



Civil Resolution Tribunal

Date Issued: July 10, 2025

File: SC-2024-003368

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buonassisi v. Clark*, 2025 BCCRT 935

B E T W E E N :

MARYBEL BUONASSISI and PAUL BUONASSISI

APPLICANTS

A N D :

ELVA MAY CLARK, LARRY CLARK, and TAYLORE CLARK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about nuisance or hazards in a strata corporation (strata). The applicants, Marybel Buonassisi and Paul Buonassisi, live in a ground-floor townhouse in the strata. The respondents, Elva May Clark, Larry Clark, and Taylore Clark, live in a strata lot on the fifth floor of the strata, above the applicants' townhouse.

2. The applicants allege the following. For 6 months the Clarks have been passing urine or a urine solution through their balcony drains. The drains direct the urine onto the applicants' garden and porch area, causing damage and an inability to use a gate in the area due to unpleasant fumes. The applicants claim \$5,000 for damage caused to 1) furniture, 2) 17 trees of different types, 3) 8 concrete planters, 4) 1 wooden planter, 5) 7 ceramic pots, 6) brick pavers, 7) small plants, and 8) soil. They also claim labour costs for hiring remediation workers. In submissions the applicants also say they suffered various health problems from exposure to the urine.
3. The respondents deny dumping any liquids from the balcony. They say that there is no evidence that links the urine to the respondents or their strata lot. They also say that there are 20 floors above their strata lot with similar balcony drain spouts that could be responsible for the applicants' troubles. They say some substances fall onto their balcony as well.
4. This dispute and dispute number SC-2024-003321 involve the same respondents but different applicants. They involve similar but slightly different issues, so I have written separate decisions for each dispute and considered the evidence in each separately. That said, much of the evidence is duplicated in both proceedings. For this reason, large portions of my decisions are identical.
5. Mrs. Buonassisi represents the applicants. Taylore Clark represents the respondents.
6. For the reasons that follow, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

7. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought 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. 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. These are the CRT's formal written reasons.

8. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. The parties in this dispute each question the other's credibility (truthfulness) about what occurred. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, the parties provided their recollections, photos, video, and relevant correspondence. No party requested an oral hearing, and I find it unlikely that cross-examination would reveal any inconsistencies in any party's evidence. So, 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 court.
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.

ISSUE

11. The issue in this dispute is whether the respondents are liable for causing urine or a urine solution to enter the applicants' property or near it, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE, AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. 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. The applicants did not provide a final reply, though they had the opportunity to do so.
13. I will first describe the strata. The photos and videos in evidence show the following. The applicants live in a townhouse on the ground floor of the strata. It is undisputed that their townhouse is adjacent to another townhouse, and the occupants of that townhouse are applicants in the other linked dispute. The townhouse has an outdoor patio covered with pavers. There are also planters of various sizes, including one or more large concrete planters with trees growing in them. The parties sometimes refer to this as the front porch area.
14. The respondents live in an adjacent high-rise building that is part of the strata. It is unclear if the building is connected to the townhouses, but nothing turns on this. There are at least 10 floors visible in the photos and given this I accept the respondents' submission that there are roughly 25 floors in the high-rise. All depicted strata lots appear identical from the exterior. They each have an outdoor balcony with 2 short pipes protruding from the bottom. The pipes act as drainage, causing liquid from the balconies to exit the pipes and fall down from a great height. The balconies are stacked vertically in a column-like manner. Glass panels act as railings for the upper half of the balconies.
15. The applicants were vague about the exact location of their townhouse in relation to the respondents' strata lot. The respondents provided photos from their balcony facing directly down. Based on these photos, which are also in evidence in this dispute, I determined in dispute number SC-2024-003321 that any liquid exiting the respondents' balcony drainpipes would likely fall 5 stories and land on the stone pavers or garden area owned or occupied by Mo Fong Hui and Jenny Yiu. The photos show only one other neighboring townhouse, located on the far side. I find it

likely that this is the applicants' townhouse. I find it unclear from the photos how any liquid exiting the respondents' 2 balcony drainage could reach the applicants' property. I will return to this point below.

16. I turn to the chronology. I have outlined it in dispute number SC-2024-003321 and I adopt it here. The submissions and evidence in this dispute add few details to that background. There is no indication that the applicants in this dispute ever complained to the strata manager about the alleged urine.

Are the respondents liable for causing urine or a urine solution to enter the applicants' property or near it?

17. The applicants complain about a noxious liquid entering their property, so I find the law of nuisance and trespass apply. A nuisance in the strata context is a substantial, non-trivial, and unreasonable interference with use and enjoyment of property. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33.
18. Trespass to land includes placing or throwing some material object on the land of another without the legal right to do so. To constitute trespass a respondent must in some direct way interfere with the applicant's land. The requirement of directness differentiates trespass from nuisance, which is committed when the respondent makes a use of their land that indirectly affects the land of the applicant. See *Lahti v Chateauvert*, 2019 BCSC 1081 at paragraph 6.
19. Based on the respondents' photos, I am not satisfied that the noxious liquid ever came into direct contact with the applicants' strata lot. The distance shown in the photos between the balcony drainpipes and the applicant's townhouse appears too great. That said, the photos show a partially obscured walkway and gate. I find it likely that the walkway and gate are common property. The applicants say they were unable to use a gate because of the unpleasant odours in the area, and I accept this was likely the case. So, I find the applicants rely on the law of nuisance.

20. Regardless, in both trespass and nuisance the applicants must show that the respondents were responsible for the noxious liquid. For many of the same reasons stated in dispute number SC-2024-003321, I find the applicants have not proven their claims.
21. The applicants provided an October 7, 2024 witness statement from KW and KK. This is the same evidence in dispute number SC-2024-003321. KW and KK are residents of the fourth-floor strata lot directly below the respondents' strata lot. They said that on March 24, 2024, one of the respondents knocked on their door and asked if they had complained to the strata about dog urine. They denied doing so. Approximately 15 minutes later, KW discovered a puddle on their balcony of dark yellow brown liquid that smelled of urine. KW went upstairs and asked the respondent to come look at their balcony. The respondent said it smelled like old urine and thought it "might have seeped through the building". After the respondent left, KW and KK noticed liquid dripping coming from the balcony drain on the respondent's strata lot. A picture of the dripping pipe is in evidence.
22. I find KW and KK's statement falls short of proving that the puddle originated from liquid exiting the respondents' balcony drain. Crucially, there is no indication that anyone collected the liquid dripping from the respondents' drainpipes. So, I find it unclear if the dripping liquid was the source of the puddle on KW and KK's balcony or the liquid that affected the applicants.
23. In addition to that, KW and KK said the liquid gathered on their balcony instead of flowing down onto the applicants' property. KW and KK only describe one isolated incident. In contrast to this, the applicants described liquid entering their property or their neighbor's property for several months. So, I find it difficult to draw any link between this incident and the applicants' complaints.
24. The applicants provided photos similar to those in dispute number SC-2024-003321. They say that they show that only the applicants' drainpipes appear corroded or stained. They say the noxious liquid caused this. They also provided photos that show yellow staining on the side of KW and KK's balcony. They suggest

this means the liquid flowed from the respondents' balcony and stained the side of KW and KK's balcony.

25. For the same reasons stated in dispute number SC-2024-003321, I do not find the depicted drainpipe corrosion or the balcony stains persuasive. The respondents provided photos of drainpipes from balconies directly above them on the sixth and seventh floor, take in July and August 2024. They show that the respondents' balcony drainpipes share the same corrosion or stains as those on the sixth and seventh floor. The respondents' other photos show that their balcony and the sixth-floor balcony also share very similar stains on their sides to those observed on KW and KK's balcony. I find they show the respondents were not necessarily the source of the drainpipe corrosion or the stains shown on the balcony's sides. The respondents also suffered from the same issues.
26. Consistent with the above, even the applicants' photos show drainpipe corrosion and balcony stains on other, neighboring strata lots.
27. I also note that it is not possible in any case to determine what type of liquid, if any, caused the drainpipe or balcony side stains from the photos alone.
28. For all those reasons, I find it unproven that the respondents were the cause of the noxious liquid entering the applicants' property. I dismiss the applicants' claims.
29. 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 dismiss the applicants' claims for reimbursement of CRT fees.

ORDER

30. I dismiss the applicants' claims.

David Jiang, Tribunal Member