



Civil Resolution Tribunal

Date Issued: July 12, 2021

File: ST-2020-008175

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bednarek v. The Owners, Strata Plan LMS1215*, 2021 BCCRT 756

BETWEEN:

EWELINA BEDNAREK

APPLICANT

AND:

The Owners, Strata Plan LMS1215

RESPONDENT

AND:

EWELINA BEDNAREK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about bylaw fines in a strata.
2. The applicant Ewelina Bednarek is the former owner of a strata lot (SL30) in the respondent strata corporation The Owners, Strata Plan LMS1215 (strata). Ms. Bednarek claims that the strata fined her for noise and pet bylaw violations without following *Strata Property Act* (SPA) and bylaw requirements. Ms. Bednarek also says that some fines were imposed to satisfy the personal interests of a strata council member.
3. Ms. Bednarek claims reimbursement of \$10,700 total, broken down as \$3,500 for noise fines, and \$7,200 for unapproved dog fines.
4. The strata says the fines against Ms. Bednarek were properly imposed. The strata counterclaims for \$10,850 for payment of fines owing. The strata also seeks an order “for any subsequent fines imposed” and for reimbursement of the strata’s legal expenses in defending against Ms. Bednarek’s claim and bringing its counterclaim.
5. For the reasons given below, I dismiss Ms. Bednarek’s claims. I allow the strata’s counterclaim in the amount of \$10,413.86. I dismiss the strata’s claim for legal expenses.
6. Ms. Bednarek represents herself. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. 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.

8. Some of the evidence in this dispute amounts to a “she said, they said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue.
9. 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.
10. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT 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.
11. Because Ms. Bednarek owned SL30 at the time of the alleged conduct for which fines were imposed, I find the CRT has jurisdiction to resolve this dispute: see the non-binding but persuasive decision in *Gill v. The Owners, Strata Plan EPS 4403*, 2020, BCCRT 4403 at paragraphs 19 through 24.

ISSUES

12. The issues in this dispute are whether the strata must refund Ms. Bednarek \$10,700 in bylaw fines or whether Ms. Bednarek must pay the strata \$10,850 for bylaw fines.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Ms. Bednarek must prove her claims on a balance of probabilities. The strata bears the same burden in its counterclaim. I have read and weighed all the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.

Overview

14. This dispute is about bylaw fines. Ms. Bednarek denies making unreasonable noise in SL30 and submits that her dog may not be a prohibited breed or heavier than permitted by strata bylaws.

15. By contrast, the strata provided evidence it received several noise complaints on different dates and gave Ms. Bednarek an opportunity to respond in each instance. The noise complaints were corroborated by statements from more than one strata lot resident, some video recordings, and detailed logs documenting the noise's character, timing and duration.

16. Similarly, the strata provided significant evidence that Ms. Bednarek's dog, Tequila, was not a permitted dog under the bylaws. Below, I discuss the unapproved dog and noise fines, in turn.

SPA and Bylaws

17. The strata filed the applicable bylaws at the Land Title Office on May 11, 2016. I find the subsequent amendments are not relevant, except one amendment filed September 22, 2020 changing bylaw 5 which governs pets.

18. The strata is obligated to enforce its bylaws under SPA section 26. However, it must do so in accordance with the SPA. SPA section 135 provides for how and when the strata can impose fines.

19. SPA section 135(1) states that a strata corporation may not impose a bylaw fine unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing

if requested. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the owner as soon as feasible. SPA section 135(3) says that once the strata has complied with these procedural steps, the strata may impose fines or penalties for a continuing contravention without further compliance with the steps.

20. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines. The court also determined that bylaw fines are invalid if the section 135 procedural requirements are not followed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

Unapproved Dog Fines

21. Ms. Bednarek claims a \$7,200 refund for fines she says the strata wrongly imposed for an unauthorized dog. The strata says it followed the SPA and bylaws in imposing the \$7,200 in fines.
22. I turn to the background about Ms. Bednarek's dog and the strata's actions.
23. Bylaw 5.4 strata that an owner resident or visitor must not keep an animal in a strata lot other than one dog which must not exceed 15 kg in weight when full grown or aged 12 months or older. Bylaw 5.4 further prohibits keeping a dog which is known to have been recused from an abusive situation or where the history of care is unknown, or where the dog is one of several specific breeds including pit bulls, pit bull terriers or any pit bull or pit bull terrier mix.
24. Bylaw 5.5 requires an owner to apply to strata council for written permission to keep a pet within 30 days of the pet residing in a strata lot.
25. Bylaw 5.7 says that an owner must not keep a dog on the property that is a nuisance or causes unreasonable interference with another owner's use and enjoyment of their strata lot. Bylaw 5.8 says that an owner who contravenes bylaw 5.7 will be subject to a \$50 fine.

26. Under the bylaws, contraventions of bylaws 5.4 and 5.5 are subject to a \$200 fine every 7 days.
27. It is uncontested that sometime before November 2019, Ms. Bednarek adopted Tequila. Although Ms. Bednarek submits that Tequila may not be a pit bull terrier mix, I find that she is, based on Ms. Bednarek's own evidence at a strata council hearing.
28. On November 25, 2019, Ms. Bednarek wrote to the strata requesting permission to have 5-month old Tequila live in SL30. On her request for permission, Ms. Bednarek described Tequila as a "rescue animal". Based on photographs that Ms. Bednarek provided to the strata, which show the size of a similar dog at maturity, I find Tequila was likely to exceed 15 kg in weight once full grown.
29. On December 6, 2019, the strata wrote to Ms. Bednarek that it refused permission for Tequila to live in SL30 because she was not a breed permitted by bylaw 5, would exceed the maximum weight permitted by the bylaws and had a rescue background. The strata asked Ms. Bednarek to rehome Tequila within 30 days. The strata warned Ms. Bednarek that if she did not move Tequila out of SL30, she may face a fine. Ms. Bednarek was given an opportunity to respond. I find the strata's December 6, 2019 letter complies with SPA section 135.
30. Based on photographs and complaint correspondence, I find that on December 15, 2019, Tequila urinated in a common hallway and the urine was left to be cleaned up by someone other than the SL30 occupants.
31. On December 16, 2019, the strata again wrote to Ms. Bednarek about removing Tequila, noting that Tequila had urinated in the hallway contrary to bylaws 5.10 and 5.12. The strata warned Ms. Bednarek that she may face a fine, and offered Ms. Bednarek an opportunity to respond or request a hearing. I find the strata's December 6, 2019 letter complies with SPA section 135.
32. The strata held a hearing about Tequila on January 15, 2020. According to notes taken by a strata council member at the hearing, Ms. Bednarek described Tequila as a mixed breed with pit bull lineage, weighing 12.5 kg at 8 months old.

33. On January 20, 2020, the strata wrote to Ms. Bednarek upholding its decision to refuse permission for Tequila to live in SL30. The strata noted that Tequila was a pit bull cross and likely to exceed 15 kgs in adulthood, characteristics both prohibited by bylaw 5. The strata therefore asked that Tequila be rehomed by February 3, 2020. The strata wrote that if Ms. Bednarek failed to comply, fines would be applied to her strata lot account weekly.
34. On January 31, 2020, the strata wrote to Ms. Bednarek about a complaint that Tequila had made excessive noise contrary to bylaw 4. The strata gave Ms. Bednarek an opportunity to respond. The strata noted that that Tequila was unapproved, contrary to bylaw 5, and should be removed from strata premises within 3 days.
35. On February 12, 2020, the strata wrote to Ms. Bednarek about Tequila and asked that Tequila be removed from strata premises. The strata explained that it had decided to fine Ms. Bednarek \$200 per week until Tequila was confirmed as removed from the strata property.
36. On March 3, 2020, the strata wrote to Ms. Bednarek notifying her that it had decided to fine her (a) \$200 a week until she removed her dog from the property and (b) \$50 for failure to eliminate the noise nuisance Tequila was causing.
37. On March 31, 2020, Ms. Bednarek replied to say that the email had gone to her junk folder. Then she stated that the bylaws restricted fines to \$200 per month, which I find is not accurate because the bylaws do not contain such a restriction. She said it is not easy to just remove a dog from the property.
38. On July 10, 2020, the strata wrote to Ms. Bednarek asking her to remove Tequila immediately or be fined every seven days until she had complied.
39. In August 2020, Ms. Bednarek provided the strata with a "Letter of Registration" from the "ADA Registry Canada", suggesting that Tequila might be a service dog. Ms. Bednarek informed the strata that Tequila was now a service dog, suggesting that the strata could not prohibit her from living in SL30.
40. SPA section 123 allows the strata to prohibit pets, with specific exemptions for dogs.

41. SPA section 123(1.01)(a) says a bylaw that prohibits a pet or animal or that restricts the access of a pet or other animal to a strata lot or common property (CP) does not apply to a guide dog or service dog.
42. SPA section 123(1.02) says that the terms “guide dog” and “service dog” are defined in the *Guide Dog and Service Dog Act* (GDSDA).
43. The GDSDA defines a “service dog” as a dog trained to perform specific tasks to assist a person with a disability, who is certified as a service dog. Under section 6 of the GDSDA certification must be completed by the registrar. I find that the Letter of Registration is not certification by the registrar as required under *GDSDA section 6*. Therefore, I find Tequila is not a service or guide dog for the purpose of the *GDSDA*.
44. On September 27, 2020 Ms. Bednarek emailed the strata property manager denying that Tequila barked or jumped at night, saying Tequila was never let out past 10 pm and slept in her cage. I find Ms. Bednarek’s response inconsistent with the repeated neighbours’ complaints about noise caused by her dog after 10 p.m., including their descriptions that suggest that Tequila resisted being crated at night and caused unreasonable noise. I prefer this evidence to that of Ms. Bednarek because the complaints were detailed and documented noise at the time, whereas Ms. Bednarek’s denials are given after the fact and are more general. I find that Tequila was causing unreasonable noise in SL30.
45. On October 15, 2020, the strata wrote to Ms. Bednarek to say that it would assess a \$200 fine for failure to remove her dog, and that this fine would be applied weekly until she removed Tequila from the premises.
46. On October 19, 2020, counsel for the strata wrote to Ms. Bednarek to say that she had been the subject of several excessive noise complaints between May 2019 and September 2020, as well as complaints about her unauthorized pit bull cross.
47. On October 22 and 29 and November 5, 12, 19 and 26 and December 3, 10, the strata wrote to Ms. Bednarek to say that 8 further \$200 fines would be applied because her dog had yet to be removed from SL30.

48. On October 6, 2020 the strata wrote to Ms. Bednarek, saying it would be imposing a \$200 fine weekly until Tequila was removed from the property. The dog-related fines to that date totalled \$7,200, broken down as \$200 per week for the previous 36 weeks (January 17, 2020 to October 6, 2020).
49. On December 12, 2020, Ms. Bednarek emailed the strata to say that Tequila had been sent to stay with her family outside Canada.
50. I find that Tequila did not meet the weight or breed requirements set out in bylaw 5. As discussed above, I prefer the record of Ms. Bednarek's evidence at hearing to her submissions here, because it is consistent with Ms. Bednarek's own communications to the strata at the time. At hearing, she acknowledged that Tequila was a pit bull mix and already 12.5 kg despite not being fully mature. I find that the strata decided to refuse permission for Tequila to live in SL30 because she did not meet the breed or size requirements in the bylaws. I find the strata complied with SPA section 135 in its January 20, 2020 letter, and was authorized to impose \$200 fines every 7 days after the January 15, 2020 hearing.
51. I therefore uphold the \$7,200 in fines imposed between January 20, 2020 and October 6, 2020. I dismiss Ms. Bednarek's claim for reimbursement of \$7,200.

Noise

52. Ms. Bednarek claims that the strata wrongly imposed \$3,500 in fines for violating the noise bylaw.
53. Bylaw 4.1 says an owner, resident or visitor must not use a strata lot, common property or common assets in a way that causes a nuisance or hazard to another person, or unreasonable or repetitive noise.
54. Under the bylaws, contraventions of bylaw 4.1 are subject to a \$200 fine every 7 days.
55. The strata says it imposed \$2,000 in fines, at \$200 per violation, for breaches of bylaw 4. I find this amount consistent with the strata lot account ledger filed in evidence.

56. It is not necessary that noise reach a particular decibel range in order for it to be considered unreasonable. Instead, the determination is objective and must be made based on a standard of reasonableness and on all of the relevant facts (see the non-binding but persuasive decision in *Torok v. Amstutz et al*, 2019 BCCRT 386, at paragraph 47).
57. In the binding decision in *The Owners v. Grabarczyk*, 2006 BCSC 1960 at paragraph 43, appeal dismissed 2007 BCCA 295, the court indicated that noise violations are not continuous or continuing contraventions when observed on different dates. Noise violations are distinct contraventions for which a fine may be imposed only if the section 135 requirements are met for each contravention. Following *Grabarczyk*, I must consider whether the strata complied with SPA section 135 for each individual noise bylaw violation.
58. Based on the strata lot account ledger, I find that the strata imposed the following fines on Ms. Bednarek for noise violating bylaw 4:
- a. \$200 on April 20, 2020 for noise observed March 31, 2020,
 - b. \$200 on July 21, 2020, for noise observed June 3 and July 28, 2020,
 - c. \$200 on August 5, 2020, for noise observed July 1, 2020,
 - d. \$200 on August 25, 2020 for noise observed August 1, 2020,
 - e. \$200 on August 28, 2020 for noise observed August 7, 2020,
 - f. \$200 on August 28, 2020, for noise observed August 12, 2020,
 - g. \$200 on September 29, 2020 for noise observed September 12, 2020,
 - h. \$200 on September 30, 2020 for noise observed September 11, 2020,
 - i. \$200 on October 15 for noise observed September 27, 2020, and
 - j. \$200 on October 15 for noise observed on September 25, 2020.

59. I have reviewed the strata's correspondence for these 10 separate noise bylaw fines. I have considered Ms. Bednarek's submission that fines were applied before she had an opportunity to respond. While the letters which offer Ms. Bednarek an opportunity to respond also mention fines, Ms. Bednarek was given an opportunity to respond to the complaint each time before the strata decided to fine her. I find that the strata complied with SPA section 135 in each instance by allowing Ms. Bednarek an opportunity to respond, and then communicating its decision to fine her in writing each time.
60. I also find that that evidence proves that someone in SL30 was causing unreasonable noise in each of the 10 instances. The strata provided audio-video clips of excessive noise from March 31, August 1, and August 7. These clips reveal very loud music recorded from outside the building, loud music out in the hallway outside the closed door of SL30, and people inside SL30 singing or yelling.
61. I also find that the letters of complaint written at the time of each noise concern support the conclusion that the SL30 occupants were causing unreasonable noise. They describe noise at all times of day and night, at volumes disrupting the daily lives of other strata residents. The noises include something being dragged on the floor, stomping of feet, yelling, loud music, and Tequila running back and forth, barking, growling, whining or dragging her crate.
62. Although Ms. Bednarek occasionally responded to the a few of the noise complaints, her responses were inconsistent with all of the other evidence about the unreasonable noise coming from SL30. The strata considered those responses and gave Ms. Bednarek hearings when she requested them.
63. I have also considered Ms. Bednarek's submission that fines were imposed on her due to personal interests of a strata council member. Although J, who lives below SL30, authored most of the noise complaints, he also provided objective evidence, through video recordings, proving repeated incidents of unreasonable noise. As well, the strata provided a statement from a different strata resident who also observed

unreasonable noise coming from SL30. Therefore, I do not agree that the strata was fining Ms. Bednarek to suit the personal interests of anyone on strata council.

64. Although Ms. Bednarek submits that some of the noise did not happen within quiet hours, I find that bylaw 4.1 prohibits unreasonable noise regardless of the time of day.
65. Based on the whole of the evidence, I find that the strata imposed \$2,000 of valid noise fines on Ms. Bednarek.
66. Ms. Bednarek also did not provide submissions or evidence proving that any of the other fines imposed by the strata shown on the strata lot account ledger were invalid. I dismiss Ms. Bednarek's claim for reimbursement of \$3,500 for noise-related fines.

Counterclaim

67. The strata counterclaims for payment of \$10,850 in fines, broken down as
 - a. \$8,800 for fines of \$200.00 for bylaw 5 breaches,
 - b. \$ 2,000.00 for fines of \$200.00 for bylaw 4 breaches, and
 - c. \$ 50.00 for breach of bylaw 5.7.
68. Above, I found the \$2,000 in bylaw 4 breach fines valid.
69. The \$50 fine was imposed on March 3, 2020, for keeping Tequila in SL30 while she was causing a noise nuisance, contrary to bylaw 5.7. The evidence proves that Tequila was causing undue noise in SL30. Specifically, loud barking, and running that neighbours reported at all hours of the day and night on January 29, 2020. I also find that the strata complied with SPA section 135 in imposing this \$50 fine.
70. I turn to the counterclaim for \$8,800 in fines for keeping an unapproved dog in SL30. Above, I found that \$7,200 of these fines imposed between January 20, 2020 and October 6, 2020 were valid.
71. This leaves \$1,600 in fines for breaches of bylaw 5. According to the SL30 strata lot account ledger, the strata imposed 6 further \$200 fines on Ms. Bednarek for bylaw 5

breaches after October 6, 2020. I find these \$1,200 in fines valid because Tequila was not permanently removed from SL30 until December 2020.

72. Ms. Bednarek says she has correspondence dated September 27, 2020 showing that she owes considerably less in fines. However, there was no such letter in evidence. I find the strata lot account ledger to be the best evidence of her fines arrears balance as of November 2, 2020.
73. The strata lot account ledger does not show arrears of \$10,850. It shows arrears of \$10,413.86 as of November 2, 2020. Based on my analysis above, I allow the strata's counterclaim and find that Ms. Bednarek must pay \$10,413.86 in fines to the strata, unless she has paid those amounts already.
74. I dismiss the strata's claims for payment of any future fines because Ms. Bednarek has now sold SL30.

CRT FEES, EXPENSES AND INTEREST

75. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order Ms. Bednarek to pay the strata for CRT fees of \$125.00.
76. The strata claims legal fees of an unknown amount as a dispute-related expense.
77. CRT rule 9.5(3)(b) says that the CRT will not order one party to pay another party any fees charged by a lawyer in a strata dispute, unless there are extraordinary circumstances. Under CRT Rule 9.5(4), when considering whether and to what degree to order reimbursement of legal fees the CRT may consider the complexity of the dispute, the degree of involvement of a parties representative and whether the representative caused any unnecessary delay expense, or any other factors the CRT considers appropriate.
78. I find the factual and legal issues in this dispute were not complex. The parties simply disagreed about whether Ms. Bednarek should have been fined, and in what

amounts. Since there were no approved representatives for either party, I find the representative factors do not apply. I find there are no extraordinary circumstances here. I dismiss the strata's claim for legal fees.

79. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$10,413.86 from November 2, 2020, the date of the strata lot account ledger print out, to the date of this decision. This equals \$32.39.

ORDERS

80. I order that, within 30 days of the date of this decision, Ms. Bednarek pay the strata a total of \$10,571.25, broken down as:

- a. \$10,413.86 in fines,
- b. \$125.00 in CRT fees, and
- c. \$32.39 in pre-judgement interest under the COIA.

81. The strata is also entitled to post-judgement interest under the COIA.

82. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Julie K. Gibson, Tribunal Member