



# Civil Resolution Tribunal

Date Issued: January 9, 2024

File: ST-2022-007775

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hebein v. The Owners, Strata Plan BCS 4061*, 2024 BCCRT 19

**B E T W E E N :**

ELSIE HEBEIN and ALBERT HEBEIN

**APPLICANTS**

**A N D :**

The Owners, Strata Plan BCS 4061

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This strata property dispute is about bylaw fines.
2. Elise Hebein and Albert Hebein co-own a strata lot in the strata corporation, The Owners, Strata Plan BCS 4061 (strata).

3. The Hebeins are represented in this dispute by a relative. The strata is represented by a strata council member.
4. The Hebeins dispute 4 bylaw fines the strata imposed on them for alleged vehicle noise. They deny the alleged bylaw breaches, and say the strata did not follow the proper complaint, investigation, and fine processes.
5. The Hebeins request the following remedies:
  - The strata remove all bylaw fines from their strata lot account.
  - The strata stop sending them complaints and imposing fines against them.
  - The strata reimburse them \$1,997.44 for legal fees.
6. The strata says the fines are valid, and the Hebeins' claims should be dismissed.

## **JURISDICTION AND PROCEDURE**

7. The Civil Resolution Tribunal (CRT) has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required even where credibility is at issue. I am satisfied I can fairly decide this dispute based on the evidence and submissions provided, without an oral hearing.
9. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

## ISSUES

10. The issues in this dispute are:
  - a. Are the bylaw fines valid?
  - b. If not, what remedies are appropriate?

## REASONS AND ANALYSIS

11. In a civil claim like this one, the Hebeins, as applicants, must prove their claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision.
12. The strata's bylaws are the Standard Bylaws under the *Strata Property Act* (SPA), plus various amendments filed at the Land Title Office since March 2011. I discuss the relevant bylaws in my reasons below.
13. The strata consists of 83 townhouse-style strata lots, plus common property. The strata plan shows that each strata lot has an adjacent limited common property driveway, which connects to the common property road.
14. The Hebeins admit that their grandson, L, who lives with them, drives a Mustang car. They say that until August 2021, L drove a green Mustang. That car was damaged in an accident, so since then L has driven a different Mustang, which is blue. The strata does not dispute this, so I accept it. I have referred to both cars as “the Mustang” in this decision, as I find nothing turns on the difference between the 2 cars.
15. The strata says the Mustang's engine “revving” noise is excessive, and has caused a nuisance to other strata residents, contrary to strata bylaws. The strata fined the Hebeins as follows:
  - April 14, 2021 - \$100

- October 27, 2021 - \$100
- April 28, 2022 - \$200
- September 15, 2022 - \$200

16. The Hebeins say the strata did not follow the process required under SPA section 135 before imposing the fines. Specifically, they say the strata did not provide sufficient particulars of the alleged breaches. The Hebeins also say the strata has not proved that the car noise was created by the Mustang, and has not proved that the noises came from inside the strata, rather than from the surrounding public roads.

17. I address each of the 4 fines in turn below.

#### ***April 14, 2021 Fine***

18. On July 31, 2020, the strata wrote to the Hebeins and said it had received complaints about excessive engine revving and idling noise from the Mustang parked in their garage, as well as noise from car maintenance tools and loud music from the Mustang's stereo. The letter cited Standard Bylaw 3, which says, in part, that 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. The letter said the strata might impose fines if the noises did not stop.

19. On March 5, 2021, the strata wrote again and said the Mustang noise had not stopped. The letter said the Mustang must be "exclusively parked on public streets" until the Hebeins provided evidence that the Mustang had an "effective exhaust system" so it made no noise disturbance when running. The letter again cited bylaw 3, and said the strata might impose fines for future violations.

20. In a March 8, 2021 letter, the strata repeated its direction that the Mustang must be parked on public streets. That letter also said the Mustang could not be parked within the strata at any time.

21. On March 24, 2021, the Hebeins attended a strata council hearing. After the hearing, the strata sent a March 30, 2021 letter again stating that the Mustang could not be parked within the strata. The letter said the Hebeins and L had not complied with this direction, and if they did not comply by April 6, 2021, the strata would impose a fine effective April 6, 2021. The March 30, 2021 letter again cited bylaw 3.
22. On April 14, 2021, the strata sent a letter stating that it had fined the Hebeins \$100, because they had not complied with the warning set out in the March 30, 2021 letter. The letter said that several residents had reported on April 13, 2021 that the Mustang was driven onto strata property, causing “unnecessary noise” multiple times.
23. For the following reasons, I find the April 14, 2021 fine is invalid. First, the text of the strata’s April 14, 2021 letter indicates that the primary reason for the fine was because the Hebeins or L continued to bring the Mustang onto strata property. However, there is no bylaw that permits the strata to prohibit driving or parking any vehicle on strata property. The strata has no parking bylaw, and no other bylaw or rule that authorizes it to bar the Mustang. So, I find the strata was not entitled to do so, and cannot fine the Hebeins for not obeying that directive.
24. Second, even if the fine is for noise nuisance contrary to bylaw 3, I find the strata has not provided evidence that bylaw 3 was breached. In making this finding, I note that the Hebeins bear the burden of proving their claims in this dispute. However, SPA section 130 says the strata cannot fine a strata lot owner unless a bylaw or rule has been contravened. So, I find that for a fine to be valid, the strata must have evidence of a bylaw breach.
25. As noted above, bylaw 3 prohibits nuisance and unreasonable noise. In *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502, the BC Supreme Court defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property (paragraph 33). The test of whether an alleged 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.

26. The strata's April 14, 2021 letter said that on April 13, 2021, the Mustang was driven onto strata property "causing unnecessary noise multiple times". However, unnecessary noise does not, in itself, meet the test for nuisance set out above. Again, the strata's main point seems to be that the Mustang should not have been driven onto strata property at all.

27. I find the strata provided no evidence that the Mustang noise on April 13, 2021, was sufficiently loud to constitute a substantial, non-trivial, and unreasonable interference with use and enjoyment of property. There are no sound recordings, decibel readings, or witness statements about noise on April 13, 2021. The strata provided copies of some residents' complaints, but none of them identify noise on April 13, 2021. Most of the complaints are from before or long after April 13, 2021, and one is undated. The BC Supreme Court has said that incidents of nuisance are not continuous or continuing contraventions when observed on different dates: *The Owners v. Grabarczyk*, 2006 BCSC 1960. I find this means that in order for the strata to impose a fine for noise nuisance on April 13, 2021, it needed evidence of noise meeting the *Triple P* test on that date. Since the strata did not provide that evidence, I find the April 14, 2021 fine is invalid.

### ***October 27, 2021 Fine***

28. In an October 7, 2021 letter, the strata repeated its direction that the Mustang must not be operated or parked on strata property. The letter said that if the Hebeins ignored this directive, it would be considered a "continuing bylaw violation", and the strata would impose a \$100 fine for each incident.

29. An October 27, 2021 letter said someone observed the Mustang parked on strata property on October 3, 2021, so the strata had imposed a \$100 fine. The letter also said future incidents would be considered a continuing bylaw contravention, and the strata would impose a \$200 fine without further warning.

30. The letter imposing the fine did not specify what bylaw was allegedly violated. SPA section 135 says a strata corporation may not fine an owner unless, among other things, the strata corporation has given the owner the particulars of the complaint in writing. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal specifically considered what constituted sufficient particulars for the purpose of section 135 (paragraph 28):

...an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of **an identified bylaw or rule**, and particulars sufficient to call to the attention of the owner or tenant the contravention at issue (my emphasis added).

31. Because the October 27, 2021 letter did not say what bylaw had allegedly been breached, I find it did not meet SPA section 135 requirements. Also, the October 27, 2021 letter specifies that the fine was imposed for parking the Mustang on strata property. As explained above, there is no bylaw or rule prohibiting that action. For these reasons, I find the October 27, 2021 fine is invalid.

### ***April 28, 2022 Fine***

32. On April 28, 2022, the strata wrote that the Mustang had been observed on strata property on April 23, 2022. The letter said the strata had imposed a \$200 fine.

33. Like the October 27, 2021 letter, the April 28, 2022 did not say what bylaw was allegedly breached, and instead specified that the fine was imposed for bringing the Mustang onto strata property. For the same reasons set out above, I find the April 28, 2022 fine is invalid.

34. Also, even if the fine was not invalid for other reasons, I would find it invalid because the strata did not warn the Hebeins in writing before imposing the fine. As explained in *Grabarczyk*, each incident of nuisance is a separate, rather than continuing, bylaw violation, requiring a new warning letter under SPA section 135.

## **September 15, 2022 Fine**

35. In a September 15, 2022 letter, the strata wrote that it had imposed a \$200 fine. The letter did not say what bylaw had been breached, or when the alleged breach occurred. Rather, the letter said it was “further to previous bylaw complaint letters for the nuisance noise from the [Mustang] while it was operated inside the complex”.
36. In a previous letter dated August 23, 2022, the strata wrote that it had received a complaint from council president PP about “nuisance and noise” occurring on August 2, 2022. The complaint, which was provided in evidence, says that on August 2 at about 1:00 pm, the Mustang was at the strata clubhouse, and started up and left creating “excessive and disturbing noise”.
37. I find the September 15, 2022 fine is invalid. First, neither the August 23, 2022 letter nor the September 15, 2022 letter say what bylaw was allegedly violated by the alleged presence of the Mustang on strata property. This means the strata’s correspondence does not meet SPA section 135 requirements. Also, other than the council president’s complaint that the noise was “excessive and disturbing”, there is no evidence about how loud the Mustang was on August 2, 2022, and that the noise met the nuisance test set out in *Triple P*.

## **Remedies**

38. In conclusion, I find all 4 bylaw fines invalid. I order the strata to reverse them immediately.
39. The Hebeins request an order that the strata stop sending them complaints and imposing fines against them. I do not make that order, because under SPA section 26 the strata has an ongoing duty to enforce its bylaws, including noise and nuisance bylaws.
40. Finally, the Hebeins request that the strata reimburse them \$1,997.44 for legal fees incurred before they filed this dispute. I find there is no basis for that order. There is nothing in the SPA or bylaws that requires the strata to reimburse legal fees.



41. Although the Hebeins did not argue it directly, I have considered whether they are entitled to legal fee reimbursement under CRTA 123(2). CRTA section 123(2) says the CRT may make orders remedying a strata corporation's significantly unfair acts or decisions. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying this test, an owner's objectively reasonable expectations are a relevant factor, but are not determinative.

42. In this case, I find the strata's actions were not significantly unfair. As noted above, the strata is obligated to enforce its bylaws. Although I have found the bylaw fines invalid, I find the strata's actions in attempting to enforce its bylaws do not rise to the level of harsh, wrongful, lacking in probity and fair dealing, bad faith, unjust, or inequitable.

43. Even if I found the Hebeins were entitled to legal fee reimbursement, I would not order the full amount claimed. This is because the invoice and statements provided in evidence do not show what most of the claimed fees are for. They primarily show payments made, and only \$134.40 of the legal fees are explained.

## **CRT FEES AND EXPENSES**

44. As the Hebeins were largely successful in this dispute, under the CRTA and the CRT's rules I find they are entitled to reimbursement of \$225 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

45. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to the Hebeins.

## **ORDERS**

46. I order that:

- a. The strata immediately reverse the 4 bylaw fines.

b. Within 30 days of this order, the strata reimburse the Hebeins \$225 for CRT fees.

47. I dismiss the Hebeins' remaining claims.

48. The Hebeins are entitled to postjudgment interest under the *Court Order Interest Act*.

49. A validated copy of the CRT's order can be enforced through the British Columbia Supreme Court (CRTA section 57). 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 (CRTA section 58). Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Kate Campbell, Tribunal Member