Civil Resolution Tribunal

Date Issued: January 16, 2024

Files: ST-2022-002734, ST-2022-004888 and ST-2022-004891

Type: Strata

Civil Resolution Tribunal

Indexed as: *Johnson v. The Owners, Strata Plan LMS 1685*, 2024 BCCRT 042

B E T W E E N :

DENISE JOHNSON

APPLICANT

A N D :

The Owners, Strata Plan LMS 1685

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. Denise Johnson owns a strata lot (unit 205) in the strata corporation, The Owners, Strata Plan LMS 1685 (strata).

2. Ms. Johnson is self-represented in these disputes. The strata is represented by a lawyer, Molly Li. Ms. Johnson has also filed another dispute against the strata, which I have decided in a separate written decision.

3. In these 3 related disputes, Ms. Johnson says the strata:

    a. Failed to investigate and resolve her noise complaints about flooring noise from the strata lot above, unit 305. Requested remedies: $6,000 in damages. Plus, an order to replace unit 305's current flooring with carpet and underlay, or alternatively order a "tap test" to assess noise transfer.

    b. Failed to investigate and resolve her complaints about high-frequency plumbing noise from unit 305. Requested remedy: $21,500 in damages.

    c. Failed to investigate and resolve her complaints about excessive noise from the stairwell next to unit 205. Requested remedies: An order that the strata must enforce its noise bylaws, and an order for the strata to investigate and resolve the stairwell noise.

    d. Failed to provide requested documents in a timely matter, without redactions. Requested remedies:

        i. An order that the strata provide listed documents in unredacted form, without charges for duplicates or Goods and Services Tax (GST).

        ii. An order that the strata reimburse Ms. Johnson for duplicate charges and GST already paid.

        iii. An order that the strata council and strata manger participate in remedial strata governance training.

        iv. $3,000 in punitive damages.

    e. Unfairly fined her $600 for alleged bylaw breaches. Requested remedies: An order rescinding the fines, and reimbursement of $600 for polygraph examinations.

f. Barred Ms. Johnson from emailing the strata. Requested remedy: An order that the strata must permit Ms. Johnson to communicate by email.

g. Had its lawyer send Ms. Johnson a letter threatening eviction and other legal action. Requested remedy: An order that the strata withdraw the letter.

h. Failed to enforce the strata's nuisance and harassment bylaws. Requested remedy: An order to enforce the nuisance and harassment bylaws in response to Ms. Johnson's complaints against owners KL, YV, and FS.

i. Treated Ms. Johnson significantly unfairly, including by failing to investigate and resolve Ms. Johnson's noise complaints. Requested remedies: $10,000 in damages, an order to comply with the SPA and bylaws, and an order that the strata council and strata manger participate in remedial strata governance training.

4. The strata denies Ms. Johnson's claims. It says she has not proved her noise claims, and says it met its duties under the SPA to investigate and enforce its bylaws. The strata denies any unfair or unreasonable conduct.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

8. Ms. Johnson provided late evidence. The strata had the opportunity to respond to the late evidence, so I find there was no breach of procedural fairness.

Anonymization Request

9. Ms. Johnson requests that her name be anonymized in this decision, to protect against public disclosure of health information.

10. I place significant weight on the open court principle, as discussed in *Lipton v. The Owners*, Strata Plan VIS 4673, 2022 BCCRT 1010. Parties are generally named in CRT decisions because these are considered open proceedings. This is done to provide transparency and integrity in the justice system.

11. I find it unnecessary to discuss the more sensitive details of Ms. Johnson's health information in this decision. Balancing Ms. Johnson's wish for privacy against the importance of the open court principle, I find it is not appropriate to anonymize this decision. So, I deny Ms. Johnson's anonymization request. However, I direct that the CRT dispute file will be sealed to prevent future disclosure of any dispute-related documents.

ISSUES

12. The issues in these disputes are:

    a. Did the strata meet its duties under the SPA in responding to Ms. Johnson's flooring noise complaints? If not, what remedies are appropriate?

    b. Did the strata meet its duties under the SPA in responding to Ms. Johnson's plumbing noise complaints? If not, what remedies are appropriate?

    c. Did the strata meet its duties under the SPA in responding to Ms. Johnson's stairwell noise complaints? If not, what remedies are appropriate?

    d. Did the strata fail to provide records as required under the SPA?

e. Must the strata rescind Ms. Johnson's bylaw fines, or reimburse her for polygraph testing?

f. Must the strata permit Ms. Johnson to communicate with it by email?

g. Must the strata withdraw its lawyer's May 19, 2020 letter?

h. Did the strata meet its duties under the SPA in responding to Ms. Johnson's nuisance and harassment complaints against KL, YV, and FS? If not, what remedies are appropriate?

i. Did the strata treat Ms. Johnson significantly unfairly, and if so, what remedies are appropriate?

REASONS AND ANALYSIS

13. In a civil claim like this one, Ms. Johnson, as applicant, must prove her 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.

Flooring Noise

14. Ms. Johnson says the occupants of unit 305, located directly above her strata lot, have caused ongoing and frequent unreasonable noise, contrary to strata bylaws.

15. Strata 4.1 is the strata's noise bylaw. It says, in part, that a resident or visitor must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy their strata lot or common property.

16. Specifically, Ms. Johnson says that in October 2018, the unit 305 occupants installed vinyl plank flooring to replace the previous wall-to-wall carpet and underlay. Ms. Johnson says that since then, all sounds from unit 305 are transmitted into her unit 205, causing an intolerable disturbance. Ms. Johnson says there is a "constant onslaught" of thumping, knocking, rattling, scraping, dragging, banging, heavy

footfalls, stomping, hard objects dropping on the floor, and creaking and sharp cracking from the flooring.

17. Ms. Johnson says the strata failed to sufficiently investigate and resolve her noise complaints. She says the ongoing noise exposure caused her physical and mental harm.

18. The strata agrees that the unit 305 occupants installed a type of linoleum flooring in 2018. The strata says Ms. Johnson first raised concerns about noise from unit 305 in 2019. However, the strata says Ms. Johnson has not proved that the noise is objectively unreasonable. The strata also says the strata council investigated on September 14, 2021, and found no evidence of unreasonable noise.

19. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, which includes enforcing bylaws. The strata council is required to act reasonably when carrying out these duties, and this includes a duty to investigate alleged bylaw violations, such as noise complaints.

20. 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 bylaw violation complaints 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).

21. Also, 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.

22. Even if unit 305 is a source of noise, bylaw 4.1 only prohibits unreasonable noise. Some amount of noise is to be expected in a shared building. In *The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd*., 2018 BCSC 1502, the court defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property (paragraph 33).

23. 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.

24. As noted above, Ms. Johnson bears the burden of proving her claims in this dispute. While Ms. Johnson provided noise logs setting out the time and nature of noises from unit 305, I find she has not provided objective evidence about the volume of those noises. Ms. Johnson provided evidence about her career experience in workplace noise assessments, and evidence about her credential as a Canadian Registered Safety Professional. However, I do not accept Ms. Johnson's own statements as expert evidence. CRT Rule 8.3(7) says an expert witness may not advocate for any party, and a party generally cannot act as their own expert because they are not neutral. I find this applicable here. Ms. Johnson is not neutral, and advocates for her own position in this dispute.

25. Ms. Johnson has not provided any neutral or objective evidence about the volume or decibel level of the alleged noises from unit 305. For example, she did not provide any sound testing reports, recordings, decibel readouts, or witness statements confirming noise from unit 305 or elsewhere.

26. Ms. Johnson agrees that in response to her noise complaints, 3 strata council members and the strata manager attended her strata lot to investigate the noise on September 14, 2021. According to the May 2, 2023 statement of former council member GW, he attended that noise investigation. GW says he and another council member went upstairs to unit 305 and, along with the unit 305 owner, made various noises including walking, opening and closing cupboards and closets, pushing a cart, and throwing items on the floor. GW also says he took a turn listening in unit 205, while 2 others went to unit 305 and made various noises. GW says when he was in unit 205, he only heard very faint noise from upstairs, less than the daily noise he heard in his own strata lot. GW also says that in unit 305, he observed that all cupboards had soft-close doors, and there were throw rugs throughout.

27. GW's statement is confirmed by a May 1, 2023 statement from the former strata manager, KL. KL says she attended the investigation in units 205 and 305 on September 14, 2021. KL says that while in unit 205, she could not hear anything unusual or substantially loud. She said she heard normal, daily noises that were very faint and barely audible.

28. Ms. Johnson says this investigation was insufficient and flawed in several ways, including:

    - Some council members and the strata manager were biased against her. She had previously agreed that different council members would attend the investigation, but those members were substituted without notifying her.
    - The "teams" in the 2 units communicated secretly by text message during the test, instead of on speakerphone so she could hear.
    - The council refused to perform a second test, contrary to their previous agreement.
    - None of the sounds produced during the test were nearly as loud and intrusive as those she had been reporting.
    - GW has diminished hearing due to work on loud construction sites.

29. I find Ms. Johnson's assertion about GW's hearing speculative, as she produced no evidence to support it. Also, GW provided a copy of a workplace hearing assessment from January 5, 2023, showing hearing levels in the "good" range. Since Ms. Johnson provided no contrary evidence proving GW has hearing loss, I accept that GW has good hearing.

30. In any event, even if all Ms. Johnson's assertions about the September 14, 2021 investigation were true, I find she bears the burden of proof in this dispute. As explained above, Ms. Johnson provided no alternative objective evidence proving unreasonable noise from unit 305. It was open to Ms. Johnson to obtain expert sound testing evidence as evidence for this dispute, but she did not. Again, she also

provided no witness statements, recordings, or decibel readings confirming unreasonable noise levels from unit 305.

31. I accept that Ms. Johnson hears noise from unit 305, and finds it disturbing and objectionable. However, I find she has not provided objective evidence proving a substantial, non-trivial, and unreasonable level of noise from unit 305.

32. Ms. Johnson says the strata acted unreasonably by refusing her request that it hire an engineer to perform tap testing (sound transfer testing) between units 305 and 205. However, since the informal testing on September 14, 2021, showed no unreasonable noise, and since Ms. Johnson has not provided alternative objective evidence of unreasonable noise, I find the strata acted reasonably and met its SPA section 26 duties in investigating Ms. Johnson's flooring noise complaints. Again, it was open to Ms. Johnson to provide her own engineering or sound testing reports as evidence in this dispute.

33. Ms. Johnson says she could not provide sound recordings to support her noise claims, since the sounds are intermittent and unpredictable. However, given her allegations about the severity of the noise and its impact on her, I find it would have been reasonable to either hire an expert, or to make ongoing recordings and edit them later. If the noises are truly so intermittent as to be unrecordable, I find they do not meet the threshold of a substantial, non-trivial, and unreasonable interference with use and enjoyment of property.

34. For these reasons, I dismiss Ms. Johnson's claim that the strata failed to reasonably address her complaints about noise from unit 305.

Plumbing Noise

35. Ms. Johnson says that in January 2020, she asked the strata council to investigate and resolve her complaint of piercing, high-frequency plumbing pipe noise coming from unit 305. She says the noise occurred multiple times per day, and increased over a 5-month period, from January to May 2020. Ms. Johnson says the plumbing noises stopped around July 2, 2020.

36. Ms. Johnson says these plumbing noises caused a permanent disability (tinnitus). As remedy for her plumbing noise claim, she requested $21,500 in damages in her dispute application. In her later submissions, she requests $45,000 in damages.

37. The legal test that applies to this claim is the same as that set out for the previous claim about flooring noise. That is, Ms. Johnson must prove that the plumbing noise occurred as she claims, and that it was a substantial, non-trivial, and unreasonable interference with use and enjoyment of property.

38. For the following reasons, I find Ms. Johnson has not proved her claim about plumbing noise.

39. The strata says it hired says it hired Trinity Plumbing (Trinity) to investigate the noise. The strata says Trinity attended the strata building 3 times in February 2020 and tested various fixtures, but Trinity was unable to re-create the noise, and found no abnormal noises.

40. I find this position is confirmed by Trinity's reports in evidence. For example, in its February 6, 2020 report, Trinity says it investigated a complaint of a loud, shrieking noise from pipes, but when it tested all fixtures thoroughly it could not re-create the noise.

41. Similarly, in its February 19, 2020 invoice, Trinity says it further investigated the reported shrieking sound from unit 205. The invoice says Trinity noticed a brief high-pitched noise when it flushed the unit 305 toilet, but this did not match the noises Ms. Johnson recorded.

42. Ms. Johnson says Trinity's plumber, Rick, verbally told her that the problem was caused by faulty plumbing parts. However, there is no report or witness statement confirming this. So, I find this is unsubstantiated and self-serving hearsay. Hearsay is admissible as evidence in CRT disputes, but since there is no document or statement from Rick confirming these statements, and no evidence from another plumber or construction expert, and since Trinity's invoices do to support this position, I place no weight on Ms. Johnson's account of her conversations with Rick.

43. For these reasons, I find Ms. Johnson has not met the burden of proving that the alleged noise was caused by faulty plumbing. In particular, I place significant weight on the fact that she provided no report from a plumbing or construction expert to establish that the alleged noises were due to a plumbing problem, or that the noises could have been stopped by plumbing repairs. Ms. Johnson says the unit 305 occupants repaired the alleged plumbing problem at some point, but I find this is speculative and unproven.

44. Ms. Johnson also says the strata unreasonably delayed investigating her plumbing noise complaints. However, Ms. Johnson says she first complained to the strata about the noise on January 23, 2020. Trinity's invoices show it first attended the strata on February 6, 2020. I find this was a reasonable response in the circumstances. Also, since Ms. Johnson has not proved the noise was due to faulty plumbing, I find there was no damage arising from this relatively minor delay.

45. The strata also says it hired Trinity to conduct some repairs in August 2020, as a good faith measure. This is confirmed by Trinity's invoice in evidence. In any event, Ms. Johnson now admits the noises had ended before then, although the evidence shows she continued to complain to the strata about the noises and did not inform the strata the noises had stopped.

46. For these reasons, I find the strata met its duty to investigate Ms. Johnson's plumbing noise complaints. I also find Ms. Johnson has not proved that the noises came from plumbing problems, or any problem with the building that the strata was obligated to repair or maintain under the SPA or bylaws. So, I dismiss Ms. Johnson's claim against the strata.

47. Even if Ms. Johnson had proved the source of the alleged noise, I would not have ordered any of her claimed damages. This is because I find she has not proved that the noise was a substantial, non-trivial, and unreasonable interference with her use and enjoyment of property. I listened to the audio recordings Ms. Johnson provided. I find that some of them have almost no audible noise. In other recordings, I find that the voice or voices on the recordings are substantially louder than the faint

background noise, which sounds like a barely audible hum. I find this does not prove that the noises were significantly loud, unreasonable, and physically damaging, as Ms. Johnson alleges. Also, Ms. Johnson provided no expert evidence or decibel readings proving the volume or pitch of the noise. So, I find Ms. Johnson has not proved her assertion that noises were high frequency or particularly loud.

48. Ms. Johnson relies in part on a December 15, 2022 letter from GQ, who says that one day, while having a telephone conversation with Ms. Johnson, he heard a loud, shrill, high-frequency noise and asked Ms. Johnson about it. According to GQ, Ms. Johnson said the noise was coming from the kitchen plumbing in the unit above hers.

49. Even accepting GQ's description of the noise as accurate, I find the noise's source is unproven. GQ relies on Ms. Johnson's explanation that the noise came from the kitchen above, but as explained previously, there is no objective evidence before me establishing the source of the noise. Also, GQ heard the noise over the telephone, and did not hear the noise from within unit 205. I find this limits the persuasiveness of GQ's evidence.

50. Also, in the letter, GQ sets out his qualifications as an occupational hygienist, with expertise in noise measurement. He gives his opinion about evaluation of noise transmission, and says that exposure to high-frequency noise can damage hearing.

51. Ms. Johnson says she does not present GQ's letter as expert evidence, but she also says he is a "qualified person" in the field of acoustics. I find that much of GQ's letter consists of advocacy in favour of Ms. Johnson's claim. For that reason, and based on CRT rule 8.3(7), I place limited weight on it. I find GQ is not neutral, and his opinions and evidence are not persuasive.

52. Even if I accepted all of GQ's evidence as accurate, GQ's statement only confirms one noise event, on one unspecified date. I find that this alone does to establish a substantial, non-trivial interference with use and enjoyment of property. As noted above, I find the audio recordings in evidence do not confirm an audibly loud or high-frequency noise.

53. I find there is no evidence before me confirming that Ms. Johnson was exposed to noise capable of causing tinnitus or other heath problems. She provided a December 2, 2022 report from her family doctor, Dr. Wong. Dr. Wong listed various symptoms and diagnoses, and said that Ms. Johnson had reported she was exposed to loud, high-frequency noise in her strata lot, and since then had experienced tinnitus, stabbing pain, and pressure in her left her. I accept that this is what Ms. Johnson told Dr. Wong, but as explained above, there is no objective evidence confirming this exposure, or proving the volume or frequency of the alleged noise.

54. Dr. Wong says that Ms. Johnson was examined by ear, nose, and throat specialist Dr. Lau in April and June 2020, and he diagnosed hyperacusis (reduced tolerance to sound). Ms. Johnson says Dr. Lau said this hyperacusis was caused by "frequent exposure to high-frequency noise". However, this is not stated in Dr. Wong's report, or any of the other reports in evidence. There is no report from Dr. Lau, or another medical specialist, in evidence. As Ms. Johnson is not a medical expert, I place no weight on her opinion about what caused her health conditions, including tinnitus or hyperacusis.

55. Similarly, Ms. Johnson provided a February 7, 2023 report from an audiologist. That report says Ms. Johnson was fitted with hearing aids, but does not address the causes of her ear conditions. Also, Ms. Johnson attended the hospital emergency room on February 19, 2020, for ear pain and left-sided tinnitus. The doctor's report says Ms. Johnson had noticed high-pitched noise in her strata lot over the past 4 weeks, which she thought was from a faucet upstairs. However, there is no medical opinion in the report about whether such noises could cause the reported ear problems. Also, as explained above, there is no objective confirmation about the frequency or volume of the alleged noises, and whether these would be sufficient to cause any medical condition.

56. In conclusion, I find the evidence contains no expert medical opinion confirming that plumbing noise caused a permanent ear condition. The volume, frequency, and source of the alleged noise is unproven. Also, I have found the strata hired Trinity to

investigate the noise reasonably quickly. For all these reasons, I find Ms. Johnson is not entitled to damages. I dismiss her claim about plumbing noise.

Stairwell Noise

57. Ms. Johnson says that since April 2020, LE, her neighbour in unit 305, deliberately ran, jumped, and stomped in the stairwell next to unit 205. Ms. Johnson says this activity occurred multiple times per day, and LE did it as retaliation for Ms. Johnson's complaints about flooring and plumbing noise.

58. Ms. Johnson says the strata failed to investigate and resolve her complaints about LE's stairwell noise, contrary to the SPA.

59. The test for this claim is the same as for the previous 2 noise claims. That is, Ms. Johnson must prove that an objective person would find the noises a substantial, non-trivial, and unreasonable interference with use and enjoyment of property.

60. As with the previous 2 claims, I find Ms. Johnson has not met this standard of proof. Again, I find there is no objective evidence before me establishing the volume of the alleged noise. There is no expert report, no sound testing or decibel level readings, and no recordings of the noise.

61. Ms. Johnson provided logs documenting the frequency of the noises. I accept that Ms. Johnson hears noise from the stairwell, and finds it disturbing, as documented in her logs. However, as explained previously, I place very little weight on Ms. Johnson's opinion about the volume or reasonableness of the noise, as she is not objective, and cannot be an expert on her own behalf in a CRT dispute.

62. Ms. Johnson says it is impossible to record the stairwell noise because it occurs suddenly without notice. However, she also says it sometimes occurs 6-10 times per day. As with the flooring noise complaint, I find that if the noise is unrecordable, then it is likely not a substantial and unreasonable interference with the use and enjoyment of property. In any event, without objective evidence about the noise, including its volume, I find Ms. Johnson's claim is unproven.

63. The strata admits that 2 other residents complained about heavy footfalls from LE, so the strata manager asked LE to be mindful when using the stairwell. The strata says LE emailed the strata in April 2022 stating that she would no longer use the stairwell. Ms. Johnson disputes this, and says LE did not stop.

64. Based on the strata's admission about complaints from other residents, I accept that Ms. Johnson likely heard stairwell noises from LE. However, I am persuaded by the strata's submission that these noises would necessarily have been brief and intermittent. Again, some level of noise is expected is a residential building. Because of this, and because of the lack of objective evidence about the stairwell noise's volume, I find Ms. Johnson has not met the burden of proving that an objective person would find LE's stairwell noise a substantial, non-trivial, and unreasonable interference with the use and enjoyment of property.

65. For these reasons, I dismiss Ms. Johnson's claim about stairwell noise.

Records Disclosure

66. Ms. Johnson says the strata has frequently denied her requests for strata records, or provided records later than the deadline required under the SPA. She also says the strata has improperly charged her for duplicate documents, and improperly charged her GST on top of records fees permitted under the *Strata Property Regulation* (Regulation).

67. SPA section 35 sets 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 the applicable fee.

68. SPA section 36(3) says the deadline for providing records, except for bylaws or rules, is 2 weeks. Regulation section 4.2(1) says the maximum fee for copies of records is 25 cents per page.

69. As remedy for her claim that the strata failed to provide records, or provided them with impermissible redactions, Ms. Johnson requests an order that the strata provide

"listed documents" in unredacted form. However, I find it unclear from Ms. Johnson's evidence and submissions what records she seeks. She does not explain what list she is referring to. Also, she admits the strata has provided some records in the past, as she says there have been unnecessary duplicate copies. So, I cannot tell what records she seeks.

70. The strata says it has provided all requested records. I find Ms. Johnson has not specifically proven otherwise.

71. Similarly, Ms. Johnson says the strata improperly charged her for duplicate documents, but I cannot tell from the evidence and submissions which documents were duplicated, or what the alleged excess charge was.

72. For these reasons, I dismiss Ms. Johnson's claim for records disclosure and refund of duplicate charges.

GST

73. The strata says the CRT has no jurisdiction to decide whether the strata was required to charge GST on records fees. I agree, as this question requires interpreting the federal *Excise Tax Act,* under which GST is charged. CRTA section 121 says the CRT has jurisdiction to decide claims in respect of the SPA. This does not include interpreting the *Excise Tax Act.*

74. However, Ms. Johnson says her claim is not about whether the strata was entitled to charge GST on records fees. Rather, she says that since the Regulation sets a maximum fee of 25 cents per page, the records fee, inclusive of GST, must not be higher than 25 cents.

75. As noted by the strata, the SPA and Regulation do not mention GST. However, I find that GST is not a "fee", as contemplated under the SPA and Regulation. So, I find the strata did not breach the SPA or regulation by charging GST on top of the 25 cent per page records fee.

76. For all of these reasons, I dismiss Ms. Johnson's claim about records disclosure. As part of this, I find she is not entitled to her claimed remedy of $3,000 in punitive damages. Punitive damages punish a party for "morally culpable" behaviour and are awarded only rarely, for malicious, vindictive, or outrageous acts. See *Honda Canada Inc. v. Keays*, 2008 SCC 39. I find Ms. Johnson has not proved the strata acted outrageously or vindictively in relation to records disclosure, so I find she is not entitled to punitive damages.

Bylaw Fines

77. Ms. Johnson says the strata wrongly charged her $600 in bylaw fines. She says the strata imposed 3 $200 fines, but did not conduct any investigation before imposing the fines, and did not have evidence of bylaw infractions.

78. The evidence shows the strata imposed the following fines:

- June 25, 2019 - $200 fine for noise violation on April 24, 2019.
- April 23, 2020 - $200 fine for noise violation on March 29, 2020.
- August 28, 2020 - $200 fine for incident in common property woodworking room on April 9, 2020.

79. The parties agree Ms. Johnson has not paid the fines. I will address each of these fines in turn.

June 25, 2019 Bylaw Fine

80. The strata has raised the issue of how the *Limitation Act* applies to these disputes, and says some of Ms. Johnson's claims are barred because the limitation period has passed. However, courts have found that bylaw fines are not subject to the *Limitation Act* : see *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273. I find this includes requests for reversal of unpaid fines.

81. On June 25, 2019, the strata sent a letter fining Ms. Johnson $200 for an alleged incident of excessive noise on April 24, 2019, contrary to bylaw 4.1. The letter said Ms. Johnson had loudly pounded on the ceiling of her strata lot.

82. In an April 24, 2019 email to the strata, LE wrote that while she was not home, she received a text message from a family member in LE's strata lot, stating that Ms. Johnson had "pounded".

83. While Ms. Johnson bears the burden of proof in this dispute, I find the strata must establish a bylaw has been breached before imposing a fine. There is no indication that the strata investigated this matter, such as by obtaining a statement from the unnamed individual who allegedly hearing the pounding. There is no recording of the pounding, and no evidence about its volume or nature. It seems the only evidence of the April 29, 2019 incident is a hearsay statement from someone who did not hear the pounding.

84. Because of this, I find the strata has not established that the alleged incident of unreasonable noise occurred. So, I find the $200 is invalid, and I order the strata to remove it from Ms. Johnson's strata lot account.

April 23, 2020 Bylaw Fine

85. On March 29, 2020, LE emailed the strata and said that around 7:00 pm, when she and her son were making noise on their outside deck in support of healthcare workers, they heard pounding from below. LE said the noise was so forceful the deck vibrated, and she was concerned about property damage.

86. LE wrote that Ms. Johnson had a history of pounding on her ceiling, as a form of harassment. LE requested that the strata fine Ms. Johnson for this incident, under the nuisance bylaw.

87. On March 30, 2020, the strata sent Ms. Johnson a warning letter about this alleged noise incident, citing bylaw 4.1, the strata's noise bylaw. After a hearing, the strata issued an April 23, 2020 letter imposing a $200 fine. The letter stated that the strata

council had decided that the March 29, 2020 incident disturbed other residents and therefore violated bylaw 4.1.

88. As summarized earlier in this decision, bylaw 4.1 says, in part, that a resident must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy their strata lot or common property.

89. Ms. Johnson denies the alleged pounding. There is no indication in the evidence before me that the strata investigated the alleged March 29, 2020 noise incident. The only evidence about it is LE's March 29, 2020 email. There is no recording of the noise, and no statement from another witness.

90. The strata says there is evidence of similar banging incidents by Ms. Johnson on other dates. However, even if that is true, it does not prove that the March 29, 2020 incident was a substantial, non-trivial and unreasonable interference with another owner's use and enjoyment of property. Rather, since LE admits that at the time of the alleged incident, she and her son were making noise outdoors to support healthcare workers, along with others in the neighbourhood, I find it unlikely that further noise from below was a substantial interference, Also, LE's assertion about possible property damage is unproven. For these reasons, I find the strata has not proved a breach of bylaw 4.1.

91. So, I order the strata to remove the $200 fine from Ms. Johnson's strata lot account.

August 28, 2020 Bylaw Fine

92. On August 28, 2020, the strata sent Ms. Johnson a letter imposing a $200 fine for an alleged violation of bylaw 4.1 on April 9, 2020. The letter said Ms. Johnson had caused a nuisance to another resident, and unreasonably interfered with that resident's right to use and enjoy common property.

93. The particulars of the alleged April 9, 2020 incident are set out in the strata's earlier letter of April 17, 2020. That letter says Ms. Johnson "demonstrated aggressive, threatening behaviour" towards a strata council member in the common property

woodworking room. The letter says that specifically, Ms. Johnson blocked the person's exit from the room, ignored requests to move out of the way, yelled at the person, confronted her about various things, and threatened that there would be a "reckoning".

94. The evidence shows that the council member in question is SS. Ms. Johnson says she did not yell at or threaten SS. In a May 14, 2020 letter to the strata, Ms. Johnson admits to being in the woodshop, but says she did not yell, corner SS, or block either of the 2 exits.

95. SS gave her account of the woodshop incident in a May 2, 2023 statement, which I summarize as follows:

- On April 9, 2020, she and Ms. Johnson were in the woodshop.
- Ms. Johnson became confrontational and blocked the exit door that led to SS's strata lot.
- Ms. Johnson spoke very loudly and harshly, attacking SS's character for about 5 minutes.
- SS asked repeatedly for Ms. Johnson to stop talking. SS told Ms. Johnson she wanted to leave, and that she was "blocking the exit I wanted to use", but Ms. Johnson refused to move.
- Ms. Johnson repeatedly threatened some sort of retribution or reckoning.
- Eventually Ms. Johnson left. After that, SS felt scared and concerned.

96. There are no other witness statements about the April 9, 2020 incident.

97. As previously noted, bylaw 4.1 says, in part, that an owner must not use common property in a way that causes a nuisance or hazard to another person, or unreasonably interferes with their right to use and enjoy common property.

98. Based on the evidence before me, I accept that Ms. Johnson and SS had a disagreement in the common property woodshop. However, I find this does not

constitute Ms. Johnson "using common property". That interpretation would bar owners from having interpersonal conflicts on common property, which I find is not the purpose of bylaw 4.1.

99. I accept that this interaction made SS uncomfortable. However, SS's statement does not explain why she could not have left using the other exit door. For this reason, I find Ms. Johnson did not cause a hazard. Also, SS did not explain her intended use of the woodshop on the day in question, so I find there is no evidence that Ms. Johnson interfered with SS's use of common property.

100. For these reasons, I find the evidence before me does not establish that Ms. Johnson breached bylaw 4.1 on April 9, 2020. So, I order the strata to remove the $200 fine from Ms. Johnson's strata lot account.

101. I address Ms. Johnson's claim for reimbursement for polygraph testing fees at the end of this decision.

Email Communications

102. The April 13, 2022 council minutes state that due to the "aggressive nature and negative tone of [Ms. Johnson's] correspondence and a history of this type of correspondence being received from this owner, the council passed a motion that the strata manager would no longer review or respond to Ms. Johnson's emails".

103. Ms. Johnson says that this action was significantly unfair, and contrary to the SPA. The strata says it learned on April 27, 2022, that the April 13 motion was incorrect, and the strata council reversed the decision by May 20, 2022. This is confirmed by Ms. Johnson. In a May 25, 2022 letter to the strata she quoted from a May 20, 2022 email from the strata, as follows:

> We received your email last month and acknowledge that the strata corporation cannot prevent any owner from communicating per [SPA] section 63. However, at no time has the strata manager stopped receiving your or other owners' emails or reviewing them for required response. Unless there is a SPA requirement to respond, no response will be provided until council

> has an opportunity to review at the next meeting. Response will then be included in the correspondence section of the minutes as appropriate.
>
> Things that will require timely response include request for hearings, documents… Letters commenting on any decision made by council or allegations or improper process etc. will be deferred.

104. Ms. Johnson says that since May 2022, the strata has failed to respond to various emails she has sent. She also says the strata has acted significantly unfairly, by treating her differently from other owners.

105. 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.

106. In this case, I find the strata's actions were not significantly unfair. I find the strata quickly corrected any SPA breach, and now permits Ms. Johnson to communicate by email. In *Tenten v. The Owners, Strata Plan VR113*, 2019 BCCRT 1427, I found that a strata corporation is not required to respond to each item of correspondence from an owner, particularly when that owner sends a large volume of correspondence. I accept the strata's evidence that Ms. Johnson sent large volumes of correspondence, as Ms. Johnson does not dispute it, and it is supported by the evidence before me. So, I find the reasoning in *Tenten* applies equally here.

107. For these reasons, I dismiss Ms. Johnson's claim about email correspondence.

Withdrawal of Letter

108. Ms. Johnson says that in a May 19, 2020 letter, the strata's lawyer falsely accused her of bullying and harassment, and contained other absurd and false allegations against her. She says the letter is aggressive and threatening, with no basis in fact.

109. As remedy, Ms. Johnson requests an order that the strata withdraw this letter. However, I find that order would serve no purpose. The letter has already been sent and read, so it is unclear how it could be withdrawn. I find that whether or not it remains in any strata file is irrelevant, since the letter has no legally binding force, and the strata can take no action based on the letter. So, I dismiss this claim.

Complaints Against Other Owners

110. Ms. Johnson says the strata failed to enforce its harassment and nuisance bylaws. Specifically, she says the strata failed to investigate and resolve her complaints about harassment by strata residents KL, YV, and FS.

111. In dispute ST-2022-004885, which I have decided in a separate decision, Ms. Johnson argued that the strata's harassment bylaw was invalid and unenforceable, because it was approved through a restricted proxy vote at a special general meeting. I agreed with Ms. Johnson's position on that issue, and found that the harassment bylaw (bylaw 59) was never enforceable because the ownership approval vote did not meet SPA requirements.

112. Since the strata's harassment bylaw is unenforceable, I find Ms. Johnson cannot successfully argue in this dispute that the strata was unreasonable or negligent in not enforcing that bylaw. So, I dismiss this part of her claim.

113. As for the alleged breaches of the strata's nuisance bylaw, I dismiss these claims for the same reasons that I found above that the April 9, 2020 woodshop incident did not constitute a nuisance or other breach of bylaw 4.1. Bylaw 4.1 prohibits using a strata lot or common property in a way that is a nuisance or hazard, or interferes with another's right to use and enjoy a strata lot or common property.

114. Ms. Johnson says KL harassed her repeatedly, by watching her strata lot, making faces at her, taunting her, spitting on her vehicle, yelling at her, making rude gestures, shining a spotlight at her, intimidating her with his dog, and vandalizing her home and vehicle. Like the woodshop incident, I find this alleged conduct is not "using" a strata lot or common property.

115. Similarly, Ms. Johnson says YV sent her insulting texts and voicemails. I find this is not a use of a strata lot or common property, as contemplated in bylaw 4.1: see *The Owners, Strata Plan LMS 2461 v Wong*, 2022 BCSC 1222.

116. Finally, Ms. Johnson says FS and his husband "chased her" out of the common property elevator. In a December 11, 2021 email, FS wrote that his husband asked Ms. Johnson not to enter the elevator as there was not enough room. Regardless of which account is accurate, I find this was a disagreement between residents, and not a "use" of common property constituting a violation of bylaw 4.1.

117. For these reasons, I dismiss Ms. Johnson's claim against the strata for allegedly failing to investigate and resolve her complaints against KL, YV, and FS.

Significant Unfairness

118. Ms. Johnson says the strata treated her significantly unfairly in various ways, including:

- Failing to investigate and resolve her noise complaints.
- Failing to investigate and resolve her complaints against KL, YV, and FS.
- Sending her the May 19, 2020 lawyer's letter.
- Permitting residents to participate in a daily 7:00 pm cheer for healthcare workers.

119. Again, in *Kunzler,* the court said 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.

120. As explained above, I dismiss Ms. Johnson's noise complaints, her claim about alleged harassment by KL, YV, and FS, and her claim about the May 19, 2020 lawyer's letter. So, I find the strata did not act significantly unfairly in any of those matters.

121. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a reasonable expectations test for claims of significant unfairness by a strata corporation. This test was restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28 as follows:

a. What was the affected owner's expectation?

b. Was that expectation objectively reasonable?

c. If so, was that expectation violated by an action that was significantly unfair?

122. I find Ms. Johnson's expectation that the strata would forbid strata residents from participating in the 7:00 pm cheer was not objectively reasonable. I also find the strata did not act harshly, wrongfully, unjustly or in bad faith in permitting strata residents to participate the cheers. As submitted by the strata, these cheers were conducted in many British Columbia communities during the COVID-19 pandemic. So, I do not accept that these were organized in the strata to target or harass Ms. Johnson. Although Ms. Johnson found the cheers disturbing, since they only occurred once per day, for a predictable and finite period, I find they did not breach bylaw 4.1. Also, Ms. Johnson has not explained why she could not wear hearing protection during that fixed period.

123. Ms. Johnson also alleges that the former council president, SS, operated a noisy weed whacker "at all hours" on city property directly across from Ms. Johnson's strata lot. Ms. Johnson says SS did this deliberately, to target Ms. Johnson.

124. Even if this is true, I find that this is a matter between Ms. Johnson, SS, and possibly the city. The strata is the respondent in this dispute, and its bylaws do not govern actions on city property. I find it speculative and unproven that SS did this alleged activity as part of her strata council role.

125. For these reasons, I dismiss Ms. Johnson's claims about significant unfairness.

CRT FEES AND EXPENSES

126. CRT rule 9.5 says the CRT will usually order an unsuccessful party to pay the successful party's CRT fees and reasonable dispute-related expenses. I find Ms. Johnson was largely unsuccessful in this dispute, so I find she is not entitled to reimbursement of fees or expenses.

127. Also, I would not order reimbursement of the bulk of Ms. Johnson's claimed expenses in any event, for the following reasons.

128. Ms. Johnson claimed $800 for Dr. Wong's report. However, as explained above, I found against Ms. Johnson on those claims addressed in Dr. Wong's report. Also, I found Dr. Wong's report mostly unhelpful, as the medical opinions in it were based on acceptance of facts as related solely by Ms. Johnson, which I found were not objectively proven. So, I would not order reimbursement for Dr. Wong's report.

129. Ms. Johnson also claims reimbursement of $600 for polygraph testing fees. I dismiss this claim, as I found the January 26, 2022 polygraph report unhelpful in deciding this dispute. The polygraph report says Ms. Johnson was simply asked to indicate yes or no to 6 questions about whether letters she signed or wrote were true. I find these questions too vague to prove or disprove any specific facts at issue in this dispute. Specifically, the fact that Ms. Johnson believes that various letters are true does not prove the truth of those documents' contents. Also, in *R. v. Béland*, 1987 CanLII 27, the Supreme Court of Canada said evidence of polygraph testing is generally inadmissible because it offends well-established rules of evidence, is unnecessary, and leads to complications and confusion that may derail the proceedings.

130. For these reasons, I dismiss Ms. Johnson's claims for dispute-related expenses. The strata claimed no dispute-related expenses, so I order no reimbursement.

131. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Ms. Johnson.

ORDERS

132. I order the strata to immediately remove $600 in bylaw fines from Ms. Johnson's strata lot account.

133. I dismiss Ms. Johnson's remaining claims.

134. 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.

Kate Campbell, Tribunal Member