



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Truong v. The Owners, Strata Plan VIS3380*, 2021 BCCRT 46

B E T W E E N :

TRU HON TRUONG

APPLICANT

A N D :

The Owners, Strata Plan VIS3380

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Tru Hon Truong, co-owns a strata lot (unit 410) on the top floor of the respondent strata corporation, The Owners, Strata Plan VIS3380 (strata). Mr. Truong claims that the HVAC units on the strata's roof cause unreasonable noise and

vibration in unit 410. Mr. Truong asks for an order that the strata move the HVAC units to a different location.

2. The strata says that the noise and vibration that bothers Mr. Truong is not caused by the HVAC units. The strata also says that any noise and vibration from the HVAC units is minimal.
3. Mr. Truong is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
5. The CRT 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.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. Under section 123 of the CRTA and the CRT 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 CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

- a. Do the HVAC units on the strata's roof cause unreasonable noise and vibration in unit 410?
- b. If so, what remedy is appropriate?

BACKGROUND

9. In a civil claim such as this, Mr. Truong as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata consists of 102 strata lots in 2 4-story buildings in Victoria. There are 2 large commercial strata lots on the ground floor of the Mr. Truong's building. The remaining strata lots are residential. As mentioned above, unit 410 is on the top floor.
11. There are several large HVAC units on the strata's roof. The strata says that they only service the commercial strata lots, which Mr. Truong does not dispute. The strata says that the HVAC units are common assets as defined by the *Strata Property Act* (SPA). Based on the definition in section 1 of the SPA, I agree.
12. The parties disagree about whether 1 or 2 HVAC units are directly above unit 410, but I find that nothing turns on this detail.
13. The strata filed consolidated bylaws in the Land Title Office on June 19, 2018. I find that there is no bylaw that requires the strata to prevent common assets from causing unreasonable noise or vibration. That said, I find that the common law of nuisance applies because the HVAC units are common assets and are located on the strata's common property.
14. In the strata context, a nuisance is an unreasonable interference with an owner's use and enjoyment of their property: *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502. Whether or not an interference, such as noise or vibration, is unreasonable depends on several factors, such as its nature, severity, duration and frequency. The interference must also be intolerable to an ordinary

person, not just to the person who complains about it: *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

15. Applied to this dispute, I find that the law of nuisance means that the strata must ensure that the HVAC units do not unreasonably interfere with Mr. Truong's use and enjoyment of unit 410. To succeed, Mr. Truong must prove that an ordinary person would find the noise and vibration intolerable.

EVIDENCE AND ANALYSIS

Do the HVAC units on the strata's roof cause unreasonable noise and vibration in unit 410?

16. Mr. Truong says that he noticed the noise and vibrations as soon as he moved into unit 410 in 2017. There is no evidence about when he first complained to the strata. There is no evidence that the strata attempted to reduce the noise and vibration from the HVAC units until 2020.
17. The strata says that it has taken Mr. Truong's complaints seriously and has tried several things to mitigate any noise or vibration from the HVAC units.
18. The strata says that when Mr. Truong bought unit 410, the HVAC units were always on during the summer months. It is unclear whether they were always on at cooler times of year. In any event, in response to Mr. Truong's complaints, the installed a programmable thermostat so that the HVAC units would only run between 8:00 and 5:00 pm, Monday to Friday. It is unclear when the strata took this step.
19. Reducing the operating time of the HVAC system did not address Mr. Truong's concerns as he continued to complain about the noise and vibration. The next thing the strata tried was putting dense foam underneath the HVAC units at the recommendation of its mechanical contractor, West Bay Mechanical. It is unclear when the strata did this, but according to the photographs in evidence the foam was still in place on July 15, 2020. The foam, apparently, did not help either.

20. West Bay next recommended replacing the foam with large rubber tires. The strata also put heavy tires on top of the HVAC units, presumably to attempt to stabilize them. The strata appears to have added the tires in July 2020. Again, these measures did not address Mr. Truong's concerns.
21. The strata held a hearing with Mr. Truong about the noise and vibration on July 22, 2020. According to the minutes, Mr. Truong insisted that the HVAC units were running day and night. Following the hearing, the strata directed the resident manager to cut power to the HVAC units for 2 nights to make sure that they were off. According to the strata, Mr. Truong did not report a reduction in noise or vibration on those nights.
22. By this time, it is apparent from the evidence that the strata was skeptical that the HVAC units were causing the noise and vibration that bothered Mr. Truong. However, the strata decided to get its mechanical contractor, West Bay, to re-inspect the HVAC units.
23. West Bay attended on July 24, 2020. The technician reported that they powered down the HVAC system and still noted vibrations all over the roof. The technician suspected that some combination of wind, downtown traffic, and nearby industrial activity likely caused the vibrations.
24. The strata also provided a report from Danilo Eje, who says they work as a Senior Vibration Specialist for the Department of National Defence. They say that they have 42 years' experience in the field of vibration analysis, so I accept that they are qualified to give expert evidence about vibrations in buildings under CRT rule 8.3. They report that they inspected the HVAC units on the roof and determined that the level of noise and vibration "should not cause a problem" in unit 410.
25. The strata says that it has tested the noise created by the HVAC units twice using a decibel reader app on a mobile phone. On July 8, 2020, it measured decibel readings of 22 to 26 at 1:00 am and 32 to 35 at 8:00 am. On October 29, 2020, it measured decibel readings of 25 to 30 at 5:00 am. These measurements were recorded informally on what appear to be scrap pieces of paper. Neither note says where the readings were taken or whether the HVAC system was on or off.

26. It does not appear that the West Bay technician, Danilo Eje, the resident manager or any other person acting on the strata's behalf directly observed the noise and vibration in unit 410. So, I find their observations of little use.
27. However, the strata does not have to prove that the HVAC units do not cause unreasonable noise and vibration. Rather, as mentioned above, Mr. Truong has to prove that they do.
28. I accept that the noise and vibration bother Mr. Truong. I also accept that he believes that the HVAC units are to blame. However, this does not end the matter. The law of nuisance requires me to determine whether an ordinary person would find the noise and vibration intolerable, not whether Mr. Truong subjectively found the noise and vibration intolerable.
29. In previous CRT disputes where strata owners have successfully proven unreasonable noise, there has been objective evidence such as statements from neutral parties, readings from decibel reader phone apps, and reports from professionals who measured the noise (see, for example, *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238, *Moojelsky v. The Owners, Strata Plan K 323 et al*, 2019 BCCRT 386, and *Torok v. Amstutz et al*, 2019 BCCRT 386).
30. I find that the same reasoning applies to this dispute. The only evidence about the level of noise and vibration in unit 410 is from Mr. Truong. Without any objective evidence about the noise and vibrations in unit 410, I find that Mr. Truong has not proven that the level of noise or vibration is unreasonable to an ordinary person. I also find that Mr. Truong has failed to prove that the HVAC units cause any noise and vibration in unit 410. For these reasons, I dismiss his claim that the strata move the HVAC units.
31. For clarity, while I have dismissed Mr. Truong's claim because of a lack of evidence, I do not find that the strata has necessarily proven that the level of noise and vibration in unit 410 is reasonable or that the HVAC units are not responsible. The evidence is simply inconclusive.

32. With that, in an effort to assist the parties, I will make a non-binding suggestion. It is clear that Mr. Truong does not trust the outcome of the strata's investigations so far. This may be because Mr. Truong was not involved or because the investigations did not measure the noise and vibrations in unit 410, or both. I suggest that the parties hire a professional to measure the noise and vibrations at several points within unit 410, both with the HVAC system on and off, with Mr. Truong and a strata representative present. That way, whatever the results of that testing, the parties will have the same information about the level of noise and vibration in unit 410 and the extent to which the HVAC unit is the source.
33. Given my conclusion, I do not need to address whether Mr. Truong's requested remedy is appropriate.

TRIBUNAL FEES AND EXPENSES

34. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Truong was unsuccessful so I dismiss his claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses.
35. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Truong.

DECISION AND ORDER

36. I dismiss Mr. Truong's claims, and this dispute.

Eric Regehr, Tribunal Member

