Civil Resolution Tribunal

Date Issued: July 16, 2021

File: ST-2020-007605

Type: Strata

Civil Resolution Tribunal

Indexed as: *Plante v. The Owners, Strata Plan EPS2689*, 2021 BCCRT 780

B E T W E E N :

GEOFF PLANTE

APPLICANT

A N D :

The Owners, Strata Plan EPS2689

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about noise in a strata building.

2. The applicant, Geoff Plante, co-owns a residential strata lot (unit 130) in the respondent strata corporation, The Owners, Strata Plan EPS2689 (strata). Unit 130 shares a wall with a commercial strata lot (unit 120) in which a music school is operated. Mr. Plante says the music school creates unreasonable noise, which often goes on for hours every day. He says he regularly hears singing and piano playing, even over the sound of his television. Mr. Plante says the unit 130 owners refuse to do anything to reduce the noise. He says the strata admits the noise is a nuisance, and has issued one bylaw infraction fine, but has not further enforced its noise and nuisance bylaw.

3. As remedy in this dispute, Mr. Plante requests $2,000 in damages against the strata for 3 years of ongoing nuisance and failure to enforce bylaws, and an order that the strata have a soundproofing company test the noise transfer between the strata lots and remedy the noise transfer.

4. The unit 120 owners are not a party to this dispute.

5. The strata says its council members have heard the music transfer into Mr. Plante's strata lot, and agree that it is a nuisance. The strata says its bylaw fine was disputed and never paid, and it has "tried to find a solution but nothing has been agreeable". The strata says it should not have to pay for sound testing, as Mr. Plante's complaint is with the music school.

6. Mr. Plante is self-represented in this dispute. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize

any relationships between the dispute's parties that will likely continue after the CRT process has ended.

8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

10. Under CRTA section 123 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.

ISSUE

11. Has the strata met its duty to enforce its noise and nuisance bylaw, and if not, what remedies are appropriate?

BACKGROUND

12. In a civil claim like this one, Mr. Plante, as applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

13. The strata was created in October 2015, and consists of a mix of residential and commercial strata lots in 2 buildings. The strata plan confirms that Mr. Plante's unit

130 is located in building B, and shares a wall with unit 120, where the music school is operated.

14. The strata filed a set of bylaws with the Land Title Office (LTO) in November 2015. The resolution approving these bylaws specifies they are "in addition to or in substitution of" the Schedule of Standard Bylaws in the *Strata Property Act* (SPA). The strata also filed bylaw amendments at the LTO in 2018 and 2019.

15. So, I find the strata's bylaws are those filed at the LTO, except where silent on a matter covered in the Standard Bylaws, in which case the Standard Bylaws apply.

16. The primary bylaw applicable to this dispute is the strata's nuisance bylaw, bylaw 5(1), as filed at the LTO in November 2015. It says, in part, that an owner, tenant, occupant, or visitor may not use a strata lot, common property, or common assets in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with another person's right to use and enjoy common property, common assets, common facilities, or another strata lot.

REASONS AND ANALYSIS

Has the strata met its duty to enforce bylaw 5(1)?

17. Under section 26 of the SPA, the strata council has a duty to exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. When carrying under these duties, such as bylaw enforcement, the strata council must act reasonably: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc*., 2016 BCSC 32 at paragraph 237.

18. Mr. Plante submits that the music school's noise is unreasonable and a nuisance, and is therefore a breach of bylaw 5(1). He says the strata has failed to take action on this ongoing bylaw breach for "years", so he is entitled to his requested remedies.

19. The strata does not deny that the music school's noise is a nuisance, and is a breach of bylaw 5(1). Based on the evidence before me, I find the strata has not met its ongoing duty to enforce bylaw 5(1).

20. The documents in evidence establish the following chronology of events. Although Mr. Plante is not identified by name in the council meeting minutes, I find the surrounding evidence shows that he is the owner in question.

- On October 30, 2017 and March 21, 2018, Mr. Plante wrote to the strata, stating that noise from the music school was interfering with his and his wife's enjoyment of their strata lot. In the March 21, 2018 letter, Mr. Plante wrote that on 6 days per week, they heard music for 2 to 6 hours, starting at 9:00 am on Saturdays. He said music and television in their strata lot could not be played at a reasonable volume without interference, and the music school noise could be heard at the far side of their strata lot from unit 120.

- July 11, 2018 council meeting minutes document Mr. Plante's complaint about music school noise. Council agreed to request a list of renovations that had been completed in the music school to prevent noise transmission, and to attend Mr. Plante's strata lot to observe the noise.

- On August 27, 2018, the music school owner emailed the strata, stating that it had not had time to research how the music school had been constructed. It said a sound engineer had been involved during construction, and the owner followed the engineer's recommendations about noise reduction, which was much more expensive than regular construction. The owner wrote that it had also added ceiling insulation later, to address complaints about drumming. The email said the music school was one of the building's first owners, and the residential owners knew there was going to be a music school when they purchased their strata lots.

- November 14, 2018 council minutes state that council members attended Mr. Plante's strata lot and heard noise from the music school while inside. Council requested that the property manager arrange for a sound engineer to measure the noise transmission and advise on next steps.

- May 15, 2019 council minutes state that the music school owner had provided the renovations list, which showed that 26 new acoustic panels were recently

installed, but Mr. Plante wrote a letter stating that these renovations had not reduced the noise transfer. According to the minutes, the strata would have a sound engineer review the noise transfer between the 2 strata lots, to determine what could be done.

- July 24, 2019 council minutes state that the property manager "discussed one option recommended by a consultant", and was waiting for a proposal from another consultant.

- In a July 29, 2019 quote, acoustical engineering firm BKL said it would charge $2,750 plus GST to do sound transmission testing, which would require access to both strata lots. The quoted price included data analysis to determine the sound isolation of the wall assembly, review of architectural drawings if available, and a report summarizing findings and recommendations, including acoustical improvement measures.

- October 2, 2019 council minutes state that council had previously discussed proposals from "consultants" about the noise, but the expense was not within the strata's budget, and Mr. Plante was not willing to split the cost. The minutes state that the council had observed the noise and deemed it unreasonable and an interference with Mr. Plante's right of enjoyment of their strata lot. The council instructed the property manager to send a letter to the music school advising it of the bylaws, and asking it to address the noise transfer.

- In an October 7, 2019 letter to the unit 120 owner, the property manager wrote that the council had made a preliminary decision that the noise from the music school was a breach of bylaw 5(1). The letter said that if the infraction continued, or if the unit 120 owner did not answer the complaint within 14 days, the strata might consider imposing a $200 fine.

- The music school replied on October 20, 2019, stating that it considered the bylaw complaint and the strata's warning letter "invalid", based on bylaws 2(1) and 2(2). These bylaws say the strata cannot restrict or impair the operation of a business in a commercial strata lot that is permissible under applicable laws,

but the owners and occupiers of commercial strata lots will use reasonable efforts to ensure their activities do not cause a nuisance or disturbance to other owners or occupants.

- November 4, 2019 council minutes state that the council reviewed the music school owner's response, and disagreed with it. The council instructed the property manager to send a letter to the owner stating that it was in breach of bylaw 5(1), and imposing a $200 fine.

- In May 2020 the property manager corresponded with HushCity Soundproofing about a "controlled sound test", but HushCity said that test would only show that noise was present, which the strata already knew. HushCity recommended using a company such as BKL to determine the correct course of action.

- Ultimately, the strata did not perform any formal noise testing, or hire any expert.

21. Based on this evidence, I find the strata did not take reasonable steps to enforce bylaw 5(1). I note that the October 7, 2019 letter and November 4, 2019 council minutes confirm that the strata agreed that the music school noise was a nuisance to Mr. Plante and his wife, contrary to bylaw 5(1). The strata asked Mr. Plante to keep logs documenting the noise, which he did, starting in October 2019. At the council's request, RO, who appears to be the spouse of a council member, attended Mr. Plante's strata lot on October 25, 2018. RO wrote a detailed report on that date, confirming the noise from the music school, and stating that at times it could be heard throughout the strata lot. RO acknowledged that he is not an expert, but said that in his view, the noise was a "nuisance", as contemplated by the strata's bylaws, and had an adverse effect on the Plantes.

22. I find it does not matter that RO is not an expert, since no party to the dispute contests his evidence. Based on all of the evidence before me, I conclude that the music school's noise violates bylaw 5(1), regardless off what bylaw 2(1) says.

23. The strata has several arguments about why its attempts to enforce bylaw 5(1) were sufficient. I do not agree with these arguments, for the reasons set out below.

24. The strata says Mr. Plante would not permit access to his strata lot to conduct noise testing. I find the strata has not proven this assertion. There is no correspondence, set of council minutes, or other document indicating that Mr. Plante was asked to provide access, or that he refused to do so. Rather, I find the November 2019 council minutes establish that the strata declined to pursue sound testing due to cost. Given that Mr. Plante had been complaining about the noise since October 2017, and given that RO and council members confirmed that the noise was a nuisance contrary to bylaw 5(1), I find that refusing to engage sound testing experts was unreasonable in the circumstances.

25. I also find it was unreasonable to abandon testing because Mr. Plante refused to pay half the cost, as there is no bylaw or SPA provision requiring him to do so. I note that in CRT disputes where the existence of a noise bylaw breach is disputed, an applicant owner may have to obtain expert evidence to prove their claims about the noise levels or source. However, I find that does not apply here, since it is undisputed that the music school noise is a breach of bylaw 5(1).

26. As part of its evidence, the strata provided some photos of ceiling soundproofing and acoustic wall panels installed in unit 120. The strata provided no submissions about what these photos prove. I place little weight on this evidence. There is no evidence, expert or otherwise, indicating what materials or construction methods were used, or whether they were likely to reduce noise transfer into unit 130. Rather, Mr. Plante's correspondence indicates that these measures did not reduce the sound transfer, and there is no contrary evidence before me. I find the fact that the unit 120 owners may have attempted to remediate the noise problem does not mean the strata took sufficient steps to enforce bylaw 5(1), particularly since there is no evidence that these modifications helped.

27. I find that a single fine in late 2019 was not sufficient to enforce bylaw 5(1), particularly since there is no evidence before me that the strata ever actually imposed the fine,

or attempted to collect it. I note that available collection methods include a CRT dispute, or placing a lien against the title to the strata lot. Also, in cases such as *The Owners v. Grabarczyk*, 2006 BCSC 1960, the BC Supreme Court has said that a strata corporation may impose a series of fines for repeated noise violations, as long as notice is provided for each fine under SPA section 135: see paragraphs 43-44. This means that in this case, the strata was not limited to imposing only 1 fine.

28. I also note SPA section 133, which says a strata may do what is reasonably necessary to remedy a bylaw contravention, including by doing work on or to a strata lot or common property, and requiring the person who may be fined for the bylaw contravention to pay the reasonable costs of the work.

29. I find the strata did not pursue these bylaw enforcement options. Instead, it allowed the noise, which it admits was contrary to bylaw 5(1), to continue from October 2017 onwards. I find the strata was slow to take any enforcement action, and the action it did take was insufficient in the circumstances. I therefore conclude that strata has not met its duty to enforce bylaw 5(1).

Remedies

30. As remedy, Mr. Plante requests $2,000 in damages, and an order that the strata have a soundproofing company test the noise transfer between the strata lots and remedy the noise transfer.

31. In the circumstances, I find Mr. Plante is entitled to his claimed $2,000 in damages. In making this finding, I rely on the non-binding reasoning in *Torok v. Amstutz et al,* 2019 BCCRT 386. In that case, I awarded a strata lot owner $4,000 in damages for failure to investigate noise complaints and enforce its noise bylaw. In this case, I find the strata did a sufficient investigation to establish that the noise was a nuisance, but did not take adequate steps to find a solution or enforce bylaw 5(1). I therefore find, on a judgment basis, that $2,000 in damages is appropriate.

32. Mr. Plante is entitled to prejudgment interest on the $2,000, under the *Court Order Interest Act* (COIA). I find this interest is due from March 21, 2018, when Mr. Plante sent the strata a detailed noise complaint letter.

33. As for noise transfer testing, the strata agrees that a certified sound engineer should test the sound transfer into Mr. Plante's strata lot. The strata submits that Environmental Health Officer PL, from Vancouver Coastal Health Authority, should perform this testing, since he will not charge a fee. I decline to make this order. There is no evidence before me about PL's credentials or expertise in sound testing.

34. I find that in the circumstances of this case, it is appropriate to order the strata to obtain the type of sound transfer testing described in the July 2019 BKL quote. While I do not order the strata to use BKL for this testing, I order that the testing must be performed by a certified engineer or acoustics expert.

35. The strata submits that the purpose of the testing should be to determine if the noise is at an unreasonable level, and if so, the strata will obtain recommendations to reduce the noise level. I find that is not appropriate in this case, since the strata has already admitted that the noise transfer into unit 130 is a breach of bylaw 5(1). This has triggered the strata's duty to take enforcement measures, which I find in this case includes the need to obtain expert recommendations about sound transfer reduction. I therefore order that along with the testing, the strata must obtain recommendations from its expert about how to reduce noise transfer between units 120 and 130.

36. Since I do not know what recommendations the expert will make, I find it is premature to order compliance with them. However, I note the strata's ongoing obligation to take steps to enforce bylaw 5(1), which can include the processes outlined in SPA sections 130, 133, and 135.

37. I order the strata to arrange the necessary access to unit 120 to permit the testing and recommendations. I also order Mr. Plante to permit access into unit 130 for testing and inspection by the sound expert, with 48 hours' written notice from the strata.

CRT FEES AND EXPENSES

38. As Mr. Plante was successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of $225.00 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Plante.

ORDERS

40. I order that within 30 days of this decision, the strata must pay Mr. Plante $2,314.17, broken down as:

    a. $2,000 in damages,

    b. $89.17 in prejudgment interest under the COIA, and

    c. $225 as reimbursement of CRT fees.

41. I order that within 60 days of this decision, the strata must arrange and obtain the type of sound transfer testing described in the July 2019 BKL quote, performed by a certified engineer or acoustics expert, along with the expert's recommendations about how to reduce sound transfer between units 120 and 130.

42. To permit the ordered testing, I order that the strata must arrange the necessary access to unit 120, and I order Mr. Plante to permit access into unit 130 upon 48 hours' written notice from the strata.

43. Mr. Plante is entitled to postjudgment interest under the COIA, as applicable.

44. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair