



# Civil Resolution Tribunal

Date Issued: June 26, 2025

File: ST-2023-007721

Type: Strata

Civil Resolution Tribunal

Indexed as: *Selvendran v. The Owners, Strata Plan NW 2777*, 2025 BCCRT 877

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

CHARMAINE SELVENDRAN

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 2777

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This dispute is about ongoing complaints in a strata corporation.
2. Charmaine Selvendran is an owner in the strata corporation, The Owners, Strata Plan NW 2777. Ms. Selvendran says that the strata improperly determined that she and her son contravened the strata's nuisance bylaw. She says the strata issued a

fine in contravention of section 135 of the *Strata Property Act* (SPA) and seeks \$2,200 in aggravated and punitive damages. She also says the strata breached its statutory obligation to reasonably investigate bylaw complaints and seeks \$4,000 in damages for this breach. Finally, Ms. Selvendran seeks clarification on the strata's noise bylaws.

3. The strata says it responded appropriately to the numerous noise complaints it received and removed the fine from Ms. Selvendran's strata lot account. The strata asks that I dismiss Ms. Selvendran's claims.
4. Ms. Selvendran represents herself. 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. 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.

8. In submissions, Ms. Selvendran also seeks orders that the noise complaints about her strata lot be dismissed and a declaration that the strata's investigation was significantly unfair which are slightly different than those in her Dispute Notice. As they are substantively the same, and the strata had an opportunity to respond to the new remedies, I find there is no procedural unfairness in also addressing them in this decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the strata act significantly unfairly when it investigated noise complaints against Ms. Selvendran and imposed a fine?
  - b. Is Ms. Selvendran entitled to damages or any of her requested remedies?

## **BACKGROUND**

10. In a civil claim such as this, Ms. Selvendran as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata was created in 1988. It consists of 54 strata lots in wood-framed 2-storey buildings. Ms. Selvendran lives in an upstairs unit.
12. The strata filed a complete set of bylaws with the Land Title Office on May 20, 2009. Bylaw 4.1 says (in part) that an owner must not use a strata lot or common property in a way that (a) causes a nuisance to another person, (b) causes unreasonable noise, or (c) unreasonably interferes with another person's right to use and enjoy common property or another strata lot. In the context of Ms. Selvendran's claims, I find that these 3 bylaws all mean the same thing, which is that Ms. Selvendran's household cannot make noise, which an ordinary person would consider intolerable.

## EVIDENCE AND ANALYSIS

### ***The Law of Significant Unfairness***

13. I will start by setting out the applicable law. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The court has the same authority under SPA section 164, and the same legal test applies.<sup>1</sup>
14. In *Kunzler v. The Owners, Strata Plan EPS 1433*,<sup>2</sup> the court confirmed the legal test for significant unfairness. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. The use of the word “significant” means that the conduct must go beyond mere prejudice or trifling unfairness. In applying this test, the owner or tenant’s reasonable expectations are a relevant factor but are not determinative.
15. The SPA does not set out any specific procedural requirements for addressing bylaw complaints. In *Chorney v. Strata Plan VIS 770*,<sup>3</sup> the BC Supreme Court said that the SPA gives strata corporations 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. In *Leclerc v. The Owners, Strata Plan LMS 614*,<sup>4</sup> the court said that strata corporations are not held to a standard of perfection but instead must take “reasonable action” and have “fair regard for the interests of all concerned”.

### ***Noise complaints and fine***

16. Ms. Selvendran lives with her adult son Z, who is not a party to this dispute. Ms. Selvendran says she started receiving complaints regarding Z’s music in September 2021 from KB. KB lives in the strata lot beside Ms. Selvendran. Ms. Selvendran agreed to turn off the music before 9pm to accommodate KB’s schedule.
17. On January 20, 2022, the strata sent Ms. Selvendran a letter that said the strata had received a complaint and was aware of the arrangement to turn off the music/base woofer by 9pm. The strata said it agreed this was a reasonable arrangement.

18. The evidence shows that NT, who lives below KB, spoke to Ms. Selvendran and emailed a complaint to the strata in July 2022 regarding Z's music. The strata also received complaints from another strata lot, this time from the floor below Ms. Selvendran's. The owner complained of a frequent thumping noise. Strata emails indicate a strata council member took decibel readings of as high as 65 while Z played music. I note there is no indication of the time of day or location of the readings, so I put little weight on them.
19. The strata sent Ms. Selvendran a letter on August 2, 2022. In the letter, the strata said the "thumping noise from the bass woofer has become untenable." It noted two complaint letters and reports from owners of a nearby complex being disturbed by "thumping."
20. The strata council held a hearing at Ms. Selvendran's request on August 31, 2022. The hearing minutes indicated that the strata council reported that it had received numerous complaints and the music could be heard "from unit 21 to unit 26." The parties discussed ways to mitigate noise and Ms. Selvendran agreed to try foam isolators. A week later, a strata member attended Ms. Selvendran's unit and provided foam isolators to place underneath the sound system. The strata followed up in a letter on September 9, 2022, stating that the foam isolators appeared to help. The letter said the strata would give Z one month to "get his volume levels sorted out" and the strata would follow up with neighbours. It is not clear what further actions the strata took to assess the impact of the foam isolators.
21. On March 15, 2023, the strata sent Ms. Selvendran a letter stating that the music had "grown from periodic irritation to unreasonable interference." The strata said it had reviewed letters from adjoining neighbours regarding the "noise and nuisance" and had noise logs and a doctor's letter from a neighbour about the impacts of the music. The strata said it would issue a \$200 fine if the noise continued. The letter provided no other details of the complaints the strata received and neither party provided this documentary evidence here. The strata does not describe the complaints or what actions were taken in response, other than sending this letter to Ms. Selvendran.

22. On April 22, 2023, the strata notified Ms. Selvendran of a \$200 fine. In this letter, the strata said that noise complaints were coming from three separate strata lots and noted the noise “continues to be at a level and frequency which interferes with other owners to enjoy their units” without providing any other details of the complaints.
23. In levying the fine, Ms. Selvendran says the strata failed to follow section 135 of the SPA for two reasons 1) the strata did not provide her with details of the complaints and 2) it provided her only two days notice of a hearing and before she had requested one. Mrs. Selvendran says the strata sent a letter on April 3, 2023, about this hearing. Neither party provided a copy of this letter, but the strata does not dispute that it sent it. Based on the letter sent by Ms. Selvendran’s counsel saying that they would need more than two days notice for a hearing, I infer no hearing was held at this time.
24. Under SPA section 135(1), before imposing bylaw fines the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Here, the strata failed to follow section 135’s requirements to provide details of the complaints it received, such as the dates, times and nature of the noise complained of. As there is no indication that Ms. Selvendran requested a hearing at this time, I find that scheduling a hearing before she requested one was not a breach of section 135. However, if Ms. Selvendran had requested one, a two-day notice would have likely been insufficient to allow her to prepare, rendering it unlikely that the hearing would have provided a reasonable opportunity to be heard as required by section 135.
25. The parties agree that the strata failed to follow section 135 in imposing the fine. The strata says it remedied this defect because it waived the fine and informed Ms. Selvendran of this decision on October 15, 2023. I agree. So, I dismiss Ms. Selvendran’s claim for damages for a breach of section 135.

26. Though the strata has waived the fine, Ms. Selvendran says that the strata failed to remove its determination that Z's music caused a nuisance. I consider below whether the strata's response to the complaints was significantly unfair to Ms. Selvendran.

***Did the strata treat Ms. Selvendran significantly unfairly?***

27. Ms. Selvendran says the strata treated her unfairly primarily because it determined that Z's music was a nuisance when it sent the March 15, 2023, warning letter without a full investigation or a hearing. Ms. Selvendran also says that it did not follow their agreement that music could be played up to 9pm and the strata displayed a bias against her. Ms. Selvendran also says that the strata's insistence that it may impose fines in the future is significantly unfair because the fines may be backdated or otherwise lack procedural fairness.

28. In this last argument, Ms. Selvendran is essentially speculating on what the strata may do in the future. I note that the strata has an obligation to enforce its bylaws, which may include imposing fines in response to a complaint after it has conducted an investigation. Ms. Selvendran suggests the strata may be significantly unfair in the future in imposing fines. As these events have not occurred, I make no findings about them.

29. Ms. Selvendran correctly points out that the legal test for unreasonable noise, or a nuisance, is that it must be intolerable to an ordinary person.<sup>5</sup> In the strata context, a nuisance is a substantial, non-trivial, and unreasonable interference with the use and enjoyment of property.<sup>6</sup> 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.<sup>7</sup>

30. Ms. Selvendran says that Z's music is not unreasonable noise. She says GB is unreasonably sensitive. Ms. Selvendran says 3 of her direct neighbours (strata lots 16, 17, 25) have told her that the music is an acceptable noise level for them. She provided statements from two of these neighbours and another statement from a

further neighbour (strata lot 27). All the statements say that they are not bothered by the music. Ms. Selvendran says the noise is reasonable because it is limited to a few hours during the day and turned off by 9pm. She says the sound is at a low to medium level and is no louder than her neighbour's televisions.

31. Ms. Selvendran says the strata breached their agreement that the music could be played until 9pm. However, I note the strata is required to investigate bylaw complaints. This obligation stands despite previous discussions or agreements about what may constitute reasonable noise.
32. The strata says the noise is unreasonable and impedes other owner's enjoyment of their strata lots. The strata says it continues to receive complaints, but it has imposed no further fines. The strata provided emails from other owners complaining about the noise in July and August 2022 as well as March and August 2023. In August 2023, the strata received a noise log from a neighbour beside Ms. Selvendran reporting loud music several times a week that "moved the pics on wall" and required that they leave their home to find relief. The strata says it sent Ms. Selvendran correspondence about noise on March 15, 2023, April 22, 2023, May 10, 2023, June 26, 2023, and August 2, 2023, and has worked diligently to resolve the matter.
33. The problem for the strata is that it provided no information on the complaints that lead to the March 15, 2023, warning letter. It does not say what actions it took to investigate the noise complaints or acquire objective information about the noise. Specifically, there is no indication that the strata attended Ms. Selvendran's strata lot or the complaining parties' strata lots or arranged for third-party testing. The evidence shows that it gave a decibel reader to GB to use in January 2023. An email from GB to the strata shows that they had trouble using it. It appears the strata took no other action before sending Ms. Selvendran the warning letter on March 15, 2023.
34. The only objective information the strata had about the noise was an email it received from a neighbouring complex on May 11, 2023. The email stated, "a few of



us at the east end of the complex have been affected by the sound levels coming from a unit in your complex.” The email went on to say “the sounds seem to be repetitive bits of instrumental music, similar to background music in video games, that drone on and on. The sounds are pervasive and create an unsettling atmosphere.”

35. Ms. Selvendran objects to this evidence because she says it is not relevant to the issue of whether the noise interferes with other owners’ experience in her strata. I disagree. As noted, it provides some objective evidence of the unreasonableness of the noise.
36. While I agree with Ms. Selvendran that the strata’s handling of the complaints was not perfect, for the following reasons, I find the strata’s actions were not significantly unfair.
37. First, the strata actively attempted to find a solution by implementing foam isolators to absorb the noise vibrations caused by the music. This was after the August 2022 hearing and after the strata had gathered statements and noise logs. It is reasonable that as the strata began to focus its efforts on finding a way to lessen the noise from interfering with other owners, it spent less time gathering further information about the impact on other owners, other than assessing if the employed solutions were working.
38. As I noted above, the strata remedied its breach of section 135 by waiving the fine. The strata also provided a hearing date when Ms. Selvendran requested one about the nuisance determination made via the March 15, 2023, warning letter. Emails between the parties show that the strata failed to rebook the hearing when Ms. Selvendran was not available on the date it provided. This was a technical breach of section 34.1(2). For reasons I explain below, I find this does not amount to significant unfairness.
39. Here, when the strata failed to provide a hearing to discuss its warning letter and fine, Ms. Selvendran was not left in limbo or forced to accept an unfair action because the fine had already been waived, and the strata sent no other warning

letters. Instead, Ms. Selvendran's strata lot has continued to be the source of noise from Z's music. Simply put, there is no indication that the lack of a hearing lead to any hardship for Ms. Selvendran. She does not dispute that Z continues to listen to music in her strata lot as before.

40. I further find there is no indication of a bias against Ms. Selvendran or a lack of fair dealing. Ms. Selvendran says the strata did not take action in response to her complaints about two other strata owners. The strata provided no response to this allegation. However, Ms. Selvendran has not provided any objective evidence about the subject of her complaints. Without more, I cannot assess the strata's reasonable response. Further, there is no indication that the strata treated these complaints any differently than others it has received. I find Ms. Selvendran's allegation of bias unproven.
41. With that, I find the strata's response to the noise complaints, while not perfect, was not significantly unfair to Ms. Selvendran. I note the strata has a statutory obligation to investigate any noise complaints going forward.

### ***Conclusions***

42. For the above reasons, I find Ms. Selvendran has not shown that the strata's response was significantly unfair or that the strata failed to meet its duties under SPA section 26. So, I dismiss her claims for damages as well as her claim for the requested orders.

### **CRT FEES AND EXPENSES**

43. Based on the CRTA and the CRT's rules, as Ms. Selvendran was unsuccessful, I find she is not entitled to reimbursement of CRT fees or dispute-related expenses. The strata did not pay any fees or claim any dispute-related expenses.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Selvendran.

## ORDER

45. I dismiss Ms. Selvendran's claims and this dispute

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Maria Montgomery, Tribunal Member

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<sup>1</sup> *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

<sup>2</sup> 2021 BCCA 173.

<sup>3</sup> 2016 BCSC 148.

<sup>4</sup> 2012 BCSC 74.

<sup>5</sup> *St. Lawrence Cement v. Barrette*, 2008 SCC 64.

<sup>6</sup> *The Owners, Strata Plan 1162 v. Triple P Enterprises*, 2018 BCSC 1502.

<sup>7</sup> *Sauve v. McKeage et al.*, 2006 BCSC 781.