



# Civil Resolution Tribunal

Date Issued: June 26, 2024

File: ST-2023-000812

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Civil Resolution Tribunal

Indexed as: *Zenuk v. The Owners, Strata Plan BCS3458*, 2024 BCCRT 606

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

ALAN ZENUK

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS3458

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This strata dispute is about ongoing noise complaints in a strata building. Alan Zenuk owns a strata lot in The Owners, Strata Plan BCS3458. The owner of the strata lot directly below Mr. Zenuk's has made hundreds of complaints to the strata about unreasonable noise coming from Mr. Zenuk's strata lot.

2. Mr. Zenuk denies that he or his strata lot are the source of any unreasonable noise, and he says the strata's investigation into the noise complaints has been significantly unfair. He claims \$5,000 for loss of enjoyment of his strata lot, loss of sleep, and stress, all of which he says were caused by the strata's significantly unfair investigation. He also wants the strata to reverse \$56,000 in noise bylaw contravention fines he says it issued against his strata lot account.
3. The strata says it reasonably investigated the noise complaints and it denies treating Mr. Zenuk significantly unfairly. It says Mr. Zenuk's calculation of the fines is unclear, and his claims should be dismissed.
4. Mr. Zenuk is self-represented, and the strata is represented by a strata council member.

## **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. 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.
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 questions of the parties and witnesses 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. Was the strata's investigation into the noise complaints significantly unfair, and if so, is Mr. Zenuk entitled to \$5,000 in damages?
  - b. Was the process the strata followed in fining Mr. Zenuk for the noise complaints significantly unfair, and if so, should the fines be reversed?

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mr. Zenuk must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. The strata was created in 2009. It is a residential strata with 24 strata lots in a single concrete building.
12. In 2015, the strata filed a new set of bylaws with the Land Title Office. Bylaw 3(1) prohibits an owner from using a strata lot 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 another strata lot. When it comes to noise, I find these bylaws all amount to the same thing, which is that they prohibit unreasonable noise.

13. In the strata context, unreasonable noise is noise that represents a substantial, non-trivial interference with the use and enjoyment of property (see *The Owners, Strata Plan 1162 v. Triple P Enterprises*, 2018 BCSC 1502). To meet this standard, the noise must be intolerable to an ordinary person (see *St. Lawrence Cement v. Barrette*, 2008 SCC 64). Whether noise constitutes a nuisance depends on factors such as its nature, intensity, frequency, duration, and timing. In the context of a strata development, there must be a “certain amount of give and take” between neighbours (see *Sauve v. McKeage et al.*, 2006 BCSC 781).

### ***The noise complaints***

14. RK owns the strata lot below Mr. Zenuk, and he made the noise complaints at issue in this dispute. The strata submitted a statement from RK who says he first heard a tapping noise coming through his primary bedroom ceiling on June 23, 2020. He says he heard it again in November 2021, and in January 2022 the noise frequency increased to once or twice per week. He says that in March 2022 he offered to help Mr. Zenuk find the source of the noise, which Mr. Zenuk refused.

15. RK first complained to the strata about unreasonable noise coming from Mr. Zenuk’s strata lot on April 4, 2022. RK says the frequency of the noise has increased significantly over time, and he regularly hears it during the day and at night. He says he mostly hears hard percussive strikes coming through his primary bedroom ceiling, but he also hears tapping, scraping, dragging, and clunking noises from the same location. Between April 4, 2022, and November 30, 2023, RK made 443 noise complaints to the strata. RK sent the strata audio recordings and detailed noise logs with most of his noise complaints. Some of those recordings and noise logs are in evidence, and I find they are consistent with RK’s description of the noise.

16. RK says that in April 2022 he started recording the noise with a sound level meter app on his iPhone which he mounted on a tripod away from reflecting or absorbing surfaces. He says that at some point he switched to recording the noise on his iPad because of its better microphones and larger storage. RK says of the 110 sound readings he took between July and December 2022, the peak sound level was 73.8

dBA on December 6, 2022, and the average maximum sound level was 58.2 dBA. In *Suzuki v. Munroe*, 2009 BCSC 1403, the court referred to the World Health Organization's "Guidelines for Community Noise", which says that for good sleep, individual noise events in a bedroom should not exceed 45 dBA. RK's statement is the only evidence the strata submitted of the decibel level of the noise, but Mr. Zenuk does not specifically dispute the accuracy of the noise measurements.

17. Mr. Zenuk denies that he or his wife make the noise RK complains about. He says he and his wife cannot hear the noise when they are in their strata lot, so they cannot control it.
18. RK and his wife brought a separate CRT dispute against Mr. Zenuk claiming damages for the loss of quiet enjoyment of their strata lot for unreasonable noise between March 2022 and February 2023. Mr. Zenuk counterclaimed for the stress and anxiety he said resulted from RK and his wife's wrongful accusations. That decision was published on May 12, 2023 (see *Knowlan v. Zenuk*, 2023 BCCRT 395). I do not have access to the evidence or submissions before the tribunal member who wrote that decision, and his findings in that decision are not binding on me.

### ***The strata's investigation***

19. Under the SPA section 26, the strata council has a duty to exercise the powers and perform the duties of the strata corporation. This includes a duty to investigate alleged bylaw contraventions, such as noise complaints.
20. As noted above, RK first complained to the strata about unreasonable noise coming from Mr. Zenuk's strata lot on April 4, 2022. The strata canvassed other strata lot occupants and determined that the noise could only be heard in RK's strata lot. In May 2022, the strata emailed Mr. Zenuk saying it believed that the noise was coming from his strata lot. The strata asked him for permission to enter his unit to experiment with re-creating the noise RK complained about. Mr. Zenuk denied this request.
21. In May 2022, Mr. Zenuk suggested that the noise could be caused by a mechanical system in the building. It is undisputed that Mr. Zenuk's floors are polished concrete

and there are 2 inches of concrete between his floor and a foam layer holding the heating and cooling piping for his unit. There is another 9 inches of concrete between that piping and RK's ceiling, which is coated in plaster. There are no pot lights or sprinkler heads in RK's master bedroom ceiling.

22. The strata says its contractor does quarterly on-site inspections and had not noticed any problem with the heating and cooling system that could cause the noise. Nonetheless, between June 6 and 13, 2022, the strata's contractor turned off the building's heating and cooling system pumps. The evidence shows RK still made at least 4 noise complaints while the pumps were off, so the strata ruled out the heating and cooling system as the source of the noise.
23. On several dates in July and December 2022, strata council members entered RK's strata lot to test the accuracy of RK's recordings and descriptions of the noise. These council members provided statements that I find are generally consistent with RK's description of the noise. On December 17, 2022, a strata council member recorded the noise they heard in RK's strata lot. The strata compared it to RK's recording for the same date, which it said were almost identical.
24. On December 29, 2022, and January 17, 2023, the strata again asked Mr. Zenuk for permission to enter his strata lot to conduct noise testing. Mr. Zenuk did not immediately respond, and he started this CRT dispute on January 24, 2023. On March 9, 2023, the strata notified Mr. Zenuk that it would make an adverse inference against him for his failure to cooperate with its investigation. At the end of March 2023, Mr. Zenuk finally agreed to cooperate with the strata, and the parties spent the next few months negotiating the process for testing noise in Mr. Zenuk's strata lot.
25. On June 15, 2023 the strata conducted audio recording in both Mr. Zenuk's strata lot and RK's strata lot between 4:30 and 6:00 p.m. Mr. Zenuk and his wife vacated their strata lot during the recording. The parties agree that the noise RK complains of cannot be heard on either of the recordings from this date. The strata determined that the testing was inconclusive.

26. The strata says that in September 2023, it contacted several acoustic engineers. It says these engineers advised they would need vacant possession of Mr. Zenuk and RK's strata lots for several days of testing, which would cost between \$6,000 and \$8,000. The strata says it did not believe it had the right to force Mr. Zenuk or RK to vacate their strata lots for this purpose, and so it declined to pursue this option. However, the strata says that one of the acoustic engineers it talked to suggested that if the heating and cooling system was the source of the noise, draining it could help determine the cause.
27. On the afternoon of September 7, 2023, RPH Services Inc. drained the building's heating and cooling system and turned off the pumps. A strata council member entered RK's strata lot that evening while the pumps were off and says they heard similar noises to what they heard in RK's strata lot in December 2022. The strata submitted an October 24, 2023 report from RPH's owner, Stuart Matthews, who said they have been trade qualified in complex mechanical systems since 1988. I accept the RPH report as expert evidence under the CRT rules. The report says the heating and cooling system is not the source of the noise.

***Was the strata's investigation into the noise complaints significantly unfair, and if so, is Mr. Zenuk entitled to \$5,000 in damages?***

28. The CRT has authority to make orders remedying a strata corporation's significantly unfair actions or decisions. The court has the same authority under section 164 of the SPA, and the same legal test applies (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113). 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, the owner's objectively reasonable expectations are a relevant factor, but not determinative.
29. The courts have held that a strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of

procedural fairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148).

30. Mr. Zenuk says the strata's investigation into the noise complaints was significantly unfair for many different reasons, which I address below. For the following reasons, I find Mr. Zenuk has failed to prove that the strata's investigation was significantly unfair.
31. Mr. Zenuk's primary argument is that he does not make the noise and he cannot hear it, so he cannot control it. He says the strata cannot say precisely what is causing the noise, so it is unfair to blame him for it. He says that in February 2022 he put felt pads on his furniture, and he has started avoiding his bedroom as much as possible and going to bed later, but otherwise there is nothing he can do.
32. I disagree. The evidence clearly shows that between May 2022 and late March 2023, Mr. Zenuk refused to cooperate with the strata's investigation despite the strata's numerous requests. Mr. Zenuk denies refusing to cooperate. He says he declined the strata's first request in its May 2022 email because he did not know what the strata meant by "experiment", and the strata was obviously biased against him. However, in a September 9, 2022 letter Mr. Zenuk's lawyer told the strata that since the noises were happening at night and early in the morning, there was no practical way to test the noise in Mr. Zenuk's strata lot without invading his privacy. I find this was a clear refusal by Mr. Zenuk to cooperate with the strata's investigation. I find Mr. Zenuk's continued refusal to cooperate with the strata for the first year of its investigation significantly limited the strata's ability to investigate the noise. In the circumstances, I find it was not unreasonable for the strata to determine that the noise was likely coming from Mr. Zenuk's strata lot.
33. Mr. Zenuk also says that between October 3 and 11, 2022, he and his wife were out of the country and their strata lot was empty, but RK made a noise complaint on October 10, 2022. Mr. Zenuk says this proves that he and his wife are not the source of the noise. The strata says unreasonable noise could have been emanating from Mr. Zenuk's strata lot in his absence. Mr. Zenuk did not submit any evidence of his



travel plans. Even if his strata lot was empty during that time, RK made hundreds of other noise complaints during times when Mr. Zenuk or his wife were home. Since Mr. Zenuk's trip occurred while he was still refusing to cooperate with the strata, I find it was reasonable in the circumstances for the strata to determine that the noise was likely coming from his strata lot.

34. Mr. Zenuk also says the strata's June 15, 2023 recording in his strata lot exonerates him because the noise RK complains of cannot be heard on the 90-minute recording. He says the strata has treated him significantly unfairly by failing to consider this important evidence. However, the evidence shows the strata considered the June 15, 2023 recordings from Mr. Zenuk's strata lot and found they were inconclusive. Given the circumstances of the recording and the other evidence available to the strata, I find there is nothing unreasonable about this conclusion.
35. Mr. Zenuk says that no strata council member ever knocked on his door to investigate when they heard the noises in RK's strata lot in July and December 2022. However, based on Mr. Zenuk's continued refusal to grant the strata permission to enter his strata lot in 2022, I find it was reasonable for individual strata council members not to knock on his door when they heard the noise in RK's strata lot.
36. Mr. Zenuk also says the noise complaints only began after a contractor completed significant renovations to RK's strata lot in 2021. He says the strata has failed to consider that the contractor's work could be the cause of the noise. However, Mr. Zenuk does not say exactly what part of the renovations could be causing the noise, and he provided no evidence to support this allegation. There is also no evidence that Mr. Zenuk raised this with the strata before starting this dispute. There is also evidence that RK started hearing the noises before the renovations were completed.
37. Mr. Zenuk also says he has made complaints to the strata about unreasonable noise coming from RK's strata lot, and the strata has failed to adequately investigate these complaints. However, the evidence shows the strata asked Mr. Zenuk to provide noise logs or audio recordings to support his complaints, and there is no evidence he started doing this until November 2023, well after starting this dispute. I find Mr. Zenuk

has failed to show that the strata treated him differently than RK with respect to noise complaints.

38. In his reply submissions Mr. Zenuk says he played RK's recordings to several acoustic engineers who could not recognize the nature of the noise. He says the engineers declined site inspections because of the difficulties in identifying the noise's source, and because of high costs. However, Mr. Zenuk did not provide documentary evidence to support any of this, and he did not raise it until reply submissions, so the strata did not have an opportunity to respond to it.
39. In his reply submissions Mr. Zenuk also says the occupants of two other strata lots confirmed that the noise was coming from above Mr. Zenuk's strata lot. Mr. Zenuk says the strata should investigate this. However, Mr. Zenuk provided no documentary evidence to support this allegation, and there is no evidence he raised this with the strata before his reply submissions, so the strata has not had an opportunity to respond to this allegation.
40. Overall, I find Mr. Zenuk has failed to show that the strata's investigation into RK's noise complaints was significantly unfair to him. I dismiss this claim.

***Was the process the strata followed in fining Mr. Zenuk for the noise complaints significantly unfair, and if so, should the fines be reversed?***

41. Mr. Zenuk wants the strata to reverse \$56,000 in noise bylaw contravention fines he says it imposed against his strata lot because he says the strata failed to fully and fairly investigate the noise complaints. The strata denies this allegation. It says Mr. Zenuk's calculation of the fines is unclear, but there is no basis to reverse them.
42. Bylaw 22(1) permits the strata to fine an owner a maximum of \$200 for each bylaw contravention. Neither party submitted a statement of account for Mr. Zenuk's strata lot indicating the dates or amounts of the fines. However, as noted above, between April 4, 2022, and November 30, 2022, RK made 443 complaints to the strata about unreasonable noise coming from Mr. Zenuk's strata lot. The evidence before me shows that between March 22, 2023, and December 6, 2023, the strata fined Mr.

Zenuk at least \$42,600 for noise bylaw contraventions. Mr. Zenuk has not paid any of these fines.

43. On September 22, 2022, Mr. Zenuk had a hearing with the strata council to address all the noise complaints it had received up to that date. I find the purpose of the hearing was for the strata to decide whether it would fine Mr. Zenuk for breaching noise bylaws. SPA section 34.1(3) required the strata to give Mr. Zenuk a written decision within one week of the hearing. On the evidence before me, I find the strata breached this SPA requirement because it did not provide Mr. Zenuk with its written decision until March 22, 2023. In that letter, the strata notified Mr. Zenuk that it would be fining him an unspecified amount for the bylaw contraventions described in its 18 warning letters to him dated between July 5, 2022, and February 21, 2023. None of these warning letters are in evidence, but Mr. Zenuk does not dispute receiving them.
44. The BC Supreme Court has said that missing the one-week deadline required by SPA section 34.1(3) does not, on its own, give rise to significant unfairness. Rather, it is part of the context to be considered when assessing whether a strata corporation's conduct was significantly unfair (see *Simon Fraser University Foundation v The Owners, Strata Plan BCS 1345*, 2021 BCSC 360, at paragraphs 51-53).
45. In the context of this dispute, I find the strata's 6-month delay in providing Mr. Zenuk its written decision about the bylaw fines was prejudicial to Mr. Zenuk. I find Mr. Zenuk had a reasonable expectation that the strata would follow the SPA. I also note that RK continued to make similar and frequent noise complaints against Mr. Zenuk in that 6-month period, for which the strata fined him. So, I find the strata's breach of SPA section 34.1(3) was significantly unfair. I find the unfairness must be remedied by reversing all fines the strata issued against Mr. Zenuk's strata lot for noise bylaw contraventions that occurred between April 2022 and March 22, 2023, the date of the letter.
46. On May 2, 2023, the strata notified Mr. Zenuk by letter of its decision to fine him \$7,400 based on the noise bylaw contraventions noted in 37 warning letters it sent him on 15 different dates between February 21 and March 30, 2023. These warning

letters are not in evidence, but Mr. Zenuk does not dispute receiving them. The May 2, 2023 letter said Mr. Zenuk responded to the noise complaints set out in the warning letters by email and the strata considered his responses in deciding to fine him. However, based on my finding above, I find that any of the \$7,400 in fines the strata issued against Mr. Zenuk's strata lot for noise bylaw contraventions that occurred on or before March 22, 2023, must be reversed. I am satisfied that any of these fines that are for noise bylaw contraventions between March 23 and 30, 2023 are justified.

47. On July 13, 2023, Mr. Zenuk had a hearing with the strata council to address all the noise complaints it received against him between March 31 and July 12, 2023. On the evidence before me, I find the strata again breached SPA section 34.1(3) because it did not provide Mr. Zenuk with its written decision until September 28, 2023, more than 2 months after it was required to do so. In its September 28, 2023 letter, the strata notified Mr. Zenuk of its decision to fine him \$20,200 for 101 noise complaints it received on 93 different dates between March 30 and August 15, 2023.

48. I find a 2.5-month delay in reaching a decision about fines was significantly unfair to Mr. Zenuk in the circumstances because RK continued to make noise complaints against him during that time, and the strata continued to fine him. I find the unfairness is remedied by reversing the fines it issued against Mr. Zenuk's strata lot for noise bylaw contraventions that occurred between March 31 and September 28, 2023, the date of the letter.

49. On December 6, 2023, the strata notified Mr. Zenuk by letter of its decision to fine him \$15,000 for 75 noise complaints it received between August 24 and November 13, 2023. The letter said Mr. Zenuk had responded by email to these complaints. The strata said it decided to fine him based on RK's evidence supporting the complaints, Mr. Zenuk's responses, the RPH report, and its own previous decisions about these ongoing noise complaints. The strata said it was not asking for immediate payment, and that it would wait until the outcome of this CRT dispute. However, 29 of those noise complaints were received on or before September 28, 2023, so based on my finding above, I find those fines must be reversed. On the evidence before me I am satisfied that the remaining fines in the December 6, 2023 letter were justified.

50. On January 2, 2024, the strata notified Mr. Zenuk by letter that it had received 44 noise complaints against him between November 15 and December 31, 2023. It warned him that it may fine him \$200 per complaint and gave him an opportunity to respond to the complaints. It is not clear from the evidence before me whether Mr. Zenuk responded, whether the strata decided to fine Mr. Zenuk for these 44 complaints, or whether it has imposed any further fines for noise bylaw complaints occurring in 2024. So, I make no findings about any fines the strata imposed against Mr. Zenuk's strata lot for noise bylaw contraventions that occurred after November 13, 2023.
51. It is worth noting that the SPA section 133(1) allows the strata to do what is reasonably necessary to remedy a bylaw contravention, including doing work on or to a strata lot, the common property, or common assets. The SPA section 133(2) permits the strata to charge a person who may be fined for the bylaw contravention the reasonable costs of remedying the contravention.
52. In summary, I find the strata must reverse the fines it imposed against Mr. Zenuk's strata lot account for noise bylaw contraventions that occurred on or before March 22, 2023, and between March 31 and September 28, 2023.

## **CRT FEES, EXPENSES AND INTEREST**

53. Under section 49 of the CRTA, 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. I see no reason in this case not to follow that general rule. Since Mr. Zenuk was somewhat successful, I find he is entitled to reimbursement of half his CRT fees, which equals \$112.50.
54. In submissions Mr. Zenuk claims an unspecified amount for legal fees and \$250 for doctor letters, both as dispute-related expenses. However, he provided no invoice from his lawyer or receipt or invoice from his doctors, so I find the claims are unproven and I dismiss them.

55. The strata did not pay any CRT fees, but it claims \$735 in dispute-related expenses for the cost of the RPH report. It submitted a November 1, 2023 invoice supporting the amount claimed. It says the cost of obtaining the report was necessary to respond to Mr. Zenuk's claims in this dispute. I agree. Mr. Zenuk started this dispute in January 2023. I find the strata obtained the RPH report in direct response to Mr. Zenuk's allegation that the heating and cooling system was causing the noise. However, since the strata was only party successful, I find it is entitled to half the cost of the RPH report for a total of \$367.50. Deducting the \$112.50 the strata owes Mr. Zenuk for CRT fees from this amount, I find Mr. Zenuk owes the strata \$255 in dispute-related expenses.
56. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Zenuk, except as expressly ordered above.

## **ORDERS**

57. I order the strata to immediately reverse any fines it issued against Mr. Zenuk's strata lot account for noise bylaw contraventions that occurred on or before March 22, 2023, and between March 31 and September 28, 2023.
58. Within 14 days of the date of this decision, I order Mr. Zenuk to pay the strata \$255 in dispute-related expenses.
59. The strata is entitled to post judgment interest under the *Court Order Interest Act*, as applicable.
60. I dismiss the remainder of Mr. Zenuk's claims.

61. This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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. 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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Sarah Orr, Tribunal Member