



Civil Resolution Tribunal

Date Issued: November 22, 2022

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Bondoc v. The Owners, Strata Plan VR1159, 2022 BCCRT 1258*

B E T W E E N :

JOHN BONDOC

APPLICANT

A N D :

The Owners, Strata Plan VR1159

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This strata property dispute is about mechanical equipment noise.
2. The applicant, John Bondoc, co-owns strata lot 6 (SL6) in the respondent strata corporation, The Owners, Strata Plan VR1159 (strata). Mr. Bondoc says that an electrical transformer located on common property underneath SL6 is a nuisance

because it emits harmful noise and vibration into his home. Mr. Bondoc acknowledges the strata has made some attempts to address the transformer noise. However, he says the strata has been slow to act and the steps it has taken have been ineffective.

3. Mr. Bondoc seeks an order that the strata take immediate action to stop the transformer noise from entering SL6. In the alternative, he seeks \$350,000 in damages for the loss of SL6's property value due to the transformer noise and moving expenses he says he will incur if the strata does not remedy the noise. Mr. Bondoc also seeks \$35,000 in damages for loss of use and enjoyment of his primary bedroom and bathroom, harm to his physical and mental health, and for the negative impact the noise has had on his work performance.
4. The strata says that that transformer noise is not a nuisance. The strata also says it has taken reasonable steps to address the transformer noise. So, the strata says Mr. Bondoc is not entitled to any damages.
5. Mr. Bondoc is self-represented. A strata council member represents the strata.

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)*. 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.
7. 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.

8. 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.
9. 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 – Settlement Discussions

10. In their submissions, both parties refer to settlement discussions. CRT rule 1.11 says that communications made attempting to settle claims by agreement in the CRT process are confidential and must not be disclosed during the CRT's decision process. CRT rule 1.11 exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. Here, there is no evidence that the parties agreed to disclose these settlement discussions. So, I have not considered evidence of these discussions in reaching my decision.

ISSUES

11. The issues in this dispute are:
 - a. Is the transformer noise in SL6 a nuisance?
 - b. Was the strata significantly unfair in how it dealt with Mr. Bondoc's noise complaints?
 - c. If yes to any of the above, what remedy is appropriate?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Mr. Bondoc 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.

13. On April 8, 2002, the strata repealed its bylaws and filed new bylaws with the Land Title Office. The strata subsequently filed various amendments to the bylaws. I find the April 8, 2002 bylaws, as amended, are the bylaws that apply to this dispute. More on the bylaws below.
14. The following facts are undisputed. In March 2021, Mr. Bondoc and his wife purchased SL6. Directly below SL6 is an electrical transformer located in a common property electrical room in the strata's parking lot. The transformer is a key piece of the strata's electrical system and supplies power to 15 strata lots.

Noise complaints and the strata's response

15. Emails in evidence show that Mr. Bondoc first complained to the strata about a buzzing sound coming from outside of SL6 on March 28, 2021. On March 31, 2021, RC, the strata council president at the time, replied and said they would check the parkade to see if they could locate the sound's source. After some investigation, on April 9, 2021, the strata determined the noise was coming from the transformer.
16. On April 13, 2021, RC advised Mr. Bondoc about the strata's findings. Between April 20, 2021 and June 10, 2021, Mr. Bondoc complained to RC various times about the transformer noise. In most of these complaints, Mr. Bondoc said that the noise was making it difficult for him to sleep. On May 11, 2021, Mr. Bondoc said the lack of sleep caused by the noise was starting to affect his work.
17. Around this time, the strata had Lux Electric Group Ltd. (Lux) inspect the transformer to determine the noise's cause. In a May 17, 2021 estimate, Lux suggested that cleaning the transformer might help the noise issue but it was not guaranteed. Lux recommended a new transformer be installed and provided a \$11,530.20 quote for that.
18. In a June 3, 2021 email, Mr. Bondoc complained again about the noise and asked if there were any updates on fixing the transformer. Then, on June 7, 2021, after having

reviewed the Lux report, Mr. Bondoc asked the strata to replace the transformer. He said that he was willing to split the cost to make SL6 livable if the strata was not willing to pay for the new equipment. On June 9, 2021, Mr. Bondoc reiterated to RC that he was willing to spend his own money to remedy the transformer noise if necessary.

19. It is undisputed that between July 2021 and August 2022, the strata took various steps to try to address the transformer noise. This included installing isolation pads under the transformer, installing a flexible conduit, retaining BAP Acoustics (BAP) to measure the noise, and obtaining quotes to install spring isolators as well as quotes for a new transformer. However, Mr. Bondoc says the transformer noise continues.

Is the transformer noise in SL6 a nuisance?

20. As mentioned above, Mr. Bondoc says the transformer's noise and vibrations are a nuisance to SL6's residents. The transformer is undisputedly a common asset. So, I find the strata's responsibility for the nuisance stems from its obligation to "manage and maintain" common assets under section 3 of the *Strata Property Act* (SPA).
21. In the strata context, a nuisance 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). Whether or not an interference, such as noise, is unreasonable depends on several factors, such as 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).
22. Mr. Bondoc says the constant noise and vibrations from the transformer make it difficult to sleep in SL6's primary bedroom and to use the primary bathroom. He says that the noise has disrupted his sleep to the point where he has had to resign from his job. He also says that the noise causes him headaches from grinding his teeth, so he needs to wear a mouth guard when he sleeps. Mr. Bondoc further says the persistent lack of sleep required him to obtain counselling. Receipts from Mr. Bondoc's counselling sessions and mouth guard purchase are in evidence.

23. Mr. Bondoc also provided a statement from his wife, MO. MO says that the transformer noise is so loud that it is almost impossible to fall asleep peacefully. She says that she and Mr. Bondoc have bought many items like ear plugs and noise cancelling machines hoping they would help cancel the noise but have had little success. MO says that due to the lack of sleep, her body regularly aches, and she is constantly taking pain killers.
24. As mentioned above, Mr. Bondoc made offers to the strata to contribute towards the cost of repairs to remedy the transformer noise. While I find Mr. Bondoc had no obligation to pay to remedy the noise, I find the fact that he made these offers is some evidence of the impact the ongoing noise was having on him.
25. Based on the evidence before me, I accept that the transformer noise is unreasonable to Mr. Bondoc and his family. However, as mentioned above, what Mr. Bondoc must prove is that the noise is objectively intolerable to an ordinary person.
26. I find the best objective evidence about the transformer's noise is BAP's December 14, 2021 report. In this report, BAP stated that it visited SL6 and another strata lot that also has a transformer beneath it on December 2, 2021. BAP measured noise levels in both strata lots and in the electrical rooms beneath them where the transformers are located. BAP described the transformer noise as a clear audible hum. BAP reported the noise level in SL6 was 27dBA, dominated by transformer noise. Prominent tones were recorded at 120Hz, 240Hz, and 360Hz.
27. In its assessment, BAP referred to the American Society of Heating, Refrigeration and Air-Condition Engineers' (ASHRAE) guidelines for the control of noise from building services. BAP noted that for living areas in apartments, ASHRAE recommends that background noise from building services equipment not exceed 35dBA, and that no audible tones or whines be present. BAP concluded that although the 27dBA transformer noise level in SL6 was within the ASHRAE guidelines, the 120Hz and 360Hz tones conflicted with the ASHRAE recommendations. Specifically, BAP noted that these tones were significantly higher than the threshold of hearing. BAP said that without a substantial amount of masking noise, it would expect these

tones to have the potential to be disturbing and annoying. BAP then set out a number of recommendations for modifying the transformer that might help reduce the noise. These included replacing the existing isolation pads with spring isolators, eliminating or replacing all rigid connections between the metering box and surrounding building structure, and remounting the metering box and fuse box using neoprene mounts.

28. The strata says that BAP's findings fail to meet the standard set out in *Triple P* for a nuisance. It says that the noise levels BAP recorded in SL6 are below accepted levels. It also says that although BAP found some tonal frequencies in SL6 conflict with ASHRAE's guidelines, BAP does not say the frequencies are a health hazard. However, I find the *Triple P* standard does not require an interference to be a health hazard in order to be considered a nuisance. Further, previous CRT decisions have noted that it is not necessary for a noise to reach a particular decibel range in order for it to be considered unreasonable (see *Torok v. Amstutz et al*, 2019 BCCRT 386 at paragraph 47 and *Alavi v. The Owners, Strata Plan BCS1311*, 2020 BCCRT 630 at paragraph 37). Though not binding on me, I find the reasoning in these decision persuasive and apply it here.
29. I find the BAP report confirms that the tonal frequencies emitted by the transformer under SL6 are significant and may be disturbing and annoying to an ordinary person. Based on the BAP report and the fact that the transformer undisputedly constantly emits noise and vibrations, I find it more likely than not that the tonal frequencies emitted into SL6 by the transformer are unreasonable and a nuisance.

Was the strata significantly unfair in how it dealt with Mr. Bondoc's noise complaints?

30. Mr. Bondoc says that the strata has not made adequate efforts to address his noise complaints. In particular, Mr. Bondoc says the strata chose ineffective repair options, caused delays, dismissed his concerns, and failed to keep him informed of its actions. I find Mr. Bondoc alleges that the strata has acted significantly unfairly in the way it has handled his noise complaints.

31. Under CRTA section 123(2), the CRT can make orders remedying significantly unfair actions or decisions by a strata (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 was violated by a significantly unfair action.
32. I find Mr. Bondoc had an objectively reasonable expectation that the strata would investigate his complaint about the transformer noise and act on the consultants' recommendations.
33. Here I find the evidence shows that after Mr. Bondoc's initial complaints, the strata responded and took reasonable action to determine the noise's cause and find a resolution. As mentioned above, RC determined the noise was coming from the transformer and the strata then took steps to have an electrical engineer attend and examine the transformer, had isolation pads installed, had the transformer cleaned, and had some flexible conduits installed.
34. Though Mr. Bondoc alleges the strata chose ineffective repair options, the courts have found that a strata corporation is entitled to rely on and be guided by the advice of professionals: see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 56. Further, as noted in *Weir v. Strata Plan NW 17*, 2010 BCSC 784, a strata corporation may have several reasonable options available to undertake necessary repairs. So long as the option selected is reasonable, even if in hindsight it turns out to be less wise, a court (or tribunal) will have no basis to overturn the strata's decision. So, based on *Leclerc* and *Weir*, I find the steps taken by the strata up to and including the BAP report were reasonable.

35. On January 5, 2022, the strata sent the BAP report to Mr. Bondoc and said that the transformer's noise was "within accepted noise generations thresholds" and any further remediation would have to be paid for "by the owners". I infer the strata's reference to "the owners" is to SL6's owners.
36. After receiving this email, Mr. Bondoc requested a strata council hearing to urge the strata to reconsider its position and remedy the noise. This hearing took place on February 3, 2022. Meeting minutes in evidence show that following the hearing, the strata asked its strata manager to obtain quotes for installing spring isolators as well as for a new transformer. Emails in evidence shows the strata manager attempted to obtain these quotes between mid-February 2022 and July 2022.
37. The strata's January 5, 2022 email to Mr. Bondoc set out the strata's position that it was not required to do anything further to remedy the transformer noise. Given BAP's findings and recommendations, I find this decision was unreasonable and harsh to Mr. Bondoc. Further, since the noise is undisputedly being made by a common asset, I find it is the strata's responsibility to ensure the transformer noise is not a nuisance. So, I find the strata's decision that Mr. Bondoc could undertake transformer repairs at his own expense was unjust and burdensome because it shifted the strata's responsibility onto Mr. Bondoc.
38. For these reasons, I find the strata treated Mr. Bondoc in a significantly unfair manner by not doing anything about the transformer noise after receiving the BAP report in December 2021 until the February 3, 2022 hearing.

What remedies are appropriate?

39. As noted, Mr. Bondoc seeks an order for the strata to take immediate steps to stop the transformer noise from entering SL6. Since I have found that the transformer noise is a nuisance, I find the strata must reduce the noise to a reasonably acceptable level. For clarity, this does not mean that the strata is required to eliminate the noise, which the evidence shows is not possible because transformers will always make some amount of noise.

40. As mentioned above, the BAP report set out various recommendations to modify the transformer and potentially reduce the noise. In July 2022, the strata asked AE Mechanical Engineering (AE) to provide a feasibility analysis of BAP's recommendations. In its email report, AE explained that some of BAP's recommendations were not feasible and provided 3 options for the strata to consider. The strata then obtained quotes and recommendations from 2 companies that the strata says align with AE's recommendations.
41. The first quote was from IHM Mechanical Ltd. (IHM). In its August 5, 2022 quote, IHM quoted \$6,188.95 to install flexible conduit between the transformer and metering connection, install floor mount isolators and to raise the transformer and mount it onto new isolators.
42. The second was Corporate Electric Limited's (CE) August 12, 2022 quote, which included 2 options. The first was to install a new transformer with flexible connections and vibration mounts for \$21,582.43. The second was a \$5,627 quote to do essentially the same work quoted by IHM. Based on AE's July 29, 2022 email report, I accept that not all of BAP's recommendations are feasible.
43. So, I order the strata to complete the work quoted by either IHM or CE, which aligns with AE's recommendations. I leave it to the strata to decide whether to proceed with the less expensive option set out in IHM's quote and CE's option #2, or to install a new transformer. However, if the work done does not reduce the transformer noise in SL6, nothing in this decision stops Mr. Bondoc from making further complaints to the strata about the noise.
44. Once the strata decides which repair work to undertake, the strata must call an annual general meeting (AGM) or special general meeting (SGM) to hold a vote on whether to fund the transformer upgrades by the contingency reserve fund (CRF) or special levy. Mr. Bondoc says the requirement for a vote should be waived because this is a health and safety issue. I do not agree. Though bylaw 25.4 allows the strata council to make unapproved expenditures if the expenditure is necessary to ensure safety or prevent significant loss or damage, I do not find this bylaw applies here.

45. Since I have ordered the strata to upgrade the transformer, I dismiss Mr. Bondoc's alternative claim for \$350,000 in damages for loss of property value and moving expenses.
46. As mentioned above, Mr. Bondoc also claims \$35,000 in damages for loss of enjoyment of SL6's primary bedroom and bathroom, harm to his physical and mental health, and for the negative impact the noise has had on his work performance. On balance, I find there is insufficient objective evidence (such as medical reports or proof of loss of income) of the noise's impact on Mr. Bondoc's health and work performance to award him damages.
47. However, in previous CRT decisions, owners have been awarded damages for noise-related nuisance. In *Tollasepp v. The Owners, Strata Plan NW 2225*, 2020 BCCRT 481, the tribunal member considered several of these decisions and noted damages awarded in those decisions ranged from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of droning and living noise. While not binding on me, I find the reasoning in *Tollasepp* persuasive and adopt it here.
48. As noted above, in this dispute Mr. Bondoc first complained about the transformer noise in late March 2021. Based on the consistent nature of the noise, and since Mr. Bondoc has been dealing with the noise for over 1.5 years now, I find the strata must pay Mr. Bondoc \$1,000 in damages for loss of enjoyment of his strata lot.

CRT FEES, EXPENSES AND INTEREST

49. 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 in this case not to follow that general rule. Since Mr. Bondoc was largely successful, I order the strata to reimburse Mr. Bondoc for CRT fees of \$225. Neither party claims any dispute related expenses.
50. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Bondoc is entitled to prejudgment interest on the \$1,000 nuisance damages from March 28, 2021, the date

Mr. Bondoc first complained about the transformer noise, to the date of this decision. This equals \$12.42.

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

ORDERS

52. Within 30 days of this decision, I order the strata to pay Mr. Bondoc \$1,237.42, broken down as follows:

- a. \$1,000 in damages,
- b. \$12.42 in pre-judgment interest under the COIA, and
- c. \$225 in CRT fees.

53. Within 60 days of this decision, I order the strata to call an AGM or SGM to hold a vote on whether to fund the transformer upgrades by CRF or special levy.

54. Within 120 days of this decision, I order the strata to complete the transformer upgrades recommended by IHM in its August 5, 2022 quote or by CE in its August 12, 2022 quote.

55. Mr. Bondoc is also entitled to post-judgment interest under the COIA, as applicable.

56. I dismiss Mr. Bondoc's remaining claims.

57. 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