed and I find that the relevant date for determining the applicable limitation period for these claims is based on the initial application for CRT dispute resolution in Dispute ST-2021-005585. More on this below.
12. The respondents say in Dispute SC-2022-007475 that Mr. Mete abused his position as a strata council member to issue improper bylaw fines against them. I find they are essentially arguing that Mr. Mete acted contrary to section 31 of the *Strata Property Act* (SPA). That section sets out the standard expected of strata council members, which is to act honestly and in good faith with a view to the strata's best interests. I have no jurisdiction in these small claims disputes to consider claims that are in respect of the SPA (see CRTA section 1(2)).
13. However, even if this claim was made under the CRT's strata property jurisdiction, I find the respondents have no standing to sue another strata owner for violations of SPA section 31. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Rochette v. Bradburn*, 2021 BCSC 1752 at paragraph 82. So, I make no findings about whether Mr. Mete acted improperly in his role as a strata council member. Further, as the strata corporation (strata) is not a party to this dispute, I find the issue of the strata's imposition of bylaw fines is not before me and I make no findings about it.
14. The respondents also submit that some of Mr. Mete's evidence and submissions amount to defamation. The respondents did not allege defamation in their Dispute Response or their counterclaim Dispute Notice. Further, under section 119 of the CRTA, the CRT does not have jurisdiction over defamation claims. So, I will not address any alleged defamation in this decision.

15. The respondents also allege that Mr. Mete made audio and video recordings that amount to a breach of their privacy. There is no common law tort (civil wrong) for breach of privacy in BC. See *Ari v. Insurance Corporation of British Columbia*, 2015 BCCA 468. While the *Privacy Act* creates a statutory tort of invasion of privacy, those claims must be brought in the BC Supreme Court. For these reasons, I make no findings about the allegations of breach of privacy.
16. Both Mr. Mete and the respondents submit that the other should be investigated for violations of section 92 of the CRTA, which says it is an offence to provide the CRT with false or misleading information. I find that the CRT does not have the authority to investigate or decide whether someone has committed an offence under section 92 because a conviction carries the possibility of imprisonment. Such an offence is within the jurisdiction of the relevant police authority to investigate and is for the BC Provincial Court to decide under the *Provincial Court Act*. So, I have not considered these allegations. I have reviewed all of the parties' evidence and submissions and addressed the weight I give them where relevant below.

ISSUES

17. The issues in this dispute are:
 - a. Did either the respondents or Mr. Mete commit a nuisance against the other, and if so, what is the appropriate remedy?
 - b. Did either Farhoud or Mr. Mete commit an assault or battery against the other, and if so, what is the appropriate remedy?
 - c. Are the respondents entitled to the claimed \$5,000 in damages for nuisance, mental distress, and violation of privacy, as well as punitive and aggravated damages?

EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, Mr. Mete must prove his claims on a balance of probabilities (meaning “more likely than not”). The respondents bear the same burden to prove their counterclaims. I have relied on the evidence submitted in both disputes in making this decision. I refer only to the evidence and submission that I find necessary to provide context for my decision.

Did either the respondents or Mr. Mete commit a nuisance against the other?

19. As both parties base their claims to some extent on nuisance, I start with the applicable law. A nuisance occurs when a person substantially and unreasonably interferes with another person’s quiet use and enjoyment of their land or property. A substantial interference is one that is “more than mere inconvenience or minor discomfort”. It must be something that “would not be tolerated” by an ordinary person. See *Wasserman v. Hall*, 2009 BCSC 1318 at paragraph 85. A nuisance can involve a physical interference, such as a water leak, or an intangible interference, such as noise or odours.

20. I turn to Mr. Mete’s nuisance claim. Mr. Mete moved into unit 16 in about April 2018. Unit 16 is on the ground floor. The respondents live in unit 19, which has its entrance on the ground floor, but its living area is directly above unit 16. Mr. Mete says that shortly after he moved in, he discovered that the respondents regularly yelled and screamed at each other, fought, slammed doors, and generally disrupted his quiet use and enjoyment of unit 16, often late at night.

21. Mr. Mete provided a log he created from his own notes and emails to the strata about disturbances between April 2018 and July 2020. He says he did not record every instance of noise because it occurred on a near daily basis. The log shows Mr. Mete recorded yelling, fighting, and screaming incidents that occurred between 10 pm and 2 am on an approximate monthly basis, some of which were hours long. He also recorded similar noise approximately weekly without noting the time of day. The log

also notes several occasions where the police were called to the respondents' home, by Mr. Mete, other neighbours, or one of the respondents.

22. Mr. Mete also provided audio and video recordings of the noise heard in his home. One of the audio recordings was of Mr. Mete on the phone with the police, and the officer is heard asking if "that is them", which I find shows the officer could hear, through the phone, the respondents fighting and yelling in the unit above.
23. The respondents submit that the yelling and screaming heard on the recordings could have come from some other source, such as a television or residents in another unit. They say they do not recognize the voices on the recordings, and they submit that Mr. Mete may have altered the recordings to make the voices sound louder. For the following reasons, I do not find the respondents' submissions persuasive.
24. Mr. Mete provided an email statement from a neighbour, KV, who stated she has heard "horrible screaming" coming from unit 19, across the backyard. KV is a strata council member and stated that other owners also complained of noise from unit 19. She noted that Mr. Mete had repeatedly asked the council to come late at night to hear the yelling and fighting. I do not agree with the respondents that KV's statement is inadmissible because it is unsigned or because she and Mr. Mete are friends. Overall, I find KV's statement consistent with the other evidence, and I find it credible.
25. Mr. Mete also provided a copy of a June 2020 petition addressed to the local RCMP detachment from "concerned residents". The petition stated that the police had likely attended unit 19 more than 80 times in 3 years, and that noise and disturbance from unit 19 occurred 4 to 5 times per week. The petition sought the RCMP's assistance to document and manage their ongoing concerns with the respondents. It is signed by 11 residents in 9 units. While the respondents submit that some of the residents listed on the petition have since denied signing it, they did not provide any supporting evidence, such a statement from those residents. Overall, on the evidence before me, I accept that the 11 signatures on the petition are authentic.

26. Finally, one of Mr. Mete's videos recorded the police attending unit 19 and speaking with Farhad. The officer is seen telling Farhad that "everything going on in your unit, he's hearing in his unit", "this goes on every day here, every day", "you can't live like this", "they can't live like this either", and that "it's not fair to them". I find the officer was referring to the impact of the respondents' loud arguments on Mr. Mete.
27. I disagree with the respondents that this video should not be considered because Mr. Mete recorded it secretly. As the interaction occurred outside, I find neither the police nor the respondents had a reasonable expectation of privacy in the circumstances. The respondents also say the video is unreliable because of Farhad's language barrier. I find there is no indication on the video that Farhad did not understand what the police were asking or telling him. In any event, I find it is not Farhad's statements that are relevant, but those of the police, which I find show an objective observation that the respondents were regularly causing an excessive disturbance.
28. Based on the evidence set out above, I am satisfied that the yelling, screaming, and fighting heard on Mr. Mete's audio and video recordings was the respondents. I am also satisfied that the noise volume heard on the recordings accurately represents what Mr. Mete experienced inside unit 16, and that the duration and intensity of many arguments between the respondents resulted in Mr. Mete or other residents calling the police. Given the frequency, which I find was at least several times per week for over 2 years, and often for long periods in the middle of the night, I find the respondents' noise was objectively unreasonable and a substantial interference, which constituted a nuisance to Mr. Mete. I address the appropriate remedy below.
29. I note the respondents argued that some of Mr. Mete's evidence was dated outside the applicable limitation period. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after the day on which the claim was discovered or ought to have been discovered. Under section 13.1 of the CRTA, the limitation period stops running when the applicant files their application with the CRT and pays the applicable fee, which in this case was on September 9, 2021.

30. In *K&L Land Partnership v. Canada (Attorney General)*, 2014 BCSC 1701, the BC Supreme Court held that a nuisance continues so long as the activity causing the nuisance and related harm is ongoing. While that case dealt with a previous version of the *Limitation Act*, I find the same reasoning applies to the current version, and to this dispute. Here, I find the respondents' noisy behaviour was ongoing from the time Mr. Mete moved into unit 16 in April 2018, until he started this CRT dispute. That is, I find that the respondents caused unreasonable noise on essentially a daily basis, and so I find it was a continuous nuisance. Therefore, I find Mr. Mete's nuisance claims are not barred by the *Limitation Act* and that it was appropriate to consider all of Mr. Mete's evidence, including the items dated more than 2 years before the initial application for CRT dispute resolution on September 9, 2021.
31. I turn to the respondents' counterclaim for nuisance. They say Mr. Mete was "unrelenting" in his intimidation, offensive comments, and threats towards them, which disrupted their use and enjoyment of unit 19. The respondents say Mr. Mete's behaviour constitutes both nuisance and intentional infliction of mental suffering.
32. I find the respondents' allegations generally vague and unsupported by any evidence. Specifically, there is no suggestion the respondents complained to the police or the strata, or otherwise documented Mr. Mete's alleged behaviour. The only witness statement the respondents provided was from Mrs. Masouleh's sister, MA. However, I find MA only recounted what Mrs. Masouleh told her. She did not say she personally witnessed any interactions between the respondents and Mr. Mete. So, I place no weight on MA's statement.
33. Further, a statement from Mrs. Mashouleh's family doctor, Dr. Smit, said only that stress from "the ongoing conflict" with her neighbour had necessitated an increase in her medication dosage for pre-existing anxiety and poor sleep. I find Dr. Smit's statement is insufficient to establish that Mr. Mete committed a nuisance or engaged in flagrant or outrageous conduct intended to produce harm, which is required to prove intentional infliction of mental suffering. See *Mission Group Homes Ltd. v. Braam*, 2017 BCSC 1281.

34. As set out above, I find it was the respondents causing a nuisance, and that Mr. Mete rightfully called the police and reported the incidents to the strata to try and end the nuisance. In the absence of any objective or independent evidence that Mr. Mete acted in the alleged intimidating and threatening manner towards the respondents, I find those allegations unproven. So, I dismiss the respondents' counterclaim as it relates to nuisance and intentional infliction of mental suffering.

What is the appropriate remedy?

35. Damages for nuisance are generally intended to provide solace and compensation for the interference with the use and enjoyment of the person's property. I find that the appropriate degree of compensation depends on the nature of nuisance and the impact on the innocent party. As noted, Mr. Mete claims \$3,150 in nuisance damages.

36. The CRT has previously awarded damages for noise-related nuisance, ranging from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of droning and living noise. See for example *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238 and *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361. In *Chu v. Sefat*, 2021 BCCRT 723, a tribunal member awarded \$2,500 for loud music that disrupted the applicant's sleep on 16 occasions over a 6-month period.

37. I find that the interference Mr. Mete experienced was more serious and substantial than what occurred in *Chu*. Mr. Mete provided statements from 2 registered clinical counsellors, Jacqueline Kopacek and Heather Rattai. I accept their statements that during his counselling sessions, Mr. Mete frequently mentioned the noise from his neighbours, and that the noise had affected his sleep and caused him emotional distress, including symptoms of anxiety and depression. Considering the nature, frequency, and duration of the respondents' noise, and its psychological impact on Mr. Mete, I find he is entitled to the claimed \$3,150 in damages for nuisance.

38. Mr. Mete also claims \$307.97 for missed work due to sleep loss from the nuisance. He provided a statement from ST, one of his supervisors during the relevant period. I accept ST's statement that Mr. Mete told them about the challenges he was having

with the respondents, and that he took days off due to lack of sleep and emotional distress from the “persistent situation”.

39. Mr. Mete says he used up his sick and family days. He provided pay stubs showing he took an unpaid day off in the summer of 2021, amounting to \$307.97 in lost wages. Given my findings about the nature of the noise, I accept that Mr. Mete would not likely have incurred that loss had he not lost sleep and experienced distress from the respondents’ nuisance. So, I find he is entitled to the claimed \$307.97 in wage loss.
40. I find that all 3 respondents participated in creating the unreasonable noise, and so I find they are jointly and severally liable to pay the nuisance damages and wage loss awarded to Mr. Mete.

Did either Mr. Mete or Farhoud commit assault or battery against the other?

41. Assault and battery are distinct torts (legal wrongs). Assault is about threats of imminent harm, while battery is about physical contact. I find that both Mr. Mete and Farhoud allege physical contact, not threatened harm, and so I find that battery applies to both claims. A battery occurs when one person makes intentional physical contact with that another person, who did not consent to the contact. Proof of injury is not required to prove that a battery occurred, but the battery must be non-trivial, offensive, and a violation to the person who was battered. See *Non-Marine Underwriters, Lloyds of London v. Scalera*, 2000 SCC 24.
42. The parties’ allegations each arise from the same incident that undisputedly occurred on June 14, 2020. Both Mr. Mete and Farhoud provided video evidence of the incident that they each recorded on their phones.
43. Mr. Mete’s video shows the conflict started when he asked Farhoud why he was walking near Mr. Mete’s front entrance. I find Mr. Mete’s demeanor was calm, though persistent in demanding an explanation for Farhoud’s presence. I find that Farhoud responded very aggressively, by swearing and yelling at Mr. Mete to leave him alone before Farhoud goes inside and immediately onto the respondents’ balcony. The video is pointed towards the ground, but Farhoud can be heard continuing to yell at

Mr. Mete from above, and then a sound that I find was Farhoud spitting is heard. Mr. Mete immediately turns around and starts yelling that Farhoud spit on him, which Farhoud denies.

44. Farhoud's video starts at this point in the confrontation. It shows Mr. Mete extremely upset and agitated and accusing Farhoud of spitting on him. Mr. Mete then picks up an empty recycling bin, and Farhoud encourages Mr. Mete several times to throw the bin, which he does.
45. While Farhoud says the bin hit him in the chest, I do not accept that it did. I find Mr. Mete's video shows that Farhoud's camera was at chest height, immediately above the balcony railing, and Farhoud's video shows the bin bouncing off a surface somewhat below the camera. So, I find the bin likely hit the balcony siding, not Farhoud's body. Further, as Farhoud urged Mr. Mete to throw the bin at him, I find Farhoud did not consider Mr. Mete's actions a threat of imminent harm. For these reasons, I dismiss Farhoud's claim as it relates to assault and battery.
46. While neither video explicitly shows Farhoud spitting, I find the distinctive spitting sound and Mr. Mete's immediate reaction is compelling evidence. Overall, I find it more likely than not that Farhoud spit on Mr. Mete.
47. In *Johnson v. Roberts*, 2014 BCPC 263, the BC Provincial Court awarded \$1,000 in damages for being intentionally spat on in the face. The judge noted that even though such an experience rarely causes lasting harm, it is not trivial and can cause anxiety about disease transmission.
48. The evidence is unclear about where Farhoud's spit landed on Mr. Mete, though I find Mr. Mete likely would have specifically mentioned it if the spit had landed on his face. Nevertheless, I accept Mr. Mete's evidence that he was concerned about COVID-19 transmission given the ongoing pandemic at the time. Overall, I find that \$1,000 represents appropriate damages in the circumstances, and I order Farhoud to pay Mr. Mete that amount.

Counterclaim

49. I have addressed above the respondents' claims against Mr. Mete as they relate to defamation, his conduct as a strata council member, breach of privacy, nuisance, intentional infliction of mental suffering, assault, and battery. The respondents' remaining claim relates to vandalism.
50. They provided evidence showing one of their vehicles was egged. I find the respondents provided no evidence Mr. Mete was responsible, and that they ask me to infer he is responsible based on the parties' conflict over noise and the assault incident. I decline to do so. I find the respondents' vandalism claim is purely speculative, and I dismiss it.
51. For all the reasons set out above, I dismiss the respondents' counterclaims as unproven. For the same reasons, I find it unnecessary to address the respondents' requested remedy for punitive and aggravated damages.

Interest, CRT fees, and dispute-related expenses

52. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Mete is entitled to pre-judgment interest on the \$3,150 for nuisance damages calculated from May 20, 2018, the date Mr. Mete's log states he first advised the respondents of the disturbance. I also find he is entitled to pre-judgment interest on the \$307.97 for wage loss calculated from August 13, 2021, the date of his paycheck for the relevant period. Together, this interest equals \$250.84.
53. Under section 2(e) of the COIA, pre-judgment interest must not be awarded on non-pecuniary damages arising from personal injury. So, I make no order for pre-judgment interest on the \$1,000 damages for assault.
54. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Mr. Mete was substantially successful, and so he is entitled to reimbursement of \$125 in CRT fees.

55. Mr. Mete also claims \$158.50 in dispute-related expenses. The evidence shows he paid \$140 for the March 13, 2023 statement from Jacqueline Kopacek and \$126 for the February 12, 2023 statement from Heather Rattai. While I find both expenses reasonable, I find I am limited to the amount Mr. Mete claimed. Therefore, I find Mr. Mete is entitled to the claimed \$158.50 for dispute-related expenses.
56. As they were unsuccessful, I dismiss the respondents' claim for CRT fees.

ORDERS

57. Within 21 days of the date of this decision, I order the respondents, jointly and severally, to pay Mr. Mete a total of \$3,992.31, broken down as follows:
- a. \$3,457.97 in damages for nuisance,
 - b. \$250.84 in pre-judgment interest under the COIA, and
 - c. \$283.50, for \$125 in CRT fees and \$158.50 for dispute-related expenses.
58. Within 21 days of the date of this decision, I order Farhoud to pay Mr. Mete \$1,000 in damages for assault.
59. Mr. Mete is entitled to post-judgment interest, as applicable.
60. I dismiss the respondents' counterclaims.
61. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member