Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Williams v. The Owners, Strata Plan BCS 184*, 2022 BCCRT 118

B E T W E E N :

DAVID WILLIAMS and TANYA WILLIAMS

APPLICANTS

A N D :

The Owners, Strata Plan BCS 184

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Laylí Antinuk

INTRODUCTION

1. This dispute is about noise complaints in a strata corporation.

2. The applicants, David and Tanya Williams, own strata lot 29 (SL29) in the respondent strata corporation, The Owners, Strata Plan BCS 184 (the strata). The Williams have made consistent noise complaints about their neighbours in the adjacent strata lot

(SL30). They say the strata has not properly investigated their noise complaints or enforced the noise bylaws. The Williams ask me to order the strata to enforce its noise bylaws and pay $3,500 in damages for unfair treatment.

3. The strata says it reviewed and investigated all the Williams' noise complaints, made a decision about whether bylaw contraventions had occurred and sent bylaw violation notices to SL30's occupants. The strata also says it hired 2 sound professionals, 1 to test the wall between SL29 and SL30, and 1 to do a week-long noise study in SL29.

4. Mr. Williams represents the Williams. A strata council member represents the strata.

5. As explained below, I dismiss the Williams' claims.

JURISDICTION AND PROCEDURE

6. 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. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the parties that will likely continue after the CRT process has ended.

7. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate in this case. I find I am properly able to assess and weigh the evidence and submissions before me and see no reason for an oral hearing.

8. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence 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. In resolving this dispute, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also order any other terms or conditions it considers appropriate.

Preliminary Issues

Allegations about the council not acting honestly and in good faith

9. The Williams say the strata council has not acted honestly and in good faith as required by section 31 of the *Strata Property Act* (SPA). Among other things, SPA section 31 says that in exercising the strata's powers and performing the strata's duties, each council member must act honestly and in good faith.

10. The BC Supreme Court has said that strata council members owe their duties under SPA section 31 to the strata corporation, not to individual strata lot owners. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc*., 2016 BCSC 32 at paragraph 267. This means that strata lot owners, like the Williams, cannot succeed in a claim against the council for a section 31 breach. So, I find that the Williams have no standing (legal right) to make claims under SPA section 31.

11. The BC Supreme Court has also said that the CRT does not have jurisdiction to decide claims under SPA section 31. See *Williams v. The Owners, Strata Plan NW 1340*, 2021 BCSC 2058. So, even if the Williams had standing to make claims under SPA section 31, I would not have jurisdiction to decide those claims.

12. I will not discuss these aspects of the Williams' arguments further.

The prior CRT decision

13. Both parties note that in 2017, the Williams filed a dispute with the CRT about the strata's responses to similar noise complaints involving SL30's former occupants. In November 2017, a vice chair made a final decision about the merits of that past dispute in *D.W. v. The Owners, Strata Plan BCS XXX*, 2017 BCCRT 107 (the prior CRT decision). The vice chair found that the strata had failed to properly investigate the Williams' noise complaints and that this was significantly unfair.

14. The Williams say the council "is not following what was laid in the previous CRT ruling." Under CRTA sections 57 and 58, only the BC Supreme Court and BC Provincial Court have the authority to enforce CRT orders. This means the CRT does

not have authority to enforce its own orders. To the extent that the Williams seek enforcement of the prior CRT decision, they must pursue that matter in court.

15. I am not bound by the prior CRT decision. I have made this decision based on the evidence before me in this dispute.

ISSUES

16. The issues in this dispute are:

    a. Did the strata properly investigate the Williams' noise complaints and enforce the noise bylaws?

    b. Did SL30's occupants cause unreasonable noise?

    c. Did the strata treat the Williams significantly unfairly?

    d. Should I order the strata to pay the Williams $3,500 in damages?

EVIDENCE AND ANALYSIS

17. As the applicants in this civil claim, the Williams must prove their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' evidence and arguments. However, I will refer only to what I consider necessary to explain my decision.

18. The strata was created in 2002. It consists of 93 townhouse-style residential strata lots. SL29 has neighbouring strata lots on both sides, but the Williams' noise complaints relate only to SL30.

19. In 2005, the strata filed a complete new set of bylaws with the Land Title Office (LTO). The filed Form I does not explicitly say that these bylaws replaced all previously filed bylaws, but I find it clear from their text that this was the case. Since then, the strata has filed additional bylaw amendments with the LTO, but I find none of those amendments relevant. I find that the 2005 bylaws apply here.

20. The two relevant bylaws are bylaws 4.1(b) and 43.5. Bylaw 4.1(b) prohibits occupants and visitors from using strata lots or common property in a way that causes unreasonable noise. Bylaw 43.5 says occupants must ensure that noise caused by children does not disturb the quiet enjoyment of others.

21. The parties agree that the Williams have made many noise complaints about SL30. These complaints involved more than one set of SL30's occupants. As noted, the prior CRT decision dealt with complaints related only to SL30's former occupants.

Did the strata properly investigate the Williams' noise complaints and enforce the noise bylaws?

22. The Williams argue that the strata did not properly investigate and enforce the noise bylaws. I disagree. I begin with a summary of the applicable law, then turn to the facts.

23. The SPA does not set out any procedures for bylaw complaint investigations. The courts have said that a strata has the discretion to investigate bylaw complaints as it sees fit, provided it complies with the principles of procedural fairness and is not significantly unfair to anyone. See *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148. The CRT has also said a strata's investigation must be objective. See *Cavin v. The Owners, Strata Plan VR 2526*, 2021 BCCRT 1329 at paragraph 31.

24. The standard of care that applies to a strata council is not perfection, but instead, "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.

25. The parties agree that in 2018, the strata hired BAP Acoustics (BAP) to test the sound insulation in the party wall (wall) between SL29 and SL30. BAP found that the wall's sound insulation exceeds the BC Building Code's (Code) sound transmission requirements. Several council members attended SL29 during BAP's sound testing, which included BAP measuring noise levels in SL29 while a council member staged a variety of noise producing activities in SL30.

26. In November 2019, the Williams' made the first noise complaint at issue here. The strata's evidence shows that it sent SL30's owner-occupants a bylaw violation letter at November's end in response to this complaint.

27. The strata's email evidence also shows that it gave the Williams all the council members' phone numbers and availability at November's end. It undisputedly did this so the Williams could call council members to have them visit SL29 when unreasonable noise occurred in the future. However, the strata says the Williams never called any council members to attend SL29. The Williams do not deny this. So, I find that, despite having the opportunity to do so, the Williams chose not to call any council members to hear the noise allegedly caused by SL30's occupants.

28. In February 2020, the strata held a hearing requested by the Williams. At the hearing, the parties discussed the Williams' noise complaints. Less than two weeks later, the strata's property manager (manager) sent the Williams an email outlining council's response to their concerns. In the email, the manager told the Williams that council had decided to hire sound professionals to do further sound testing in SL29 to "remove the subjectivity" and "determine the accurate scope of the noise issue."

29. From March to December 2020, the Williams did not make noise complaints because they say noise had "lessened." So, they declined the strata's offer of sound testing.

30. Then from January 2021 on, the Williams made continuous noise complaints, sending numerous noise logs (logs) to the manager. Based on the logs, I find the Williams' noise complaints primarily relate to "TV/video", "thumping", "banging" and "vacuuming" sounds during daytime hours.

31. When the Williams recommenced their noise complaints in January 2021, the manager reminded them that the next step was to allow the acoustic testing company to monitor the decibel levels in SL29. The Williams agreed. So, at the beginning of spring 2021, BLK Consultants Ltd. (BLK) did a week-long noise study to quantify the noise disturbances in SL29. BLK prepared a report, then later revised it to clarify a few points in response to questions from the strata's lawyer. None of this is disputed.

32. The revised report (report) says the World Health Organization's (WHO) Guidelines for Community Noise suggest that background sound levels in indoor living spaces during daylight hours should not exceed 35 dBA. During nighttime hours, sound levels in bedrooms should not exceed 30 dBA. While the report does not explicitly say so, I infer that dBA is a measurement scale for noise. The report says that the daytime background dBA in SL29 was between 30 and 35 dBA, with most days at 30 to 31 dBA. The nighttime background dBA in SL29 for the entire week was 30 dBA.

33. The report also says that short-term noise disturbances, like vacuuming and TV sounds from SL30, were "often clearly audible" in SL29 and ranged from 40 to 56 dBA. With 1 exception, all noise disturbances occurred during daylight hours. The only nighttime disturbance occurred at around 8pm and was 41 dBA, which does not exceed the WHO sleep disturbance criterion of 45 dBA. The report says the sleep disturbance criterion is a relevant point of reference since "annoyance may occur at even lower levels" than the sleep disturbance criterion. The report concludes by saying that the clear audibility of noise intruding into SL29 can be partly attributed to the low levels of background noise, which make the disturbance reported by the Williams "not unexpected."

34. Neither party disputes the accuracy of BLK's findings or BLK's qualifications as sound testing professionals. So, I accept all the findings in the report and find that the report qualifies as expert opinion evidence. I place significant weight on the report because it provides objective expert evidence about the noise experienced in SL29.

35. After receiving the report, the strata says it considered hiring BLK to investigate the acoustic performance of the wall. I accept this because the email evidence shows the strata told the Williams it planned to hire BLK to do this. However, the strata says that, upon further consideration, it decided this was unnecessary since it had already hired BAP to test the wall in 2018 and there had been no changes to the wall since then. The Williams do not say that anyone changed the wall after the BAP study. So, I find that BAP's findings accurately measure the wall's current sound insulation. As noted, BAP found that the wall's sound insulation exceeds the Code's sound

transmission requirements. Given this, I find it reasonable that the strata decided not to test the wall a second time.

36. As noted, the Williams continued to make noise complaints throughout 2021. Based on the strata's documentary evidence, I find that the strata sent SL30 10 bylaw violation notices in response to the Williams' 2021 complaints.

37. To summarize, I find that the strata sent SL30 a total of 11 bylaw violation notices in response to the Williams' numerous noise complaints. I also find that the strata discussed the noise complaints with the Williams in a hearing. In addition, I find that, after receiving the first noise complaint at issue, the strata gave the Williams its council members' contact information and availability. Yet, the Williams never called any council member to hear the alleged unreasonable noise when it was occurring. Additionally, the undisputed evidence shows that since the prior CRT decision, the strata has hired 2 sound testing companies to investigate the sound issues in SL29. I find that neither company found any significant sound issues in SL29 that would compel the strata to take further actions, such as hiring more sound professionals or performing soundproofing upgrades to the wall.

38. Given all the strata's actions summarized above, I have no hesitation in concluding that it properly investigated the Williams' noise complaints and enforced the noise bylaws. I find that it acted reasonably and objectively with fair regard for all concerned and did not violate the principles of procedural fairness. I also find that it was not significantly unfair. More on this below.

39. I recognize that the Williams say council did not try to "properly investigate these complaints in person." However, as noted, I find that the Williams chose not to call any council member(s) to investigate in person despite having the opportunity to do so. I acknowledge that the Williams say that council's meeting minutes tell occupants to contact the manager instead of communicating directly with council. However, I am not satisfied that this general statement applied in the circumstances. Instead, I find that the evidence shows that council made it clear to the Williams that they could contact its members to attend SL29 to hear the alleged noise.

Did SL30's occupants cause unreasonable noise?

40. On balance and based on the evidence before me, I am not satisfied that SL30's current owner-occupants have caused unreasonable noise.

41. Above, I summarized BLK's findings. BLK's study lasted only 1 week (the study period), but for 2 reasons I find that its results fairly represent the sounds ordinarily experienced in SL29. First, based on the emails in evidence, I find that SL30's occupants did not know the study was occurring. So, I find that they did not change their behaviour during the study period. Second, the log the Williams made during the study period lists the same types of noises as their other logs, such as "TV/video, "banging" and "vacuuming".

42. As noted, BLK found that the daytime background dBA in SL29 was between 30 and 35 dBA, and the nighttime background dBA for the entire week was 30 dBA. None of this exceeds the WHO's Guidelines and I do not find it unreasonable.

43. Additionally, short-term daytime noise disturbances, like vacuuming, did not exceed 56 dBA. None of these noises occurred during late night hours. While the report says these noise disturbances were "clearly audible" in SL29, that does not mean they fit within the meaning of "unreasonable noise" in the bylaws. The fact that a noise is "clearly audible" does not necessarily make it unreasonable. The online Oxford Dictionary defines noise as "a sound, especially when it is loud, unpleasant or frightening." So, I find that, by definition, noise is clearly audible. Given this, the question is not whether the noise from SL30 was "clearly audible", but whether it was unreasonable.

44. Notably, despite being asked a direct question about this, the report does not include BLK's opinion about whether the noise caused by SL30 was unreasonable. I say this because, after BLK released its original report, the strata's lawyer asked it a direct question about whether the noises experienced in SL29 were normal/reasonable for daytime indoor dwelling noises. BLK did not answer this question, saying instead that the situation is "very difficult to assess and report on." It then released the revised

report, which does not say anything about whether the noise caused by SL30's occupants was unreasonable.

45. Other than the report, the only objective evidence before me about the noise caused by SL30's occupants are 3 audio recordings submitted by the Williams. One recording is labelled "TV/video" sounds, the other 2 are labelled "thumping" sounds. I carefully listened to these recordings on high volume using noise cancelling headphones. I could not hear anything in the 2 "thumping" recordings. In the "TV/video" recording, I could hear the sound of a TV fairly clearly. However, I also heard intermittent traffic noises clearly and I found them as loud or louder than the TV sounds coming from SL30. The traffic noises sounded like vehicles driving past SL29. I find that these examples do not qualify as unreasonable noise.

46. I place significant weight on the audio recordings because they provide objective evidence of the noises experienced in SL29. Further, I infer that the Williams submitted these recordings because they represent either the average or the loudest noises caused by SL30's occupants. Either way, I find that the recordings do not prove SL30's occupants caused unreasonable noise.

47. I turn now to the strata's evidence which includes 2 witness statements, 1 from SL30's owner-occupant (owner) and 1 from a frequent visitor (visitor) of the strata lot on SL30's other side.

48. The owner says that, because of SL29's "constant complaints", the 5-person family living in SL30 now tiptoes while walking, talks in a "really low tone", prevents friends and family from visiting, and restricts their family time. The owner says that the noises the Williams complain about are "everyday living noise like walking, cooking, washing dishes, showering and talking." The Williams do not contest these parts of the owner's evidence.

49. Based on the owner's statement, I find that SL30 has not engaged in any activities that one might reasonably conclude would cause unreasonable noise. I find that the logs created by the Williams support this conclusion. I say this because the Williams have never, for example, complained about noises such as screaming, or blaring

music during nighttime hours, or huge parties that carry on past 10pm. I also find the owner's statement consistent with BLK's findings. For example, the loudest noise disturbance measured by BLK was vacuuming, measured at 56 dBA. This occurred at around 6pm and lasted 8 minutes. I agree that this is an "everyday living noise" and do not consider it unreasonable in terms of volume, duration, or time of day.

50. Turning to the visitor's evidence, I note that she says she spends a lot of time in SL31. For example, she says that in 2021, she spent 8 weekends plus a few weeks in SL31. She acknowledges that while staying in SL31, she did hear some "minor noises" on the shared wall between SL30 and SL31. However, she says that once the TV or radio in SL31 was on, she heard nothing from SL30. She says, considering that SL30's occupants are a family of 5, she "was surprised at how quiet it was… I find it difficult to imagine that somebody would complain about these occasional noises as they are normal living noises in my opinion."

51. To summarize, the visitor and the owner both agree that SL30's occupants cause nothing more than normal, everyday living noises. I recognize that the relevant case law establishes that even normal living noises can be unreasonable, depending on their intensity, timing and duration. For example, see *Tran v. The Owners, Strata Plan VIS 6828*, 2021 BCCRT 28 at paragraph 43. However, based on the report, the logs and the audio recordings, I find on balance that noise caused by SL30's occupants was not intense, nor did it occur at unreasonable hours or for unreasonably long periods of time.

52. The Williams argue that the visitor's statement is "based on conjecture". I disagree. I find that the visitor's statement is based on her personal experience as a frequent visitor in SL31 and I accept it as such. I also find it consistent with the owner's statement and the objective evidence before me, which includes BLK's report and the Williams' audio recordings.

53. As noted, the Williams bear the burden of proof. Considering the totality of the evidence I have outlined above, I find that the Williams have not proven that SL30's occupants caused unreasonable noise.

Did the strata treat the Williams significantly unfairly?

54. The Williams argue that the strata has not taken their noise complaints seriously. They say this is a "continuation" of the strata's significantly unfair behaviour toward them. Once again, I disagree.

55. The courts have equated significant unfairness with oppressive or unfairly prejudicial conduct. The BC Court of Appeal has interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable. See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 [*Kunzler*].

56. As explained above, I have found that SL30 did not cause unreasonable noise. I have also found that the strata followed the principles of procedural fairness when addressing the noise complaints. For example, it held a hearing when the Williams' requested it. The strata also consulted independent sound professionals who did objective sound testing in SL29. In addition, the strata gave the Williams all the council members' contact information and council members were ready and willing to attend SL29 when the Williams called. I find nothing oppressive or unfairly prejudicial in the strata's decisions or actions. In fact, quite the opposite.

57. The BC Court of Appeal has said that an owner's expectations may be relevant when deciding whether the strata's actions were significantly unfair. When an owner's expectations are relevant, as I find they are here, I must decide:

    a. What were the owner's expectations?

    b. Were the owner's expectations objectively reasonable?

    c. If so, did the strata violate those reasonable expectations with a significantly unfair action or decision?

    See *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 and *Kunzler.*

58. Here, I find that the Williams essentially expect SL30's occupants not to cause any noise that is clearly audible in SL29. I do not consider this expectation objectively reasonable. I find that the nature of townhouse living means that a certain amount of noise must be expected and tolerated between neighbouring strata lots. See *Zaman v. Toronto Standard Condominium Corporation No. 1643*, 2020 ONSC 1262 at paragraph 23.

59. Taking all this into account, I find that the strata has not treated the Williams significantly unfairly.

Should I order the strata to pay the Williams $3,500 in damages?

60. I have found that the strata properly investigated and enforced the noise bylaws and was not significantly unfair to the Williams. I have also found that SL30 did not violate the noise bylaws. So, I order no damages.

CRT fees and dispute-related expenses

61. Under CRTA section 49 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 to depart from the general rule in this case. The Williams paid CRT fees but did not succeed in this dispute. So, I dismiss their claim for CRT fee reimbursement.

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

ORDER

63. I dismiss the Williams' claims and this dispute.

Laylí Antinuk, Tribunal Member