Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *0864457 B.C. LTD v. Sheridan et al*, 2019 BCCRT 48

B E T W E E N :

0864457 B.C. LTD

APPLICANT

A N D :

Craig Allan Sheridan, Robert Sauer, and The Owners, Strata Plan BCS 3979

RESPONDENTS

A N D :

0864457 B.C. LTD

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant and respondent in the counterclaim, 0864457 B.C. LTD (applicant), owns 2 strata lots (SL 11 and SL 19) in the respondent strata corporation, The Owners, Strata BCS 3979 (strata). The respondents, Craig Allan Sheridan and Robert Sauer are co-owners of another strata lot (SL12) in the strata (respondent owners), next to both of the applicant's strata lots. Both the applicant's and the respondent owners' strata lots are rented out.

2. Craig Allen Sheridan is the applicant in the counterclaim. The strata and Robert Sauer are not parties in the counterclaim.

3. This dispute involves allegations of excessive noise and related costs associated with soundproofing the applicant's and respondent owners' strata lots as well as alleged associated damages and lost profits.

4. The applicant's SL11 is located on the ground floor. Its SL19 is directly above SL11 on the second floor. The respondent owners' SL12 is 2 stories high located on the ground floor next to SL11 and SL19 and shares a common wall with both.

5. The applicant says the respondent owners' tenants are making excessive noise that is disruptive to its tenants.

6. In the counterclaim, Craig Allan Sheridan says the applicant's claims continue to negatively impact his and his tenant's business and that its tenant has had to temporarily close its business to mitigate further damages.

7. The applicant is represented by Nancy Church. The respondent owners and Mr. Sheridan are represented by Mr. Sheridan. The strata is represented by a strata council member.

8. For the reasons that follow, I order the respondent owners to ensure the noise level in SL12 does not cause the noise level in SL11 or SL19 to exceed 32dBA and to pay the applicant $3,722.57 as set out below. I also order the strata to enforce its noise bylaw if the respondent owners or their tenants create amplified music or

other noise in SL12 to cause the noise levels in SL11 and SL19 to exceed 32dBA, and to pay the applicant $140.85 as set out below.

9. I also dismiss Mr. Sheridan's counterclaims.

JURISDICTION AND PROCEDURE

10. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

11. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

12. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

13. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

14. Tribunal documents show the respondent owners are partners in Craibo Investments which the applicant alleges owns the respondent owners' strata lot. Based on Land Title Office documents, the respondent owners own their strata lot

personally as tenants in common. Given the parties operated on the basis that the correct strata lot owner was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the respondent owners' personal names in these proceedings. Accordingly, I have amended the style of cause above.

15. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

16. The issues in this dispute are:

    a. Has the respondent owners' tenant acted contrary to the strata's noise bylaw?

    b. Are the respondent owners responsible for noise generated by their tenant?

    c. If so, have the respondent owners made sufficient attempts to alleviate their tenant's noise or are other remedies appropriate?

    d. Is the applicant entitled to $35,400 for time spent dealing with tenant complaints, the cost of improved sound barriers to SL19, and consultant expenses?

    e. Is Mr. Sheridan entitled to receive reimbursement for expenses associated with improving sound barriers within SL12, including the cost of technical reports?

    f. Is Mr. Sheridan entitled to lost profit resulting from the time spent upgrading the soundproofing of SL12?

    g. Is Mr. Sheridan entitled to reimbursement of $4,000 for legal fees?

    h. Is Mr. Sheridan entitled to $16,000 for damages from his tenant's lost profit?

i. Is Mr. Sheridan entitled to an order that the applicant stop blaming him for its own internal management issues?

POSITIONS OF THE PARTIES

17. The applicant says the respondent owners' tenant is making excessive noise contrary to strata bylaw 3, which the applicant says is disruptive to its own tenants. In its submissions, the applicant says that effective structural soundproofing and/or permanent volume control limits on the respondent owners' tenant's equipment would be viable solutions.

18. The applicant asks the tribunal for orders that the respondent owners permanently stop their tenants from creating noise. The applicant also asks for an order that the respondent owners reimburse it a total of $35,417.50 as provided in it submissions ($17.50 more than claimed), broken down as follows:

    a. $30,500 for time spent dealing with tenant complaints,

    b. $1,400 for the cost of improved sound barriers to SL19, and

    c. $3,517.50 for consultant expenses.

19. The respondent owners ask the tribunal to dismiss the applicant's claim.

20. Although the strata is a named respondent in the applicant's claim it did not provide a Dispute Response or make any submissions.

21. In his counterclaim, Mr. Sheridan says the applicant's claim against the respondent owners negatively impacts their tenant's business and that their tenant has had to temporarily close its business to mitigate further damages.

22. Mr. Sheridan seeks orders that the applicant's claims be dismissed, and that the applicant stop blaming him for their tenants' issues. He also seeks orders that the applicant reimburse him $15,000 for the cost of soundproofing, $18,500 for

damages and his tenant's lost profit, $4,000 for sound technician costs, and $4,800 for legal fees.

BACKGROUND AND EVIDENCE

23. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

24. In a civil proceeding such as this, the applicant must prove its claim on a balance of probabilities. Mr. Sheridan must prove his counterclaim on a balance of probabilities.

25. The strata was created in November 2010 and consists of a 56-unit strata corporation located in North Vancouver, B.C. It is unclear if the strata is made up entirely of non-residential strata lots or if some strata lots are residential. However, the strata lots involved in this dispute are non-residential strata lots located in the same 2-storey building.

26. The strata's relevant bylaws are the Schedule of Standard Bylaws under the *Strata Property Act* (SPA). Amendments made by the owner developer at the time the strata was formed and subsequent bylaw amendments are not relevant to this dispute. The relevant bylaw is bylaw 3, which states in part, that an owner or tenant must not use a strata lot in a way that:

    a. Causes a nuisance to another person,

    b. Causes unreasonable noise,

    c. Unreasonably interferes with the rights of another person to use or enjoy another strata lot.

27. The applicant rents out its strata lots to 2 separate businesses that use the space for their office operations. SL11 is rented to a window business that uses the strata lot as a showroom and to meet clients. SL19 is rented to a business that operates a telephone call centre.

28. The respondent owners rent out its strata lot to a business that operates a cycling fitness studio (Eastwood). Nothing turns on the fact that Eastwood is owned by a related party to one of the respondent owners.

29. In July 2016, shortly after Eastwood occupied SL12, the applicant's tenants in SL19 began complaining to the strata manager about excessive noise emanating from SL12. Subsequently, the applicant's tenants in SL11 made similar complaints.

30. The noise complaints from both of the applicant's tenants all related to daily exercise sessions conducted by Eastwood that involved the use of loud amplified music for approximately 45 minutes each. The amplified bass sounds were of particular concern.

31. Between July 15 and November 2016, the strata issued 4 bylaw violation letters to the respondent owners that resulted in at least 2 $50 bylaw fines. It is unclear why the strata did not write to the the tenants as required under section 130 of the SPA. It is also unclear if the bylaw fines were paid or subsequently reversed by the strata as asserted by Mr. Sheridan.

32. In 2016, meetings between the applicant's representatives, the respondent owners' tenant and Mr. Sheridan occurred that resulted in some improvement to the sound levels in the applicant's strata lots. Ultimately, in early 2017, the respondent owners made modifications to the dividing wall on the interior of SL12, but details of the modifications were not provided in evidence.

33. In February and March 2017, the applicant arranged, at its cost, for an environmental consultant (Antiquity) to test the sound levels in their strata lots over an 8-day period. In a March 31, 2017 report, Antiquity concluded that sound levels observed in SL11 and SL19 during the testing period averaged between 65 and 70dBA for roughly 1-hour periods followed by a similar length quieter period averaging 45 to 55dBA. The report stated that the elevated sound levels would hinder communication in the applicant's strata lots stating it would be "analogous to struggling to speak over a vacuum cleaner at 3 meters' distance."

34. On May 16, 2017, the respondent owners retained their own acoustic consultant (BAP) to measure sound levels in the applicant's strata lots. In a May 31, 2017 report to Mr. Sheridan, BAP concluded the sound levels were between 42 and 62dBA in the applicant's strata lots during the test time and that an appropriate level would be 36dBA.

35. On January 15, 2018, the strata wrote to the respondent owners warning of further bylaw fines for contravention of bylaw 3 with respect to noise.

36. On February 19, 2018 members of the strata council visited the 3 strata lots involved in this dispute and investigated the noise issue at the request of the respondent owners.

37. On April 9, 2018, following a, the strata wrote to the respondent owners advising that they had taken all reasonable steps to mitigate noise levels from their tenant's business operations and that the strata considered the matter closed. It is not clear if the strata council had received the parties' expert reports when making this determination.

ANALYSIS

Has the respondent owners' tenant acted contrary to the strata's noise bylaw?

38. As noted, bylaw 3 states a strata lot must not be used in ways that cause a nuisance, unreasonable noise, or unreasonably interferes with the rights of another person to use or enjoy another strata lot. Based on the evidence, I find Eastwood's use of SL12 by was contrary to bylaw 3. This is clear from the emails sent by the applicant's tenants, by letters issued from the strata to the respondent owners about noise bylaw violations and by the expert reports of the parties.

Are the respondent owners responsible for noise generated by their tenant?

39. While the strata's bylaws make tenants responsible to the strata by following the bylaws, the strata's bylaws are silent on an owner's obligation with respect to their tenant's actions or inaction.

40. The SPA also does not expressly address the responsibility of an owner in relation to their tenant's actions other than the strata's responsibilities and options to enforce bylaws under sections 129 through 135 of the SPA. There is also no requirement for a commercial landlord to have their tenant acknowledge their bylaw responsibilities with respect to strata lots, as is the case with a residential landlord.

41. However, I find that an owner is responsible for their tenant's actions, as to find otherwise would not make any practical sense. Section 131 of the SPA supports such a conclusion as it makes an owner responsible for fines or costs incurred by their tenant.

42. Therefore, I find the respondent owners are responsible for noise generated by their tenant.

Have the respondent owners made sufficient attempts to alleviate their tenant's noise or are other remedies appropriate?

43. It is agreed that upgrades or alterations were made to the common dividing wall in SL12 between it and SL11 and SL19. However, details of the alterations were not provided in evidence. Despite the upgrades, and contrary to the strata's position that the respondent owners have made sufficient reasonable attempts to reduce the noise in SL12 to reasonable levels, I find further remedies are required for the reasons set out below.

44. Both parties obtained experts to conduct sound level testing. The applicant retained Antiquity in February and March 2017, and the respondent owners retained BAP in May 2017. The respondent owners say the Antiquity readings were taken before the common wall alterations were made. The applicant says the test was completed after the dividing wall alterations. The strata, in its April 9, 2018 letter to the

respondent owners says the wall alterations were completed in January 2017, before the Antiquity testing took place. I find I do not need to determine when the common wall upgrades were completed, as the date of BAP testing, show the noise levels in SL11 and SL19 remained unsatisfactory after the wall upgrades were completed. As earlier noted, BAP concluded the sound levels were between 42 and 62dBA in the applicant's strata lots during the test time and that an appropriate level was 36dBA.

45. The BAP recommendations contained 3 options. The first and simplest was to control the amplified sound in the respondent owners' SL12 to a maximum equivalent sound level of 87dBA. I note that one of the recommendations of Antiquity was to reduce the noise levels at the source by installing volume-limiting controls on the amplified music devices.

46. From the evidence, it appears this was attempted but that appropriate controls were not put in place to disallow overriding the maximum sound levels.

47. The second option involved controlling the amplified sound levels as described in the first option as well as completing further dividing wall upgrades in SL12.

48. The third option was to complete the first 2 options as well as installing a new floor at the same level as the floor/ceiling between SL11 and SL19 with a further option of installing a closed stairway between the new upper and original lower level of SL19 in place of the option 2 wall upgrades.

49. Both expert reports comment on the District of North Vancouver noise bylaw. Although the municipal noise bylaw may prove helpful in determining noise levels, the strata has not adopted the municipal standards in its bylaws and I find they do not necessarily apply to neighbouring strata lots as in the case before me.

50. I accept the expert report of BAP, as obtained by the respondent owners, that determines the noise level in SL12 is too high. I therefore order the respondent owners to take steps to ensure the noise level in SL19 is always at a level that keeps noise levels in SL11 and SL19 to the recommended level of 32dBA or below.

I decline to make specific orders as to what the respondent owners must do to achieve this maximum level of noise as there may be various ways to accomplish this that have not been identified. That is, the respondent owners may choose to ensure their tenant puts permanent volume-limiting controls on its music amplifiers so the level in SL12 never exceeds 87dBA, upgrade the soundproofing in SL12 so noise levels in SL11 and SL19 are never above 32dBA, or some combination of both.

51. Nothing in my decision restricts the applicants form upgrading the soundproofing in either or both of its strata lots, but I do not order them to do so.

52. The strata has not provided submissions in these proceedings but I find it is responsible to enforce its bylaws. Therefore, I order that the strata immediately enforce its noise bylaw if the respondent owners or their tenant permits amplified music or other noise in SL12 to cause the noise levels in SL11 and SL19 to exceed 32dBA.

Is the applicant entitled to $35,400 for time spent dealing with tenant complaints, the cost of improved sound barriers to SL19, and consultant expenses?

53. As noted above, the applicant's claim for $35,400.00 is broken down as follows in it submissions.
    a. $30,500.00 for time spent dealing with tenant complaints,
    b. $1,400.00 for the cost of improved sound barriers to SL19, and
    c. $3,517.50 for consultant expenses.

54. The difference of $17.50 is not explained.

55. I decline to order reimbursement of $30,500 for time spent by the applicant addressing its tenant's concerns, as the applicant did not provide any method of how it calculated these alleged expenses. For example, it did not provide an hourly rate or any other details of its handling of over 500 emails, attendance at strata meetings, or dealing with its consultant.

56. I also decline to order reimbursement the $1,400 claimed for upgrading the common wall between SL19 and SL12 as I find this was completed as part of the applicant's negotiations with its tenant in renewing its lease and was also associated to adding a bathroom in SL19 as requested by the tenant. Evidence as to the date the work was completed was not provided but I note the invoice for the soundproofing work in SL19 was dated February 8, 2016, which is after the date the noise testing by Antiquity started on February 6, 2016.

57. As for the costs of the applicant's consultant, Antiquity, I find the applicants are entitled to reimbursement of the $3,517.50 in fees paid to establish the unacceptable noise levels in SL11 and SL19. Given the strata took steps to enforce its bylaws prior to the Antiquity report, I find the respondent owners are responsible to reimburse the applicant for this amount and I so order.

Is Mr. Sheridan entitled to receive reimbursement for expenses associated with improving sound barriers within his strata lot, including the cost of technical reports?

58. I have found the applicant is entitled to further relief form the respondent owners' tenant's noise because the work completed by the respondent owners was not successful in reducing the sound levels to an acceptable level. Given this finding, I decline to Mr. Sheridan's request for reimbursement of expenses to improve sound barriers, including the cost of technical reports.

59. Further, even if I found in favour of Mr. Sheridan, he did not provide evidence of these expenses, such as copies of paid invoices.

60. I dismiss Mr. Sheridan's claim in this regard.

Is Mr. Sheridan entitled to lost profit resulting from the time spent upgrading the soundproofing of their strata lot?

61. The sound upgrades completed in SL12 were not successful. Further, Mr. Sheridan did not provide any evidence to support his claim for lost profit or that the soundproof upgrades could not have been completed after business hours.

62. I dismiss Mr. Sheridan's claim in this regard.

Is Mr. Sheridan entitled to reimbursement of $4,000 for legal fees?

63. As noted in the tribunal's rules, generally speaking, the tribunal does not award reimbursement of legal expenses except in extraordinary circumstances, which I find do not exist here. In any event, Mr. Sheridan was not successful in his counterclaim.

64. Even if I found in favour of Mr. Sheridan, he did not provide evidence of legal expenses, such as copies of paid invoices.

65. I dismiss Mr. Sheridan's claim in this regard.

Is Mr. Sheridan entitled to $16,000 for damages from his tenant's lost profit?

66. Mr. Sheridan did not provide any evidence to suggest it was necessary for the tenant's business to close to allow the soundproof upgrades to be completed. Further, his tenant is not a party to this dispute and he has no legal basis for claiming lost profits of his tenant. Any claim for lost profit would have to be made by Eastwood.

67. I dismiss Mr. Sheridan's claim in this regard.

Is Mr. Sheridan entitled to an order that the applicant stop blaming him for its own internal management issues?

68. I decline to order that the applicant stop blaming Mr. Sheridan for the noise issues. I have found that the applicants had proved the noise generated by the respondent owners' tenant required further remedy and do not agree the noise issue is the applicant's "internal management issue".

69. Further, I find that, much like an apology, it is not productive to order a party to do something that is generally voluntary. I find an order forcing the applicant to stop blaming Mr. Sheridan for the noise issue would serve no useful purpose.

70. I dismiss Mr. Sheridan's claim in this regard.

TRIBUNAL FEES, EXPENSES AND INTEREST

71. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. I find the applicant was the successful party in its dispute and order the respondent owners and strata to reimburse it $225 for tribunal fees on an equal basis at 112.50 each and I so order.

72. The applicant also claims dispute-related fees in addition to those described above, of $56.70 for registered mail costs for serving the Dispute Notice. I find the respondent owners and strata must reimburse the applicant $56.70 registered mail expenses on an equal basis at $28.35 each and I so order.

73. Mr. Sheridan was not successful in his counterclaim, but the applicants paid no tribunal fees and claimed no additional dispute-related expenses other than those described above. For this reason, I decline to make any order for tribunal fees or dispute-related expenses in addition to those described above.

74. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to pre-judgement interest on the $3,517.50 paid to its expert, Antiquity, from the due date of the invoice to the date of this decision. I calculate the amount of pre-judgement interest to be $64.40 and I order the respondent owners pay this amount to the applicant.

75. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

ORDERS

76. I order that the respondent owners must:
    a. Immediately take steps to ensure the noise level in SL19 is always at a level that keeps noise levels in SL11 and SL19 to a level of 32dBA or below.
    b. Within 30 days of the date of this order, pay the applicants $3,722.57 broken down as follows:
        i. $3,517.50 for the cost of the applicant's expert,
        ii. $64.40 for pre-judgement interest under the COIA,
        iii. $112.50 for tribunal fees, and
        iv. $28.35 for other dispute-related expenses.
77. I order that the strata:
    a. Immediately enforce its noise bylaw if the respondent owners or their tenant permits amplified music or other noise in SL12 to cause the noise levels in SL11 and SL19 to exceed 32dBA, and
    b. Within 30 days of the date of this order, pay the applicant $140.85 broken down as follows:
        i. $112.50 for tribunal fees, and
        ii. $28.35 for dispute-related expenses.
78. The applicant is entitled to post-judgement interest under the COIA, as applicable.
79. I order that Mr. Sheridan's counterclaims are dismissed.
80. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has

not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

81. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

J. Garth Cambrey, Vice Chair