



Civil Resolution Tribunal

Date Issued: July 15, 2022

File: ST-2021-008102

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sandhu v. The Owners, Strata Plan EPS3434*, 2022 BCCRT 815

BETWEEN:

SUNNY SANDHU

APPLICANT

AND:

The Owners, Strata Plan EPS3434

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about mechanical equipment noise.
2. The applicant, Sunny Sandhu, owns a strata lot (SL302) in the respondent strata corporation, The Owners, Strata Plan EPS3434 (strata). Mr. Sandhu is a past member

of the strata council.

3. Mr. Sandhu says the strata has failed to address noise caused by parkade exhaust fans, depriving him of his right to quiet use and enjoyment of SL302. He says the noise has been ongoing for 4 years and, although the strata has attempted to address the noise issue, no meaningful solution has been implemented. Mr. Sandhu seeks an order that the strata reduce the noise from the fan operation to an acceptable level from inside SL302. He says an acceptable level is as recommended by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) handbook, which is a noise criteria (NC) of 30, the equivalent of 35 dB.
4. The strata disagrees with Mr. Sandhu. It says Mr. Sandhu's claim is out of time under the *Limitation Act* (LA) because he first discovered the claim in 2017 when he moved into SL302. The strata also says it is not negligent and took reasonable steps to investigate and reduce the noise level, which it says is now reasonable. The strata asks that the CRT dismiss Mr. Sandhu's claim.
5. Mr. Sandhu is self-represented. A strata council member represents the strata.
6. For the reasons that follow, I dismiss Mr. Sandhu's claim and this dispute.

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 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.

ISSUES

11. The issues in this dispute are:

- a. Is Mr. Sandhu's claim out of time under the LA?
- b. If not, has the strata failed to properly investigate and address Mr. Sandhu's noise complaint?

BACKGROUND, REASONS AND ANALYSIS

12. As applicant in a civil proceeding such as this, Mr. Sandhu must prove his claims on a balance of probabilities, meaning "more likely than not". I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.
13. The strata plan shows the strata was created in November 2016 under the *Strata Property Act* (SPA). It consists of 623 strata lots in 2 high rise towers above 5 levels of underground parking. Mr. Sandhu's SL302 is in the south tower on the second level above the ground. It is undisputed that a vent from a parkade exhaust fan (central

exhaust fan) is located at ground level of the south tower below SL302. There are 4 other exhaust fan vents located at different locations around the 2 towers.

14. The strata's owner developer filed bylaws different than the Standard Bylaws with the Land Title Office (LTO) at the time the strata was created. The strata filed 3 additional bylaw amendments with the LTO between 2018 and 2021. Together, these are the strata's bylaws. I address relevant bylaws applicable to this dispute below, as necessary.

Is Mr. Sandhu's claim out of time under the LA?

15. Mr. Sandhu says he first complained about noise from the parking fan vent located at ground level on the south side of the building below SL302 since 2017 when he first moved into SL302. I accept Mr. Sandhu's evidence that the fan noise is ongoing between "early spring and late fall" each year, given the strata did not argue otherwise.
16. The strata says that since Mr. Sandhu did not file this dispute with the CRT until 2021, he missed the 2-year limitation period set out in the LA because he first discovered his noise claim in 2017. Mr. Sandhu disagrees because he says the noise is ongoing. I find Mr. Sandhu's claim is not statute-barred for the following reasons.
17. Section 13 of the CRTA confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears.
18. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.
19. CRTA section 13.1 says the limitation period stops running after a claim is filed with the CRT.

20. I find Mr. Sandhu's claim is a nuisance claim. The courts have found that nuisance in a strata setting is an 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.
21. In *K&L Land Partnership v. Canada (Attorney General)*, 2014 BCSC 1701, the BC Supreme Court held that a nuisance continues so long as the activity causing the nuisance is ongoing. In *Bruusgaard v. The Owners, Strata Plan LMS 2599*, 2019 BCCRT 693, the CRT relied on *K&L* and the reasoning in *The Owners, Strata Plan VR 133 v. Zelman et al*, 2018 BCCRT 538 to find that ongoing noise disturbances from a hot tub pump were not statute-barred under the LA. Although not binding on me, I accept the reasoning in *Bruusgaard* and find that even though Mr. Sandhu first complained of exhaust fan noise more than 2 years before he filed his application for this dispute, his claim is not statute-barred because the fan noise is ongoing.
22. To the extent the fan noise can be found not to be ongoing because it subsides annually between late fall and early spring, I would still find Mr. Sandhu's claim is not statute-barred. I say this for the following reasons.
23. Mr. Sandhu filed his CRT dispute application on October 22, 2021. In order for Mr. Sandhu's claim to have been filed in time, it must have been discovered, or discoverable, before October 22, 2019.
24. In May 2018 based on Mr. Sandhu's noise complaints, the strata obtained an acoustic engineer report from BAP Acoustics (BAP Report) on the noise levels within SL302. The BAP Report recorded noise levels based on the ASHRAE NC standard noting a reading of NC 30 is considered acceptable. The recorded noise levels in SL302 were as follows: in the living room with the balcony door open (54), with the balcony door closed (37), the second bedroom (35) and the primary bedroom (26). The BAP Report noted the noise levels in the living room and second bedroom of SL302 exceeded the ASHRAE criteria and suggested the physical position of the central exhaust fan in the vent shaft "would potentially enable a silencer to be installed on top of the [central] exhaust fan".

25. The undisputed evidence is that the strata initially pursued the fan noise as a deficiency alleging the owner developer was responsible. This is confirmed in strata council meeting minutes of September 2017 and April 2018. It is also well-documented in email evidence exchanged between Mr. Sandhu and the strata manager in 2018. At some point in 2018, the sequencing of the 5 exhaust fans was modified so that all 5 fans could operate together at 70% efficiency, rather than the central exhaust fan operating at 100% efficiency. According to the owner developer's acoustical engineer, such a change in exhaust fan operation would reduce the fan noise by 7 dB, which meet the ASHRAE NC of 30, except for in the SL302 living room with the balcony door open.
26. Despite the apparent reduced noise levels, in 2019, the strata investigated other modifications to the central parkade fan, including the installation of a silencer in the vent shaft, but did not proceed with any significant modifications to reduce noise levels because of associated costs. Also in 2019, the strata determined that the central exhaust fan was associated with controlling temperature of a commercial strata lot HVAC system, which the strata also investigated.
27. In January 2020, the strata's contractor suggested the carbon monoxide (CO) sensors that control the exhaust fans should be tested and recalibrated twice annually in order to restrict the fan operation only to times needed. The evidence suggests the strata has implemented this twice-annual recalibration of the CO sensors since March 2020.
28. Over 1 year later in July 2021, Mr. Sandhu requested a strata council hearing. As a result of the hearing, the strata agreed to investigate the commercial strata lot's HVAC cooling believed to be associated with the central exhaust fan. It appears the investigation included the City of Vancouver (City), although the reason why the City became involved is not clear. By October 2021, the strata apparently abandoned the HVAC investigation stating in an October 22, 2021 email to Mr. Sandhu that the matter was with the City and the commercial strata lot owner or tenant.
29. Based on the sequence of events described above, I find the evidence is that the strata continually investigated or agreed to investigate Mr. Sandhu's noise complaint until at

least October 22, 2021, the same day Mr. Sandhu filed his CRT application. Therefore, I find that is the earliest date Mr. Sandhu could have discovered his claim. So even if the noise was not ongoing, I would find Mr. Sandhu is within the limitation period under the LA to file his noise claim.

Has the strata failed to properly investigate and address Mr. Sandhu's noise complaint?

30. It is undisputed, and I find, that the central exhaust fan is a common asset of the strata. This means the strata has a duty to repair and maintain the exhaust fan under SPA section 72 and bylaw 9(1)(a).
31. Citing *Chen v The Owners, Strata Plan NW 2265*, 2017 BCCRT 113, Mr. Sandhu agrees he is not entitled to silence, but argues he is entitled to live in SL302 “without unreasonably loud mechanical noise”. I agree.
32. In submissions, Mr. Sandhu argues the strata has not taken appropriate action, has deflected responsibility to the commercial owner or tenant, has made unreasonable decisions, and has caused undue delay in addressing the noise issue. In other words, Mr. Sandhu argues the strata has failed to properly address his noise complaints. Here, I do not agree.
33. As earlier noted, I have found Mr. Sandhu's claim is a nuisance claim. Whether or not the interference causing the nuisance, such as noise, is unreasonable, depends on several factors including its nature, severity, duration and frequency. The interference must also be substantial such that it is intolerable to an ordinary person: see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.
34. I recognize that Mr. Sandhu is affected by the central exhaust fan noise, but that does not mean he has proved it is a nuisance. On the evidence before me, I find Mr. Sandhu has not proven the noise he complained of met the tests in *Triple P Enterprises Ltd.* or *St. Lawrence Cement*.
35. In particular, while the BAP Report indicates the noise levels were initially unreasonable, there were no other objective noise tests conducted after the strata

sequenced the exhaust fans' operation or recalibrated the CO sensors. Mr. Sandhu was free to obtain his own report to substantiate his claim but chose not to. I find it significant that the strata requested access to SL302 in March 2022 to have an acoustical engineer conduct further noise tests in SL302, but Mr. Sandhu refused access because he did not believe the engineer selected by the strata was credible.

36. I also agree with the strata that it did not treat Mr. Sandhu significantly unfairly. The CRT has jurisdiction to determine claims of significant unfairness: see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164.

37. The courts and the CRT have considered the meaning of "significant unfairness" in many contexts and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal 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 also *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

38. While the strata's investigation may have been imperfect and taken some time, I find overall, the strata has reasonably investigated and addressed Mr. Sandhu's noise complaints based on the evidence before me. I find no evidence of significant unfairness.

39. For these reasons, I dismiss Mr. Sandhu's claim.

CRT FEES AND EXPENSES

40. 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 not to follow this general rule in this dispute.

41. Although the strata claimed \$500 for "filing fees, costs, and prejudgement interest" under the *Court Order Interest Act*, I find the strata did not pay CRT filing fees or submit any costs or expenses. Further, there is no debt payable to the strata, so there is no

reason to award prejudgement interest. Accordingly, I dismiss the strata's \$500 expense claim.

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

ORDER

43. I dismiss Mr. Sandhu's claim, the strata's expense claim, and this dispute.

J. Garth Cambrey, Vice Chair