



# Civil Resolution Tribunal

Date Issued: April 29, 2020

File: ST-2019-008769

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS 2409 v. Cao*, 2020 BCCRT 466

**BETWEEN:**

The Owners, Strata Plan EPS 2409

**APPLICANT**

**AND:**

JING CAO

**RESPONDENT**

**AND:**

The Owners, Strata Plan EPS 2409

**RESPONDENT BY COUNTERCLAIM**

---

## REASONS FOR DECISION

---

Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The respondent Jing Cao owns strata lot 62 (unit 909) in the applicant strata corporation The Owners Strata Plan EPS 2409 (strata).
2. The strata says Ms. Cao
  - a. caused repeated noise disturbances by pounding on her floors,
  - b. falsely claimed a strata council member was climbing up the building to break into her apartment,
  - c. threw food and garbage out her window on the balcony below,
  - d. brought false complaints that unit 1007 owners were smoking, doing drugs, playing video games and banging on their floors.
3. The strata asks for an order that Ms. Cao pay:
  - a. \$600 in fines for noise and damage bylaw violations,
  - b. \$0.75 for a letter charge back, and
  - c. \$1,200 for the cost of cleaning the stains on the building wall and balcony caused by the food and debris she threw out her window.
4. The strata also asks for an order requiring Ms. Cao to stop
  - a. sending “harassing and repetitive email” to strata council and property management email addresses, and
  - b. intentionally causing a noise disturbance to neighbouring units.
5. Ms. Cao denies the strata’s claims. Ms. Cao counterclaims, saying the strata has failed to properly investigate her complaints and enforce its Bylaws.

6. Ms. Cao says that the resident of the unit above hers (unit 1007) smokes, causing smoke to enter her unit. Ms. Cao says the smoke causes her breathing problems and other symptoms. Ms. Cao also says the resident above her unit makes undue noise.
7. In her counterclaim, Ms. Cao asks for an order that the strata:
  - a. fully investigate her smoking complaints, including by engaging an air quality specialist, and enforce the non-smoking bylaw,
  - b. fully investigate her noise complaints, including by conducting noise transfer testing between unit 901 and the units upstairs and below,
  - c. provide her with copies of any other smoking complaints that the strata has received since January 1, 2019,
  - d. cease making defamatory comments about her mental health to other residents, the police or “BC Health Services”, and stop calling them to her unit without her consent,
  - e. stop strata council member BH from emailing her directly,
  - f. stop BH from coming to her unit without other council members present,
  - g. produce any video surveillance and fob records that the strata relies on it in its claims against her, and
  - h. remove the fines on her strata lot account.
8. The strata says Ms. Cao is not entitled to the relief sought in her counterclaim. The strata says it has investigated her complaints diligently and that they have not been substantiated by the evidence. The strata asks that I dismiss Ms. Cao’s counterclaim.
9. The strata is represented by strata council member WH. The owner is self-represented.

## 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. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. A dispute that involves some issues that are outside the tribunal's jurisdiction may be amended to remove those issues.
13. Ms. Cao asks for an order that the strata cease making defamatory comments about her mental health to other residents. Defamation claims are outside the tribunal's jurisdiction and so I refuse to resolve them under section 10 of the CRTA: see *Eastman v. The Owners*, Strata Plan PGS 217, 2019 BCCRT 655 at paragraph 21.
14. 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.
15. 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**

16. The issues in this dispute are whether the strata is entitled to the relief it seeks in its claim and whether Ms. Cao is entitled to the relief she seeks in her counterclaim. I have detailed the multiple remedies sought by each party in my Introduction above.

## **EVIDENCE AND ANALYSIS**

17. In general, the applicant strata bears the burden of proof on a balance of probabilities. Ms. Cao bears the same burden of proof in her counterclaim.

18. While I have reviewed all of the evidence and submissions provided, I have only referred to the evidence and submissions necessary to the extent I find necessary to explain my decision.

### ***Bylaws***

19. The applicable bylaws were filed by the strata at the Land Title Office (LTO) on October 24, 2014. There was also a February 2019 amendment introducing a non-smoking bylaw that applies to this dispute.

20. The relevant Bylaws are as follows:

21. Bylaw 2.3 an owner may not use a strata lot in a way that causes a nuisance, causes “unreasonable or repetitive noise”, or other otherwise unreasonably interferes with another person’s right to use and enjoy their strata lot.

a. Bylaw 2.3(2) says that an owner must not cause damage to common property (CP) or limited common property (LCP), which includes the exterior of a building and balconies.

b. Bylaw 4.1 sets a maximum fine of \$200 per bylaw contravention and allows the strata to charge expenses it incurs in enforcing the bylaws against the owner.

- c. Bylaw 4.2 says that if an activity or lack of activity that constitutes a bylaw contravention continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.
  - d. Bylaw 7.1 prohibits undue traffic or noise in a strata lot between 10:30 p.m. and 7:00 a.m. and prohibits occupants from using sound equipment in any way that causes a disturbance or interferes with the comfort of another occupant.
  - e. Bylaw 7.1(19) prohibits smoking of any kind or vaping by anyone in a strata lot, or on CP or LCP.
22. On July 5, 2018 the strata wrote to Ms. Cao about a noise bylaw violation for playing loud music on the balcony using a portable speaker.
23. On September 4, 2018 the strata wrote to Ms. Cao about playing loud music on the balcony again on September 2, 2018, indicating that their warnings had been ignored. The strata fined her \$200.
24. On February 12, 2019, the strata passed a  $\frac{3}{4}$  vote resolution approving a bylaw to prohibit smoking in a strata lot, on CP or LCP.
25. In February and March 2019 Ms. Cao emailed strata council with repeated complaints of cigarette smoke she thought was coming from unit 1007.
26. Starting in March 2019 and through to January 2020 the strata wrote to the owners of several units in the strata about smoking bylaw violations. The strata also issued some fines for smoking bylaw violations during this time frame.
27. On March 12, 2019 the strata property manager wrote to Ms. Cao to say that her concerns would be considered by strata council. The strata noted that council had sent out multiple letters to different units to try to find the source of the alleged smoke, but without results to that date.

28. On March 19, 2019 sent the owners of unit 1007 a warning that they must cease violating the smoking bylaw, if they were doing so, immediately. The letter asked for their response to the complaint. The unit 1007 owners denied smoking.
29. Members of strata council attended at Ms. Cao's unit to try to determine if a cigarette smell was present, but she refused them access.
30. In investigating Ms. Cao's smoke complaints in early 2019, the strata collected statements from the unit 1007 residents, and reviewed their fob activity to see if they were at home at the times identified in Ms. Cao's smoke complaint.
31. Strata council then arranged a hearing at Ms. Cao's request which she did not attend.
32. On March 26, 2019 then strata council member JA said that his unit was below unit 1007 and that, despite being a non-smoker, he had also found cigarette butts and ashes on his balcony on occasion. JA expressed his wish to find the source of the smoke and to assist as permitted given his council role.
33. Based on the available evidence, strata council found the complaint of cigarette smoke was unsubstantiated. Ms. Cao was displeased with this outcome.
34. On July 24, 2019 strata council held a further hearing and Ms. Cao attended. In the course of the hearing, strata council member JA told Ms. Cao he lived below her (unit 809). After the hearing, the strata council member began to hear loud noises from Ms. Cao's suite, often after 11 pm or around 4:30 a.m. I find that these loud repetitive noises are proven by the audio recordings the strata filed in evidence.
35. On July 26, 2019 Ms. Cao's then counsel wrote to the strata asking that it engage an air quality specialist or another independent expert to investigate the source of smoke ingress to her unit, if other investigative techniques failed.
36. On September 6, 2019, JA found the noises from above his unit to be particularly loud and long-lasting. JA reported them to the concierge. The concierge went and spoke to Ms. Cao. After the concierge left, Ms. Cao proceeded to loudly stomp on

her floor. JA documented a long and persistent history of noise from Ms. Cao's unit since then, which did not abate despite the strata fining Ms. Cao.

37. In August 2019, Ms. Cao emailed the strata with reporting a log of 10 instances of marijuana or tobacco smoke and 1 instance of loud "video game noise" observed from August 16-19, 2019, that she suspected was coming from the unit above.
38. In mid-September 2019, JA reported seeing Ms. Cao throw food onto his balcony.
39. On September 19, 2019, the strata also wrote to Ms. Cao warning her that it had received multiple noise complaints about her stomping, dropping items on the floor repeatedly and moving her furniture late at night. The strata explained that this behaviour was a violation of Bylaw 7. The strata wrote that a fine of up to \$200 could be levied against her. The strata offered Ms. Cao an opportunity to respond, including an opportunity for a hearing.
40. On September 22, 2019 Ms. Cao emailed the strata to report a suspected attempted break in at her unit. She reported seeing another strata resident try to get into her apartment including hitting her door several times. She requested camera footage from 1:35-1:45 for that morning.
41. On September 26, 2019 the police attended at unit 909 to speak with Ms. Cao after someone called to express concerns for her mental wellbeing. Based on the police report, the police reported no mental health issues but felt the situation was a disagreement between owners about noise and smoking in the building.
42. On October 3, 2019 Ms. Cao again emailed the strata to say that someone knocked at her door and then "ran away like a coward." She requested video footage for October 3, 2019 11:20-11:30 and explained that she felt this was the person who had attempted to break into her apartment numerous times.
43. On October 22, 2019, the strata wrote to Ms. Cao to say it had imposed a \$200 fine against her strata lot account for a noise violation on October 20, 2019 from 7:00 pm-12:30 a.m. The letter offered Ms. Cao the opportunity to provide a written response or attend a strata council meeting under section 135 of the SPA.



44. The strata imposed fines of \$200 on October 4 and 23, 2019, for a total of \$400 in fines, for noise bylaw violations.
45. On October 25, 2019, the strata wrote to Ms. Cao to say that the strata had decided to fine her \$200 for noise bylaw violations from August 31, 2019 to September 29, 2019. The letter offered Ms. Cao an opportunity to respond in writing and/or attend a strata council meeting in person.
46. On October 27, 2019, Ms. Cao emailed the strata to say that the person living below her was banging on her living room windows at 9:45 pm.
47. On October 28, 2019 Ms. Cao wrote to the strata to say that her tea cup fell on the floor making one noise. Then, she says she heard a loud bang on her window. She wrote that she was fearful that another resident would call police or break into her apartment and hurt her.
48. On October 30, 2019 the strata wrote to Ms. Cao demanding payment of \$904.56 for what appear to be arrears for the food and noise fines, and the unpaid special levy.
49. In February 2020, JA provided the tribunal with a log of noise disturbances caused by Ms. Cao in late January and early February.
50. Strata council member WH provided a statement that he had investigated Ms. Cao's smoking and noise complaints by conducting random patrols of the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors of the building paying attention to noise, vibration and smell. WH wrote that he visited the unit 1007 occupants, without advance notice and found no smell of smoke in their unit. Contrary to Ms. Cao's assertion that a smoke extractor machine was in unit 1007, WH did not observe such a machine when he visited there.
51. JS, the property management company contact for the strata, reported from January 2019 to mid-August 2019 she received about 1,628 emails of complaint from Ms. Cao regarding unit 1007. JS warned the unit 1007 owners not to smoke. The unit 1007 owner denied that anyone was smoking in their unit or on their balcony. No evidence of any smoking was discovered despite the strata's

investigation. On many of the occasions when Ms. Cao said there was smoke, the unit 1007 occupants were either at work or out of the country.

52. On November 7, 2019, the strata wrote to Ms. Cao about a complaint of noise through the night from another resident, KA. The strata indicated a bylaw violation letter would be sent and that she could expect another \$200 fine.
53. On November 13, 2019, the strata wrote to Ms. Cao about a noise bylaw violation for November 19, 2019 at 2:00 a.m. The strata said it fined her \$200 as a “continued contravention”.
54. On November 13, 2019, the strata wrote to Ms. Cao about a noise bylaw violation for November 7, 2019 at 2:00 a.m. The strata said it fined her \$200 as a “continued contravention”.
55. On November 26, 2019, the strata wrote to Ms. Cao about a complaint of a repeated knocking noise coming from her unit on November 17, 2019 at about 7:43 p.m. The strata indicated it had fined her \$200 and offered an opportunity for her to respond or appear in person before strata council.
56. In November 2019, Ms. Cao wrote a letter to unit 810 owner asking them to contact her if they continued to hear noise that they thought was coming from her unit.
57. Strata council president EN wrote a statement to say that he attended at JA’s unit (809) in late summer 2019. There was no noise in unit 809 for about an hour but, as EN went to leave at around 9 am, an intentional, repetitive noise started above the living room area. JA later informed EN that the noise had stopped at about 1 am. I find EN’s evidence to be further confirmation that Ms. Cao was causing repetitive and unreasonable noise that interfered with another person’s use and enjoyment of their strata lot.
58. On January 8, 2020, strata council, through its president WH, emailed Ms. Cao to inform her that council had located a smoker on her floor violating the smoking bylaw. WH wrote that the smoker had been fined. Strata council indicated that the

smoker was not in unit 1007. WH asked that Ms. Cao stop pounding or knocking on her floor, which would only cause more fines to be issued against her.

59. On January 17, 2020 the strata wrote to Ms. Cao about noise bylaw violations reported on January 10 and 11, 2010. The strata said it had imposed a \$200 fine for “continued contravention.”
60. On January 26, 2020, a person TM wrote an email to Ms. Cao saying that she had been a tenant in unit 909 but, due to the pervasive smell of smoke she was going to leave the lease agreement early, effective January 29, 2020.
61. On February 5, 2020, the strata wrote to Ms. Cao about noise bylaw violations reported on January 31 to February 3, 2020. The strata said it had imposed a \$200 fine for “continued contravention.”
62. Based on a statement filed in evidence by the applicant, another tenant, AV, signed a one-year lease on October 7, 2019, also left early on October 20, 2019 due to the smell of smoke.
63. The strata contests the authenticity and content of the evidence from AV and TM. Given my findings below, I find it unnecessary to decide whether their evidence should be given any weight.

### ***The SPA and Bylaw Violations***

64. SPA section 135(1) says a strata cannot impose a fine against a person for a bylaw contravention unless it has
  - a. received a complaint about the contravention,
  - b. given the owner the particulars of the complaint in writing, and
  - c. given the owner a reasonable opportunity to respond to the complaint (including a hearing if requested).
65. SPA section 135(2) requires the strata to given notice in writing of a decision to fine a person for a bylaw contravention, as soon as feasible.

66. The strata must strictly follow the SPA section 135 requirements before fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

### ***\$200 Fine for Allegedly Throwing Food from Balcony***

67. I will now address the \$200 fine the strata imposed on Ms. Cao for allegedly throwing food from her balcony in September 2019.

68. The strata provided photographs of food debris on the unit 809 balcony. Based on those photographs and the schematics of the unit 809 and 909 windows and exteriors, I find that, in September 2019, Ms. Cao either dropped or threw food or organic waste from her balcony onto the unit 809 patio below.

69. On September 19, 2019 the strata wrote to Ms. Cao warning her that it had received a complaint that she had thrown food onto the balcony of unit 809. The strata enclosed photographs of the food splatter. The strata explained that this behaviour was a violation of Bylaws 2.3 and 7 regarding use of property and garbage disposal. The strata indicated that a fine of up to \$200 could be levied against Ms. Cao. The strata wrote that if it did not hear from her by October 8, 2019, it would impose a fine. The strata offered Ms. Cao an opportunity to respond, including at a hearing. I find that the strata's September 19, 2019 letter complies with section 135(1) of the SPA.

70. According to Ms. Cao's strata lot account ledger, on October 9, 2019 the strata imposed a \$200 fine on Ms. Cao for throwing food off her balcony.

71. I find that the strata did not comply with the SPA section 135(2) requirement to provide written notice of its decision to fine Ms. Cao. That is, the SPA required the strata to decide to fine her, and then send her a letter explaining that a \$200 fine was being imposed. Based on the evidence, the strata did not send a written notice of the decision to fine before it applied the fine to her account.

72. As a result, I order that the strata remove the \$200 fine from Ms. Cao's strata lot account. Under *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750 it is possible to cure a procedural defect under section 135(2).

### ***Cost of Cleaning Food off Building***

73. The strata also seeks an order that Ms. Cao pay \$1,200 for the cost of cleaning the stains caused by the food debris dropped from her balcony. I dismiss this claim because the strata did not prove that it paid any amount to for cleaning, such as by providing a quote and receipt.

### ***Noise Bylaw Violations***

74. The strata seeks payment from Ms. Cao for two-\$200 fines for noise violations imposed on October 4, 2019 and October 23, 2019.

75. I find that the strata must remove the October 23, 2019 \$200 fine from Ms. Cao's account because it failed to comply with section 135(2) of the SPA, which requires that the strata provide the owner with written notice of its decision to apply a fine. Notice must be given before the fine can be applied. Because the strata applied the fine on October 23, 2019 but sent its section 135(2) notice letter on October 25, 2019, I find the fine was imposed contrary to the SPA.

76. I find that the strata's September 19, 2019 letter regarding noise complies with section 135(1) of the *Strata Property Act* (SPA). I find that this letter was sent about the \$200 fine imposed on October 4, 2019.

77. However, for the October 4, 2019 \$200 fine, I was not provided with any strata letter that satisfied section 135(2) of the SPA. I find that the strata must also remove this fine from Ms. Cao's strata lot account.

78. In several letters to Ms. Cao, the strata said it would impose fines for noise violations that were continuing contraventions. The courts have held that noise violations are not continuous or continuing contraventions when observed on different dates. Rather, they are distinct contraventions for which a fine may be imposed if section 135 SPA requirements are met in each instance: see *Strata Plan VR 2000 v. Grabarczyk*, 2006 BCSC 1960 at paragraph 43, appeal dismissed at 2007 BCCA 295.

### ***Charge Back for “Official Letters”***

79. The strata seeks an order to have Ms. Cao pay a \$0.75 charge it applied to her strata lot account on August 13, 2019. The description on the strata lot account reads “Charge Back Official Letters”.
80. While the Bylaws allow the strata to charge expenses the strata incurs in enforcing the Bylaws to an owner, the strata did not explain what this \$0.75 covered, nor why the “official letters” could not be sent by email. The strata also did not prove the expense through a receipt. I therefore find that the strata must remove this charge from Ms. Cao’s strata lot account.

### ***Injunctive Relief Claims***

81. The strata seeks an order requiring Ms. Cao to stop sending “harassing and repetitive” emails to strata council and property managers. While I decline to make such an order, Ms. Cao is entitled to email the strata council if she has legitimate concerns but should refrain from rude or repetitive emails in doing so. I make this finding based on the analysis in *The Owners, Strata Plan VR 766 v. Hayatshahi*, 2020 BCCRT 451 at paragraph 28. The Vice Chair cited *Tenten v. The Owners Strata Plan VR113 2019 BCCRT 1427* and noted that there is no legal requirement for the strata to respond to every item of correspondence from an owner. Though these decisions are non-binding, I rely on them for the proposition that the strata need only respond to owner communications where necessary to fulfil their responsibilities.
82. I decline to grant the strata request for an order requiring Ms. Cao to desist from intentionally causing a noise disturbance to other units. The Bylaws already require Ms. Cao to desist from intentionally noisy behaviour, and the strata can impose fines to enforce the Bylaws.

## ***Counterclaim – Smoking Complaints***

83. Ms. Cao seeks an order that the strata fully investigate her smoking complaints, including by engaging an air quality specialist. She also asks for an order requiring the strata to enforce the non-smoking bylaw.
84. Under section 26 of the SPA the strata has an obligation to enforce its bylaws, which implicitly requires it to take steps to investigate complaints of a bylaw contravention.
85. Section 129 of the SPA gives the strata several bylaw enforcement options including choosing to impose fines. I find the options available to the strata are discretionary given the use of the word “may” in section 129.
86. I find that the strata conducted a reasonable and responsive investigation into Ms. Cao’s complaint regarding smoking, and that it enforced its non-smoking Bylaw. I make this finding because:
- a. strata council members attended at Ms. Cao’s unit to investigate her complaint of the smell of smoke,
  - b. a strata council member conducted random spot checks at unit 1007, and did not find anyone smoking,
  - c. strata council collected statements from the unit 1007 occupants, in which they denied smoking and identified themselves as non-smokers,
  - d. a strata council member conducted random patrols on three floors of the building to try to identify any smoking,
  - e. the strata council issued bylaw warnings and fines to several units for smoking violations between February 2019 and March 2020, and
  - f. when strata council identified a smoker on Ms. Cao’s floor, the smoker was warned and fined and Ms. Cao was informed.

87. Ms. Cao raised concerns about her own health and mentioned the decision in *Leary v. Strata Plan VR1001*, 2106 BCHRT in which the BC Human Rights tribunal addressed a strata's duty to accommodate a person's disability in a second-hand smoke scenario. Ms. Cao filed a copy of a Ventolin inhaler prescription but did not file any expert evidence that proved she has a disability. I therefore find it unnecessary to consider *Leary* further here.
88. I decline to order the relief sought by Ms. Cao because the strata has conducted a reasonable investigation of her smoking complaints and enforced its bylaw as required under the SPA.

### ***Counterclaim – Document and File Production***

89. Ms. Cao seeks an order requiring the strata to provide her with copies of any other smoking complaints that the strata has received since January 1, 2019.
90. I adopt the tribunal's analysis from paragraphs 72-75 of *The Owners, Strata Plan NW 2243 v. Cole*, 2018 BCCRT 823 which, though not binding on me, I find is directly applicable to this issue.
91. Section 35(2)(k) of the SPA and section 4.1 of the *Strata Property Regulation* require the strata to retain copies of all correspondence sent or received by the strata and council for at least 2 years. I find that letters (or emails) of complaint fall within that section. Section 36 of the SPA sets out that a strata must, upon receiving a request from an owner, provide copies of records referred to in section 35, within 2 weeks of the request, except for requests of bylaws and rules, which must be provided within 1 week. I find that the strata must provide copies of the complaint letters to Ms. Cao. Section 36 does not provide for refusal or redaction of the documents.
92. The *Personal Information Protection Act* (PIPA) sets out how private organizations, such as the strata, can collect, use or disclose an individual's personal information. Section 18(1)(o) says that an organization may only disclose personal information



about an individual, without consent, if the disclosure is required or authorized by law.

93. The tribunal has previously considered this issue and determined that a strata may not refuse to provide copies of requested complaint letters on the grounds that they contain private information (see *Mason v. The Owners, Strata Plan BCS 4338*, 2017 BCCRT 47, and *Bertuzzi v. The Owners, Strata Plan 350*, 2017 BCCRT 6). The tribunal members reasoned that, as the information was required to be produced by law (section 36 of the SPA) then any personal information therein could be disclosed under section 18(1)(o) of PIPA.
94. Although prior tribunal decisions are not binding on me, they provide guidance on statutory interpretation and promote consistent decision making. I adopt the reasoning in the tribunal decisions noted above and apply it here. I find that the strata is required to provide unredacted copies of any smoking complaint letters from January 1, 2019 to present to Ms. Cao, pursuant to SPA section 36.
95. Ms. Cao also seeks an order that the strata produce any video surveillance and fob records that the strata relies on it in its claims against her. I refuse to grant this order. Fob records and video recordings are not included in SPA section 35. In any event, the strata already produced fob records, video and audio recordings that were relevant and filed them as evidence in this proceeding.

### ***Counterclaim – Noise Complaints***

96. Ms. Cao seeks an order requiring the strata to fully investigate her noise complaints, including by conducting noise transfer testing between unit 901 and the units upstairs and below. I decline to order this relief because:
- a. there is a significant amount of reliable evidence that Ms. Cao has violated the noise bylaw repeatedly,
  - b. Ms. Cao raised concern about “video game noises” in August 2019, but did not formally complain after that date about noise, and

- c. the strata has conducted a reasonable investigation into her complaints, including by conducting floor checks for noise.

### ***Counterclaim – Injunctive Relief***

97. Ms. Cao also seeks several orders requiring someone to do something or refrain from doing something. I address these in turn below.
98. Ms. Cao asks for an order that the strata be prevented from calling the police or “BC Health Services”, and that the strata stop calling them without her consent.
99. There is no requirement for the strata to have a person’s consent before calling emergency or health services, and so I decline to make that order.
100. Ms. Cao also asks for an order to stop BH from emailing her or attending at her unit without other council members present. I find that BH and WH are the same person. The SPA does not allow an owner to dictate which council members can be involved in strata council duties. I therefore refuse to grant this order.

### **TRIBUNAL FEES, EXPENSES**

101. Under section 49 of the CRTA, 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 not to follow that general rule. Despite some orders against the strata, I find that the parties had divided success in this dispute. I order each party to bear their own tribunal fees and dispute-related expenses, if any.
102. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

### **ORDERS**

103. I order that, within 30 days of this decision,

- a. the strata provide Ms. Cao with copies of all smoking bylaw complaint letters received from January 1, 2019 to present, and
- b. the strata remove the following fines from Ms. Cao's strata lot account:
  - i. \$200 added on October 4, 2019 re: noise,
  - ii. \$200 added on October 9, 2019 re: food, and
  - iii. \$200 added on October 23, 2019 re: noise.

104. I dismiss the remaining claims and counterclaims.

105. 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 Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

---

Julie K. Gibson, Tribunal Member