Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Donatelli v. The Owners, Strata Plan 535*, 2022 BCCRT 1297

B E T W E E N :

MARTIN J. DONATELLI

APPLICANT

A N D :

The Owners, Strata Plan 535

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about enforcement of noise bylaws.

2. The applicant, Martin J. Donatelli, owns a strata lot (unit 315) in the respondent strata corporation, The Owners, Strata Plan 535 (strata). Mr. Donatelli is self-represented in this dispute. The strata is represented by a strata council member.

3. Mr. Donatelli says his upstairs neighbours (unit 415) have repeatedly breached a strata noise bylaw, by permitting their visiting young grandchild to run, play, and jump in their strata lot. Mr. Donatelli says the strata has refused to enforce the bylaw. In his dispute application, Mr. Donatelli requested the following remedies:

   - An order that the strata immediately enforce bylaw 4(3)(e) on unit 415, and impose fines for future violations.
   - Reimbursement of $1,050 for Mr. Donatelli's time spent on this matter.
   - $1,800 in damages for "unnecessary stress and suffering" due to the bylaw violations.
   - An order that the strata pay a $900 in bylaw infraction fines and a $1,000 "punitive fine", since the council failed to enforce the bylaws.

4. In his subsequent submissions, Mr. Donatelli requested additional damages, which I address below.

5. The strata says it responded to Mr. Donatelli's bylaw complaints appropriately and fairly. The strata says Mr. Donatelli has misinterpreted the bylaw, and that the noise from unit 415 is reasonable in the context of a residential building, and does not breach the bylaw. The strata also says Mr. Donatelli has failed to prove his claim, and refused to cooperate with its noise investigation.

6. For the reasons set out below, I dismiss Mr. Donatelli'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 which 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.

11. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 535. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 535. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. So, I have amended the strata's name above.

Additional Damages

12. In his CRT submissions, Mr. Donatelli requested additional damages for noise incidents he says occurred after he filed his dispute application. The strata says it would be unfair for the CRT to make a decision about these additional damages,

since Mr. Donatelli did not notify it about these bylaw complaints, so it had no opportunity to respond to them.

13. Since I have dismissed Mr. Donatelli's claims, including his claims for damages, I find nothing turns on the amounts, or when they were claimed. So, I have considered the additional damages claims as part of this decision, and dismiss them for the reasons set out below.

ISSUES

14. The issues in this dispute are:

    a. Has the strata failed to enforce bylaw 4(3)(e)?

    b. If so, what remedies are appropriate?

BACKGROUND

15. In a civil claim like this one, Mr. Donatelli, as applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

16. The strata plan shows that the strata was created in 1977. It contains 55 residential strata lots, in a 4-storey building. Mr. Donatelli's unit 315 is located on the third floor, and unit 415 is directly above it on the fourth floor.

17. The strata filed consolidated bylaws at the Land Title Office in May 2011. These are the bylaws applicable to this dispute. Strata bylaw 4 addresses noise and nuisance. The relevant portions state:

    - Bylaw 4(1) – an owner, tenant, occupant or visitor must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, or causes unreasonable noise that disturbs other residents.

- Bylaw 4(3)(a) – an owner, tenant, occupant or visitor must keep audible noise to a minimum between 11:00 pm and 7:00 am.

- Bylaw 4(3)(e) – running, playing, jumping and "other activities likely to disturb other residents" are not permitted in strata lots, hallways, or stairwells.

18. As background, since this dispute involves child-related noise, I also note strata bylaw 1. That bylaw says any person residing in the strata must be at least age 19, and that visitors under 19 may only stay for 4 weeks in any 6 week period. However, the age restriction on residency became unenforceable on November 24, 2022, when the legislature enacted the *Building and Strata Statutes Amendment Act, 2022*. Among other things, that enactment amends the SPA so that any age restriction bylaw with a minimum age of less than 55 is immediately unenforceable.

REASONS AND ANALYSIS

Has the strata failed to enforce bylaw 4(3)(e)?

19. Mr. Donatelli says the unit 415 occupants have repeatedly violated bylaw 4(3)(e), in particular by allowing their visiting young grandchild to run, jump or play in unit 415. Mr. Donatelli says that despite his complaints, the strata has failed to enforce the bylaw.

20. *Strata Property Act* (SPA) section 26 requires a strata council to enforce strata bylaws and rules. This includes a duty to reasonably investigate alleged bylaw violations. The strata has a duty to take steps to consistently enforce its bylaws, unless the effect of the breach on other owners breach is trivial or "trifling": see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc*., 2016 BCSC 32 at paragraphs 237-238.

21. Mr. Donatelli's submissions and evidence raise 2 alleged problems. First, he says the strata has interpreted the bylaw's meaning incorrectly. Second, he says the strata's enforcement process and actions were insufficient and flawed. I deal with these two problems in turn.

Interpretation of Bylaw 4(3)(e)

22. The precise wording of bylaw 4(3)(e) is as follows:

> Running, playing, jumping and other activities likely to disturb other residents is not permitted in strata lots, hallways, or stairwells.

23. The strata says that bylaw 4(3)(e) must be read broadly, and cannot be read narrowly to mean that the bylaw prohibits all running, playing and jumping in a strata lot. The strata argues that if the bylaw were applied literally, any child visiting the strata would surely violate the bylaw. The strata says this would be an illogical, absurd interpretation of bylaw 4(3)(e), as visiting children would effectively be prohibited.

24. Mr. Donatelli disagrees. He says the literal wording of the bylaw should apply, meaning that running, playing, and jumping are strictly prohibited. He says children may visit as long as they do not run, play, or jump.

25. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the court said the basic rules of statutory interpretation should be used to interpret strata bylaws. One of these rules, the plain meaning rule, says the words of a bylaw should be interpreted using their plain and ordinary meaning. However, the Supreme Court of Canada has said that where it would lead to a contradiction or an absurdity, the plain meaning of the words may be modified in the interpretive process to avoid an absurd result (see *Paul v. The Queen*, 1982 CanLII 179 (SCC) at page 662).

26. In this case, I agree with the strata that it would be absurd to impose a literal interpretation of bylaw 4(3)(e). This is because on its face, the wording of the bylaw prohibits all forms of “playing” in strata lots. This would mean that strata residents could not play card games, video games, or board games, or engage in any other form of play in their homes. I also agree with the strata that a literal interpretation of bylaw 4(3)(e) would effectively contradict bylaw 1(2), which permits visiting children.

27. The BC Supreme Court has defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property: see *The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd*., 2018 BCSC 1502 at

paragraph 33. It is possible for a strata to adopt a noise nuisance bylaw that sets a different standard that this. However, I find that given the absurdity created by a literal reading of bylaw 4(3)(e), it is reasonable and appropriate to interpret that bylaw in light of the "substantial, non-trivial, and unreasonable interference" test in *Triple P*.

28. So, following the reasoning in *Paul* and *Triple P,* I find that bylaw 4(3)(e) must be interpreted in the context of the strata's other noise bylaws and the BC Supreme Court's definition of nuisance in the strata setting. This means that bylaw 4(3)(e) prohibits running, playing, jumping and other activities to the extent that they substantially, non-trivially and unreasonably interfere with other occupants' use and enjoyment of their strata lots or common property. As discussed further below, this requires an assessment of the amount, nature, frequency of timing of the noise produced by these activities.

Enforcement Process

29. Mr. Donatelli argues that because he heard and complained about noises of running, playing, and jumping from unit 415, and because the unit 415 occupants did not specifically deny that their grandchild did these actions, the strata should necessarily have imposed bylaw violation fines.

30. The strata says it responded to Mr. Donatelli's complaints reasonably by sending a warning letter to unit 415, speaking with the unit 415 occupants, and obtaining written confirmation from the unit 415 occupants that they agreed to take steps to mitigate noise. The strata also says that after Mr. Donatelli continued to complain, it offered to arrange professional sound testing, but Mr. Donatelli refused to cooperate.

31. The SPA does not set out any specific procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770,* 2016 BCSC 148, the BC Supreme Court said the SPA allows a strata corporation to deal with complaints of bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions is not significantly unfair to any person who appears before it (paragraph 52).

32. Similarly, the courts have established that a strata corporation is not held to a standard of perfection. Rather, the strata must act reasonably with fair regard for the interests of all concerned: *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 57.

33. For the following reasons, I find the strata acted reasonably in responding to Mr. Donatelli's bylaw complaints, and therefore met its duty to enforce bylaw (4)(3)(e).

34. As explained above, I find bylaw 4(1)3)(e) cannot be interpreted literally, as Mr. Donatelli asserts it should. This means strict liability does not apply. That is, Mr. Donatelli says a lack of denial by unit 415 necessarily means the strata should have imposed fines, but for the following reasons, I do not agree.

35. SPA sections 129 and 130 address bylaw enforcement. These sections state that the strata "may" impose fines. The SPA does not make fines mandatory for bylaw breaches. In the circumstances of an ongoing issue like noise complaints within a shared building, I find it was appropriate and reasonable for the strata to begin by issuing a warning letter and attempt to resolve the situation informally. The evidence shows the strata sent unit 415 a detailed warning letter on January 11, 2022, after receiving Mr. Donatelli's complaint email on December 23, 2021. On January 1, the unit 415 owners provided written confirmation on January 14, 2022 that they agreed to install 3 large play mats, wear thick socks, keep noise to a minimum after 10:00 pm, and encourage their grandson to walk softly and move less.

36. The correspondence shows that these initial steps did not resolve the issue to Mr. Donatelli's satisfaction. He sent the strata further written complaints on February 7, February 8, March 14, April 4, and April 23, 2022. Mr. Donatelli then filed this CRT dispute on April 29, 2022.

37. The evidence also shows that throughout its correspondence with Mr. Donatelli about the unit 415 noise issue, the strata repeatedly asked Mr. Donatelli to provide specifics of his complaints. For example, in a February 8, 2022 email, the strata manager wrote that if the problem persisted, Mr. Donatelli should document dates, times and duration

of specific incidents. In a March 8, 2022 email, the strata manager wrote that in pursuing noise complaints, complainants need to:

> 2. … document their [evidence], noting the date, time, duration, intensity, and other specific details that will help the property manager and strata council make an appropriate determination about the best course of action;
>
> 3. depending on the nature of the complaint, complainants should include snapshots, recordings, decibel counts, and impartial eyewitness collaboration of facts to back their complaints…

38. Mr. Donatelli did not provide the strata with detailed evidence such as noise recordings, decibel levels, or witness statements. Rather, he sent the 4 emails listed above, which set out dates, and general periods in which noise occurred, such as "12:45 pm - 9:40 pm". There were a few notations like "thumping, jumping, falling, running, dropping things", but otherwise no specific descriptions.

39. As explained above, the appropriate question for the strata to consider was whether the complained-of incidents were a substantial and unreasonable interference with Mr. Donatelli's use and enjoyment of unit 315. The test of whether a potential nuisance 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.

40. I find that Mr. Donatelli did not provide evidence, either before this CRT dispute or during it, to establish that noise from unit 415 was objectively unreasonable. I agree that his noise logs show frequent and ongoing noise. However, there is nothing to corroborate those subjective reports, and nothing to establish the level of noise that occurred. The correspondence in evidence shows that the strata offered to hire BAP Acoustics to perform noise testing, but Mr. Donatelli declined. Mr. Donatelli says he refused because the strata made this offer after the bylaw violations had stopped, so the offer was a "ploy" by the strata. Even if that is true, it was open to Mr. Donatelli to arrange for testing at a different time.

41. Based on the evidence before me in this dispute, I find the strata reasonably met its duty to investigate Mr. Donatelli's bylaw complaints. I also find Mr. Donatelli has not met the burden in this CRT dispute of proving that noise from unit 415 was an objectively unreasonable interference with the use and enjoyment of unit 315.

42. For these reasons, I dismiss Mr. Donatelli's claims.

CRT FEES AND EXPENSES

43. 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. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

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

ORDER

45. I dismiss Mr. Donatelli's claims and this dispute.

Kate Campbell, Vice Chair