



Civil Resolution Tribunal

Date Issued: August 27, 2024

Files: SC-2023-000223 and
SC-CC-2023-005175

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Woo v. Bruno*, 2024 BCCRT 834

B E T W E E N :

LINDA WOO

APPLICANT

A N D :

LORENZO BRUNO

RESPONDENT

A N D :

LINDA WOO

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. These disputes consist of a claim and a counterclaim about noise complaints in a strata corporation (strata). They are linked to two other disputes (ST-2022-006942 and ST-2023-007108) that fall within the Civil Resolution Tribunal's (CRT) strata property jurisdiction, and involve different parties and different issues. So, I have written separate decisions for each of those disputes.
2. Linda Woo lives below Lorenzo Bruno in the strata. Ms. Woo says Mr. Bruno is liable in negligence and nuisance for making unreasonable noise in his strata lot that affects her sleep, health, and work. In SC-2023-000223, Ms. Woo claims \$5,000 in damages for lost business revenue, lost productivity, and medical expenses. She includes in this amount damages for loss of enjoyment of life, injury to dignity and respect, and pain and suffering. Ms. Woo is self-represented.
3. Mr. Bruno denies Ms. Woo's claims, which he says are frivolous and vexatious. He says Ms. Woo has harassed him with her complaints to the strata, calls to police, banging on the ceiling, and tracking of his movements with video and audio recordings that he says invade his privacy. In SC-CC-2023-005175, Mr. Bruno counterclaims for \$5,000 in nuisance damages. Mr. Bruno is also self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 states 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.
5. 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.

The parties in this dispute question each other's credibility, or truthfulness. However, an oral hearing is not necessarily required where credibility is in issue.¹ Here, neither party asked for an oral hearing, and I find I am properly able to assess and weigh the significant documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
7. Where permitted by CRTA section 118, 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.

Preliminary issues

8. I was unable to open four pieces of Ms. Woo's evidence. However, based on their titles ("gaming noises"), I find they are likely recordings similar to many others I was able to open. So, I did not ask Ms. Woo to resubmit them in an accessible format.
9. Ms. Woo also submitted one piece of late evidence in SC-2023-000223, which Mr. Bruno noted she also submitted in SC-CC-2023-005175. I considered the evidence collectively in both disputes in coming to my decision, so I find the late evidence was simply a duplicate.
10. In her submissions for SC-2023-000223, Ms. Woo asks that I order Mr. Bruno to hire a structural engineer or flooring specialist as soon as possible, and to stop making noise with his electronic devices. These requested remedies were not set out in the Dispute Notice issued at the start of these proceedings, the purpose of which is to define the issues and provide fair notice to respondents of the claims against them. So, I find it would be procedurally unfair for me to consider these additional remedies

¹ See *Downing v. Strata Plan VR2356*, 2023 BCCA 100.

that Ms. Woo only raised in submissions. In any case, these requested remedies are for injunctive relief, which is an order that a party do or stop doing something. CRTA section 118 provides for injunctive relief in limited circumstances that I find do not apply here. So, I would not have been able to order the additional requested remedies, even if I had not found it would be procedurally unfair to consider them.

11. Finally, as noted, this dispute is linked to ST-2022-006942. That strata property dispute is about whether the strata treated Ms. Woo significantly unfairly in investigating her noise complaints. Ms. Woo provided arguments and evidence in this dispute about the strata's investigation of her complaints against Mr. Bruno. However, I find the strata's actions are not relevant to the issues in this dispute. So, I have not addressed any of Ms. Woo's allegations against the strata here.

ISSUES

12. The issues in this dispute are:
 - a. Has Mr. Bruno been negligent or caused a nuisance by making unreasonable noise, and if so, what is the appropriate remedy?
 - b. Has Ms. Woo caused a nuisance by complaining about Mr. Bruno, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. Woo must prove her claims on a balance of probabilities, meaning more likely than not. Mr. Bruno must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence, but refer only to information I find relevant to explain my decision.
14. Mr. Bruno moved into the strata lot above Ms. Woo's in July 2022. Since then, Ms. Woo says she has experienced near-daily unreasonable noise coming from Mr. Bruno's strata lot, including running appliances during quiet hours, entertaining guests, stomping, dragging furniture, dropping objects on the internal and patio floors,

slamming cupboards and other kitchen contact noises, a motorized exercise bike, and flooring creaks, knocks, and pops. Ms. Woo has made numerous complaints to the strata about the noise, and has also contacted the police.

15. Mr. Bruno denies making unreasonable noise, apart from on one occasion when he used his washing machine during quiet hours shortly after he moved in. He acknowledges that Ms. Woo may hear some noises, but he disputes that they are unreasonable, and that they necessarily come from his strata lot. Mr. Bruno says Ms. Woo's constant complaints to the strata and the police amount to harassment, and her admitted ceiling-banging and cupboard-slamming are a nuisance for which he is entitled to compensation.

The applicable law

16. As noted above, Ms. Woo says Mr. Bruno has been negligent, and each party says the other has caused a nuisance.
17. To establish negligence, Ms. Woo must prove Mr. Bruno owed her a duty of care, he breached the applicable standard of care, and she suffered damage as a result of the breach.² I find Mr. Bruno and Ms. Woo owe each other a duty of care as neighbours in the strata, and the applicable standard of care is reasonableness.
18. In *Farber*, a recent CRT decision, the tribunal member clearly summarized the law of nuisance in the strata property context.³ A nuisance is a substantial and unreasonable interference with an owner's use and enjoyment of their property.⁴ The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency.⁵ The test is also objective. This means it is measured with reference to a reasonable person occupying the premises.⁶ The objective requirement guards against those with abnormal sensitivity or unreasonable expectations.⁷

² *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.

³ *Farber v. Corbisiero*, 2024 BCCRT 318.

⁴ *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502.

⁵ *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

⁶ *Sauve v. McKeage et al.*, 2006 BCSC 781.

⁷ *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024.

19. I find that in order to succeed in either negligence or nuisance, the test is the same. The parties must each prove the other made unreasonable noise that caused them to suffer damage, including interference with the use and enjoyment of their strata lot.

Has Mr. Bruno been negligent or caused a nuisance by making unreasonable noise?

20. Ms. Woo submitted different kinds of evidence to support her claim. I address these each in turn.

21. First, Ms. Woo submitted a substantial number of audio and video recordings that she says are of noise Mr. Bruno made mostly at night. Ms. Woo provided the strata with many, if not all, of these recordings in support of her over 300 complaints, 90% of which she says were about creaking, popping, and knocking noises related to Mr. Bruno's flooring.

22. Some of the recordings are completely silent, which suggests the files may have been corrupted, or there was simply no noise. I listened to the recordings with earbuds and with the volume at maximum, as Ms. Woo suggested. However, I find that of those recordings where noise can be heard, the majority reflect only very faint or muffled single-impact noises that appear to reflect everyday living, or soft background humming. I note the audio recordings do not establish Ms. Woo's location, so I find they do not confirm the noises came from Mr. Bruno's strata lot. The video recordings undisputedly show Ms. Woo in her strata lot.

23. Next, Ms. Woo submitted police call recordings and attendance reports in response to her complaints. None of the reports say there was unreasonable noise. In one report, the attending officer said they could hear "definite noises, and listened to (Ms. Woo) state that 'these noises' keep her up at night". However, in two other reports, officers described the noises as Mr. Bruno just "going about his life", and suggested they might be related to a structural issue in the building. Overall, I find the police reports unhelpful in determining whether the noises Ms. Woo reported hearing from Mr. Bruno's strata lot were unreasonable.

24. Ms. Woo also submitted text messages, statements, and emails she says are from other witnesses to Mr. Bruno's unreasonable noise. I find witness statements from Ms. Woo's sister, SW, and her friend, PP, do not assist her. SW and PP described changes in Ms. Woo that they believe are attributable to the reported noise, but it is undisputed that neither of them directly experienced the alleged disturbances.
25. Ms. Woo texted another friend, M, a video recording she identified as being from "above". M responded asking what the noise was, and commenting that it was loud. However, M also wrote "any noise especially above YOUR head is no pleasant It is like torture when is more and more and more" (reproduced as written). While I accept M may have found Ms. Woo's recording loud, I put little weight on their comments in terms of proving the noise was objectively unreasonable, because 1) they did not witness the noise directly, and 2) they appear to take the view that any noise is intolerable.
26. Ms. Woo's neighbour, JB, reported hearing "the noise (Ms. Woo) heard at 10:30-ish pm" on January 15, 2023. However, there is no recording of that noise, and in the text message exchange, JB said they "heard it a bit I guess, it's not too loud here thankfully". On another occasion, JB said they heard "the noise", without further explanation. JB also reported that the alleged noise did not normally bother them because they went to bed early. I find JB's comments are not particularly helpful to Ms. Woo, because 1) they do not suggest the noise was unreasonable, and 2) JB did not witness the noise from inside Ms. Woo's strata lot.
27. Next, Ms. Woo submitted a statement from a neighbour, TL, across the hall. TL said on January 26, 2023, they heard a "motoring noise" coming from the strata lot above for 15 minutes, while speaking to Ms. Woo at the entrance to her strata lot. Immediately after that, TL said they heard "loud banging noises in the kitchen". On March 19, TL said they witnessed "the abnormal snapping noise in (Ms. Woo's) bedroom ceiling", which was "loud enough to be disruptive and would wake someone up". Then, TL said they witnessed a "humming noise" from above Ms. Woo's fireplace mantle on April 4. TL described the noise as "especially annoying when trying to

sleep”. Finally, on May 11, TL said they heard a noise similar to a “loud bathroom fan” coming through the ceiling in Ms. Woo’s bedroom. TL said when they lay on Ms. Woo’s bed and closed their eyes, they found the noise to be “so annoying (they) would not be able to sleep”.

28. Mr. Bruno denies the “motoring noise” came from his strata lot, as he owns a mechanical exercise bike. I find the January 26 recording does not pick up any “motoring noise”, although a person I infer is TL says he can hear the noise. While this suggests there may be some issue with the quality of the recording, I note TL does not say the noise is loud or unreasonable. There are no recordings of the other noise events TL witnessed.
29. On March 8, 2023, two strata council members attended Ms. Woo’s strata lot and Mr. Bruno’s strata lot to try and recreate the flooring noise complained of, and to determine whether it breached the strata’s nuisance bylaws. The recordings in evidence picked up some snapping noises, most of which are very faint with one slightly louder one. The strata council members agreed they could hear the louder snap, but also said the others were just building sounds. One member said they could hear the same noises in their strata lot.
30. I accept that TL heard some of the noises Ms. Woo complains of, and that in some instances they found them loud enough to interfere with sleep. However, the strata council members also heard noises, and identified them as building sounds. Contrary to TL, they did not suggest the noises were loud, annoying, or otherwise unreasonable.
31. Next, Ms. Woo relies on decibel readings of the noise recordings using an app on her phone, though she acknowledges they may not be “100% accurate”. For some of these, she submitted videos of the readings showing spikes ranging from 31.5 decibels to 44.8 decibels. None of the videos recorded continuous noise. Instead, they generally recorded a single “snap”. Also, I note the videos were recorded during the day between 7am and 9pm, not at night. In *Suzuki*, the court referred to the World Health Organization’s Guidelines for Community Noise, which recommend

continuous indoor daytime noise not exceed 35 decibels.⁸ They also say that for good sleep, individual noise events in a bedroom should not exceed 45 decibels, and continuous background noise should not exceed 30 decibels. Ms. Woo did not provide video evidence that decibel readings of the single-event noises she recorded exceeded 45 decibels at any time. In these circumstances, I find the decibel readings from the app do not establish that the noise Ms. Woo complains of was unreasonable. Ms. Woo did not provide evidence of any professional testing of the noise levels.

32. Weighing all the relevant evidence, I find Ms. Woo has not proven it is more likely than not Mr. Bruno made unreasonable noise that interfered with the use and enjoyment of her strata lot. I find the one occasion on which Mr. Bruno admitted using his washing machine during quiet hours insufficient to constitute a nuisance. Though I accept the noises Ms. Woo hears bother her, I do not agree that on an objective basis she has shown they rise to the level of negligence or nuisance. Living in a strata building involves some degree of give and take among neighbours when it comes to noise and other potential nuisances.⁹

33. I dismiss Ms. Woo's claims.

Has Ms. Woo caused a nuisance by complaining about Mr. Bruno?

34. In his counterclaim, Mr. Bruno says Ms. Woo's claims are frivolous and vexatious, and that she has harassed him and invaded his privacy by continually making complaints and recording his movements. Mr. Bruno also says she has caused a nuisance by banging on her ceiling and purposely slamming cupboards.

35. Mr. Bruno does not ask that I dismiss Ms. Woo's claims on the basis that they are frivolous and vexatious, nor does he specifically ask for a remedy for the alleged invasion of privacy or harassment. In any case, I find the invasion of privacy allegation is not supported by the evidence. Ms. Woo appropriately documented the noise she says she has heard in her strata lot, and her direct contact with Mr. Bruno has been

⁸ *Suzuki v. Munroe*, 2009 BCSC 1403.

⁹ See *Sauve*.

relatively limited. Also, there is no recognized tort of harassment in British Columbia, which means one person cannot claim against another on that basis in this province.¹⁰ So, I have not considered these allegations further.

36. To the extent Mr. Bruno says Ms. Woo's complaints are a nuisance, I find that is an allegation I can consider. However, I find Ms. Woo's complaints do not rise to the level of nuisance. This is because while Ms. Woo's complaints have not resulted in the police or the strata taking action against Mr. Bruno, this does not mean they are entirely unfounded. As I note in ST-2023-006942, the strata is currently investigating the noise complaints by conducting independent acoustical testing to determine whether the noise breaches its bylaws. Also, I find there is no evidence Ms. Woo is deliberately, significantly, or unjustifiably interfering with Mr. Bruno's use and enjoyment of his strata lot by complaining. She is taking permitted action to address concerns she has with noise she believes is coming from his strata lot that is causing her significant distress.
37. I turn to Mr. Bruno's allegation that Ms. Woo's ceiling-banging and cupboard-slamming are a nuisance. I find this is different from Ms. Woo complaining about Mr. Bruno's alleged noise. While Ms. Woo denies "banging" on her ceiling, she admits to "tapping" on it to try and get Mr. Bruno to stop making the noises she complains of. Ms. Woo submitted a recording of a call she made to police on October 22, 2023, in which she said she "poked" her ceiling and slammed her cupboard in response to Mr. Bruno's alleged noise. Specifically, Ms. Woo said she "finally had to slam (her) cupboard – like, like slam it so that he would understand". Given Ms. Woo's admission and the October 22 call recording, I find this deliberate noise was likely loud enough to cause a disturbance.
38. Mr. Bruno did not submit recordings of the tapping or slamming. While the context suggests this likely happened more than once, Mr. Bruno did not provide any other dates, and does not say how often the banging or slamming occurred. In *Teh*, a tribunal member found that the applicant was subject to unreasonable noise for a

¹⁰ *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473.

short time during quiet hours on a handful of occasions, and awarded them \$50.¹¹ Previous CRT decisions are not binding on me, but I agree with this approach. So, similarly, I find Mr. Bruno is entitled to \$50 for Ms. Woo's unreasonable ceiling-tapping and cupboard-slamming. I order Ms. Woo to pay Mr. Bruno \$50 in nuisance damages.

CRT FEES, INTEREST, AND DISPUTE-RELATED EXPENSES

39. The *Court Order Interest Act* applies to the CRT. Mr. Bruno is entitled to pre-judgment interest on the \$50 nuisance damages from October 22, 2023 to the date of this decision. This equals \$0.48.
40. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The CRT often awards partial CRT fees where a party is partially successful. However, in previous decisions, the CRT has declined to do so where the applicant received only a small percentage of their initial claim.¹² Here, Mr. Bruno was mostly unsuccessful, having received only \$50 of the claimed \$5,000. So, I dismiss his claim for CRT fees. Neither party claimed dispute-related expenses.

ORDERS

41. Within 30 days of the date of this order, I order Ms. Woo to pay Mr. Bruno \$50 in nuisance damages and \$0.48 in prejudgment interest under the *Court Order Interest Act*, which totals \$50.48.
42. Mr. Bruno is entitled to post-judgment interest, as applicable.
43. I dismiss Ms. Woo's claims.
44. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British

¹¹ *Teh v. The Owners, Strata Plan 202*, 2021 BCCRT 180.

¹² See, for example, *Konrad v. The Owners, Strata Plan EPS 4098*, 2024 BCCRT 661, *Dennie v. Rodgers*, 2023 BCCRT 509, and *Pivnick v. Planet Lazer Entertainment Ltd.*, 2023 BCCRT 7.

Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia

Megan Stewart, Tribunal Member