



# Civil Resolution Tribunal

Date Issued: November 30, 2023

File: ST-2023-000154

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thackray v. Martin*, 2023 BCCRT 1039

B E T W E E N :

STEPHEN RUSSELL HOWARD THACKRAY

**APPLICANT**

A N D :

JON MARTIN and The Owners, Strata Plan BCS 1501

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about noise and related issues in a strata corporation.
2. The applicant, Stephen Russell Howard Thackray, co-owns a strata lot (SL17) in the respondent strata corporation, The Owners, Strata Plan BCS 1501 (strata) with his spouse, BS. The other respondent, Jon Martin, lives in the neighbouring strata lot

(SL16) with his spouse LM, who is SL16's owner. LM and BS are not named parties to this dispute.

3. Mr. Thackray says Mr. Martin made several complaints against Mr. Thackray about bylaw contraventions, including complaints about noise from Mr. Thackray's backyard water feature. Mr. Thackray says Mr. Martin has threatened him and invaded his privacy and continues to make complaints. Mr. Thackray asks for an order that Mr. Martin and LM stop their verbal threats of physical violence, privacy invasions, and their "made up and nuisance claims".
4. Mr. Martin disputes Mr. Thackray's claims and says he has not threatened Mr. Thackray or invaded his privacy.
5. Mr. Thackray says the strata initially decided the water feature noise was not unreasonable, but has since backtracked on its decision. Mr. Thackray also alleges the property manager failed to keep him informed of complaints and documentation about SL17, despite Mr. Thackray's requests. Mr. Thackray asks for the following remedies:
  - a. The strata pay \$15,000 in damages for "twice back-tracking on their decision" that the water feature noise issue was resolved, not engaging a sound transmission engineer, nor taking sound level readings within unit 56.
  - b. The strata pay \$5,000 for the property manager allegedly failing to provide correspondence and documentation to Mr. Thackray.
6. The strata disputes Mr. Thackray's claims. It says it reasonably addressed the water feature noise, and complied with the *Strata Property Act* (SPA) and bylaws in handling the noise complaint. The strata also says the property manager responded to all correspondence and requests from Mr. Thackray.
7. Mr. Thackray and Mr. Martin are each self-represented. The strata is represented by a strata council member.

## JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.
11. 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.

### ***Additional monetary claim***

12. In submissions, Mr. Thackray asked to increase the monetary value of his claim from \$0 to \$10,000. For the following reasons, I decline to consider this additional requested remedy.
13. Mr. Thackray included a copy of his Dispute Notice titled "requested increase in claim amount". In the document itself, the initially claimed "\$0.00" for Mr. Thackray's requested resolution for his claim against Mr. Martin is crossed out, and "\$10,000" is

written in with red ink. I asked CRT staff whether Mr. Thackray had asked to amend his Dispute Notice before the CRT decision process, and CRT staff advised he had not.

14. CRT rule 1.19 says that a Dispute Notice will only be amended after the dispute has entered the CRT decision process in extraordinary circumstances. In submissions, Mr. Thackray says he brought his claim against Mr. Martin to stop Mr. Martin from increasing his barrage of complaints, but says it did not work. Mr. Thackray says he is requesting to now claim \$10,000 as a result.
15. The purpose of the Dispute Notice is to define the applicant's issues and provide notice to the respondents of the claims made against them, as well as describe the remedies sought by the applicant. Mr. Thackray had the opportunity to amend his Dispute Notice before the CRT decision process, but did not do so. I find his submissions do not set out any exceptional circumstances that would justify allowing him to add a \$10,000 monetary claim against Mr. Martin at this late stage in the CRT process. Further, allowing this new monetary claim could prejudice Mr. Martin, who has not been provided with any notice of a monetary claim against him. So, I decline to allow this late requested amendment. This means Mr. Thackray's requested \$10,000 monetary claim against Mr. Martin is not properly before me, and I have not addressed it in this dispute.

### ***Other bylaw complaints***

16. The parties refer to complaints and alleged bylaw contraventions regarding a clothesline and parking. I have not addressed these other issues in this dispute because Mr. Thackray requests no remedy in relation to them.

## **ISSUES**

17. The remaining issues in this dispute are:
  - a. Should I order Mr. Martin or LM to stop their verbal threats of physical violence, privacy invasions, and their "made up and nuisance claims"?

- b. Did the strata treat Mr. Thackray significantly unfairly in addressing the water feature noise, and if yes, what remedy is appropriate?
- c. Did the strata fail to provide documents to Mr. Thackray as required by the SPA, and if yes, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

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

### ***Claims against Mr. Martin and LM***

19. As noted, Mr. Thackray asks that I order Mr. Martin and LM to stop their verbal threats of physical violence, privacy invasions, and their "made up and nuisance claims". For the following reasons, I decline to do so.
20. First, as noted, LM is not a named party to this dispute. So, I can make no order against them.
21. Second, under CRTA section 10, the CRT must refuse to resolve a claim that is outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
22. Mr. Thackray alleges Mr. Martin verbally threatened him, invaded his privacy, and fabricated nuisance claims against Mr. Thackray. I find these are essentially harassment and breach of privacy claims. I find these claims are outside the CRT's strata property jurisdiction as they are not claims that are "in respect of" the SPA, as required under CRTA section 121(1). Those allegations, if proven, may be bylaw contraventions. However, individual owners cannot enforce bylaws against other owners. See, for example, *Kuan et al v. The Owners, Strata Plan NW2603*, 2019 BCCRT 800 at paragraph 20.

23. I also considered whether Mr. Thackray could address these claims under the CRT's small claims jurisdiction. However, even if Mr. Thackray sought to do so, there is no recognized tort of harassment in British Columbia. See *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, at paragraph 61. The BC Court of Appeal has also found that there is no common law cause of action for breach of privacy. See *Ari v. Insurance Corporation of British Columbia*, 2015 BCCA 468, at paragraph 9. I note the *Privacy Act* creates a tort (civil wrong) when one person violates another's privacy, with exceptions. However, section 4 of the *Privacy Act* says that such an action must be brought in the BC Supreme Court. In any event, the only remedy Mr. Thackray seeks is an injunctive order. This means ordering someone to do something, or stop doing something. Except for certain exceptions set out in CRTA section 118(1) that do not apply here, the CRT cannot make injunctive orders under its small claims jurisdiction.
24. For all the above reasons, I refuse to resolve Mr. Thackray's claims against Mr. Martin under CRTA section 10.

***Did the strata treat Mr. Thackray significantly unfairly in addressing the water feature noise, and if yes, what remedy is appropriate?***

25. Mr. Thackray asks for an order that the strata pay \$15,000 in damages for "twice backtracking" on its decision that the water feature noise issue was resolved, and for not engaging a sound transmission engineer or taking sound level readings within SL16.
26. Although he does not use these words, I find Mr. Thackray's alleges the strata treated him significantly unfairly in how it addressed the water feature noise.

***The law of significant unfairness***

27. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under CRTA section 123(2). That provision contains similar language to SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The legal test for significant

unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

28. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed the legal test for significant unfairness. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner or tenant's objectively reasonable expectations are a relevant factor, but are not determinative. The use of the word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness.

### ***Water feature noise***

#### **Background**

29. The strata replaced the schedule of standard bylaws under the SPA with its own bylaws in 2007. There have been further bylaw amendments since that time, but none are applicable to this dispute.
30. Bylaw 3(1) says, in part, that an owner, tenant, occupant or visitor must not use a strata lot in a way that (a) causes a nuisance or hazard to another person, (b) causes unreasonable noise, or (c) unreasonably interferes with another person's right to use and enjoy their strata lot.
31. The water feature is undisputedly located in the SL17's backyard. SL16 and SL17 are townhouse-style strata lots located beside each other in a duplex building. In submissions, both Mr. Thackray and Mr. Martin refer to the outdoor spaces beside their strata lots as their yards. However, apart from small limited common property patios outside SL16 and SL17, the strata plan shows that the remaining outside areas surrounding SL16 and SL17 are common property, including the "backyards".
32. I note that Mr. Thackray's submissions are arguably based in part on his position that the water feature was part of approved common property alterations. Mr. Thackray says he had the water feature, which he refers to as a "bubbler stub wall", installed shortly after he moved into SL17 in 2014. Mr. Thackray says he needed an "edge" for

his new artificial turf. He says the strata council approved his requested “backyard improvements”. He says the water feature has been operational for 7 years, during the summer months only.

33. For its part, the strata does not dispute that Mr. Thackray requested approval of some common property alterations in 2014. However, the strata says neither the written proposal nor the attached sketch mentions a water feature. The strata also says the strata council’s written approval also made no mention of any water feature. The strata says it has not received any request at any time to install a water feature. The strata does not dispute that the water feature has been operational for several years. However, the strata says it only became aware of the water feature when it received the complaint from SL16 in 2021.
34. Mr. Thackray’s own evidence shows the water feature was not part of the approved 2014 common property alterations. Emails also show Mr. Thackray explicitly acknowledged not putting in a water feature at the time, and that they would seek approval for that later. There is no evidence they ever did so. So, I find the water feature was not an approved common property alteration.

#### Strata’s actions

35. Emails to the property manager show Mr. Martin began complaining of noise from Mr. Thackray’s water feature in the summer of 2021.
36. In a September 7, 2021 bylaw contravention warning letter to Mr. Thackray and BS, the strata manager advised that the strata had received a complaint about the water feature disturbing residents in neighbouring strata lots, contrary to bylaw 3. The strata asked Mr. Thackray and BS to immediately install a timer to turn off the water feature between 10 pm and 8 am.
37. Mr. Martin’s spouse, LM, requested a hearing, and the strata held one on August 29, 2022. During the hearing, the strata considered Mr. Martin and LM’s noise complaints about the water feature, where Mr. Martin and LM reported the water feature was louder than their own air conditioning unit which Mr. Martin reported had a maximum



decibel level of 56dB. They also reported that when the TV was on in SL16 they could still hear the water feature and had to shut the windows. The strata council discussed how noise complaints are subjective, and considered the WHO guidelines that noise may cause sleep disturbance at 30dB and annoyance in outdoor living areas at 50 to 55dB. The strata council decided to ask Mr. Thackray to permanently turn off (and preferably remove) water feature.

38. Mr. Thackray's spouse, BS, requested a hearing in response to an August 29, 2022 letter from the strata asking for Mr. Thackray and BS to remove the water feature. The August 29, 2022 letter itself is not in evidence. At the September 26, 2022 hearing, BS requested that the water feature be left in place with a timer on at night. The strata decided to allow BS and Mr. Thackray to keep the water feature on the following conditions: turn off the water feature from 9pm to 9am and when Mr. Thackray and BS were away, permanently move the water feature to the "south side of the yard near the gate", and ensure the audio level measured 1 metre from the water feature was no more than 60db. If those criteria were not met, the strata said the water feature must be removed.
39. In an October 19, 2022 email to the property manager, BS said that the water feature had been drained and pump removed.
40. Draft strata council meeting minutes from November 28, 2022 indicate that the water feature had not been relocated, as the strata had required. The strata council discussed the issue and decided the water feature must be permanently removed and no additional water features could replace it.

### ***Analysis***

41. I find Mr. Thackray's expectation was that the strata's initial decision about the water feature noise would not change. For the following reasons, I find that this expectation was not objectively reasonable.
42. First, SPA section 26 requires the strata to enforce its bylaws. The SPA does not set out any procedural requirements for addressing bylaw complaints. In *Chorney*

*v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court said that the SPA gives strata corporations discretion about how to respond to bylaw complaints, as long as they comply with principles of procedural fairness and do not act in a significantly unfair way.

43. Further, several CRT decisions have concluded that it is significantly unfair for a strata corporation to fail to reasonably investigate bylaw complaints and enforce its bylaws. See, for example, *Chan v. The Owners, Strata Plan LMS 1946*, 2021 BCCRT 456. While previous CRT decisions are not binding on me, I agree that a failure to investigate noise complaints and enforce bylaws may be significantly unfair, depending on the impact on the owner or tenant.
44. The strata was obligated to address Mr. Martin and LM's complaints about water feature noise. Here, I find the evidence shows the strata has not acted unreasonably in responding to Mr. Martin's complaints, or in changing its mind about the water feature noise. As noted, strata corporations are not held to a standard of perfection. 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.
45. Mr. Thackray himself acknowledged that strata council members attended at SL17 and took decibel readings on various iPhones to assess the water feature noise. The recordings themselves are not in evidence. Mr. Thackray says the average across several cell phones was 40dB. For its part, the strata says BS reported the noise recordings taken inside Mr. Thackray and BS's bedroom was around 40dB, and says the strata council measured noise of 59 and 62dB when measured right beside the water feature. This is reflected in the September 22, 2022 hearing minutes, so although the recordings themselves are not in evidence, I accept the strata's evidence that it observed decibel readings of 59 and 62dB at the water feature. The strata also says Mr. Martin provided an audio recording that he reported was 64dB. There is no documentary evidence of this recording, but it is consistent with the decibels the strata reported observing during its own sound recordings.

46. Mr. Thackray says the strata council did not take decibel readings from within SL16 and did not engage a sound engineer. However, I find this does not make the strata's decision about the water feature noise unreasonable. The strata says the water feature is only 10 feet from SL16's primary bedroom. Mr. Thackray does not dispute this. The strata says given the proximity to SL17's primary bedroom, the strata council members were satisfied that the water feature noise likely caused unreasonable interference with Mr. Martin and LM's right to enjoy the use of SL16. The strata is not required to obtain a sound engineer for every noise complaint. The strata has reasonably explained the steps it took to investigate the water feature noise, and its assessment.
47. Mr. Thackray says the strata council continually backtracked on its decisions about the water feature. The strata council initially indicated the noise level was not unreasonable and considered the matter resolved. Mr. Thackray says despite this decision, the strata council later requested Mr. Thackray remove the water feature and relocate it to the other side of his backyard. Mr. Thackray says he did so at considerable expense and effort, but despite meeting all the requirements, the strata council demanded Mr. Thackray remove it completely. Although Mr. Thackray says he met all the strata's requirements, Mr. Thackray did not provide documentary evidence to show that he complied with the strata's conditions to keep the water feature.
48. Mr. Martin says Mr. Thackray removed the water feature in the spring of 2023 and replaced it with a larger and louder one. Mr. Martin says Mr. Thackray did not have strata approval for the replacement water feature either and says the strata has ordered Mr. Thackray to remove it, but Mr. Thackray has not complied.
49. None of the parties provided documentary evidence to confirm the water feature's current location, or whether it has been replaced with a different water feature. Based on the parties' submissions, it is unclear whether the water feature has been removed, relocated, or replaced.

50. The strata says it did not “flip-flop” in its decisions. Rather, it says its decisions reflect an attempt to mediate between the parties as best as it could. I agree. I find the evidence shows the strata changed its approach to addressing the water feature noise after investigating and receiving input from both affected strata lots at hearings in August and September 2022. I accept the strata was attempting to compromise and find a solution that worked for both Mr. Martin and Mr. Thackray to address the water feature noise.
51. Further, as noted, the strata only allowed Mr. Thackray to keep the water feature subject to certain conditions. If he did not meet those conditions, he would be required to remove it. As noted, the evidence does not show that Mr. Thackray complied with the conditions to keep the water feature. So, I find the strata asking Mr. Thackray to remove it is consistent with its earlier decision to allow Mr. Thackray to keep the water feature only if certain conditions were met. The strata also did not take any enforcement actions against Mr. Thackray under the SPA, such as fining him. I find the strata’s conduct shows it was giving Mr. Thackray time to comply with bylaw 3, as permitted under SPA section 129(2).
52. Based on the evidence, I find the strata changing its mind about the water feature noise and asking Mr. Thackray to remove the water feature was not wrongful or lacking in probity or fair dealing. There is no evidence of bad faith or deception on the strata’s part. I find the strata reasonably addressed the water feature noise based on the evidence before me. Therefore, I find the strata did not treat Mr. Thackray significantly unfairly, and I dismiss his claim for \$15,000 in damages.

***Did the strata fail to provide documents to Mr. Thackray as required by the SPA, and if yes, what remedy is appropriate?***

53. As noted, Mr. Thackray alleges the strata manager failed to keep Mr. Thackray informed of “complaints or documentation” regarding SL17. He alleges that he was not provided with “any correspondence” until 10 days after a strata council hearing, and says he was “blind-sided” at the meeting. Mr. Thackray argues this amounts to “withholding evidence” and claims \$5,000.

54. SPA section 35 and *Strata Property Regulation* section 4.1 set out the records that a strata corporation must prepare and retain. SPA section 36(1)(a) says that on receiving an owner's request, the strata corporation must make the records referred to in section 35 available for inspection, and must provide copies upon payment of any applicable fee. The deadline for providing records is 1 week for bylaws or rules, and 2 weeks for all other records.
55. Mr. Thackray says he emailed the property manager requesting documentation "at least a dozen times" before he finally received it "after the date of the hearing". Mr. Thackray does not say what documentation he requested, or on which dates. He also did not provide documentary evidence to support this allegation, such as copies of his alleged requests. Without more specific information about the requested documentation, I cannot determine whether the strata (and the strata manager) failed to comply with the SPA. So, I find this allegation unproven, and I dismiss this aspect of Mr. Thackray's claims.

### ***CRT fees and expenses***

56. 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. Thackray was unsuccessful, I dismiss his fee claim. Neither Mr. Martin nor the strata paid any CRT fees, and none of the parties claimed any dispute-related expenses.
57. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Thackray.

## **ORDERS**

58. I refuse to resolve Mr. Thackray's claims against Mr. Martin under CRTA section 10.

59. I dismiss Mr. Thackray's remaining claims.

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Leah Volkers, Tribunal Member