Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

DEREK POPE

APPLICANT

A N D :

JACQUELINE YAS, NINELE JACKSON, ARLENE YAS, and The Owners, Strata Plan 30

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This decision addresses the first of 2 related disputes. The disputes are about noise between strata lots in a strata corporation, and alleged harassment. I have written 2 separate decisions for these 2 disputes because although the second dispute is essentially a counterclaim to the first, the named parties are not identical in the 2 disputes.

2. The applicant in this dispute, Derek Pope, is a joint owner of strata lot 12 (SL12) in the respondent strata corporation, The Owners, Strata Plan 30 (strata).

3. The other respondents, Jacqueline Yas, Ninele Jackson, and Arlene Yas, were registered as joint owners of strata lot 15 (SL15) in the strata at the time these disputes were filed. Jacqueline Yas and Ninele Jackson are now deceased. Arlene Yas (Ms. Yas) is self-represented in this dispute. For convenience, in this decision I refer to Arlene Yas, Jacqueline Yas, and Ninele Jackson collectively as "the Yas family".

4. Mr. Pope is represented by Cora Wilson, a lawyer. The strata is also represented by a lawyer, Tim Wedge.

5. SL15 is located on the fifth floor of the tower-style strata building, directly above SL12. Mr. Pope says he and his wife experience intermittent unreasonable noise from SL15, since the SL15 owners replaced the carpet with hard surface flooring. Mr. Pope also says the strata has failed to enforce the bylaws and the alteration agreement signed when the hard surface flooring was installed in SL15. Mr. Pope requests the following orders from the tribunal:

    a. An order that Ms. Yas comply with the alteration agreement and the bylaws about flooring, noise, and nuisance.

    b. An order that the respondents pay to remedy the acoustical deficiencies experienced in SL12, based on the quote from Acoustics West Installations Ltd. (Acoustics West).

c. An order that the respondents remedy any acoustical deficiencies in the SL15 flooring at their expense.

d. $70,000 in damages.

e. An order for reimbursement of dispute-related expenses.

6. The SL15 owners deny Mr. Pope's claims. Ms. Yas says there is no unreasonable noise from her strata lot, that her family did not cause the noises Mr. Pope complaints of, and the SL15 flooring has no deficiencies. Ms. Yas says Mr. Pope and his wife have unreasonably harassed them about the alleged noises, and have refused to cooperate in resolving the noise complaints.

7. The strata says it is not liable for any of Mr. Pope's claims. It says it did all it could to meet its duty to investigate the noise complaints and enforce its bylaws, but both the Popes and the Yas family were uncooperative. The strata says it is not liable for any damages, and the SL15 flooring should be replaced at Ms. Yas' expense.

8. The strata requests reimbursement of $32,290.00 in dispute-related expenses.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

10. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I have considered whether an oral hearing is necessary in order to resolve this dispute, and I conclude that it is not. I note that Ms. Yas requested an oral hearing. However, it

was open to all parties to provide any relevant evidence, including witness statements and expert reports, including reports in rebuttal of other evidence. I also note that the parties, including Ms. Yas, provided detailed statements about the contested facts in the extensive correspondence from the time of the events in question.

11. As stated in the BC Supreme Court's decision in *Yas v. Pope,* 2018 BCSC 282, issues of credibility are routinely addressed on written records. I am therefore satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

12. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

13. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

PRELIMINARY ISSUES

Jacqueline Yas

14. The documents in this dispute indicate that Jacqueline Yas was served with a copy of the Dispute Notice, but did not respond to it. This means she was technically in default. However, the evidence before me indicates that at the relevant time, she was around 100 years old, with severe health problems.

15. I also note that the submissions and evidence establish that both Jacqueline Yas and Ninelle Jackson passed away after the 2 dispute notices were filed.

16. CRTA section 7(4)(c) says that if one or more persons served with the Dispute Notice respond within the required time period, the tribunal may proceed to the case management phase. I find that is appropriate in this case, given Jacqueline

Yas' personal circumstances at the time, and given that her daughters, Arlene Yas and Ninele Jackson, provided dispute responses. I accept that their responses and Ms. Yas' submissions apply to Jacqueline Yas.

Additional Applicant – Bhavananda Pope

17. In a June 28, 2018 preliminary decision in this proceeding, a tribunal vice chair denied a request by Mr. Pope to add his wife Bhavananda Pope, as co-applicant. The vice chair provided detailed reasons for her decision. She explained that while Mrs. Pope was an appropriate party, it would be disproportionate and inconsistent with the tribunal's mandate to add new party 1.5 years after the Dispute Notice was issued, as it would unreasonably delay the proceeding. The vice chair relied on the factors for determining whether to allow amendments to pleadings set out in *Preferred Steel Construction Inc. v. M3 Steel*, 2015 BCCA 16 at para. 36.

18. The vice chair noted that while the BC Supreme Court rules contemplated in *Preferred Steel* do not apply to the tribunal, the decision provided helpful guidance. The vice chair concluded as follows:

> Here, I find the overall delay is excessive, and I have found there is no reasonable explanation for it. The prejudice to the respondents is that with the addition of Ms. Pope, the respondents will have to address significant damages claims and remedies unique to Ms. Pope that they would not have to address with Mr. Pope as the sole applicant. In all of the circumstances, I find the most just and convenient result is that this already protracted tribunal proceeding continue without the addition of Ms. Pope as an applicant.

19. Mr. Pope asks that I reverse this decision by adding Mrs. Pope as co-applicant. Mr. Pope submits that the vice chair applied the wrong test in her preliminary decision. I do not agree. I find that Vice Chair Lopez considered and applied the tribunal's statutory mandate, and acknowledged that while *Preferred Steel* is not determinative in a tribunal dispute, it provides helpful guidance. I accept and rely on the vice chair's reasoning, and refuse Mr. Pope's request to overturn the preliminary decision.

20. Mr. Pope provided extensive evidence and submissions to support his argument that Mrs. Pope's diagnosis of post-traumatic stress disorder was aggravated by noise from SL15. As Mrs. Pope is not a party to this dispute, I make no findings about her medical condition and the effect of noise from SL15 on it.

Strata Objection to Submissions

21. The strata objected to the final reply submissions from both Mr. Pope and Ms. Yas, on the basis that are not responsive to the previous submissions, and instead include new or expanded arguments that should have been included in the parties' original submissions. The strata says these submissions should be struck, or given little weight.

22. In the context of the tribunal's statutory mandate, which includes flexibility, I find it is most appropriate to allow the submissions. Given the outcome of this dispute, I find it is not necessary to give the strata an opportunity for further submissions in order to preserve procedural fairness.

Claim for Remediation to SL12

23. In the Dispute Notice and initial submissions, Mr. Pope sought an order that the respondents pay for remedial work to improve the acoustics of SL12, as recommended by a company called Acoustics West Installations Inc. (Acoustics West). According to a July 28, 2016 email, this work involved removing the existing ceiling drywall in SL12 and replacing it with different materials. In his reply submission, Mr. Pope has waived this claim, but repeats his request for an order to replace the SL15 flooring.

24. Based on this waiver, I do not order remedial work to SL12, and dismiss this claim.

ISSUES

25. The issues in this dispute are:

    a. Is the Yas family bound by a 2010 alteration agreement?

b. Did the Yas family breach the applicable bylaws about flooring and noise?

c. Were the strata's actions in dealing with the flooring alterations and noise complaints significantly unfair to Mr. Pope?

d. Is Mr. Pope entitled to any of the following remedies?

   i. An order that Ms. Yas comply with the alteration agreement and the bylaws about flooring, noise, and nuisance.

   ii. An order that the respondents fix acoustical problems with the SL15 flooring.

   iii. $70,000 in damages.

e. Is Mr. Pope entitled to reimbursement of dispute-related expenses, including legal fees and engineering reports?

f. Is the strata entitled to reimbursement of legal fees and disbursements?

EVIDENCE AND ANALYSIS

26. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, Mr. Pope must prove their claims on a balance of probabilities.

27. The strata was created in 1971, under the former *Strata Titles Act* and exists under the Strata Property Act (SPA). It consists of a 9-storey tower building, with 25 residential strata lots.

28. The evidence shows that the Popes bought SL12 in May 2008. The Yas family bought SL15 in April 2013.

2010 Alteration Agreement

29. In November 2010, the M family, previous owners of SL15 applied to the strata council for permission to renovate, including replacing the existing carpets with

hardwood flooring. In their November 23, 2010 application letter, the Ms wrote that the replacement floors "will be premium-quality engineered maple hardwood, with a sound supressing underlay having a rating of over 60." The application letter also said the Ms wished to install stone tile over the existing linoleum in the bathrooms and laundry room.

30. The Ms also filled out and signed a form prepared by the strata, setting out an agreement between them and the strata about the new floor covering (alteration agreement). The alteration agreement is dated November 23, 2010, and says that the Ms understood that the strata's approval to installed alternative floor covering was conditional upon the following terms (my summary):

    a. Installation in accordance with manufacturer's instructions, by a trade approved by manufacturer.

    b. If there are complaints that are validated by the strata council and determined by a majority of the council members to be as a result of the change in floor covering, you will within 30 days of being so advised in writing…install carpet over the flooring, remove the flooring, or take such steps so as to alleviate the problem.

    c. Prior to the issuance for a Form "F" pertaining to the sale of your unit, you will submit an agreement to the strata council (signed by the purchaser) to the effect that he/she is aware of and agrees to be bound by section (b) of this agreement.

31. The Ms and the strata signed an agreement granting permission for the flooring changes, dated December 5, 2010. This agreement said the Ms would indemnify the strata for claims under the *Builder's Lien Act,* structural or building damage, maintenance, and replacement.

32. Ms. Yas provided a copy of an invoice showing that the Ms purchased new flooring and underlay that was delivered to SL15 on January 10, 2011. Based on this evidence, I accept that the delivered flooring was installed shortly thereafter.

33. Ms. Yas says she may not be not bound by the November 2010 alteration agreement. She says there is no "privity of contract", since she and her family never agreed to comply with the alteration agreement, as contemplated in term (c).

34. The strata says the Yas family is bound by the alteration agreement, because it was attached to the Form B information certificate provided at the time they purchased SL15. I disagree. The evidence before me confirms that the alteration agreement was attached to the Form B, so the Yas family was aware of it. However, there is nothing in the alteration agreement that says it automatically applies to a subsequent purchaser of SL15 without a written acknowledgement that they "agree to be bound" by it.

35. Mr. Pope says, and the strata does not dispute, that the strata issued the Form F certificate prior to the Yas' purchase of SL15 without requiring any written affirmation of the alteration agreement. For that reason, and based on the wording of the alteration agreement, I find it is not binding on the Yas family. If the agreement had said it automatically applied to subsequent purchasers, my finding would likely be different.

36. Mr. Pope says the strata's decision to issue the Form F certificate without written acceptance of the alteration agreement from the Yas family was significantly unfair to him. I address this argument later in this decision, in the section on significant unfairness.

Strata Bylaws

37. Although the Yas family is not bound by the alteration agreement, it is bound by the strata's bylaws.

38. Mr. Pope's noise complaints about SL15 began in 2013 and 2014. At that time, bylaws filed at the Land Title Office (LTO) on October 31, 2006 were in effect. The consolidated bylaws filed in 2006 consist of the Standard Bylaws from the *Strata Property Act* (SPA) with some variations and additions.

39. I find that the 2006 bylaws are applicable to this dispute. The strata filed an amendment about smoking in December 2013, which is not relevant. The strata filed more extensive amendments in October 2017 and December 2018. Some of these amendments are about flooring alterations. Since these amendments were not voted on or filed until after this dispute was initiated, I find they are not determinative of the issues in this dispute.

40. The 2006 bylaws relevant to this dispute are bylaws 3(1), 5(3), and 5(5).

Do the SL15 floors breach the strata's flooring bylaws?

41. Bylaw 5(3) says that all replacement flooring shall be subject to the approval of the council, and that approval is not to be unreasonably withheld provided that the noise and vibration-suppressing capabilities of the proposed flooring meets or exceeds that of the flooring it is to replace.

42. I find this bylaw does not apply directly to the Yas family, as they neither requested nor received approval to install the flooring at issue in this dispute. Mr. Pope submits that the strata was significantly unfair in approving the M family's flooring change request in 2010, and I address that argument below in the section on significant unfairness.

43. Bylaw 5(5) says that an owner wishing to alter a strata lot, including the flooring, must apply in writing to the council with a description of the proposed alterations and appropriate design drawings and specifications. Bylaw 5(5) further states that alterations which do not conform to the application submitted to the council for approval will be deemed to contravene the bylaw and will be subject to removal.

44. I find that the second part of bylaw 5(5) does apply to the Yas family, as it is an ongoing requirement not limited to the specific owners who changed the flooring (unlike the alteration agreement).

45. Mr. Pope and the strata suggest that the SL15 flooring is a contravention of bylaw 5(5) because the Ms wrote in their November 23, 2010 application letter that their new flooring would have "a sound supressing underlay having a rating of over 60."

Testing arranged by the strata, and conducted by an engineer from BAP Acoustics on May 16, 2018 showed that the flooring installed in SL15 has an AIIC (Apparent Impact Insulation Class) rating of 52. Thus, Mr. Pope and the strata argue that the actual flooring in SL15 does not conform to the M family's November 2019 application to council.

46. The January 10, 2011 invoice provided by Ms. Yas shows that the Ms installed "From the Forest Maple Sunset" flooring, and "Floor Muffler 100" high density underlay. The product specifications sheet provided by Ms. Yas says the underlay has an IIC (Impact Insulation Class) rating of 74.

47. I provide a more detailed analysis of the BAP testing results, and the weight I place on them, below. In general, I find the fact that the underlay itself has an IIC rating of 74 does not contradict BAP's finding that the SL15 floors had an actual rating of AIIC 52. There is little evidence before me about how the underlay and flooring were installed, and how their combination, in the actual location of SL15, would perform. Also, there is no contrary expert evidence before me indicating that BAP's findings were incorrect. Rather, another engineer, Mr. Wakefield, reviewed the BAP test results, and offered no contrary opinion or critique of the testing methods or results. For these reasons, I put significant weight on BAP's reported findings.

48. Based on this evidence, I find that the flooring underlay in SL15 does conform to the November 23, 2010 alteration application, which only promised a rating "over 60". It is clear that the 60 rating applies to the IIC rating, rather than the AIIC rating. I therefore find the SL15 flooring is not a contravention of bylaw 5(5).

Did the Yas family breach the noise bylaw?

49. Bylaw 3(1) says, in part, that an owner, tenant, occupant, or visitor must not use a strata lot in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.

50. Mr. Pope says he experienced no unreasonable noise from SL15 before April 2013. He first complained about noise from SL15 on April 9, 2013, shortly before the Yas family purchased it. In his April 9, 2013 letter to the strata council, Mr. Pope wrote that when the Ms stayed in SL15 there would be "the usual minor noises such as radio or a dropped item", but there must have been a realtor who showed SL15 the previous week. He said the "clip clopping of her high heels were way in excess of 'normal' noise."

51. The Yas family purchased SL15 later in April 2013. Mr. Pope wrote to the strata council about noise from SL15 again on August 13, 2013, but then on August 17, 2013 wrote that there had been "great abatement" of the noise, and the council did not need to intervene.

52. The evidence shows that the Popes corresponded with council and the Yas family about their noise complaints on a fairly regular basis from September 2013 onwards. For example, the Popes emailed Ms. Yas about noise on September 7, 2013 and October 19, 2013. On September 23, 2013, the Popes again wrote to the council reporting noise from SL15, and asking council to take action "as swiftly as possible".

53. The next letter to the council is dated March 10, 2014, and concludes, "the matter must be remedied and you are the only body which has the power to resolve it."

54. On March 18, 2014, the Popes wrote to council that the noises were worse on the weekends, but occurred every day from midnight until about 3:30 am. They suggested the council investigate by entering SL15 and replicating the complained-of noises, with another council member in SL12 to judge whether the noises were excessive.

55. On March 21, 2014, Mr. Pope reported that the noises from SL15 had again abated to a tolerable level, so there were no longer the same level of noises to investigate. He asked that the strata postpone their investigation.

56. The evidence shows that Mr. Pope updated the council that he was attempting to work with the Yas family to reach a satisfactory arrangement about the noise. He asked the council to “keep the complaint file open until normalcy has been achieved for a reasonable period.”

57. Mr. Pope wrote to the property manager about the noise on January 7 and 10, 2015. In August 2015, he provided council with statutory declarations from 3 witnesses, attesting to hearing loud noises from SL12. These witnesses gave the following evidence:

    a. SD, a family friend, said he had stayed in SL12 on numerous occasions, and heard unreasonable noise he believes came from SL15 (unit 602). SD said the noises started in April 2013, and continued after that. The noises included loud bangs in the evening, extremely disturbing crashes, and other identified noises. SD said at times the noises were so loud they could not hear dialogue on television. SD said he stayed in SL12 for 10 days in November 2014, and was wakened by noises from SL15 on 7 or 8 occasions. SD said the noise sounded like someone propelling themselves on an office chair for 1 to 2 meters. SD also said that in evenings during that period, they heard at least 4 very heavy thuds from SL15 that sounded as if a 100 kilogram man had jumped from counter height. SD said they visited SL12 almost every weekend in 2014, and usually heard the same kind of thumps, bangs, and crashes, plus a bouncing noise.

    b. LC, who worked for the Popes, testified that while in SL12 she heard noises from SL15 that she thought were excessive. She said she is usually in SL12 in the afternoons, and on most occasions when she heard noises from SL15, they were well above what she believed were the normal sounds of living in a neighbouring condo. She described instances in August 2013 and November 2014, and said she identified the sounds as coming from SL15.

    c. PC said he used to dine with the Popes in SL12 until the end of 2013, when they found the disturbances from the loud noises from SL15 were upsetting to the extent that they began to dine in restaurants.

58. The Popes continued to complain in writing to council about noise from SL15 until June 2016. As I will discuss later in this decision, the strata took various steps, including holding a hearing, engaging a mediator, and fining the Yas family for noise bylaw breaches. However, I find the evidence before me, including the "noise reports" provided by the Pope's lawyer to the strata, establish that the noise continued.

59. Ms. Yas' evidence confirms that she was aware of the Pope's ongoing noise complaints. She denies that she or her family made the noises, and says they did not come from SL15.

60. Having carefully weighed the evidence before me, I find that it establishes that the Yas family breached bylaw 3(1) on an intermittent but ongoing basis from August 2013 onwards by causing noise that unreasonably interfered with Mr. Pope's right to use and enjoy SL12.

61. Ms. Yas says they placed area rugs and used felt pads on furniture, so the alleged noises could not have come from SL15. However, I find the evidence she provided does not confirm she actually took these actions before this dispute was filed in November 2016. While she provided photos showing rugs, they do not indicate when the rugs were purchased or placed. The photos also do not establish what amount of the floor surface was covered, or that the rugs were thick enough to prevent significant noise. For these reasons, I find Ms. Yas' assertion that felt pads and area rugs were used does not establish that the noises came from SL15.

62. Ms. Yas also says there were times when the noises could not have come from SL15, or when the Popes admitted to being mistaken about the source of a particular noise. However, I find that the evidence, taken as a whole, establishes that SL15 was the primary source of loud noises from August 2013 to June 2016.

63. In making this finding, I place significant weight on the statements of witnesses SD, LC, and PC. Each of these witnesses visited SL12 on multiple occasions, and identified the source of the noise as being SL15. Ms. Yas says the sources of the noises identified by the witnesses has not been verified, and could have come

from other strata lots, common areas, or outdoors. However, I note that the strata plan shows that SL12 and SL15 have essentially identical footprints, and that SL15 is directly above SL12. Based on that fact, I am persuaded by the witness' statements that they believed the noises they heard came from SL15. It is possible to occasionally mistake the source of a sound. However, I find it would be unreasonable to conclude that this was consistently so for the Popes and all 3 witnesses, each of whom reported hearing different types on noises on different visits, all of which they specifically said came from SL15, directly above.

64. I also note that LC said she worked for other owners in the strata, and that she found the noises in SL12 unusual. I find this persuasive because it indicates that LC was familiar with the building, and was therefore less likely than a casual visitor to mistake the source of a sound. Similarly, SD said he stayed overnight in SL12 at different times, including for a 10-day period. For the same reasons as LC, I find SD was familiar with SL12, and unlikely to repeatedly mistake the source of loud sounds.

65. I also find that the acoustic testing results in evidence strongly support that the Yas family caused the noises complained of by the Popes.

66. In a June 20, 2017 report, Clair Wakefield, an engineer engaged by the Popes for an expert opinion, said a "tap test" was the most appropriate way to test for the noise-suppressing capabilities of the SL15 floor.

67. Mr. Wakefield and a later report from BAP Acoustics (BAP) dated May 4, 2018 explain that a tap test involves placing a "tapping" machine on the floor surface of the upper room, and measuring the level of transmitted noise in the room below. The results are expressed as an "Apparent Impact Insulation Class" (AIIC) rating, which indicates the degree to which the floor reduces noise from sources such as footsteps, dropped objects, or dragged furniture.

68. On May 16, 2018, following a preliminary order from the tribunal, BAP's engineer, Mark Gaudet, performed the tap test on the SL15 floors. As previously noted, he reported that the result was an AIIC rating of 52. Mr. Gaudet said that while the BC

Building Code has no requirement for impact noise, it recommends that floors without carpet achieve an impact insulation class of 55. He said a carpeted concrete slab floor typically yields impact insulation above IIC 70 (better than IIC 50). Mr. Gaudet also said high quality underlay plus a hard flooring such as wood laminate, engineered hardwood, or ceramic tile can produce results in the range of AIIC 55 to 65, depending on the floor assembly and site conditions.

69. In his June 20, 2017 report, Mr. Wakefield explained that the difference between AIIC and IIC is the word "apparent", which is used to indicate the test was performed in the field rather than in a laboratory setting.

70. Mr. Wakefield reviewed BAP's testing report, and provided an August 28, 2018 report in response. He did not dispute the testing methodology or results reported by BAP. He also agreed that the BC Building Code does not have a minimum requirement for impact isolation class, but stated its recommendation of IIC 55 without finish flooring means that the Building Code "considers AIIC 55 to be the minimum degree of impact noise insulation considered appropriate for party floors."

71. Thus, the uncontested evidence from BAP, and confirmed by Mr. Wakefield, is that the SL15 floor is rated at AIIC 52, which does not meet the minimum recommendations of the Building Code.

72. The evidence shows that both Mr. Wakefield and Mr. Gaudet are professional engineers, with specialized expertise in acoustics. The reports are thorough and well-explained, and are consistent with each other. Also, Mr. Gaudet visited SL15, and inspected the floor. For these reasons, I accept that the BAP report and Mr. Wakefield's report are expert evidence, as contemplated in tribunal rule 8.3. For the same reasons, I find the reports from BAP and Mr. Wakefield persuasive, and place significant weight on them.

73. Ms. Yas submits that Mr. Wakefield's evidence is not independent or objective, because Mr. Pope's lawyer framed the questions in order to get particular answers, and he based his opinion on background information provided by the

Popes without visiting the building. I am not persuaded by these arguments. First, Mr. Wakefield's evidence is mostly about how sound transmission works on floors, and what factors are important in elevating or suppressing sound and vibration. He also gives related opinions about what testing was most appropriate. I therefore find that Mr. Wakefield's evidence was not dependent on one set of background facts, or on a site visit. Also, as explained above, the opinions of Mr. Gaudet and Mr. Wakefield are consistent. Finally, it was open to Ms. Yas to provide another expert report, to rebut those of Mr. Gaudet and Mr. Wakefield. For these reasons, I do not accept her arguments that I should give less weight to Mr. Wakefield's report.

74. I note that BAP performed another test, called a "pink noise test", on June 19, 2019. The pink test involved placing a speaker in SL15, to transmit a high level of noise. The sound levels were then measured in SL15 and SL12, to determine how much sound reduction occurred between the 2 spaces. The result is measured as an "Apparent Sound Transmission Class" (ASTC).

75. BAP's pink noise test results showed that the SL15 floor had an ASTC rating of 56. BAP reported that the Building Code requires that a dwelling have a minimum STC rating of 50. Therefore, the SL15 floor met the Building Code requirement for sound reduction. However, I find that the pink test result is not determinative of the issues in this dispute. That is because Mr. Wakefield explained in his reports that the tap test and the pink noise test are tests for different things. He said that the tap test measures how much impact noises such as footsteps and dropped objects are transmitted, while the pink test measures the transmission of airborne sound like voices or television.

76. Therefore, the fact that the SL15 floor met the requirement for airborne noise is not determinative. The SL15 floor did not meet the minimum recommendation for impact noise, and that is the type of noise primarily documented in the Pope's noise complaints, and in the witness statements.

77. In summary, the strata plan shows that SL15 is directly above SL12, with essentially the same floor plan. The noise complaints from the Popes, and the statements of their witnesses, establish a pattern of loud, intermittent, impact-type noises coming from SL15. Mr. Gaudet's uncontested test results prove that the SL15 floor, rated at AIIC 52, does not meet the minimum recommendations of the Building Code for impact noise insulation. Taken together, I find that the combined effect of all of this evidence establishes that the Yas family breached bylaw 3(1) by causing noise that unreasonably interfered with Mr. Pope's ability to use and enjoy SL12.

78. The evidence before me does not establish the specific cause of the noises from SL15. However, I find that since the tap test results show that the floor did not meet even minimum building code recommendations for impact noise isolation, even fairly typical activities of daily living were audible in SL12. As stated on page 2 of Mr. Wakefield's July 26, 2016 report, ratings of AIIC 60 or more are required to avoid significant issues with footstep noise transmission. AIIC 52, the tested rating of the SL15 floors, was well below this level. Given the low rating, and when the noises occurred at night, as documented in the Pope's written complaints, I find that this constituted an unreasonable interference with use and enjoyment of SL12.

79. In making this finding, I note that Ms. Yas was aware of the Pope's noise concerns from August 2013 onwards, but did not take steps to establish whether there were actual sound transmission problems coming from SL15. She simply denied making noise. However, I find that the May 2018 tap test establishes that, in retrospect, Ms. Yas' position was unreasonable. Her floors were not sufficiently noise-suppressing for a residential setting. Any steps Ms. Yas took to mitigate the noise (such as placing area rugs) were not sufficient, as they did not abate the noise.

80. The evidence shows that in late September 2013, shortly after the noise complaints began, the council requested that Ms. Yas allow an expert paid by the strata to confirm what soundproofing was laid under the SL15. Ms. Yas refused. In May 22, 2015, Ms. Yas refused to allow a lawyer hired by the strata to investigate

the noise problem to visit SL15 as part of the investigation. In July 2015, the council asked Ms. Yas if she would agree to sound testing, but she did not agree. In an August 12, 2015 email to council, she said she would only allow entry into SL15 for sound testing if the strata agreed to several conditions, including that the Yas family would not be responsible for any testing costs, that other strata lot's floors would be tested, and that they would not install wall-to-wall carpeting.

81. I find that since Ms. Yas knew about the Pope's ongoing noise complaints, these refusals, and the conditions set out in the August 12, 2015 email, were unreasonable. Ms. Yas had notice that the Popes found the noise from SL15 a significant and ongoing disturbance. However, she did not cooperate with the strata's attempts to investigate, or obtain alternate test results on her own. She refused the strata's May 2016 offer to replace the SL15 flooring at it own cost.

82. I have found above that there was a pattern of intermittent but significant noise from SL15. I find that this noise, coupled with the Yas family's failure to mitigate the noise, verify the sound-suppression of her floors, or cooperate with the strata's investigation or remediation efforts, means that they unreasonably interfered with the Popes' right to use and enjoy SL12, and therefore breached bylaw 3(1).

83. I will discuss the appropriate remedies for this breach later in this decision.

Were the strata's actions in dealing with the flooring alterations and noise complaints significantly unfair to Mr. Pope?

84. Mr. Pope says the following actions of the strata were significantly unfair:

    a. The strata approved flooring for SL15 based on an underlay rated at "over 60" for sound suppression, which did not meet the bylaw requirement at that time.

    b. The strata failed to confirm post-installation that the SL15 flooring complied with the approval conditions.

    c. The strata failed to meaningfully enforce its bylaws, including by linking the SL15 noise to the flooring.

d. The strata provided a Form F certificate without receiving confirmation that the Yas family was bound by the alteration agreement.

85. Under CRTA section 123(2), the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. This is similar to the Supreme Court's power under SPA section 164.

86. The BC Court of Appeal considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated by the BC Supreme Court in *The Owners, Strata Plan LMS 1721 v. Watson,* 2018 BCSC 164 at paragraph 28:

a. What is or was the expectation of the affected owner or tenant?

b. Was that expectation on the part of the owner or tenant objectively reasonable?

c. If so, was that expectation violated by an action that was significantly unfair?

87. I will now apply this test to the 4 alleged instances of significant unfairness.

Strata Approved Flooring Contrary to Bylaws

88. Mr. Pope says that when the strata approved the Ms flooring alteration application in 2010, the bylaws required a rating of 70 or over. The Ms only promised that their flooring would have a rating of over 60, and the strata did not insist that the Ms meet the higher standard before granting approval.

89. The applicable bylaws did not specifically say that a rating of 70 or over was required. Rather, bylaw 5(3) said that replacement flooring was subject to the approval of the council, and that approval was not to be unreasonably withheld provided that the noise and vibration-suppressing capabilities of the proposed flooring meets or exceeds that of the flooring it is to replace. Mr. Wakefield's July 28, 2016 report says that carpet and underlay typically provides AIIC ratings from

70 to 85. Mr. Gaudet gave a similar opinion, stating in his May 25, 2018 report that carpeted concrete slab floors typically rate above IIC 70.

90. Based on this expert evidence, I accept that the rating of over 60 promised by the Ms would necessarily meet the requirements of bylaw 5(3). However, the evidence produced by Ms. Yas, and which I have found was not contradicted, is that the underlay used by the Ms had an IIC rating of 74.

91. Therefore, even if the strata had insisted on an IIC rating of 70, which is what Mr. Pope says bylaw 5(3) required, the Ms underlay would have met that standard. Thus, I conclude that any potential unfairness that occurred is moot, as it did not result in any actual affect.

Post-Installation Inspection

92. Mr. Pope also argues that the strata was significantly unfair to him, the downstairs owner, by failing to confirm post-installation that the SL15 floors complied with the approval conditions. However, for the reasons explained above, I find the floor did, at least technically, meet the approval conditions. By using an underlay rated at 74, the Ms met both bylaw 5(3) and the approval conditions.

93. The May 2018 testing showed that the actual AIIC rating of the SL15 floor is 52, which is less than required under bylaw 5(3), and less than what was promised in the M family's alteration request. However, the evidence before me suggests that the only way to establish the actual rating of the floor (as opposed to the rating on the underlay specification sheet) was to do a tap test. This is a very involved test, administered by an engineer, and requiring specialized equipment and analysis of results. Absent a bylaw requiring the strata or owner to conduct a tap test, which does not exist here. I find it would be unreasonable to expect the strata to engage such testing after every renovation, and there was nothing about the SL15 renovation at the time that suggested unusual intervention was required.

94. I note that there is nothing in the evidence before me that explains why the SL15 floor scored so low on the tap test. Mr. Gaudet confirmed that he inspected the

floor, and he said there was no suspicion that the quality of the floor installation contributed to the poor impact insulation performance.

95. For these reasons, I find the lack of post-renovation inspection was not unfair.

Failure to Meaningfully Enforce Bylaws

96. Mr. Pope says the strata failed to meaningfully enforce its bylaws, including by refusing to link the SL15 noise to the flooring.

97. I do not agree. I find that the strata made numerous attempts to enforce its bylaws, including by warning and fining the Yas family. However, I find that Mr. Pope failed to sufficiently cooperate with the strata's attempts to investigate the noise complaints, to the extent that I find he cannot successfully establish that the strata's actions were significantly unfair.

98. For example, on March 10, 2014, the Popes wrote to the strata, asking for a remedy for the noise issue. The strata replied on March 14, stating that for council to act, it needed to "verify the nuisance". The letter asked the Popes for their cooperation in allowing council representatives to access their strata lot on 4 occasions over the next 14 days. The letter said that based on the Pope's descriptions of the noise, these visits would occur on 2 evenings, 1 weekend, and 1 afternoon. The letter asked for written consent for the plan.

99. The Popes did not consent. Rather, on March 18, 2014 they replied that the strata should not conduct a "nuisance" investigation, but instead should enforce the alteration agreement. The Popes wrote that agreeing to the "4 visit" procedure could not guarantee the noises would occur, and would not protect their interests. The Popes instead suggested that a council member enter 602 and attempt to replicate the noises.

100. The strata repeated its request that the Popes agree to the "4 visit" procedure, and set a deadline of March 28 for response. On March 24, 2014 the Popes asked the strata to delay the verification, as the noise had abated to a tolerable level. In a March 28 letter, the Popes described the strata's plan as futile, and "doomed to

failure". They did not consent to it. The strata replied on April 8, 2014 stating that the Popes had "effectively tied council's hands".

101. Following further noise complaints from the Popes, on May 16, 2015 the strata wrote to them and said that while council took the allegations seriously, there was presently a lack of any objective evidence upon which the council could make a reasoned decision. The email said the Pope's complaints were subjective, and it was crucial to obtain objective evidence. The strata requested access to both strata lots to "conduct its own informal sound tests". The email said if these tests were inconclusive, professional acoustic testing might be required to resolve the issues. The email also asked the Popes to use a digital recorder to record the sounds from SL15. The email concluded that after the objective evidence was received, it would be considered by the council and a final decision would be made.

102. Despite this request, the Popes did not provide the recordings requested by council. The strata repeated its request for objective evidence on July 24, 2015. In an email to the Pope's lawyer on January 8, 2016, the strata's (then) lawyer wrote that despite the council's numerous requests, the Popes had failed or refused to provide sound or video recordings, decibel level readings, or any other completely objective evidence to support their accusations.

103. I find that it would have been reasonable in the circumstances for the Popes to agree to the visits the strata proposed in March 2014, and provide the recordings requested in May 2015. I find the strata's requirement of objective evidence was justified, given that the noise complaints were subjective, unverified, and disputed by the Yas family. The tap test ultimately provided the most thorough evidence about the impact noise control of the SL15 floors. The Yas family did not provide access for that testing until ordered by the tribunal in May 2018. However, given that the complaint was about noise, I find it would have been possible for the Popes to provide an audio recording of alleged noises to support their complaints. There is no expert evidence before me establishing that such evidence would be impossible to collect, or to assess for decibel levels if properly obtained.

104. Finally, as described above, the strata was also largely unable to obtain the Yas family's cooperation to investigate the noises and potential acoustic problems with the floor.

105. For these reasons, I find the strata enforced its bylaws to a reasonable extent in all the circumstances. In particular, I find that until the time of the BAP tap test in May 2018, Mr. Pope failed to provide the objective evidence reasonably requested by the strata in order to verify his noise complaints. I therefore conclude the strata's actions in enforcing its bylaws were not significantly unfair.

Form F Certificate

106. As explained previously, the alteration agreement says that prior to the issuance of a Form "F" pertaining to the sale SL15, the Ms would submit an agreement to the strata council (signed by the purchaser) to the effect that he/she was aware of and agreed to be bound by section (b) of the alteration agreement.

107. The Form F is a certificate of payment issued by the strata upon request by an owner or purchaser. It indicates whether the strata lot owner owes money to the strata corporation, and if so, whether there are satisfactory arrangements for payment. The LTO requires a completed Form F before transferring a strata lot to a new owner.

108. Mr. Pope says that despite this agreement, when the Ms sold SL15 to the Yas family in 2013, the strata issued the Form F without requiring written confirmation that the Yas family agreed to be bound by alteration agreement. The strata does not particularly dispute this, although it says the alteration agreement was attached to the Form B.

109. It appears that the strata's action in issuing the Form F without the required confirmation may have been an oversight. However it happened, I find that this action was not significantly unfair. I agree that as the owner directly below SL15, Mr. Pope had a reasonable expectation that the noise protections set out in the alteration agreement would be enforced. However, it is likely that the strata had no

authority to refuse to provide a Form F. SPA section 115 says the strata must issue a Form F within 1 week of a request to show if money was owing to it or if satisfactory arrangements for payment of a debt had been made. Since there was apparently no debt relating to SL15, the strata had no authority to refuse to issue the Form F regardless of whether or not they were provided with confirmation that the Yas family agreed to be bound by the alteration agreement.

110. Even if I found there was significant unfairness by the strata, for the same reasons that I found above that the strata had sufficiently attempted to enforce its bylaws, I would find that Mr. Pope is not entitled to any remedy.

111. The alteration agreement provision Mr. Pope seeks to rely on says that if there are complaints that are validated by the strata council and determined by a majority of the council members to be as a result of the change in floor covering, the SL15 owner will, within 30 days, install carpet over the flooring, remove the flooring, or otherwise alleviate the problem.

112. In order to enforce this provision, even if the Yas family had been bound by it, the strata would have required evidence that the noise complaints were "as a result of the change in floor covering." As noted in the strata's correspondence, the council had significant concerns that the Pope's noise complaints were not a result of the change in SL15's flooring, since the flooring was changed sometime around 2011, and there were no complaints until April 2013. I find that this raised a legitimate question about the cause of the complaints. For example, was it because the new owners had a different lifestyle than the Ms? That would not, on its face, be a complaint resulting from the flooring change.

113. As explained above, Mr. Pope was unwilling to provide objective evidence, such as sound recordings, to verify his noise complaints. Thus, I find the strata did not have sufficient information to reasonably conclude that the reported noises were a result of the flooring change in SL15. This means that it would not have been able to compel the Yas family to take action under the alteration agreement, even if they were bound by it.

114. For these reasons, I conclude the strata's actions regarding the Form F were not significantly unfair.

115. I dismiss Mr. Pope's claims of significant unfairness by the strata.

Remedies

116. As I have dismissed Mr. Pope's claims of significant unfairness against the strata, I find the strata is not responsible for any damages or reimbursements.

117. Mr. Pope seeks an order that Ms. Yas comply with the alteration agreement and the bylaws about flooring, noise, and nuisance.

118. As I have found Ms. Yas was not a party to the alteration agreement, and is not bound by it, I do not order her to comply with it.

119. Ms. Yas is already required to comply with all strata bylaws. I make no additional order that she do so, as it would have no practical effect.

Change of SL15 Flooring

120. Mr. Pope also seeks an order that the respondents remedy the acoustic problems with the SL15 flooring.

121. Given my finding that noise from SL15 created an ongoing, unreasonable interference with Mr. Pope's use and enjoyment of SL12, and given that the tap test results show the SL15 flooring does not meet minimum building code recommendations, I order that Ms. Yas replace the wood flooring at her own expense. As the non-wood flooring was not tested, I do not order it replaced, but I note that Ms. Yas may be liable for further noise bylaw violations in the future.

122. Based on the expert reports in evidence, I order that the replacement flooring must be carpet with underlay. I find this is justified because according to the engineers reports, other forms of flooring are unlikely to deliver a similar level of impact noise insulation.

123. I also order that the strata must approve the replacement flooring before it is installed, and that Ms. Yas must allow the strata access to her strata lot to verify that the flooring changes are complete.

Damages for Nuisance

124. Mr. Pope claims $70,000 in damages for nuisance. This includes general damages as well as special damages, including living out expenses, market devaluation to SL15, and interest.

125. I find that Mr. Pope has established a claim in nuisance. The tort of nuisance in a strata setting is an unreasonable continuing or repeated interference with a person's enjoyment and use of their strata lot (see *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462).

126. As explained above, I have found that the intermittent but significant noise from SL15, coupled with the Yas family's failure to mitigate the noise, verify the sound-suppression of her floors, or cooperate with the strata's investigation or remediation efforts, means that they unreasonably interfered with the Pope's right to use and enjoy SL12. I therefore find that the Yas family is liable in nuisance.

127. Mr. Pope claims $35,000 in general damages for loss of use and enjoyment of SL12. He relies on the BC Supreme Court's decision in *Shields v. Strata Plan VIS 5030*, 2017 BCSC 1522. In that case, strata lot owners were awarded $15,000 in damages for 6 or 7 years of loss of enjoyment and inconvenience arising out of discoloured water that the strata failed to fix. In that case, the court acknowledge that the strata lot was usable, and the objective impact of the nuisance was minimal.

128. I find that cases on noise nuisance are more similar to the case before me, and therefore their reasoning on general damages is more persuasive. In *Suzuki v. Munroe*, 2009 BCSC 1403, the BC Supreme Court awarded $6,000 in damages for nuisance when a neighbour's air conditioner caused undue noise that prevented the petitioners from using their house. In *Chen v. The Owners, Strata*

Plan NW 2265, 2017 BCCRT 113*,* the tribunal awarded the owner $4,000 in damages for loss of enjoyment of her strata lot over a 2.5 year period due to noise nuisance which impacted the owner's ability to sleep.

129. In *Torok v. Amstutz et al,* 2019 BCCRT 386, I ordered $4,000 in damages for noise nuisance caused by an air conditioner. In *Bartos et al v. The Owners, Strata Plan BCS 2797,* 2019 BCCRT 1040, I ordered $8,000 in damages for 3.3 years of excess noise caused by an elevator, which also affected the owners' ability to sleep in their strata lot.

130. Although these tribunal decisions are not binding precedents, I find their reasoning is applicable here, and apply it.

131. As explained above, I find that Mr. Pope's claim for nuisance was not established until the BAP tap test on May 16, 2018. Given this period established nuisance, the impact of the nuisance, and the other facts of this dispute, I find the appropriate amount of general damages is $8,000. I order the Yas family to pay that amount.

132. Mr. Pope is entitled to pre-judgement interest on this amount under the *Court Order Interest Act* (COIA). I find this interest is payable from the date of the tap test on May 16, 2018. I calculate pre-judgment interest to be $211.89.

Special Damages

133. Mr. Pope claims $63,703.03 in special damages arising from the noise nuisance. These damages are made up of expenses related to a second property the Popes own. The expenses include property transfer taxes and legal costs incurred to buy the property, property taxes, utility bills, insurance, and mileage incurred to travel there from his principle residence (SL12).

134. I find Mr. Pope is not entitled to any of these claimed special damages. He says he bought the second property on October 23, 2013, to escape the effects of ongoing unreasonable noise from SL15. By October 23, 2013, Mr. Pope had only complained to the council about noise from SL15 on 2 occasions since the Yas

family moved in (and only once before that). He wrote to the strata about noise on August 13, 2013, but then 4 days later he wrote that there had been a "great abatement" of the noise, so the council did not need to intervene. On September 23, 2013, he wrote to the council about the noise again. There is no further written record of a complaint until March 2014.

135. I find that this evidence does not support the conclusion that Mr. Pope bought this second property in order to escape noise from SL15, or that this was a reasonable solution after only 1 non-revoked complaint. Rather, I find that the evidence supports the conclusion that the second property was purchased for other reasons, such as a vacation home. I therefore do not order any special damages related to the second property, including mileage to get there.

136. Mr. Pope also claims damages for market devaluation of SL12. I do not order any compensation for market devaluation, as I find this claim was not proved. There is no evidence before me about the market value of SL12 at any time, such as a real estate appraisal. There is also no evidence that the Popes attempted to sell SL12, so I find that any potential loss was unrealized.

137. For these reasons, I dismiss Mr. Pope's claims for special damages.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

138. As Mr. Pope was partially successful in this dispute, in accordance with the CRTA and the tribunal's rules I find it reasonable that Ms. Yas must reimburse half of his tribunal fees, which equals $112.50.

Engineering Reports

139. Mr. Pope claims reimbursement of $5,165.14 for Mr. Wakefield's engineering reports. Tribunal rule 9.4(2)(c) says the tribunal may require one party to pay another for reasonable expenses and charges the tribunal considers directly related to the conduct of the tribunal process.

140. I find that the fees for Mr. Wakefield's expert reports meet this test. I find they were reasonable to obtain in the circumstances, and I found them helpful in deciding the dispute. I therefore order the Yas family to reimburse Mr. Pope $5,165.14 for these reports.

141. The strata claims reimbursement for BAP's engineering reports, in the amount of $5,775.00. Again, I found these reports helpful in deciding the dispute. They were ordered by the tribunal, and I note that in preliminary submissions to the tribunal Ms. Yas agreed that both the tap test and the pink test should be performed. As I have found Ms. Yas liable for a bylaw breach, I find it is appropriate in this case that she bear the cost of these reports. I therefore order her to reimburse the strata $5,775.00 for the BAP reports.

Legal Fees

142. Mr. Pope and the strata claim reimbursement of legal fees and disbursements. In final submissions, Mr. Pope claimed $43,956.35, and the strata claimed $25,714.24.

143. Tribunal rule 9.4(3) says that except in extraordinary circumstances, the tribunal will not order one party to pay another party's legal fees in a strata property dispute.

144. Mr. Pope also says the dispute is extraordinary because of the strata's inappropriate conduct prior to and during the dispute. His position is set out in a detailed submission, and I will not repeat it here. Much of it is set out in my reasons on significant unfairness, and I note that I have dismissed that claim.

145. The strata says the dispute was not extraordinary for Mr. Pope or the Yas family, but it was extraordinary for the strata because it was caught in between 2 neighbours, and put to extreme legal expense due to the 2 uncooperative parties. The strata says the extraordinary circumstances included a BC Supreme Court application and preliminary applications before tribunal to obtain orders to conduct testing.

146. While this dispute had a particularly large amount of evidence and submissions, and several preliminary applications, I find it was not extraordinary as contemplated in tribunal rule 9.4(3). The fact that the parties were particularly entrenched in their positions is not extraordinary, in the context of litigation.

147. Both the strata and Mr. Pope seek an order analogous to special costs, as discussed in *Parfitt et al v. The Owners, Strata Plan VR 416 et al,* 2019 BCCRT 330. Special costs are an unusual order, in which a court will order a party to pay all or part of another party's legal costs. An award of special costs is only made in exceptional circumstances, and is intended to chastise a party for reprehensible, scandalous or outrageous conduct.

148. The leading case in British Columbia with respect to special costs is *Garcia v. Crestbrook Forest Industries Ltd.*, [1994] B.C.J. No. 2486 (BCCA). The Court of Appeal said that special costs should be ordered against a party when their conduct in the litigation was reprehensible, in the sense of deserving of reproof or blame.

149. In *Hirji v. Owners Strata Corporation VR44*, 2016 BCSC 548, the court provided detailed reasons on special costs in the context of a strata dispute. The court noted prior decisions and confirmed the "reprehensible" test from *Garcia*. The court stated in paragraph 5 of *Hirji* that an award of special costs should only be made in exceptional circumstances where an element of deterrence or punishment is necessary because of the reprehensible conduct. The court cited the prior authority of *Westsea Construction*, which says the court must exercise restraint in awarding special costs, and not all forms of misconduct meet the threshold of "reprehensible". The court said reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant.

150. I find that the factors considered in *Hirji* are not applicable here. I do not find there was conduct that rose to the level of reprehensible, and necessitating deterrence or punishment.

151. For these reasons, I dismiss both the strata's and Mr. Pope's claims for reimbursement of legal fees.

152. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to applicant strata lot owner, Mr. Pope.

ORDERS

153. I order that within 90 days of this decision:

    a. Ms. Yas must replace the wood flooring in SL15 at her own expense. I order that the replacement flooring must be carpet with underlay. The strata must approve the replacement flooring, consistent with its bylaws, before it is installed. After the installation Ms. Yas must allow the strata access to her strata lot to verify that the flooring changes are complete.

    b. The Yas family must pay Mr. Pope $8,000 in general damages for nuisance, plus $211.89 in pre-judgment interest, $112.50 for tribunal fees, and $5,165.14 for Mr. Wakefield's reports. This totals $13,489.53.[1]

    c. The Yas family must reimburse the strata $5,775.00 for the BAP reports.

154. Mr. Pope is entitled to post-judgement interest under the COIA, as applicable.

155. Mr. Pope's remaining claims are dismissed.

156. The strata's claim for legal fees is dismissed.

157. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British

[1] Amendment notes: This amended decision is issued under the authority of CRTA sections 64 (b) and (c), in order to correct inadvertent and arithmetical errors in the original decision. These amendments, which are shown in underlined text, do not change the substance of the original decision.

Columbia (BCSC). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCSC order.

158. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the CRTA, Mr. Pope can enforce this final decision by filing a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCPC order.

Kate Campbell, Vice Chair