Civil Resolution Tribunal

Date Issued: November 16, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Vechter v. The Owners, Strata Plan VR 219*, 2021 BCCRT 1211

B E T W E E N :

JOSEPH VECHTER

APPLICANT

A N D :

The Owners, Strata Plan VR 219

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about noise and nuisance complaints.

2. The respondent, Joseph Vechter, co-owns and resides in a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 219 (strata). Mr. Vechter says he repeatedly complained to the strata about noise, vibration, and damage to his

apartment caused by unauthorized renovations in the strata lots above his. He says the strata failed to enforce its bylaws against SP, who owns the upstairs strata lots. SP is not a party to this dispute.

3. Mr. Vechter claims $25,000 in damages and seeks orders that the strata enforce its bylaws and take various steps to manage or stop the renovations.

4. The strata says it authorized SP's renovations and that construction noise is allowed within certain hours under its bylaws. It says it has enforced its bylaws against SP, where appropriate. The strata also says Mr. Vechter unreasonably expected the strata to stop the renovations and refused to allow SP's contractors to fix the hole they made in Mr. Vechter's ceiling, which would have reduced the noise in his strata lot. The strata asks that the dispute be dismissed.

5. Mr. Vechter represents himself. The strata is represented by a strata council member.

6. As explained below, I find the strata acted significantly unfairly by failing to adequately investigate Mr. Vechter's noise complaints. I order the strata to pay $2,500 as compensation. I dismiss the remainder of Mr. Vechter's claims.

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 and fairness.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. 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, 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.

PRELIMINARY ISSUE

11. It is undisputed that SP's renovations include enclosing part of the strata's common property rooftop deck to create a hallway, as explained below. In his submissions, Mr. Vechter argues that the strata failed to comply with section 71 of the *Strata Property Act* (SPA) and its own bylaw 5(5) in authorizing SP's renovations. Both SPA section 71 and bylaw 5(5) require a ¾ vote of owners at a general meeting to approve significant changes to the use or appearance of common property. It is undisputed that no such vote has been held regarding SP's renovations.

12. In his submissions, Mr. Vechter asks the CRT to void the strata's authorization of SP's common property alterations and order the strata to hold a vote under SPA section 71. I find this requires an analysis of whether SP's renovations significantly changed the use or appearance of common property, as Mr. Vechter alleges. I find Mr. Vechter did not raise this issue, refer to SPA section 71, or request this remedy in his application for dispute resolution. Nor did Mr. Vechter amend his Dispute Notice to include this further claim or remedy. Although Mr. Vechter initially alleged that SP's renovations were "unpermitted and unauthorized" I find this would not reasonably have alerted the strata to Mr. Vechter's later SPA section 71 argument or related requested remedies and so I find the strata did not have adequate notice of this issue.

13. The evidence shows the strata authorized SP's renovations to the rooftop deck on January 25, 2014 which is approximately 6 years before Mr. Vechter applied for dispute resolution. So, I find Mr. Vechter's claim about the validity of the strata's authorization may be subject to a 2-year limitation period under the *Limitation Act*, depending on when Mr. Vechter could reasonably have discovered this claim. Neither party made any submissions on this issue.

14. Further, I find it would be unfair to decide whether the strata's common property alteration authorization was invalid without notifying SP and giving him the opportunity to participate in this dispute.

15. On balance, I find the strata did not have adequate notice of Mr. Vechter's SPA section 71 claim, first made in his submissions. Nor has either party addressed the potential limitation period issue. Further, as noted, SP is not a party to this dispute. On balance, I find it would be procedurally unfair to the strata, and to SP, to consider this issue in this dispute. So, I refuse to resolve Mr. Vechter's late claim about SPA section 71.

16. Mr. Vechter filed his application for dispute resolution on February 23, 2021. Both parties submitted evidence and arguments about property damage to Mr. Vechter's strata lot, and noise and nuisance complaints after this date. I find those complaints and events are included in Mr. Vechter's complaints of ongoing noise and nuisance. Further, as both parties addressed the events and complaints, I find it would not be procedurally unfair to consider them. So, I find I can consider Mr. Vechter's property damage and complaints post February 23, 2021.

ISSUES

17. The remaining issues in this dispute are:

    a. Has the strata failed to enforce its bylaws, in relation to the alleged noise, nuisance or unreasonable interference with Mr. Vechter's use and enjoyment of his strata lot?

    b. If so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

18. In a civil dispute like this one the applicant, Mr. Vechter, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.

Background

19. The strata was created in 1975 and consists of 33 apartment style residential strata lots on 4 floors. Mr. Vechter and his sister inherited strata lot 27, known as unit 311. He moved into the apartment in September 2019. SP owns strata lots 32 and 33, which are known as units 404 and 405 respectively. Unit 404 is directly above unit 311. None of this is disputed.

20. The strata plan shows a common property roof area on the north half of the fourth, or top, floor. It is clear from the evidence that the owners of the 5 fourth floor apartments have each fenced off a portion of the roof as rooftop decks for their individual exclusive use. It is unclear whether the strata obtained a ¾ owners' vote required under section 74 of the SPA to designate the rooftop decks as limited common property (LCP) for the fourth-floor apartment owners' exclusive use, or whether the strata granted those owners' exclusive use of the rooftop decks under SPA section 76. However, that issue is not properly before me in this dispute, so I make no findings about the exclusive use of the rooftop decks.

21. It is undisputed that SP wanted to combine units 404 and 405 into a single apartment. The strata lots are divided by an emergency exit stairway and hallway and so have no common wall. SP's October 2013 submissions to the strata, including building plans, outline his plans to enclose part of the rooftop deck adjacent to strata lots 32 and 33, creating a hallway between the two strata lots. In a January 25, 2014 letter, the strata provided written authorization for SP's walkway construction.

22. It is unclear whether SP's consolidation of the 2 apartments contravenes SPA section 259, which governs the process for consolidating, or adding to, strata lots. However, as those issues are not before me in this dispute, I find I need not decide whether SPA section 259 applies here.

23. Based on SP's June 2014 blueprints and municipal permits provided to the strata, I find SP's renovations included demolishing and rebuilding the interior of strata lots 32 and 33. This is consistent with the 2021 work schedules SP and his contractor (D) provided to the strata along with their 2019-2021 renovation updates to the strata.

24. Mr. Vechter says SP started renovating in February 2020. Based on the strata's correspondence with SP and his contractor, D, I find SP started his renovations by the end of November 2019. Based on correspondence between the parties, SP and D, I find the renovations were undertaken in stages, with lengthy pauses in between. Although it is unclear whether the renovations are complete at the time of this decision, it is undisputed that they were ongoing at the time of the strata's July 2021 submissions.

25. The strata filed an amended set of bylaws in the Land Title Office on December 20, 2014, which I find apply here. Although the strata has since filed further bylaws, I find they do not apply here because they are either not relevant to the issues before me or were filed after this dispute was started. I will address the relevant bylaws below.

Did the strata fail to enforce its bylaws against SP?

26. Mr. Vechter says the strata failed to respond to his numerous complaints about the noise, vibration and damage caused by SP's renovations. He says the strata failed to enforce its bylaws against SP, which the strata denies. The strata says it answered each of Mr. Vechter's complaints and did what it could to address his concerns.

27. Under section 26 of the SPA, a strata corporation must enforce its bylaws, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). It is undisputed that the renovation noise and damage to Mr. Vechter's suite is not trivial

and so I find the strata had a duty to investigate Mr. Vechter's complaints and enforce its bylaws.

28. A strata may investigate bylaw contravention complaints as it sees fit, provided it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). The standard of care that applies to a strata council is not perfection, but rather "reasonable action and fair regard for the interests of all concerned" (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). Section 27(2) of the SPA states that the owners may not interfere with council's discretion to determine, based on the facts of a particular case, whether a person has breached a bylaw, whether a person should be fined, or the amount of the fine.

29. Section 123(2) of the CRTA gives the CRT the power to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. Significantly unfair conduct must be more than mere prejudice or trifling unfairness (see *Dollan v. The Owners, Strata Plan BCS 1589,* 2012 BCCA 44). Significantly unfair means conduct that is oppressive or unfairly prejudicial. "Oppressive" is conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith, while "prejudicial" means conduct that is just and equitable (see *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126). In considering an owner's reasonable expectations the courts have applied the following test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:

    a. What was the applicants' expectation?

    b. Was the expectation objectively reasonable?

    c. Did the strata violate that expectation with a significantly unfair action or decision?

30. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that an owner's reasonable expectations continue to be relevant to determining whether the strata's actions were significantly unfair.

31. First, I address Mr. Vechter's argument that the renovations were not authorized or permitted by council. Based on the strata's January 25, 2014 signed letter, I find it authorized SP's walkway renovation. Although the strata advised SP in July 2017 that it had not authorized the renovations, I find this was because the 2017 strata council could not find the 2014 signed authorization, which it later found. In an August 20, 2018 letter, a former 2014 strata council member confirmed that the 2014 strata council had approved SP's renovations and was aware of the interior strata lot renovations as well. So, I find the strata authorized SP's renovations.

Noise and Nuisance Complaints

32. Based on Mr. Vechter's March 26 and November 16, 2020 noise complaints, and his submissions in this dispute, I find Mr. Vechter expected the strata to stop SP's renovations. I agree with the strata that such an expectation was objectively unreasonable, particularly as the strata had authorized the renovations. However, I find it was objectively reasonable for Mr. Vechter to expect the strata to investigate his noise and nuisance complaints and to enforce the strata's bylaws.

33. Strata bylaw 3(1) prohibits an owner from using a strata lot, or common property, in a way that causes a nuisance or hazard to another person, unreasonably noise, or unreasonably interferes with other people's rights to use and enjoy the common property or their own strata lot. I find this bylaw applies to most of Mr. Vechter's complaints.

34. The correspondence shows Mr. Vechter complained of loud machine noise twice on March 26, 2020, with included audio recordings from inside his apartment. He emailed the strata with further noise complaints on June 9, 10, 11, 12, 16 and 22, 2020, sometimes with further audio recordings. I find the recordings depict loud construction type machine noises, which nearly drown out Mr. Vechter's speaking voice. On December 10 and twice on December 12, 2020 Mr. Vechter again complained of noise. It is undisputed that BC's public health officer (PHO) either ordered or recommended that residents stay home during this period, due to the COVID-19 pandemic. Mr. Vechter again complained of anticipated noise levels, based on D's posted schedule on April 25, 2021 and about excessive noise on June 3, 2021.

35. Bylaw 3(10) says that an owner may only "generate any audible noise" related to renovations or construction during the hours of 8 am to 5 pm Monday to Friday and 10 am to 4 pm on Saturdays. Mr. Vechter's June 22, 2020 noise complaint was about construction noise before 8 am. It is undisputed that the strata fined SP for contravening bylaw 3(10) for the June 22, 2020 complaint.

36. Based on the strata's emails, I find it emailed SP and D about Mr. Vechter's noise complaints on March 26, June 12, and December 10, 2020, and about "many owner complaints regarding construction noise" on July 14, 2020. I find the strata asked SP to provide an update on the renovation progress, and a schedule of work so that it could advise owners of anticipated renovation noise. I also find the strata suggested SP install soundproofing installation on the floor on June 12, 2020 and told SP that Mr. Vechter asked for noise insulation on March 25, 2021. However, it did not further investigate the level, duration, or repetition of the complained of noise, warn SP about bylaw 3 complaints, or issue any fines under bylaw 3(1)

37. The strata says these responses were the best it could do, because all other construction noise was permitted under bylaw 3(10) and because SP's renovations had been approved by the former strata council. As explained below, I disagree.

38. Bylaws are to be given their plain and ordinary meaning (see *The Owners, Strata Plan LMS 3259 v., Sze Hang Holdings Inc.,* 2016 BCSC 32). In determining the meaning of an individual bylaw, the bylaws must be read as a whole (see *Semmler v. The Owners, Strata Plan NES3039,* 2018 BCSC 2064). Keeping these principles in mind, I interpret bylaw 3(10) to allow "audible" construction noise at certain times, while prohibiting any "unreasonable" noise under bylaw 3(1)(b), even if it is construction noise. This is because the 2 bylaws use different words to describe the type of noise allowed or prohibited.

39. I find the strata erred in believing that construction noise within the prescribed time frames would always be reasonable, regardless of how loud, lengthy, or repetitive it was. I find the strata unreasonably relied on this incorrect bylaw interpretation in finding the complained of noises were reasonable, without investigating them. While I

acknowledge the strata offered to take a noise reading in Mr. Vechter's apartment in April 2021, I find this does not adequately address the 10 noise complaints he submitted in 2020.

40. In the strata context, nuisance is a substantial, non-trivial and unreasonable interference with an owner's use and enjoyment of their property (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.,* 2018 BCSC 1502). The test of whether noise is unreasonable is objective and is measured with reference to a reasonable person occupying the premises (see *Sauve v. McKeage et al.*, 2006 BCSC 781). The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64).

41. I find the strata had audio recordings of the noise from within Mr. Vechter's suite as objective evidence of the noise. I further find the strata received complaints form other owners, as noted in its June 12, 2020 email to SP. This is supported by a June 16, 2020 letter from fourth floor residents Mr. and Mrs. B, who describe "unbelievable noise" from heavy materials and "very stressful" construction noise. Further, in a January 8, 2021 email to Mr. Vechter, GL, another third-floor owner said she spoke with a named strata council member about noise and disruptions from the renovations several times in the summer of 2020. I find this evidence contradicts the strata's submission that it received no complaints about the construction noise in 2020, other than from Mr. Vechter. I find the other owners' complaints are further evidence that the construction noise was objectively unreasonable.

42. Overall, I find the strata unreasonably concluded that the construction noise was reasonable, given that the strata had objective evidence of the disruptive noise. I find the strata failed to investigate Mr. Vechter's several noise complaints in 2020 and 2021 and so failed to enforce its noise and nuisance bylaws, other than the June 22, 2020 complaint.

43. I disagree with the strata that Mr. Vechter contributed to the degree of noise by failing to allow D to fix the hole in his ceiling. This is because the hole was created in February 2021, nearly 1 year after Mr. Vechter started complaining about the construction noise.

Property Damage Complaints

44. It is undisputed that Mr. Vechter's ceiling was damaged by a water leak from the renovations on February 26, 2020. The parties' correspondence shows that Mr. Vechter complained that the water damage was still not repaired on March 26, 2020. On July 9, 2020 he complained that the renovation leak continued, and the damage was still not repaired. By that time, D had attempted to repair the ceiling damage, but Mr. Vechter was unsatisfied and refused D any further attempts or access to his strata lot. Mr. Vechter says a restoration company finally repaired the water damage in February 2021, which is supported by his insurance claim documents and is not disputed by the strata in any event.

45. Under strata bylaw 7(3), any owner who alters common property or their own strata lot is responsible for all costs relating to the effect on all adjacent strata lots. Based on an email chain starting on April 14, 2020, I find the strata enforced the bylaw by telling SP that he was responsible for repairing the water damage before the next stage of renovations could begin. Although ultimately SP's renovations did restart before Mr. Vechter's ceiling was repaired, I find the strata did not act unfairly toward Mr. Vechter by allowing that to happen. This is because SP was not contravening bylaw 7(3) but rather, complying with it by attempting to repair the water damage.

46. Neither party submitted any evidence about the extent of the ceiling damage, such as the restoration company's report or photographs. I infer the damage was not extensive from Mr. Vechter's use of the term "water stain" in describing the damage. For these reasons, I am unable to find that the water damage was extensive enough to substantially interfere with Mr. Vechter's enjoyment of his own strata lot under bylaw 3(1)(c).

47. On January 27, 2021 Mr. Vechter complained to the strata about cracks in his ceiling and walls. The strata submitted an April 5, 2021 structural engineering firm report, written by Derek Lam, Structural Technologist, and Ismael Charrat, professional engineer and Senior Engineer Manager. As a professional engineer, I accept Ismael Charrat is qualified to provide an opinion on the cause of Mr. Vechter's ceiling cracks under the CRT rules. As the strata hired the structural engineering firm and submitted

the report, I infer it does not dispute the authors' qualifications. I accept the report's undisputed conclusion, which is that the unit 404 and 405 renovations likely caused the drywall cracks in Mr. Vechter's unit.

48. I find the drywall cracks are not a nuisance or an unreasonable interference with Mr. Vechter's enjoyment of his own strata lot. The photos show narrow cracks between the ceiling and crown moulding, or on the walls. While the cracks are unsightly, the April 5, 2021 report confirms they are cosmetic and do not indicate any structural damage.

49. It is undisputed that, on February 27, 2021 SP's plumber stepped on Mr. Vechter's ceiling and broke through, creating a large hole as shown in Mr. Vechter's photos.

50. As noted above, Mr. Vechter would not allow D or his contractors to repair the ceiling water stain, the cracked drywall, or the ceiling hole. I find it was objectively unreasonable for Mr. Vechter to expect the strata to halt SP's renovations until Mr. Vechter's repairs were completed, given that only Mr. Vechter had control over the timing of the repairs. This is particularly so given that Mr. Vechter told the strata the restoration company did not want to complete the repairs until the renovations had been completed.

51. Further, I find bylaw 7(3) only requires SP to pay for the cost of any repairs, which the strata's emails show he was willing to do, whether the repairs were completed by his contractors or the restoration company. Mr. Vechter says the repairs did not cost him anything because his insurance paid for the repairs. Overall, I find the strata reasonably enforced bylaw 7(3) against SP.

52. I find the hole in Mr. Vechter's ceiling unreasonably interfered with his own enjoyment of his strata lot. It is undisputed that the hole allowed Mr. Vechter to see, and hear, the construction upstairs and limited his privacy. It is undisputed that the strata fined SP under bylaw 3 for the ceiling hole. I find the strata reasonably enforced the bylaw in relation to the ceiling hole.

53. Finally, I turn to Mr. Vechter's allegation that the strata failed to provide him with a requested meeting about the noise and nuisance.

54. It is undisputed that Mr. Vechter's lawyer requested a strata council hearing under section 34.1 of the SPA on December 17, 2020. It is undisputed that the requested hearing was held on January 13, 2021. I find that meets the SPA requirements to hold a hearing within 4 weeks of the request.

55. Based on the parties' emails, I find Mr. Vechter requested the strata set up a meeting with himself and SP to determine the repair work needed in unit 311 and a time frame, in mid June 2020. I find this was not a written request for a strata council hearing under SPA section 34.1. Nor do I find Mr. Vechter's meeting request had anything to do with his noise and nuisance complaints. So, I find the strata was not obliged to set up the meeting. Given Mr. Vechter's dissatisfaction with D's 2 prior attempts at repairing his ceiling, I also find it reasonable for the strata not to set up the requested meeting.

56. In summary, I find the strata reasonably investigated its bylaws against SP in relation to Mr. Vechter's property damage complaints. However, I find it did not reasonably, or at all, investigate Mr. Vechter's noise complaints and enforce its noise bylaws, other than the June 22, 2020 complaint.

57. I find the strata's failure to sufficiently investigate Mr. Vechter's complaints was significantly unfair to Mr. Vechter. I find the strata treated Mr. Vechter the same way as other owners because it failed to investigate and enforce any complaints of unreasonable noise. However, I find the strata's failure to act was still harsh and burdensome to Mr. Vechter. Given the unique circumstances of the COVID-19 pandemic, I find Mr. Vechter could not easily leave his strata lot to escape the noise in 2020. Based on Mr. Vechter's submitted audio recordings, and other owners' complaints, I find the construction noise was very loud, repetitive and harsh.

58. The evidence shows SP and D did not provide a work schedule to the strata until February 2021, more than 1 year after the start of the renovation. It is undisputed the strata continuously asked SP to provide updates on the schedule. So, I find Mr. Vechter often received little to no warning about when the noise would occur, how

long it would last, or when it would stop. In these circumstances, although I accept there were months of no noise, I find the noise's unpredictability made it significantly more unreasonable and burdensome, as argued by Mr. Vechter.

Remedy

59. Mr. Vechter asks the CRT to order the strata to enforce its bylaws. The strata is already required to do so. I decline to order the strata to comply with an existing legal duty as I find such an order redundant and unnecessary in these circumstances.

60. I also decline to order the strata to restrict SP's renovations to Monday to Friday, 10 am to 3 pm, as there is no evidence to suggest why such restricted timing would lessen the noise or nuisance experienced by Mr. Vechter. I also find this order unnecessary, given the strata's bylaws already restrict audible construction noise to certain days and times.

61. Mr. Vechter also asks for an order that the strata "take all steps" to stop the renovations, and to stop all renovations that "unreasonably interfere with his rights". An order to do something is known as injunctive relief. An injunction must give the parties proper notice of the obligations imposed on them, and clearly define the standard of compliance expected of them. Vague or ambiguous language should be avoided because breaching an injunction is punishable in a quasi-criminal manner (see *Nova Scotia v. Doucet-Boudreau,* 2003 SCC 62). I find Mr. Vechter's requested orders do not contain the precise language required for an injunction.

62. Further, I have found the strata acted significantly unfairly in failing to investigate and enforce its noise bylaws but not in respect to addressing Mr. Vechter's property damage complaints. I find ordering the strata to restrict or otherwise stop the renovations is not a proportional remedy for that wrong. This is particularly so given SP is not a party to this dispute. So, I decline to grant the injunctive orders requested by Mr. Vechter.

63. Finally, Mr. Vechter claims $25,000 as compensation for the unreasonable noise, nuisance, loss of enjoyment of his strata lot and interference with his property. As noted in *Tollasepp v. The Owners, Strata Plan NW 2225,* 2020 BCCRT 481, several CRT decisions have found that, regardless of the source of the nuisance, a strata may be liable for damages when it takes insufficient steps to investigate complaints and enforce its bylaws. Although not binding on me, I find these decisions persuasive and adopt their reasoning that a strata can be liable in nuisance if it fails to investigate potential nuisance brought to its attention.

64. I accept Mr. Vechter's statement that the loud noise interfered with his enjoyment of his strata lot, particularly given that he could not escape the noise easily in 2020, given the PHO orders and guidelines to stay home during the 2020 portion of the Covid-19 pandemic. Based on the recordings, and emails between the strata and D, I accept that the noise was intermittent instead of constant, but find the construction noise recorded was repetitive, loud, and intrusive. I do not find the noise continued for 18 months straight, as alleged by Mr. Vechter. Rather, I find the construction noise continued, off and on, between February and mid-April 2020, from early June to July 2020 and again from early December 2020 to at least July 2021, potentially with some breaks.

65. I have also considered that, although the strata failed to investigate Mr. Vechter's noise complaints, it did attempt to hold SP accountable for repairing Mr. Vechter's property damage, investigated whether the renovations were authorized, demanded schedules and noise warnings from SP and D, and overall attempted to hold SP and D accountable for the disturbances.

66. In *Chan v. Gibb et al,* 2019 BCCRT 1210, a CRT vice-chair ordered a strata to pay $2,500 for a combination of causing nuisance and failing to investigate construction related noise complaints during an 8-month renovation project. On a judgment basis, I find $2,500 compensation is an appropriate remedy here.

CRT FEES, EXPENSES AND INTEREST

67. 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. Although I declined to grant injunctive orders, I find Mr. Vechter was substantially successful in this dispute and so I find he is entitled to reimbursement of $225 in CRT fees he paid. He claims no dispute-related expenses.

68. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant/respondent is entitled to prejudgment interest on the $2,500 damages award from March 26, 2020, the date of Mr. Vechter's first noise complaint, to the date of this decision. This equals $28.49.

69. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Vechter.

ORDERS

70. Within 14 days of this decision, I order the strata to pay Mr. Vechter a total of $2,753.49, broken down as follows:

    a. $2,500 in damages,

    b. $28.49 in interest under the COIA, and

    c. $225 in CRT fees.

71. Mr. Vechter is also entitled to post-judgment interest under the COIA.

72. 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.

Sherelle Goodwin, Tribunal Member