Civil Resolution Tribunal

Date Issued: June 22, 2023

File: SC-2022-004159

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Levelton v. Indrasiri*, 2023 BCCRT 526

B E T W E E N :

RUKSHILA LEVELTON and MICHAEL LEVELTON

APPLICANTS

A N D :

ANUSHKA MADUSHAN INDRASIRI and NATHASHA LANKESHWARI VITHANAGE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about noise. The applicants, Rukshila Levelton and Michael Levelton, previously lived in the same strata corporation (strata) as the respondents, Anushka Madushan Indrasiri and Nathasha Lankeshwari Vithanage. The applicants

say the respondents caused unreasonable noise to enter their strata lot. The applicants claim $3,500 as damages under the law of nuisance.

2. The respondents disagree. They say the applicants are unreasonably sensitive to noise. The respondents also advance other arguments that I address below.

3. Mrs. Rukshila Levelton represents the applicants. Mr. Vithanage represents the respondents.

4. For the reasons that follow, I find the applicants have proven their claim.

JURISDICTION AND PROCEDURE

5. 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.

6. 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. Here, I find that 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 that an oral hearing is not necessary in the interests of justice.

7. 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.

8. 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.

Is the dispute moot?

9. A claim is moot when, after the start of a legal proceeding, something happens that removes any live controversy between the parties. See *Binnersley v. BCSPCA*, 2016 BCCA 259. The CRT generally dismisses moot claims.

10. The respondents say the dispute is moot because they moved out on November 29, 2022. I find the dispute is not moot because the applicants claim damages for past harm. See, for example, the non-binding but persuasive decision of *Wong v. The Owners, Strata Plan EPS4444*, 2022 BCCRT 737. In particular, the applicants seek compensation for the period of February to June 23, 2022, when they applied for dispute resolution. So, I decline to dismiss this dispute as moot.

ISSUE

11. Are the respondents liable for unreasonable noise, and if so, are the applicants entitled to the claimed $3,500 in damages?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

13. I begin with the undisputed facts. A diagram shows that the strata's buildings include row housing. The respondents live in strata lot 14 (SL14). It is located between strata lots 13 (SL13) and 15 (SL15). SL13 is on the north side and SL15 is on the south side. They each share a wall with SL 14. At the time relevant to the noise allegations, the applicants lived in SL13.

14. In early February 2022, the respondents obtained a new sound system. The applicants kept a log about noise from it. They say, and I accept, that they kept the log to send it to the strata. I find the log is generally accurate because it is corroborated by text messages, emails, and a witness statement outlined below. I note the respondents dispute its accuracy and I discuss this below as well.

15. The log shows that Mrs. Levelton initially complained to Mrs. Vithanage about the sound system's bass on February 1 and 4, 2022. Mrs. Vithanage asked Mr. Indrasiri to turn down the volume and he did so on those dates. On February 5, 2022, Mrs. Rukshila Levelton complained to Mrs. Vithanage, but the log says she did not reply. She texted Mr. Indrasiri that the bass was too loud. Mr. Indrasiri texted back, "I can't do anything…to be honest". He said this was because he was using a Sonos-brand system, which was "the best sound system in the world". He added, "You and all other neighbors have to get use[d] to this system."

16. From February 5 to June 18, 2022, the applicants noted 20 different noise incidents of varying length. Some were a few minutes long and some lasted several hours. All noise entries were about loud bass entering SL 13 from SL 14. For most entries, the applicants said they took measurements of the noise with a phone app. These levels reached as high as 63 decibels, which I find are likely roughly accurate given the other evidence discussed below. As noted by the applicants, the noise often occurred on Friday evenings from 6:00 pm - 11:00 pm, and on Saturdays from as early as 11:30 am until 11:00 pm.

17. The applicants emailed the strata manager complaints about the noise on February 5, 11, 26, March 4, 10, 14, 19, 21, 25, 2022. Aside from emailing the respondents on February 15, 2022, the correspondence shows that the strata and the strata manager initially took limited action. On March 14, 2022, Mr. Levelton emailed the strata manager and said that the applicants were considering suing the strata. The emails show the strata council president, P, visited SL14 the next day.

18. Mr. Levelton emailed a report to the strata manager about P's visit. P heard the bass "while at it was at its lowest" and still found that "it was too loud". I find Mr.

Levelton's report is likely accurate because it is consistent with the strata's following actions. The strata manager sent the respondents a bylaw infraction letter dated March 30, 2022. The letter said that the respondents had breached the nuisance bylaw through the loud bass. It said if the respondents did not stop, the strata would consider imposing fines for further violations.

19. On April 28, 2022, the strata council held a hearing with the respondents. It is undisputed that the respondents tested different volume levels in SL14 while P listened from SL13, in order to find a reasonable level. Despite this, the applicants noted more noise incidents from April 28 to June 18, 2022. The noise log shows the applicants also complained to the police on April 4 and June 18, 2022. The applicants applied to the CRT for dispute resolution on June 23, 2022.

20. Emails show the following. The strata arranged to have another hearing on July 24, 2022, to listen to the noise from SL14 in both SL13 and SL15. The purpose was to find the maximum reasonable volume. The applicants cancelled the meeting. After several months, they eventually sold SL13 and moved out on November 29, 2022.

Are the respondents liable for unreasonable noise?

21. In a strata context like this one, a nuisance is a substantial and unreasonable interference with an owner's use and enjoyment of their property. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64. The test is objective and is measured with reference to a reasonable person occupying the premises. See *Sauve v. McKeage et al.*, 2006 BCSC 781. The objective requirement guards against those with abnormal sensitivity or unreasonable expectations. See *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024.

22. I find it proven that the respondents caused objectively unreasonable noise to enter SL14 for several reasons. First, as noted above, the strata council president P visited SL13 in March 2022. P concluded that the noise was unacceptable at the

time. I find it unlikely that P happened to hear the noise when it was particularly loud. The applicants' email indicates that P heard bass in SL13 when it was on the lower end of the volume range.

23. Second, the occupant of SL15, MS, provided a written statement that corroborates the applicants' account. MS wrote the following. Music from SL14 became "bothersome" starting from February 2022. At times, the wall would "tremble". MS tried talking to the respondents, complaining to the strata, and calling the police. None of these helped. Instead, "loud bass music was a regular occurrence for hours on end", primarily on Fridays and Saturdays. This affected MS' enjoyment of their home. MS moved out a day after the applicants did, on November 30, 2022.

24. I find that the evidence provided by MS and reports of P's and the strata's actions show that the applicants' use of their home was unreasonably interfered with by unreasonable noise. Both MS and P heard loud bass through the walls from the respondents' sound system. I find this shows that the applicants had neither abnormal sensitivity nor unreasonable expectations about the noise. The respondents say the applicants need a sound test by a professional engineer to prove their case. While such evidence can be helpful, I find MS' statement and P's reported actions are sufficient in the circumstances.

25. Third, the applicants provided the noise log and a video of themselves recording decibel levels of over 60 in SL 14 on their phone. I find the log and video are generally consistent with the other evidence. The fact that the noise started when the respondents undisputedly obtained a new sound system also gives their version of events the ring of truth.

26. Fourth, Mr. Indrasiri's emails, text messages, and MS' statement show the respondents were often uncooperative and unwilling to reduce the volume of their sound system. Mr. Indrasiri essentially refused to reduce the system's volume in the February 5, 2022 text to Mrs. Levelton. The strata manager emailed the respondents about the noise on February 15, 2022. Despite this, P heard unreasonable noise a month later in SL13, on March 15, 2022.

27. The respondents say that the noise log is incorrect for certain dates. For example, they say they were absent on February 12 and 20, 2022. As evidence they provided pictures of themselves in locations far from SL14. Phone screenshots indicate the photos were taken on those dates. They suggest the applicants heard some other noise on those dates.

28. I accept there are some discrepancies in the noise log, but I nonetheless find it is generally accurate given MS' comments and P's actions, discussed earlier. Further, the diagram shows SL13 only shares walls with SL14 and SL12. So, I find it unlikely that the applicants generally misattributed the source of the bass.

29. The respondents also say that I should make a negative or adverse inference because the applicants cancelled the noise testing session of July 24, 2022 without rescheduling. I disagree as the applicants explain that they cancelled because they were exposed to COVID-19. Further, I am only considering the applicants' claim for noise from February 1 to June 23, 2022, the date they applied for dispute resolution. This period occurs before the cancelled noise testing in July 2022. So, I find the July 24, 2022 session was unnecessary for the applicants to prove their claim.

30. In summary, I find that the applicants experienced significant and unreasonable bass from February 1 to June 23, 2022. I find the noise was intolerable for an ordinary person. I find the duration was generally for several hours on 2 days each week. This leaves the question of the appropriate remedy.

31. In *Knowlan v. Zenuk*, 2023 BCCRT 395, the CRT awarded $4,500 in damages for nightly noise that disrupted sleep. In *Chu v. Sefat*, 2021 BCCRT 723, the CRT awarded $2,500 for overly loud music after 10 p.m. and before 7:00 a.m. on at least 16 different occasions over a 7-month period.

32. CRT decisions are not binding, but I find the reasoning in these decisions persuasive. I find an award between $2,500 and $4,500 is appropriate. The applicants experienced noise more frequently and more often, than in *Chu*. The applicants claim $3,500, which is coincidentally the average of these 2 decisions. I

find this amount is an appropriate measure of damages and order the applicants to pay it. The applicants waived interest, so I make no order for it.

33. 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 see no reason in this case not to follow that general rule. I find the applicants are entitled to reimbursement of $175 in CRT fees. No parties claim any dispute-related expenses.

ORDERS

34. Within 30 days of the date of this order, I order the respondents to pay the applicants a total of $3,675, broken down as follows:

    a. $3,500 as damages for nuisance, and

    b. $175 in CRT fees.

35. The applicants are entitled to post-judgment interest, as applicable.

36. 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.

David Jiang, Tribunal Member