



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Shaw v. The Owners, Strata Plan LMS 572*, 2022 BCCRT 1210

B E T W E E N :

FREDERICK SHAW

APPLICANT

A N D :

The Owners, Strata Plan LMS 572

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about noise complaints in a strata corporation.
2. The applicant, Frederick Shaw, co-owns strata lot 15 (SL15) in the respondent strata corporation, The Owners, Strata Plan LMS 572 (strata). Mr. Shaw says that the strata failed to respond to his hearing request about alleged excessive noise coming from

strata lot 8 (SL8). He also alleges that the strata failed to properly investigate his complaints. Mr. Shaw seeks \$5,000 in damages for the alleged noise which he says disrupts his daily activities and quality of life.

3. The strata admits that it was delayed in scheduling Mr. Shaw's hearing. However, it says that Mr. Shaw refused the strata's late invitation to a hearing. The strata also says that it has tried to investigate Mr. Shaw's complaints, but Mr. Shaw has not been cooperative. It further says that Mr. Shaw has failed to prove that the noise he complains about is unreasonable.
4. Mr. Shaw is self-represented. The strata is represented by JG, the strata council president.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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 Issues

Late Evidence

9. Mr. Shaw provided some evidence after the CRT's deadline. The evidence includes emails sent by the strata council to Mr. Shaw on September 17, 2022 and September 21, 2022 about noise complaints made against SL15 by SL8. The strata says the late evidence is unrelated to this CRT dispute. I agree. The subject of this dispute is Mr. Shaw's noise complaints about SL8, not the reverse. So, I find the late evidence is not relevant to the issues in this dispute and have not considered it in my decision below.

Alleged Breach of Standard of Care

10. In his submissions, Mr. Shaw alleges that the strata council has breached its standard of care in investigating his noise complaints. Section 31 of the *Strata Property Act* (SPA) requires strata council members to act honestly and in good faith, with a view to the best interests of the strata, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
11. Our courts have found that strata council members owe these duties to the strata as a whole and not to individual owners (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32; *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551; and *Rochette v. Bradburn*, 2021 BCSC 1752). So, I find Mr. Shaw does not have standing (legal right) to claim that the strata council members breached the statutory standard of care and dismiss this claim.

ISSUES

12. The issues in this dispute are:

- a. Was the noise Mr. Shaw experienced unreasonable?
- b. Was the strata significantly unfair to Mr. Shaw in investigating, or failing to investigate, his noise complaints and in not giving him a hearing within the timelines set out in SPA section 34.1?
- c. If the answer to any of these questions is yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicant, Mr. Shaw must prove his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
14. The strata consists of 2 buildings with 20 strata lots. The strata plan shows that SL 15 is located on the third floor in 1 of the buildings, with SL8 directly below it.
15. On July 10, 2001, the strata filed bylaws with the Land Title Office. I find these are the bylaws that apply to this dispute. I discuss the relevant bylaw in my analysis below.

Noise complaints and the strata’s response

16. Mr. Shaw says that he experiences excessive noise in SL15 when SL8’s owner uses their dryer and primary bathroom shower. Emails in evidence show that Mr. Shaw first complained to the strata about the noise on January 13, 2022. Mr. Shaw sent a follow-up email on February 1, 2022 and provided the strata council with requested sound clips of the noise. In this email, Mr. Shaw said the noise levels were very noticeable from SL15’s living room and primary bathroom. Mr. Shaw welcomed a neutral strata council member to visit SL15 to hear the noise at an agreed upon time.
17. JG responded the same day and said the strata council would get back to Mr. Shaw. On February 7, 2022, the strata council informed Mr. Shaw that the plumbing service

for cleaning the stacks was scheduled for February 9, 2022 which would hopefully provide some answers or results.

18. On February 14, 2022, Mr. Shaw wrote to the strata council and noted there was no change to the noise which continued to negatively impact his quality of life. In this email, Mr. Shaw also requested a meeting with the strata council to discuss the ongoing noise issues. The same day, the strata council responded saying the council was currently swamped, dealing with several urgent matters and no council meeting was scheduled. The strata council also advised that a council member had gone to SL8 “a couple of weeks ago” to listen to SL8’s appliances and water running and noticed no unusual sounds.
19. On February 18, 2022, Mr. Shaw complained to the strata council that the noise persisted. On March 2, 2022, Mr. Shaw followed up on his February 14, 2022 meeting request, and said that the “high pitched and grinding noise levels” had not stopped. It appears the strata council did not respond so Mr. Shaw followed up again on March 11, 2022, requesting a hearing for a third time and saying that the noise issues were still ongoing.
20. On March 13, 2022, the strata council responded, and said that the strata was dealing with flood issues and did not have a council meeting scheduled to hold his requested hearing. In the email, the strata council noted again that they had visited SL8 on a couple of occasions and did not experience the noise levels Mr. Shaw complained about.

Was the noise Mr. Shaw experienced unreasonable?

21. The strata’s bylaw 2 addresses noise. It says that no owner or occupant can make any disturbing noise which may interfere with the rights, comforts and convenience of other owners at any time, without the written permission of those owners whose rights to quiet enjoyment will be affected. This bylaw is consistent with case law on nuisance from the BC Supreme Court. For example, in *Campbell et al v. Blainey et al*, 2005 BCSC 250, the court said in paragraph 55 that a nuisance occurs when one person’s use of property unreasonably inflicts inconvenience and discomfort on

another. In *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502, the court defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property (paragraph 33).

22. 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. This generally means that a resident's subjective noise complaints will not be enough to prove that noise is unreasonable. Rather, I find that Mr. Shaw must provide objective evidence that the noise is unreasonable to an ordinary person.
23. The strata says strata council members have visited SL8 on various occasions and not witnessed any noise at the levels Mr. Shaw complains of. The strata's evidence also includes a May 28, 2022 report following its coordinated visits to SL8 and SL15. The report states that 1 council member, MK, attended in SL8 while 2 council members, FL and LK, attended in SL15. The council members did not use any device to measure the sound levels.
24. The report notes that when SL8's dryer was on, FL "heard nothing above ambient noise levels" and the "timbre was not unpleasant, and was constant like a white noise". LK observed the shower noise and noted that there were slight fluctuations in pitch and volume but nothing "approaching the bothersome volume or timbre expected". Based on this report, I find FL and LK's conclusions were that the sounds produced by SL15's dryer and primary bathroom shower were not extreme or unreasonable.
25. Mr. Shaw says the noises occur daily and provided some logs recording when he heard the alleged excessive noises. He describes the alleged dryer noise as a high pitched, shrieking noise and the alleged shower noise as a high pitched, shrill and whining noise.

26. Mr. Shaw did not provide any witness statements in support of his allegations or professional reports analysing the noise levels experienced in SL15. Instead, Mr. Shaw relies on data he compiled of decibel readings taken on his phone using an application. Mr. Shaw says that he followed a “scientific method” collecting decibel and hertz levels to compare with published norms. He also says that the application he used has a high level of acceptability and is calibrated with professional quality decibel measurement devices.
27. Despite these submissions, I do not find Mr. Shaw’s data reliable and give it little weight for the following reasons. First, I find Mr. Shaw is not an objective party. There is also no evidence that he has any expertise in sound testing. Further, other than his own assertions, Mr. Shaw provided no supporting evidence to prove the application’s quality and reliability.
28. Based on the above, I find Mr. Shaw has not provided objective evidence that the noise is unreasonable to an ordinary person.

Did the strata fail to adequately investigate Mr. Shaw’s noise complaints?

29. SPA section 26 requires the strata council to perform the duties of the strata, which includes enforcing bylaws. The strata must act reasonably in response to complaints about bylaw infractions. I find that this includes a duty to reasonably investigate noise complaints.
30. The SPA does not set out any specific procedures for addressing bylaw complaints. The courts have said that a strata may investigate bylaw infraction complaints as its council sees fit, provided it complies with the principles of procedural fairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS770*, 2016 BCSC 148 at paragraph 52).
31. Mr. Shaw says the strata failed to give him a timely hearing and failed to properly investigate his noise complaints, including alleging that the strata council president has a conflict of interest. Although Mr. Shaw does not use these exact words, I find

his claim is that the strata has treated him significantly unfairly in the way it has handled his noise complaints and hearing requests.

32. Under CRTA section 123(2), the CRT can make orders remedying significantly unfair actions or decisions by a strata corporation or strata council (see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164). Courts have found that a strata's actions are significantly unfair when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or are unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44). *Dollan* also sets out a reasonable expectations test. According to paragraph 28 of *Watson*, the reasonable expectations test asks whether an objectively reasonable expectation by an owner or tenant was violated by a significantly unfair action.
33. I find that Mr. Shaw had a reasonable expectation that the strata would investigate his noise complaints in a fair and timely way.
34. The strata acknowledges that there were some delays in it investigating Mr. Shaw's complaints and providing him a hearing. It contributes these delays to flooding issues it was dealing with. Mr. Shaw says the strata's delays were deliberate.
35. In its submissions, the strata says that the strata council president visited SL8 on January 13, 2022 and did not observe anything unusual. Further, the evidence shows the strata council told Mr. Shaw on March 13, 2022 that a council member was available to attend at SL15 to witness the noise firsthand. However, Mr. Shaw said the proposed visit was "late in the timeframe" and did not contact the council member to visit SL15.
36. As noted above, the strata had council members attend at SL 8 and SL15 on May 28, 2022 to investigate Mr. Shaw's noise complaints. Mr. Shaw takes issue with the procedures the strata council members followed in conducting the May 28, 2022 investigation and says FL and LK's observations were too subjective. In particular, Mr. Shaw says that the 1 to 3 minute duration of each test for the dryer and shower

were too short. He also says that the dryer test was done without a full wet load in the dryer and so did not properly replicate the conditions when SL8 uses the dryer.

37. While I acknowledge the investigation was not perfect, perfection is not required from strata council members. The law recognizes that strata councils are made of people volunteering their time for the good of the strata community (see *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 at paragraph 50). Further, although FL and LK's observations are undisputedly subjective, I find this subjective investigation was a reasonable starting point for the strata to see whether further investigation was necessary. Emails in evidence show that following the May 28, 2022 investigation, the strata told Mr. Shaw it was going to have a plumbing company which was coming in to fix a leaking tap look into the noise issue.
38. I accept the strata's evidence that JG attended at SL8 to investigate Mr. Shaw's initial complaint the same day he made it. Though Mr. Shaw alleges JG has a conflict of interest due to his friendship with SL8's owner, I do not find a friendship alone establishes a conflict of interest. I find the evidence before me does not prove on a balance of probabilities that JG was biased against Mr. Shaw or favoured SL8's owner.
39. While I accept the strata did not visit SL15 to investigate Mr. Shaw's complaints as quickly as he wanted, I do not find the strata's investigation delays were purposeful or done in bad faith. Based on the evidence before me, I find Mr. Shaw has not established that the strata acted significantly unfairly in investigating his complaints. Rather, I find the strata's investigations, though slow to start, were reasonable under the circumstances.
40. I now consider whether the strata acted significantly unfairly in dealing with Mr. Shaw's hearing requests. Section 34.1 of the SPA says that the strata must hold a hearing within 4 weeks of a hearing request. This provision is mandatory. So, I find Mr. Shaw had a reasonable expectation that the strata would hold a hearing within 4 weeks of his February 14, 2022 request. Since the strata undisputedly did not hold a hearing within this timeframe, I find the strata violated this reasonable expectation.

41. Though the strata did not hold a hearing within 4 weeks of his original request, the evidence shows that on April 4, 2022, the strata invited Mr. Shaw to a hearing scheduled for the following day. Mr. Shaw declined this invitation due to the short notice and since he had already applied to the CRT for dispute resolution. The strata subsequently held a hearing for Mr. Shaw on May 18, 2022.
42. For the reasons that follow, I do not find the strata was significantly unfair to Mr. Shaw in failing to give him a hearing within the timeline set out in SPA section 34.1. As noted above, strata corporations are not held to a standard of perfection. Although the strata did not hold Mr. Shaw's hearing 4 weeks of his request, it did offer him a hearing on April 5, 2022, albeit on short notice, and eventually held the hearing on May 18, 2022. I find the evidence does not establish that the strata's delay in scheduling Mr. Shaw's hearing was burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or was unjust or inequitable. So, I find Mr. Shaw has not proven that the strata treated him significantly unfairly by failing to give him a hearing within 4 weeks of his request.

What remedies, if any, are appropriate?

43. I have found that Mr. Shaw has failed to prove the noise he complained about was unreasonable. I have also found that the strata did not treat Mr. Shaw significantly unfairly in the manner it addressed his noise complaints and hearing requests. Given this, I find Mr. Shaw is not entitled to his \$5,000 claimed damages.
44. Nothing in this decision prevents Mr. Shaw from making future noise complaints or relieves the strata from its duty to investigate future complaints.

CRT FEES AND EXPENSES

45. 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. Since I have found the strata breached SPA section 34.1 by failing to give Mr. Shaw a hearing within 14 days, I find Mr. Shaw was partially successful in this dispute. So, I find he is entitled to reimbursement of half of his paid

\$225 in CRT fees. This equals \$112.50. Neither party claimed any dispute-related expenses.

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

ORDERS

47. Within 21 days of this decision, I order the strata to pay Mr. Shaw \$112.50 for CRT fees.
48. I dismiss Mr. Shaw's remaining claims.
49. Mr. Shaw is entitled to post-judgment interest, as applicable.
50. 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.

Nav Shukla, Tribunal Member