



Civil Resolution Tribunal

Date Issued: July 26, 2024

Files: ST-2023-001336 and
ST-CC-2023-012496

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chan v. The Owners, Strata Plan EPS 4773*, 2024 BCCRT 726

B E T W E E N :

HON WING CHAN and HUNG ANGELA CHEUNG

APPLICANTS

A N D :

The Owners, Strata Plan EPS 4773

RESPONDENT

A N D :

HON WING CHAN and HUNG ANGELA CHEUNG

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Hon Wing Chan and Hung Angela Cheung (owners) co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 4773. In the owners' claim against the strata, they say that the strata unfairly issued 18 bylaw fines against their strata lot, totalling \$900. They ask for an order that the strata remove the fines.
2. The strata says that it was justified in issuing the bylaw fines. In its counterclaim against the owners, the strata says that the owners have caused various nuisances and disturbances within the strata community. It claims payment of \$1,750 in bylaw fines, as well as an orders that the owners stop the disturbances and remove their doorbell camera from their strata lot.
3. Mr. Chan represents the owners. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

4. 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.
5. 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, none of the parties requested an oral hearing, and I find that I am properly able to assess and weigh the extensive documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.

7. 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.
8. Initially, only Mr. Chan was named as an applicant in 1336 and as a respondent in 12496. However, the parties' evidence and submissions showed that most of the bylaw fines at issue were about Ms. Cheung's conduct. So, I referred both disputes back to the CRT's case management stage under CRTA section 45 to give the parties an opportunity to add Ms. Cheung as a party to both disputes.
9. The parties agreed that Ms. Cheung should be named as a co-applicant in 1336 and a co-respondent in 12496. The Dispute Notice in 1336 was amended accordingly, and Ms. Cheung filed a Dispute Response in 12496. Ms. Cheung confirmed that she wishes to adopt the evidence and arguments already provided by Mr. Chan.

ISSUES

10. The issues in this dispute are:
 - a. Did the owners contravene the strata's noise bylaws? If so, was the strata entitled to issue bylaw fines against the owners?
 - b. Has the strata acted in a significantly unfair manner towards the owners?
 - c. Should I order the owners to remove their doorbell speaker, and to stop causing unreasonable noise?

EVIDENCE AND ANALYSIS

11. In this civil dispute, each of the applicants must prove their respective claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

12. I was unable to open one piece of the strata's evidence. Based on the strata's description of the evidence, it is an April 25, 2023 letter that it sent to the owners following an April 18, 2023 hearing. The owners also submitted a copy of this letter, which I was able to open. So, I did not find it necessary to ask the strata to resubmit the unopenable evidence.

Bylaw Fines

13. In the owners' claim, the owners ask for orders that the strata cancel 18 bylaw fines issued against their strata lot between March 31, 2022 and December 13, 2022 (the 2022 fines). In the counterclaim, the strata claims payment of the 2022 fines, plus an additional \$850 in fines it says it imposed against the owners in 2023 (the 2023 fines).

14. The owners installed a Ring doorbell outside their strata lot in 2018. The parties agree that the Ring doorbell includes a camera and a speaker component, which allows a user to project their voice through the doorbell. Most of the fines at issue in this dispute are about noise coming from the owners' doorbell. Specifically, the strata says that the owners are using their doorbell to project their voices throughout the strata's common areas, including yelling at other strata lot owners and using inappropriate language.

15. Bylaw 4.1 says, in part, that a resident or visitor must not use a strata lot, the common property, or common assets in a way that:

- a. Causes a nuisance or hazard to another person,
- b. Causes unreasonable noise, or
- c. Unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.

16. In the context of the alleged bylaw violations in this dispute, I find that these bylaws essentially amount to the same thing, which is a prohibition on unreasonable noise. In the strata context, unreasonable noise is noise that represents a substantial, non-

trivial interference with the use and enjoyment of property.¹ To meet this standard, the noise must be intolerable to an ordinary person.² Whether a noise constitutes a nuisance depends on factors such as its nature, intensity, frequency, duration, and timing.

2022 fines

17. I begin with the 2022 fines. As noted, the strata issued 18 fines of \$50 each. In some instances, the strata issued a single fine for multiple alleged incidents. For each of the fines, the strata provided:

- a. A copy of the complaint(s) it received about the alleged bylaw violation,
- b. Video or audio evidence of the incident(s) giving rise to the complaint, including a translation of the dialogue if applicable,
- c. A copy of its strata manager's correspondence to the owners, advising of the complaint and inviting them to respond in writing or request a hearing, and advising that the strata corporation may issue a fine if it determines that any bylaws have been contravened,
- d. A written response from the owners about the complaint, and
- e. A copy of its strata manager's correspondence to the owners advising that the strata council had reviewed the information provided, including the owners' response letter, and had decided to impose a \$50 fine.

18. Although most of the correspondence in evidence is between the strata and Mr. Chan, I find it clear from the evidence that Mr. Chan corresponded with the strata on behalf of both himself and Ms. Cheung.

19. As noted, most of the fines relate to the owners' use of their doorbell speaker. The video clips in evidence show multiple instances of a voice emanating from the speaker. Based on the translations in evidence, these vocalizations often include

¹ *The Owners, Strata Plan 1162 v. Triple P Enterprises*, 2018 BCSC 1502.

² *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

profanity and insults, and are often directed towards other strata lot owners. Many of the disturbances occur late in the evening, around 10:00 or 11:00 pm.

20. The owners do not dispute the accuracy of the video and audio recordings or their translations. However, the owners deny that they caused unreasonable noise. They say that the volume of the speaker is low, and would not project a person's voice into the common area.
21. I find the video footage clearly shows that the voices coming from the doorbell speaker are audible in common areas, including from the doorways of neighbouring strata lots located across the street from the owners' strata lot.
22. The owners also say that they have the right to yell inside their own property, and that their yelling did not cause a nuisance or hazard because there is no evidence that they physically harassed anyone. I disagree. The bylaws in question prohibit unreasonable noise, which is not the same thing as physical harassment. I find evidence of physical harassment is not required to prove a breach of the noise bylaw.
23. While I accept that the owners were inside their strata lot at the time of most of the complaints, the bylaw prohibits the use of a strata lot in a way that causes a nuisance or unreasonable noise. By using their doorbell speaker to project their voices into common property, including insulting and profane language, the owners have used their strata lot in a way that affects other owners. While the owners say that they sometimes use the intercom because they see "suspicious shadows" around their front door and they are concerned about break-ins, I find this explanation is not consistent with the dialogue in the video footage.
24. The owners also say that strata does not have guidelines about what constitutes a nuisance. Essentially, they argue that the strata issued fines based on council members' subjective interpretations of what is appropriate. As noted above, the legal test for nuisance is assessed on an objective standard of whether the noise would be intolerable to an ordinary person. Previous CRT decisions have found that yelling that is audible in common areas, especially including profanity, is unreasonable noise that

interferes with use and enjoyment of strata property.³ While prior CRT decisions are not binding on me, I find this reasoning persuasive, and apply it here.

25. Based on the videos in evidence, I find the noise coming from the owners' doorbell speaker is unreasonable. Although the duration of each outburst is relatively short, as the owners argue, I find that the noises leading to the complaints and fines at issue in this dispute were excessive and amounted to more than mere inconvenience. I say this based on the frequency of these occurrences, the use of profanity and insults, the intensity of the outbursts, and the fact that that they often occur at night. I find that an ordinary person would find these noises intolerable.
26. As noted, other owners' or residents' subjective experiences are not determinative as to whether a noise is unreasonable. However, based on the numerous complaints in evidence from multiple different residents within the strata, I accept that the owners' behaviour has been distressing to several individuals.
27. For these reasons, I find the strata has proven that the owners have breached bylaw 4.1 by causing unreasonable noise. However, I find the strata is not entitled to all of the 2022 fines, for the following reasons.
28. SPA section 135 outlines the process a strata corporation must follow when enforcing its bylaws. Section 135(1) says that a strata corporation must not impose a fine unless it has received a complaint, and given the owner particulars of the complaint and a reasonable opportunity to answer it. Section 135(2) requires the strata to notify the owner in writing of its decision to impose a fine as soon as feasible.
29. The strata's correspondence to the owners about the complaints at issue in this dispute generally complies with these requirements. However, I find there are two exceptions in which the strata provided insufficient particulars in its correspondence to the owners notifying them of the complaint. For the incident on August 1, 2022, and one of two incidents on August 2, 2022, the strata's letters say that the alleged bylaw violation was "causing nuisance and noise disturbance using the Ring Doorbell

³ See, for example, *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361, and *The Owners, Strata Plan LMS4355 v. Vorias*, 2022 BCCRT 745.

& Intercom.” However, based on the owner complaint and video footage in evidence, the August 1 incident actually involved one of the owners yelling at other residents from their vehicle while driving past another strata lot, and the August 2 incident involved one of the owners yelling from the doorway of the strata lot. The videos of these two incidents do not show the owners causing any disturbance involving the doorbell. So, I find the strata did not comply with SPA section 135(1) before issuing fines against the owners for these two incidents, because its letters did not accurately describe the particulars of the complaints.

30. Other than these two incidents, I find the strata complied with SPA section 135 before issuing fines against the owners.
31. The owners also argue that other strata lots have not been fined for similar behaviour. I find the owners essentially argue that the strata has treated them significantly unfairly in its enforcement of the bylaws, which I address further below. In summary, subject to my findings on significant unfairness below, I find the strata has established that it is entitled to payment of 16 of the 2022 fines. This totals \$800.

2023 fines

32. In its counterclaim, the strata provided evidence about 17 additional complaints it says it received about the owners breaching bylaw 4.1. I find it is not necessary to detail these alleged contraventions, because the strata has not proven that it complied with SPA section 135(2) when fining the owners for any of them. As noted, this section requires the strata to inform an owner in writing, as soon as feasible, of its decision to issue a fine. Unlike the 2022 fines, the strata provided no evidence showing that it informed the owners that it had decided to fine them for these incidents.
33. Previous CRT decisions have found that a strata corporation is not entitled to impose fines if it has not complied with SPA section 135(2).⁴ I agree. Absent any correspondence in evidence from the strata informing the owners of its decision to

⁴ See, for example, *The Owners, Strata Plan NW 2395 v. Nikkel*, 2020 BCCRT 1095 and *Fariborz v. The Owners, Strata Plan EPS1945*, 2022 BCCRT 268.

impose fines for these alleged contraventions, I dismiss the strata's counterclaim for payment of the 2023 fines.

Significant unfairness

34. As noted, the owners say that the strata has not fined other owners for causing similar noise, despite them submitting complaints.
35. The SPA does not set out any procedures for assessing bylaw complaints. Strata corporations have discretion about how to respond to bylaw complaints, as long as they comply with principles of procedural fairness and do not act in a significantly unfair way.⁵
36. The CRT has authority to make orders remedying a strata corporation's significantly unfair acts or decisions. The court has the same authority under SPA section 164, and the same legal test applies.⁶ 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.⁷ In applying the test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.⁸
37. The CRT has consistently held that owners have an objectively reasonable expectation that a strata corporation will investigate bylaw complaints and enforce its bylaws if there has been a proven contravention. This is because SPA section 26 requires the strata to enforce its bylaws except in very limited circumstances, such as if the breach is trivial.⁹
38. The owners say that other strata owners have also yelled in common areas but the strata has not issued fines against them. Particularly, they say that there were three instances when strata council president, JP, and his wife, whose name is not in evidence, yelled at their unit. The owners say that the strata acted in a conflict of interest by not issuing fines against JP and his wife.

⁵ *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148.

⁶ *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

⁷ *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

⁸ *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44.

⁹ See *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270.

39. These alleged incidents occurred on December 18, 2021, February 8, 2022, and May 12, 2022. I infer that JP and his wife live in unit 111, as that is the number the owners use to refer to them.

December 18, 2021 incident

40. The strata provided video footage of the incident on December 18, 2021. In the video, the person holding the camera, who I infer to be JP, approaches the owners' door while noise is coming from their Ring doorbell. The person speaks into the doorbell camera in a calm voice. The translation in evidence says that the person asks the owners to stop disturbing the neighbours, and warns that they may be fined. As the video footage progresses, multiple other owners come out of their units and join the discussion, some with raised voices.

41. On December 20, 2021, JP emailed the strata manager about the incident, and copied the other strata council members. He explained that he confronted "105", which is the owner's unit, through the doorbell about the doorbell activity. He said that he warned "her" (which I infer means Ms. Cheung) to stop using it to harass neighbours. JP noted that other strata lot owners, including his wife, came out to also tell Ms. Cheung to stop.

42. There is no evidence before me that the owners complained about this incident to the strata until a September 23, 2022 letter. There is no response from the strata in evidence, but I infer that the strata did not issue any fines in relation to this incident.

February 8, 2022 incident

43. The owners reported a February 8, 2022 incident involving unit 111 to the strata on March 8, 2022, and provided video footage. The video the owners provided shows a person, who I infer is JP's wife, standing in the road and shouting at the owners' door.

44. The evidence shows that the strata manager forwarded the owners' complaint to the strata council for consideration on April 13, 2022. The same day, one of the strata council members responded and said that the video the owners provided did not

“accurately reflect the true situation”. They said they had reviewed the footage from their own doorbell camera and found that it was the owners who initiated the yelling. They said that if a warning is issued to unit 111, one should be issued to unit 105 as well.

45. The emails show that two other strata council members responded and decided against sending a warning letter to unit 111. JP did not participate in this decision, but did respond after these emails, saying that he could provide any input or additional evidence if needed. There is no evidence before me that the other strata council members requested further information from JP.
46. The strata provided video footage showing this altercation from two other doorbell cameras. In these videos, a person, who I infer is JP’s wife, approaches the owners’ unit, then walks away. As the person is walking away, a voice begins speaking from the owners’ doorbell speaker. The translation in evidence shows that both parties exchange insults and profanity in their brief interaction.
47. On September 13, 2022, the strata, through its strata manager, wrote to the owners in response to several letters it says it received from the owners. While not all of these letters are in evidence, I infer they contained further complaints about the February 8 incident. Although the strata’s letter refers to the incident as occurring on March 8, it is clear from the letter’s context that this is an error and the incident in question is the February 8 altercation.
48. In this letter, the strata said that it reviewed the owners’ correspondence as well as additional information that provided the “full extent of what transpired”. The strata said that after reviewing all of the information, it determined that Unit 111 was not at fault for causing nuisance and noise disturbance.

May 12, 2022 incident

49. Lastly, the strata provided video footage of the May 12, 2022 incident. The footage shows that a person, again who I infer to be JP’s wife, approaches the owners’ unit while a voice is coming from the owners’ doorbell camera. JP’s wife goes over to the

owners' unit, and a person who I infer is Ms. Cheung comes to the door. Both people argue in raised voices for approximately one minute.

50. Again, there is no evidence before me that the owners reported this incident to the strata until September 23, 2022. There is no response from the strata in evidence, and no evidence that either owner was fined for this incident.

Conclusion on significant unfairness

51. The owners say that because the strata did not fine unit 111 for any of these three incidents, then they should not be liable for any of the fines issued against them. The strata says that the owners have not provided any evidence that JP and his wife breached the strata's bylaws. The strata also says that the owners' expectation that they be allowed to yell inside their unit with impunity is not reasonable.
52. Here, I find the owners have not proven that the strata acted significantly unfairly towards them with respect to their complaints about unit 111. First, I find the strata complied with SPA section 136(1), which says that a strata council member must not participate in a decision about a bylaw complaint which is made about them. While the strata did not submit strata council emails reflecting its decision not to fine unit 111 for the December 18 and May 12 incidents, there is no suggestion that JP participated in these decisions, and I find it is unlikely he would do so as it is clear from the April 13 emails that the strata council was aware of SPA section 136(1).
53. Second, I find that the video footage of the three incidents the owners complained of does not establish that JP or his wife was yelling, unprovoked, at the owners' unit. Rather, I find each of these incidents was a heated discussion between multiple parties, and in each incident, the owners also participated in, and in some cases initiated, the shouting and name-calling.
54. As noted, there is no evidence before me that the strata fined the owners for these incidents and not unit 111. Had the strata done so, my conclusion may have been different. However, here I find these three incidents differ from the repeated and unprovoked noise disturbances that the strata did fine the owners for. So, I find it was

reasonable in the circumstances for the strata to proceed without issuing fines against any unit for these three incidents, and the strata did not act significantly unfairly towards the owners.

Summary and remedies

55. In summary, in the owners' claim, I find the strata must remove the fines for the August 1, 2022 complaint and for one complaint on August 2, 2022. I dismiss the owners' remaining claims.
56. In the strata's counterclaim, I find the strata has proven it is entitled to payment of \$800 in bylaw fines. I dismiss the strata's remaining counterclaims for bylaw fines.
57. The strata also asks for an order that the owners remove the Ring doorbell and that they be prohibited from future installation of any externally mounted camera or speaker systems. I decline to make this order. I find there is no evidence that the presence of the doorbell itself contravenes the strata's bylaws, and indeed, the strata acknowledges that several other owners have similar doorbells. Rather, it is the owners' use of the doorbell to project their voices into common areas which is the problem.
58. I find this is addressed by the final order the strata seeks, which is an order that the owners stop "all inappropriate behaviours". I infer the strata asks for an order that the owners comply with the bylaws, specifically in relation to their use of the Ring doorbell.
59. While the CRT typically declines to make a general order that an owner or strata comply with the SPA or bylaws, as they are already legally entitled to do so, given the volume of incidents in this dispute I find it appropriate to specifically order the owners to comply with bylaw 4.1.

CRT FEES, EXPENSES AND INTEREST

60. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, as the parties had mixed success, I find it appropriate for each of the parties to bear their own CRT fees. None of the parties claimed dispute-related expenses.
61. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgment interest on the bylaw fines from the date it issued each fine to the date of this decision. This equals \$65.79.
62. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

63. Within 21 days of this decision, I order the owners to pay the strata \$865.79, broken down as follows:
- a. \$800 in bylaw fines, and
 - b. \$65.79 in pre-judgment interest under the COIA.
64. The strata is entitled to post-judgment interest under the COIA.
65. I order the owners to immediately comply with strata bylaw 4.1.
66. I order the strata to cancel the bylaw fines it issued against the owners for the incident on August 1, 2022, and one incident on August 2, 2022.
67. I dismiss the parties' remaining claims.
68. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Alison Wake, Tribunal Member