



Civil Resolution Tribunal

Date Issued: November 18, 2024

File: ST-2022-010235 and
ST-2022-010280

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hu v. The Owners, Strata Plan EPS6099*, 2024 BCCRT 1165

B E T W E E N :

LIYAN HU

APPLICANT

A N D :

The Owners, Strata Plan EPS6099

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. These 2 strata property disputes are about noise, related bylaw fines, and document requests. They involve the same parties and facts, so I have issued 1 decision for both disputes. They are also linked to another dispute involving similar claims from a neighbouring strata lot owner in the same strata corporation. The other dispute is ST-2022-000157 (linked dispute), in which the applicant here is a third party. In the linked dispute, the applicant's neighbour complains of piano noise

from the applicant's strata lot. To some extent there are overlapping arguments in the linked dispute based on the same facts as this dispute, but I have written a separate decision for the linked dispute, which is indexed as *Torabi v. The Owners, Strata Plan EPS6099*, 2024 BCCRT 1164.

2. The applicant, Liyan (Leanne) Hu, owns strata lot 216 (SL216) in the respondent strata corporation, The Owners, Strata Plan EPS6099 (strata). Ms. Hu is self-represented. A strata council member represents the strata.
3. In dispute ST-2022-010235, Ms. Hu says the strata has fined her for noise bylaw violations contrary to the *Strata Property Act* (SPA), which totaled \$3,800 on February 28, 2023. The strata imposed additional fines after that date which totaled \$30,700 on May 2, 2024. They all relate to noise complaints made by Ms. Hu's neighbour, Mr. Torabi, about Ms. Hu's son playing a piano. Mr. Torabi owns SL208 directly below Ms. Hu. Ms. Hu also says the strata failed to investigate the noise complaints made against her before imposing fines and failed to provide records and documents to which she is entitled under the SPA.
4. In dispute ST-2022-010280, Ms. Hu restates her claims about the bylaw fines, records and documents, and the strata's investigation and also that the strata council failed to record its decisions in its minutes. She also says the strata unreasonably demanded that she restrict the piano playing, without any legal basis, and made threats about her non-compliance that included threatening to charge her for an independent sound test expense. Finally, she says the strata's actions are tantamount to bullying and that the strata was collaborating with Mr. Torabi to "fabricate bylaw infraction allegations" to force her to accept an agreement to limit the piano playing in SL216.
5. Ms. Hu asks for orders that the strata:
 - a. Reverse the noise bylaw fines imposed against her,
 - b. Provide her with the following records and documents:
 - i. All correspondence between the strata and its lawyer from September 1, 2021 to November 11, 2022,

- ii. All correspondence from Mr. Torabi related to his noise complaints against her, and
 - iii. All correspondence relating to SL208 and SL216 between the strata and its property manager between September 1, 2021 and March 13, 2023, and
- c. Pay her \$5,000 for extreme stress and mental anguish.
6. The strata says it properly followed the SPA when it imposed fines against Ms. Hu. It also says it has provided Ms. Hu with all the records and documents she is entitled to receive under the SPA. It denies acting improperly about Mr. Torabi's complaints and says Ms. Hu has not suffered any personal injury, so she is not entitled to damages. The strata asks that Ms. Hu's claims be dismissed.
7. As explained below, I find the strata must reverse all bylaw fines charged against Ms. Hu involving piano noise from December 6, 2022 until the date of this decision. I find Ms. Hu did not prove her remaining claims, so I dismiss them.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
9. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.

ISSUES

11. The issues in this dispute are:
 - a. Did the strata treat Ms. Hu significantly unfairly when it imposed noise fines against her for piano playing?
 - b. Did the strata act unreasonably when it restricted piano playing in SL216?
 - c. Must the strata provide Ms. Hu with additional records and documents?
 - d. Is Ms. Hu entitled to damages for mental stress?

BACKGROUND, EVIDENCE AND ANALYSIS

12. As applicant in civil proceedings such as these, Ms. Hu must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision. I note the parties' submissions for these 2 disputes are the same. Since the linked dispute mostly involves the same facts, I have considered the submissions and evidence from all 3 disputes in reaching my decision. I further note that I am not persuaded I have been provided all relevant correspondence as there are emails and letters in evidence that refer to prior emails and letters that have not been provided. In any event, I am satisfied that sufficient information has been provided to allow me to decide these disputes.
13. The strata was created in February 2020 under the SPA. It consists of 340 strata lots in a single 49-storey high-rise building. As noted, SL216 is located directly above SL208, owned by Mr. Torabi.

14. On October 26, 2021, the strata filed a complete new set of bylaws with the Land Title Office, which I find are the bylaws applicable to this dispute. Bylaw 3(1) is the relevant bylaw. It says, in part, that a resident must not use a strata lot in a way that:
 - a. Causes a nuisance to another person,
 - b. Causes unreasonable noise, or
 - c. Unreasonably interferes with the rights of other persons to use and enjoy a strata lot.

The law about noise and nuisance

15. Under SPA section 26, the strata must enforce its bylaws. In doing so, it must act reasonably. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, at paragraph 237.
16. A strata corporation's duty to enforce its bylaws includes a duty to objectively investigate alleged bylaw infractions, such as noise complaints. See for example, my decisions in *Cox v. The Owners, Strata Plan BCS 4261*, 2022 BCCRT 38 and *Abanilla v. The Owners, Strata Plan LMS 739*, 2021 BCCRT 1292.
17. Noise complaints are a form of nuisance. In *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502, the court found that nuisance is an unreasonable interference with an owner's use and enjoyment of their property. Whether an interference is unreasonable depends on several factors, such as its nature, severity, duration, and frequency. The interference must also be substantial such that it is intolerable to an ordinary person. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.
18. The SPA does not set out any procedures for assessing bylaw complaints. However, in *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court found at paragraph 52, that the SPA allows strata corporations to deal with matters of complaints for bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it.

The law about significant unfairness

19. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.” See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
20. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:
 - a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?
 - b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?
21. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the Court of Appeal determined the reasonable expectations test set out in *Dollan* is not determinative. Rather, the Court found the test is a factor in deciding whether significant fairness has occurred, together with other relevant factors, including the nature of the decision in question and the effect of overturning or limiting it.

The law about bylaw fines

22. SPA section 135 sets out procedural requirements the strata must follow when considering bylaw fines. Under SPA section 135(1), before imposing fines, the strata must have received a complaint, and given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines “as soon as feasible”.

Did the strata treat Ms. Hu significantly unfairly when it imposed fines against her for piano playing?

23. On August 26, 2021, the strata’s concierge prepared an incident report. Among other things, the report noted that Mr. Torabi contacted them about piano noise from

SL216 “every day for 1 hour”. The report also stated the Ms. Hu said Mr. Torabi was “poking” the ceiling of SL208.

24. On September 10, 2021, the strata began writing letters to Ms. Hu about Mr. Torabi’s piano noise complaints. The strata advised Ms. Hu it had received a complaint about loud piano noise from SL216 on August 26, 2021, which I infer is the concierge incident report. The strata said the piano noise was contrary to bylaws 3(1)(a), (b), and (c) noted above. The strata advised Ms. Hu it might impose fines if she did not respond or request a council hearing within 2 weeks. Later in September 2021, the strata wrote 3 more similar letters to Ms. Hu based on 3 more concierge incident reports about complaints from Mr. Torabi.
25. Ms. Hu and Mr. Torabi both attended the November 16, 2021 strata council meeting at the council’s request. The minutes show Ms. Hu attended first, and that Mr. Torabi attended later. I infer they did not attend the meeting at the same time. The minutes confirm the purpose of the owners’ attendance was to discuss their respective noise complaints and that the strata council had decided “to pause any decisions” until it had further discussions with both owners. The minutes also confirm that Ms. Hu left information with the strata that included her November 16, 2021 letter, which she provided in evidence. The letter outlined Ms. Hu’s issue with Mr. Torabi intentionally causing a disturbance, which she described as “prolonged, apparently mechanized / automated jackhammering during the day, into the night and, on occasion, well into the early hours of the morning”. She says the disturbance had been ongoing for 4 months, which aligns with the August 26, 2021 and subsequent concierge incident reports.
26. Ms. Hu’s letter also explained that her son practices piano and that she had taken several soundproofing measures to mitigate any sound transfer. The measures included adding soundproofing to the wall, installing 10 mm thick carpet and 50 mm “castor pads” on top of the carpet. She also explained that in September 2021, she installed “sound-absorbing 25 mm thick heavy-duty carpet” on top of the existing 10 mm carpet. In Ms. Hu’s words, she did “everything possible, within reason, to dampen sound conduction” when the piano is played. She wrote her son is entitled

to play the piano as there is no bylaw that prohibits piano playing. There is no evidence the strata responded directly to her letter.

27. On February 22, 2022, the strata again wrote to Ms. Hu about another complaint evidence by an incident report. It advised the first 4 bylaw complaints were still awaiting a decision. The letter advised Ms. Hu the strata might impose fines if she did not respond or request a council hearing within 2 weeks. On March 4, 2022, Ms. Hu wrote to the strata advising that the “jackhammering” had stopped, but Mr. Torabi’s “poking” the SL208 ceiling had returned. She stated she felt “bullied” by Mr. Torabi for continuing to make noise for “no good reason”, and by the strata council for failing to take action against Mr. Torabi. She asked the strata to address the issues. She also said she took it upon herself to limit the piano playing to 1 hour per day at reasonable times.
28. In April 2022, Ms. Hu requested the strata confirm piano playing during the day with limited hours does not violate the bylaws. The strata did not respond directly, but she attended the May 31, 2022 council meeting to discuss the piano noise and explained the soundproofing measures she had taken. This is confirmed by the council meeting minutes.
29. Also in April 2022, Ms. Hu emailed the strata suggesting it retain an acoustical engineer to assist with determining if the piano playing was unreasonable. She also wrote that she had not received an answer about her request about how often the piano could be played under the bylaws.
30. In June 2022, Ms. Hu began requesting copies of records and documents relating to her alleged noise violations. The strata says it provided an electronic link to the requested information shortly after her request, but Ms. Hu disputes this. Essentially, Ms. Hu says the strata did not provide her with all of the requested information. By November 2022, Ms. Hu advised the strata that she needed the information to respond to the strata’s piano noise allegations.
31. I return to address Ms. Hu’s request for documents below, but I now consider whether the strata’s actions were significantly unfair to Ms. Hu.

32. Following *Dollan*, I find Ms. Hu had a reasonable expectation that the strata would investigate Mr. Torabi's noise complaints against her. The strata relies solely on the concierge incident reports. Based on my review of the reports, I find the reports simply identify noise complaints made by Mr. Torabi, but they do not address the severity and frequency of the piano noise or otherwise confirm the piano noise was unreasonable. The reports show that on some occasions, the concierge contacted Ms. Hu (or she contacted them) but did not always attend SL208 or SL218. Where the concierge did attend SL208, some of the reports indicate the noise was "loud" or "6 out of 10", but I do not find that proves the noise was unreasonable. Aside from relying on the concierge reports, the strata did not make an objective assessment of Mr. Torabi's noise complaints such as having strata council members attend SL208 to assess the severity and frequency of the noise or retaining an independent third-party assessment of the noise.
33. As I noted in the linked dispute, the strata did not take any meaningful steps to investigate Mr. Torabi's claims against Ms. Hu. What is confusing is that the strata says the concierge reports do not confirm the noise is unreasonable and that Mr. Torabi did not prove the piano noise is unreasonable, yet it still imposed \$30,700 in noise bylaw fines against Ms. Hu.
34. I find that in the circumstances here, for the strata to impose fines against Ms. Hu without determining the noise was unreasonable, and therefore in contravention of bylaw 3(1) was unreasonable and a failure of its duty to investigate. I find the lack of an improper investigation of the piano noise complaints against her resulted in the strata treating Ms. Hu in a significantly unfair manner.

Did the strata act unreasonably when it restricted piano playing in SL216?

35. By March 2022, the strata's focus was on arranging a compromised settlement between the 2 owners rather than investigating the issue. This is evidenced in the March 22, 2022 strata council meeting minutes that refer to the strata council trying to negotiate a settlement with the parties and in the October 17, 2022 council meeting minutes that allege a settlement had been made for Ms Hu to limit the time the piano was played. However, the correspondence in evidence does not prove a

settlement was reached. Rather, it supports that Ms. Hu requested the strata confirm piano playing during the day with limited hours does not violate the bylaws. She requested a council hearing to discuss this in April 2022, which was held on May 31, 2022. The strata did not directly respond to Ms. Hu, but prior to the hearing in an April 29, 2022, letter it asked her to limit the piano playing time until this decision was issued.

36. Then, in a July 11, 2022, letter, the strata's lawyer asked Ms. Hu to limit the playing time to 1 hour per day, 3 days per week. Ms. Hu did not agree but said she would restrict the piano playing to 1 hour per day between 4 pm and 7 pm. The strata also said it had authority under SPA section 133 to retain an acoustic engineer and charge the cost to Ms. Hu, based on the results of the investigation. Ms. Hu responded the next day correctly stating section 133 permits a strata to charge back cost for remedying a bylaw contravention, but not for assessing a bylaw complaint, which applied here. Among other things, she also asked the strata to clarify the legal basis for restricting the piano playing and whether playing piano 1 hour per day was unreasonable. She also suggested mediation might be helpful to resolve the dispute.
37. In an August 25, 2022 letter, the strata's lawyer again requested Ms. Hu limit the piano playing to 1 hour per day, 3 days per week and added a request the piano be relocated to another location in SL218. The letter did not address her questions or her suggested mediation. According to Ms. Hu, the strata's requests were based on requests Mr. Torabi made to the strata. I agree since Mr. Torabi wrote to Ms. Hu suggesting these things as a possible way to settle the issues.
38. By November 4, 2022, the strata advised Ms. Hu it would not support mediation and that she would be fined for piano playing outside 1 hour per day, 3 days per week. I agree with the strata that it has discretion to identify possible settlement options or compromises between disputing parties in an effort to resolve a dispute. However, the strata went much further here by imposing piano playing restrictions without Ms. Hu's agreement and without establishing the piano playing was a nuisance.

39. I agree with Ms. Hu that the strata's bylaws do not restrict piano playing in a strata lot. I note the strata attempted to amend its bylaws to restrict the playing of musical instruments at its general meeting in July 2023, but the proposed bylaw amended failed to pass. The only bylaws that apply to piano playing are bylaws 3(1)(a), (b), and (c) noted above. As I have discussed, any limitation or prohibition on piano playing must be because the piano "noise" is unreasonable based on its nature, severity, duration, and frequency, and substantial such that it is intolerable to an ordinary person. The strata failed to prove these things, so I find it had no authority to restrict the piano playing in SL218 to certain hours. To the extent the strata imposed fines for piano playing outside of its restricted hours, I find the strata acted significantly unfairly.
40. The strata started imposing fines against Ms. Hu for piano noise on December 6, 2022. I have found the strata acted significantly unfairly by failing to properly investigate Mr. Torabi's noise complaints and by attempting to limit the time when Ms. Hu's piano could be used. Therefore, I find the strata must reverse \$30,700 of bylaw fines it imposed against Ms. Hu.
41. As a result, I find I do not need to address Ms. Hu's argument that the strata failed to follow SPA section 135.

Must the strata provide Ms. Hu with additional records and documents?

42. In total, the strata issued about 177 bylaw infraction letters to Ms. Hu between September 10, 2021, and May 6, 2024. Based on my review of the letters in evidence, I find each letter identified the specific date and time of the alleged noise complaint from Mr. Torabi based on a concierge incident report. Generally speaking, Ms. Hu responded to the strata's letters by requesting copies of records and documents she felt related to the noise complaint. She stated she needed this information before she could properly respond. Except for requests for records and documents Ms. Hu is not entitled to under the SPA, such as invoices, I find such requests were reasonable.
43. Ms. Hu claims that the strata did not provide her with copies of all the records and documents she requested. The strata says it provided her with all the records and

documents she was entitled to receive under the SPA and claims solicitor-client privilege over correspondence exchanged with its lawyer. I find on the evidence before me that Ms. Hu has not proved her claim. This is because the parties disagree on what records were provided and copies of the actual records and documents the strata did provide to Ms. Hu are not in evidence. Rather, the strata provided an electronic link to records and documents, which it says it updated when Ms. Hu requested additional information. In order to prove her claim, Ms. Hu would need to show what specific documents the strata did not provide and that the strata is obligated to provide the documents under SPA section 35 and related case law.

44. On this basis, I decline to order the strata to provide Ms. Hu with additional records and documents and dismiss her claim. It is open to Ms. Hu to make a fresh request for specific documents under SPA sections 35 and 36 at a future date.

Is Ms. Hu entitled to damages for mental stress?

45. Ms. Hu alleges the strata collaborated with Mr. Torabi to fabricate bylaw infraction allegations against her. The strata denies Ms Hu's allegation.
46. I infer Ms. Hu relies on the strata lawyer's letters that directly follow Ms. Torabi's request for acceptable piano playing time and that the piano be relocated with SL218. Ms. Hu also relies on strata's November 4, 2022 letter that expressly states Ms. Hu will be subject to fines if piano playing occurs "outside the [council's] stipulated hours as it creates a nuisance." Further, in a letter dated December 23, 2022, the strata confirmed with Mr. Torabi that Ms. Hu "had not complied with the strata's stipulations on piano playing limits" and had been fined 13 times, which seems to support the Ms. Hu's allegation. In any event, I do not find the correspondence proves collaboration, especially since the bylaw infraction letters issued by the strata all cite violations of bylaw 3(1) and not that the piano noise was outside the strata-established "stipulated playing times". At most, I find the strata agreed with Mr. Torabi's proposed solution.
47. Based on the overall evidence and submissions, I find Ms. Hu has not proved her allegation about the strata's collaboration with Mr. Torabi.

48. Even if Ms. Hu had proved the strata collaborated with Mr. Torabi, I would still dismiss her claim for damages. I say this because Ms. Hu did not provide any medical evidence about her own stress or mental distress, but she did provide a medical report from her son's doctor. However, Ms. Hu's son is not a party to this dispute so I cannot make an order involving her son.
49. Finally, I agree with the reasoning in the non-binding but persuasive CRT decision *Eggberry v. Horn et al*, 2018 BCCRT 224, which says for a claim about stress or mental distress to be successful there must be medical evidence supporting the stress or mental distress. Ms. Hu did not provide medical evidence for herself so her claim cannot succeed.

CRT FEES AND EXPENSES

50. 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. Ms. Hu paid \$350 in CRT fees and the strata did not pay CRT fees. Ms. Hu was partially successful, so, in the circumstances, I find it appropriate for the strata to reimburse Ms. Hu \$175 for CRT fees.
51. Neither party claimed dispute-related expenses, so I order none.
52. Under SPA section 189.4, the strata may not charge any dispute-related expenses against Ms. Hu.

DECISION AND ORDER

53. I order that the strata:
- a. Immediately, reverse all piano noise fines it imposed against Ms. Hu from December 6, 2022 to the date of this decision, and
 - b. Within 15 days of the date of this decision, pay Ms. Hu \$175 for CRT fees.
54. I dismiss Ms. Hu's remaining claims.

55. Ms. Hu is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
56. 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 in which it is filed.

J. Garth Cambrey, Tribunal Member