



Civil Resolution Tribunal

Date Issued: November 29, 2019

File: ST-2017-00071

Type: Strata

Civil Resolution Tribunal

Indexed as: *Yas v. Pope*, 2019 BCCRT 1349

BETWEEN:

Arlene Yas and Ninele Jackson

APPLICANTS

AND:

Derek Pope, Bhavananda Pope, and The Owners, Strata Plan 30

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This decision addresses the second 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 this second

dispute is essentially a counterclaim to the first, the named parties are not identical in the 2 disputes.

2. At the time this dispute was filed, the applicants, Arlene Yas and Ninele Jackson, owned strata lot 15 (SL15) in the respondent strata corporation, The Owners, Strata Plan 30 (strata). Ninele Jackson was Arlene Yas' sister, and is now deceased.
3. The other respondents, Derek Pope and Bhavananda Pope (the Popes), are joint owners of strata lot 12 (SL12) in the strata.
4. Arlene Yas (Ms. Yas) is self-represented in this dispute. The Popes are represented by a lawyer, Cora Wilson. The strata is also represented by a lawyer, Tim Wedge.
5. SL12 is located on the fourth floor of the tower-style strata building, directly below SL15. As described in my decision on dispute ST-2016-00470, Mr. Pope has alleged that the applicants' change to hard surface flooring in SL15 caused unreasonable noise in SL12.
6. Ms. Yas says that the Popes' "persistent and multiple" noise complaints have interfered with the her and her family's ability to use and enjoy SL15, and has caused them to become anxious and fearful of further complaints. She says the Popes' complaints are baseless. Ms. Yas also says the strata council has worked to convince other owners of their "guilt", and she has become alienated in the building. Ms. Yas requests the following remedies:
 - a. An order that the strata rescind bylaw violation fines.
 - b. An order that the Popes stop making noise bylaw complaints against her, and that the strata not accept these complaints.
 - c. \$200,000.00 in compensation for legal fees, suffering, loss of a business opportunity, and dispute-related expenses.
7. The Popes say their noise complaints are not baseless, so the orders requested by the applicant should be refused. The Popes say the applicants refused to permit

acoustical testing in SL15, and the applicants did not advise the Popes of any noise mitigation attempts such as rugs, furniture felt pads, or quiet appliances.

8. The strata denies the applicants' claims. It says it followed the proper procedure for investigating noise complaints, and found that 3 of the complaints were valid breaches of the strata's bylaws. The strata says it is not liable for any damages or compensation to the applicants, and that it has no jurisdiction to refuse to accept or investigate bylaw complaints.
9. For the reasons set out below, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

10. 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.
11. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am 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.

ISSUES

14. The issues in this dispute are:
- a. Must the strata reverse the applicants' noise bylaw violation fines?
 - b. Should the tribunal order that the Popes stop making noise bylaw complaints against Ms. Yas? Should the tribunal order that the strata not accept these complaints?
 - c. Is Ms. Yas entitled to compensation for suffering, loss of a business opportunity, legal fees, and dispute-related expenses?

EVIDENCE AND ANALYSIS

15. 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, the applicant must prove their claims on a balance of probabilities.
16. All of the relevant facts and evidence are set out in my first decision on these related disputes, ST-2016-00470. I will not repeat them here, but rely on them. I also rely on the findings of fact from that decision.

Must the strata reverse noise bylaw violation fines?

17. The evidence shows that the strata fined the Yas family \$350 for a series of noise bylaw violations.
18. In ST-2016-00470, I found that the Yas family violated strata bylaw 3(1), which 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.
19. Specifically, I found 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).

20. The applicants do not argue that the strata failed to give proper notice and a right to respond to the bylaw contravention complaints against them, as required in section 135 of the *Strata Property Act* (SPA). Rather, they argue that they did not violate bylaw 3(1).
21. Since I have found that the Yas family did breach bylaw 3(1), for the reasons set out in ST-2016-00470, I find it is not appropriate to reverse the bylaw fines.
22. I therefore dismiss this claim.

Further Noise Bylaw Complaints

23. Ms. Yas requests an order that the Popes must stop making noise bylaw complaints against her. She also requests an order that the strata not accept or deal with such complaints. She submits that the Popes have harassed the Yas family.
24. The tribunal generally does not make "prospective orders", or orders about things that are in the future and have not yet happened. Also, I find it would be contrary to the SPA to make the orders Ms. Yas seeks. Under the SPA, an owner or tenant is entitled to make a complaint about a bylaw breach, and the strata is required to enforce its bylaws. This includes a duty to investigate alleged breaches.
25. Finally, based on my reasons in ST-2016-00470, I find that Ms. Yas' position that she was harassed or unfairly treated by the Popes or the strata is not supported by the evidence. I have found the noise complaints against SL15 were not "baseless", as Ms. Yas asserts. Rather, there was a pattern of noise from SL15 that unreasonably interfered with the Popes' use and enjoyment of their strata lot.
26. For these reasons, I dismiss the applicants' claims that the Popes not make noise complaints, and that the strata refuse such complaints.

Damages

27. The applicants claim \$200,000.00 in compensation for suffering, loss of a business opportunity, legal fees, and dispute-related expenses.
28. I find that the applicants are not entitled to compensation for suffering, as they have not established their claim of mistreatment by the Popes or the strata. The applicants objected to the manner and frequency with which the Popes complained about noise. However, given my finding that the noise from SL15 was an unreasonable interference, I find that this objection does not justify an award of damages.
29. Also, I would not order damages for a lost business opportunity in any event, as the applicants provided almost no evidence to support that claim, such as information about their incomes and business activities.

Dispute-Related Expenses

30. As the applicants were not successful in this dispute, or in ST-2016-00470, I dismiss their claim for reimbursement of legal fees and dispute-related expenses. Under tribunal rule 9.4(1), dispute-related expenses are generally only ordered in favour of the successful party in a dispute.
31. Also, under 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. As explained in ST-2016-00470, I do not find the circumstances of this dispute to be extraordinary.

TRIBUNAL FEES AND EXPENSES

32. The applicants were unsuccessful in this dispute. In accordance with the CRTA and the tribunal's rules I find they are not entitled to reimbursement of tribunal fees
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the applicants.

ORDER

34. The applicants' claims, and this dispute, are dismissed.

Kate Campbell, Vice Chair