



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Karmali v. The Owners, Strata Plan LMS 2259, 2023 BCCRT 459*

B E T W E E N :

FAYYAZ KARMALI

APPLICANT

A N D :

The Owners, Strata Plan LMS 2259, IDA CHOI, and XIAOFEI WU

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This strata property dispute is about flooring and noise. The applicant, Fayyaz Karmali, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2259 (strata). Mr. Karmali's strata lot 59, which the parties refer to as unit 16C, is directly below the respondent owner Xiaofei Wu's strata lot 64, which the

parties refer to as unit 17C. The other respondent, Ida Choi, is Ms. Wu's property manager and manages unit 17C, which is rented to tenants.

2. Mr. Karmali says that since September 2021 he has heard increased noise from unit 17C. He suspects that the increased noise coincides with a flooring change. He wants "the respondent" (without specifying which respondent) to install "proper underlay" beneath the flooring to ensure that it complies with the strata's bylaws. Mr. Karmali gave this claim a value of \$4,000 but in submissions confirms that he is not seeking damages from any party.
3. All 3 respondents initially said the flooring and underlay complied with the strata's bylaws. The strata now says after further investigation, it considers Ms. Wu to be in contravention of various strata bylaws. The strata says I should order Ms. Wu to upgrade the underlay in unit 17C. Ms. Wu and Ms. Choi say they believe the underlay is "up to spec," but they are prepared to remediate if it is not.
4. Mr. Karmali is a lawyer and represents himself. The strata is represented by a council member. Ms. Choi represents herself. Ms. Wu adopts Ms. Choi's submissions.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

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 the parties and witnesses questions of 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.

ISSUES

9. The issues in this dispute are:
 - a. Does Mr. Karmali have standing to bring a strata property claim against Ms. Choi or Ms. Wu?
 - b. Is the strata required to install a different flooring underlay in unit 17C, or to require Ms. Wu to do so?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Karmali must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. Mr. Karmali did not submit any documentary evidence, despite having the opportunity to do so.
11. The strata was created in 1995 and includes 82 strata lots in a single tower. Mr. Karmali says he has lived in the same apartment since 2005. Title documents for unit 16C indicate that he has owned it since May 2017 but I find nothing turns on how long Mr. Karmali has lived in unit 16C. Ms. Wu has owned unit 17C since October 2014.
12. Mr. Karmali began complaining about noise in September 2021. He says he hears "every sound" from unit 17C, including the patter of a small dog.

13. Unit 17C was undisputedly renovated in late 2008 by a previous owner. The applicable bylaws at that time were filed in May 2008. Bylaw 5.4 said installation of any hard floor covering must be on top of an underlay to prevent sound transmission. The underlay was required to have certain sound transmission class (STC) and impact insulation class (IIC) ratings if cork or “silent step” was used. Since there is no evidence that cork or “silent step” were used, the only aspect of this bylaw that applied was that there had to be an underlay of some kind.
14. A July 2008 “Work Permit and Agreement” (alteration agreement) said the owner was installing laminate flooring in several rooms. The underlay was to be “Dura-Son 65 FICC” (field impact insulation class). The alteration agreement included a hand-written condition that a person, BL, who I infer was the building manager or a council member, was to inspect the underlay before the laminate flooring was installed. It added that “failure to do so may result in flooring being removed to inspect underlay.” This condition appears to have been initialled by the former owner and a strata representative. There is no evidence about whether BL inspected the underlay before the laminate was installed.
15. After this CRT proceeding started, the strata hired a BC Floor Covering Association (BCFCA) inspector to examine the underlay in unit 17C. The BCFCA’s January 15, 2023 inspection report says that the underlay is not Dura-Son. All the parties accept that finding, as do I. However, the report does not say anything about the existing underlay or its sound-insulation qualities.
16. On February 6, 2023, the strata wrote to Ms. Wu, stating that her flooring underlay was an unauthorized alteration. The letter said Ms. Wu could answer the complaint in writing or request a hearing within 14 days. If she did not, the strata may decide to impose a fine or “take action.” The evidentiary record ends with this letter so I do not know if or how Ms. Wu responded. I return to the letter’s content below.
17. Ms. Wu and Ms. Choi say they contacted “the contractor” (I infer from the 2008 renovation), and asked what underlay was used. They say the contractor provided a

photo, which they provided in evidence, of packaging for Acoustec underlay showing IIC 72 and STC 73 ratings.

Does Mr. Karmali have standing to bring a claim against Ms. Wu or Ms. Choi?

18. As noted, Mr. Karmali's only requested remedy is for one of the respondents to install proper underlay beneath the flooring in unit 17C and ensure that it meets the "code for the building (including under the strata bylaws)." Mr. Karmali did not refer to any BC Building Code provisions that apply so I interpret his request to mean compliance with the strata's bylaws.
19. I consider the claim against Ms. Wu first. The CRT has consistently held that individual owners do not have standing to bring a claim against other owners for bylaw contraventions (see, for example, *Edwards v. The Owners, Strata Plan BCS 3364 et al*, 2019 BCCRT 1092, and *Cheikes v. BM Clubhouse 40 Ltd.*, 2022 BCCRT 43). This is because SPA section 26 says the strata council, not individual owners, exercises the powers and duties of the strata, including enforcing the strata's bylaws. CRT decisions are not binding on me, but I agree with and adopt the reasoning in these decisions. I find that Mr. Karmali has no standing to claim that Ms. Wu contravened the strata's bylaws. Mr. Karmali's claim against Ms. Wu does not fit within the CRT's small claims jurisdiction either. The only remedy he seeks, installation of underlay, is an injunctive order, meaning an order that a party do or stop doing something. With limited exceptions set out in CRTA section 118(1) that do not apply here, the CRT cannot make injunctive orders in small claims disputes. As a result, I dismiss Mr. Karmali's claim against Ms. Wu.
20. As for the claim against Ms. Choi, Mr. Karmali does not provide any reasons why Ms. Choi may be responsible for repairs in Ms. Wu's strata lot. I dismiss the claim against Ms. Choi.
21. That leaves Mr. Karmali's claim against the strata.

Is the strata required to install a different underlay in unit 17C, or to require Ms. Wu to do so?

22. It is undisputed that unit 17C's flooring and underlay are part of unit 17C and not common property. Bylaw 2.1 says that an owner, not the strata, is responsible for repairing and maintaining their strata lot, except for certain exceptions under bylaw 8.1.3 that I find do not apply here. This means that the strata is not responsible to repair Ms. Wu's floor.
23. However, as noted above, the strata must enforce its bylaws. That duty includes a duty to investigate alleged bylaw contraventions, such as Mr. Karmali's noise and flooring complaints. The strata has taken some investigative steps, such as hiring BCFCA to inspect the underlay and writing a bylaw enforcement letter to Ms. Wu.
24. I find it would be premature for me to order the strata to install underlay in unit 17C, or to order the strata to require Ms. Wu to do so. The SPA gives the strata options to enforce its bylaws, including by imposing fines and by doing work on a strata lot to remedy a bylaw contravention (section 129). Before doing those things, the strata must give the affected owner a reasonable opportunity to answer the complaint, including a hearing if requested (section 135). That process had not completed when the parties made submissions. I find that making an order about unit 17C's underlay would circumvent this mandatory process, which would be unfair to Ms. Wu. I also find the CRT's process is not a substitute for SPA section 135's procedures in circumstances like these where there is no claim between the strata and Ms. Wu.
25. Without intending to prejudice the strata's investigation (which may or may not be completed before this decision is given), it is not clear on the evidence before me that Ms. Wu has contravened a bylaw. The strata's February 6, 2023 letter asserted that unit 17C's underlay does not meet "the strata bylaw specifications as requested from your alteration request." I note Ms. Wu was not an owner at the time the July 2008 alteration request was signed, and her name is not on the alteration request. The strata appears to rely on bylaw 5.6, which says installation of any hard floor covering must be on top of an underlay to prevent sound transmission, "acceptable to and approved by" council, with proof of purchase and the STC and IIC ratings supplied to

the building manager. However, bylaw 5.6 took effect in September 2019, so I find it does not apply to the 2008 renovation. As noted above, the applicable 2008 bylaws only required underlay, not underlay acceptable to and approved by council.

26. If Ms. Wu changed the flooring after September 2019, she would have to comply with bylaw 5.6. But there is little evidence that she changed her flooring. Mr. Karmali says that the unit 17C tenants initially suggested that the flooring had been changed “recently” but are now silent on the matter. I find this vague assertion, which is hearsay, insufficient to show that Ms. Wu changed the flooring. So, it is not clear that Ms. Wu has contravened a bylaw, and as a result, there is no basis in the evidence before me to order installation of a different underlay in unit 17C.
27. Further, Ms. Wu is correct that the BCPCA report does not say anything about the current underlay. If the current underlay is Acoustec, with the sound insulation ratings that Ms. Wu claims, an order to remove and replace the underlay may not resolve the underlying noise complaint. Other noise bylaw enforcement approaches may be necessary, such as working with the tenants to reduce noise.
28. For these reasons, I find it would be premature to make any orders against the strata, and I dismiss Mr. Karmali’s claim.
29. I have made this decision on the limited evidence and brief submissions before me. The strata’s further investigation may reveal new facts, and this decision does not prevent it from taking enforcement steps under the SPA. The strata’s obligation to enforce its bylaws is ongoing.

CRT FEES AND EXPENSES

30. 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. As Mr. Karmali was unsuccessful, I find he is not entitled to any reimbursement. The strata did not pay any CRT fees.

31. The strata claims \$1,050 for the BCFCA report from Ms. Wu. The strata relies on a clause in the alteration agreement that says in the event of legal proceedings to enforce or interpret the alteration agreement, the prevailing party is entitled to recover any litigation expenses. Ms. Wu is not a party to the alteration agreement, but the agreement indicates that it binds future unit 17C owners. I find it is not necessary to determine whether Ms. Wu is bound by the alteration agreement because she agrees to pay for the BCFCA report. So, I order her to reimburse the strata \$1,050.
32. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Karmali.

ORDERS

33. I dismiss Mr. Karmali's claims.
34. Within 30 days of the date of this order, Ms. Wu must pay the strata \$1,050 in dispute-related expenses for the BCFCA report.

Micah Carmody, Tribunal Member