



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Chambers v. The Owners, Strata Plan VIS4023*, 2025 BCCRT 947

B E T W E E N :

WESLEY WALTER CHAMBERS and SASHA APPLETON

APPLICANTS

A N D :

The Owners, Strata Plan VIS4023

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about the strata's bylaw enforcement after receiving ongoing noise complaints.
2. The applicants, Wesley Walter Chambers and Sasha Appleton, own and live in strata lot 84 (SL84) in the respondent strata, The Owners, Strata Plan VIS4023. The

applicants say the strata acted significantly unfairly by failing to enforce its noise bylaw against the applicants' downstairs neighbour in strata lot 72 (SL72). The applicants seek \$6,000 in damages from the strata for not enforcing the noise bylaw. The applicants also want the strata to enforce the noise bylaw by fining the SL72 resident for every bylaw infraction and give them updates about the enforcement dates and fine amounts. The applicants seek a monetary award for this order of \$2,000.

3. The strata says it has taken appropriate bylaw enforcement steps, including issuing progressive fines and ultimately seeking an order to sell SL72. The strata also says that the applicants are not entitled to damages because they were already awarded damages against the SL72 resident. The strata says any further damages award would amount to double recovery.
4. Mr. Chambers represents the applicants. A strata council member represents the strata.

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 hearing's format, 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. I find that an oral hearing is not necessary.

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. 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. Is the applicants' claim barred by the rule against double recovery?
 - b. Did the strata act significantly unfairly toward the applicants by failing to adequately enforce the applicable bylaws?
 - c. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

Background

11. The strata was created in 1996 under the *Condominium Act* and continued under the *Strata Property Act* (SPA). The strata consists of 98 units across three buildings. The strata repealed and replaced its bylaws in 2010. The strata has filed further bylaw amendments after that, but none are relevant to this dispute.
12. The strata's bylaw 4.1(b) says a resident must not use a strata lot in a way that causes unreasonable noise. Bylaw 26.1 says the strata may fine an owner \$50 for a first bylaw infraction, \$100 for a second bylaw infraction and \$200 for subsequent

bylaw infractions. Bylaw 26.2 says that where a strata determines a resident has engaged in repeated bylaw contraventions, the strata must levy fines.

13. The applicants purchased SL84 in July 2021. The applicants say they began noticing noise from SL72 soon after moving in. This noise included audible arguments, banging, crashing and dog barking. The applicants say they first spoke to SL72's owner in November 2021 about the noise that they regularly heard. SL72's owner was apologetic and explained that another occupant was experiencing a medical condition that caused frustration and arguments, sometimes late at night. The applicants kept a log of noise and noted continuing noise through November and December 2021 and January 2022.
14. The applicants say they made their first formal complaint to the strata on November 4, 2021, and have made subsequent complaints and recorded over 100 noise incidents coming from SL72.

The law of significant unfairness

15. The applicants say the strata treated them significantly unfairly by failing to adequately enforce its noise bylaws. Under CRTA section 123(2) the CRT can order a strata to remedy a strata corporation's significantly unfair act or decision.
16. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, 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. In applying this test, the owner's objectively reasonable expectations are relevant, but not determinative. The word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness.
17. Previous CRT decisions have concluded that it is significantly unfair for a strata corporation to fail to reasonably investigate and enforce its bylaws. See, for example, *Chan v. The Owners, Strata Plan BCS2583*, 2021 BCCRT 456 and *Dhanani v. The Owners, Strata Plan NW 2265*, 2021 BCCRT 282. While previous

CRT decisions are not binding on me, I agree that failure to investigate and enforce bylaws may be significantly unfair. Further, SPA section 26 requires the strata to enforce its bylaws, and so it is reasonable for owners to expect the strata to do so.

18. The SPA does not provide specific procedural requirements for addressing bylaw complaints. In *Chorney v. Strata Plan VIS770*, 2016 BCSC 148, 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.
19. When a strata corporation has failed to reasonably enforce its bylaws and an owner has suffered a loss of use and enjoyment of their strata lot, the CRT may award damages to compensate for this loss, as was the case in *Chan and Dhanani*.

Is the applicants' claim barred by the rule against double recovery?

20. The applicants started a CRT dispute against the SL72 resident owner for loss of quiet enjoyment of SL84. On February 9, 2024, that dispute was resolved by default decision as the SL72 owner did not participate in the dispute. The CRT ordered \$2,500 in damages for nuisance.
21. The strata says the applicants' claim in this dispute is barred by the rule against double recovery, which means getting paid for the same loss twice. The strata relied on the Supreme Court of Canada's summary of the principle against double recovery in *Ratych v. Bloomer*, 1990 CanLII 97 (SCC). In *Ratych*, the Court concluded that the calculation of the monetary heads of damage (also known as out-of-pocket expenses) should be based on the plaintiff's actual loss and that double recovery violated the principle that monetary damages must be calculated based on the plaintiff's demonstrated loss. The rule is generally applied to prevent double recovery for out-of-pocket expenses such as wage loss or lost benefits.
22. The damages claimed in this dispute are not out-of-pocket expenses but rather non-pecuniary damages (also known as pain and suffering). So, I find that the applicants' claim is not barred by the rule against double recovery.

The applicants' noise complaints and the strata's response

23. The applicants provided a summary of the noise incidents. In mid-September 2021, the applicants first noticed daytime arguing coming from SL72. The applicants noticed banging noises, yelling for up to an hour at a time, or slamming of doors on four separate occasions in October 2021. After a further audible yelling incident from 2am to 3am on November 4, 2021, the applicants complained to the property manager. The applicants provided a copy of the email they sent to the strata's property manager on November 4, 2021.
24. The applicants notified the strata about further noise incidents on November 9, 15 and 16, 2021. On November 9, 2021, the strata's property manager suggested that the applicants should call the police non-emergency line to report ongoing noise concerns. The applicants replied that they were reluctant to do so as they did not think calling the police would result in a timely resolution of their complaints and would cause animosity from SL72's residents.
25. The applicants then noticed regular arguments and yelling through November and December 2021 and January 2022. The audible yelling sometimes occurred during the day, sometimes in the evening and sometimes the yelling woke the applicants up in the middle of the night. Sometimes the yelling was also accompanied by crashing or banging and a barking dog.
26. The applicants notified the strata's property manager about ongoing noise from SL72 on January 14, 2022. On January 25, 2022, the applicants made another formal complaint about noise coming from SL72. This email also included a list of 27 separate noise incidents that had occurred since November 16, 2021.
27. The applicants kept a record of noise incidents that they heard. The applicants noise logs show the noise from SL72 was less frequent in February and March 2022 although not entirely absent. It is not clear if the applicants emailed the strata or property manager after every noise incident. However, I accept that by February 2022 the applicants had sent several emails reporting ongoing noise coming from SL72.

28. The applicants formally complained to the strata about noise again in May, June, August, September and October 2023 and in January, February, June and September 2024. In these later complaints, the applicants included their noise logs which recorded incidents of audible yelling, banging and dog barking on a daily or weekly basis, sometimes during the day and sometimes late at night. Beginning in April 2023, the applicants noise logs included more loud music at various hours of the day and night in addition to the other noises.
29. The applicants provided recordings of the audible noise. I find that the recordings prove audible yelling, crashing, banging and dog barking. The applicants also provided recordings of two conversations with the SL72 resident on November 9, 2021, and January 25, 2022, where the SL72 resident acknowledged noise coming from SL72. The strata also does not dispute that the noise occurred in and was caused by the SL72 occupants. So, I find that the audible noise that triggered the applicants' complaints came from SL72.
30. On at least one recording, the yelling, crashing and barking continued for approximately 20 minutes. Based on the recordings and the applicants' noise logs showing audible noise in the evening and late at night, I find that the ongoing audible noise coming from SL72 was unreasonable.
31. The strata says it gave SL72's owner a warning on November 17, 2021, and issued a \$50 fine on January 19, 2022, and on February 8, 2022. The strata says it issued a \$100 fine on June 13, 2023, and a warning and a \$100 fine on September 5, 2023. The strata did not provide supporting evidence for any of these warnings or fines.
32. The strata provided evidence of bylaw contravention letters sent on October 23, October 31, November 29, 2023, and January 18, 2024. The strata also sent notices of \$100 fines on November 23 and November 29, 2023, and a \$200 fine on April 8, 2024. The strata also says it sent bylaw enforcement letters and \$200 fines on December 18, 2023, and February 12, 2024, but did not provide evidence of these letters.

Did the strata act significantly unfairly?

33. For the reasons set out below, I find that the strata acted significantly unfairly in the way it conducted bylaw enforcement in response to the applicants' complaints and the ongoing noise coming from SL72.
34. The applicants say the strata took too long to start enforcing the noise bylaw against SL72's owner. In particular, the applicants say that the strata should have promptly consulted a legal professional in January 2022 when it became apparent that there was ongoing noise from SL72. The applicants also say that the strata did not sufficiently update the applicants about what enforcement steps the strata was taking in response to their complaints.
35. The strata disputes this allegation and says that it started enforcing the noise bylaw within weeks after the first complaint in November 2021. As noted above, the strata did not provide evidence of these early fines. So, I cannot determine if they were issued. In any event the strata disclosed to the applicants at the October 2023 council meeting that early fines were issued improperly and were later retracted. So, I find that even if the strata did issue fines in November 2021 and January 2022, these fines were ineffective.
36. The strata further says that it did not initially receive ongoing complaints from the applicants. However, I find the November emails show repeated concerns about noise from SL72 and the January 2022 emails show a list of ongoing noise concerns.
37. The strata also says that there was a break in the noise between the January 2022 bylaw enforcement and the next formal complaint on May 19, 2023. However, the May 19, 2023, email from the applicants lists 39 noise incidents that had occurred since January 25, 2022. So, while the noise may have been less frequent, I find the applicants' evidence shows the noise continued through this period.
38. Based on the applicants' emails, I find that the strata's fines as described do not conform with bylaw 4.1 and 26.1 respecting subsequent bylaw contraventions.

Following the bylaw enforcement on January 25, 2022, with evidence of further bylaw contraventions, bylaw 26.1 allowed the strata to issue \$200 fines for each subsequent offence. The strata did not do so until December 18, 2023, and February 12, 2024.

39. There is also no evidence that the strata conducted its own investigation of the noise from SL72. Once the applicants had notified the strata of an ongoing noise problem in January 2022, and provided the list of noise incidents since November 2021, the strata could have investigated to determine if further bylaw enforcement was necessary. Instead, the strata only relied on complaints from the applicants.
40. The strata had much more severe enforcement options, such as daily or near-daily \$200 fines. This is because incidents of nuisance are discrete transactions when observed on different dates, not continuing contraventions (see *The Owners v. Grabarczyk*, 2006 BCSC 1960). So, the strata could have imposed a series of fines for repeat infractions.
41. I find the strata's limited response in January 2022 and lack of progressive enforcement of the noise bylaw was burdensome to the applicants, given the regularity of the unreasonable noise and the nature of the noise. I find it was also wrongful, given the strata's enforcement obligations under the SPA. Even if the noise subsided between January 25, 2022, and May 19, 2023, when the applicants made their next formal complaint, I find the noise was still present and continued to cause a nuisance to the applicants.
42. I find that the strata's failure to enforce its bylaws and its lack of independent investigation into the noise from SL72 were significantly unfair to the applicants. I address their remedies below.

What remedies are appropriate?

43. The applicants claim \$6,000 for the strata's significant unfairness in failing to enforce bylaw 4.2. As stated above, a claim for significant unfairness in bylaw enforcement arises from the applicants' loss of use and enjoyment of their strata lot.

44. The applicants rely on *Bhullar v. The Owners, Strata Plan EPS6340*, 2024 BCCRT 1201 where the tribunal member found the strata and the respondent strata lot owner were separately liable for the unreasonable noise that Ms. Bhullar experienced. In *Bhullar*, the strata and the respondent strata lot owner were each ordered to pay \$4,000 for loss of peaceful enjoyment of the strata lot. However, in *Bhullar*, the tribunal member found that Ms. Bhullar experienced unreasonable noise for more than 2 years which affected Ms. Bhullar's sleep and overall health.
45. Here, the applicants say that their sleep and health were affected and that they needed to take additional medication to assist with sleep. However, the applicants did not provide any supporting evidence of the alleged negative health implications, such as the prescriptions or other medical records.
46. In *Bhullar*, the strata failed to issue any fines for nearly 2 years. Here, the strata says it issued fines in November 2021, even if the fines were later determined to be invalid. I find, the significant unfairness here is based on the strata's failure to accurately follow its stated bylaw responsibilities, including administering the progressive fine structure provided in bylaw 26.
47. In *TM v. The Owners, Strata Plan XXX*, 2023 BCCRT 915, the tribunal member awarded \$2,500 for ongoing noise that included screaming, swearing and sounds of fighting. In *TM*, the strata had acted reasonably in enforcing its bylaws for three months but then failed to investigate or enforce any noise complaints reported by TM in a subsequent four-month period.
48. Lastly, in the default decision issued against SL72's owner, the Vice Chair found that the noise nuisance at issue was more invasive than everyday living noises but the noise was also intermittent and so less invasive than constant air conditioning or other machine noise. Although I am not bound by this decision, I accept the reasoning provided for calculating the applicants' damages. For these reasons, I find the applicants are entitled to \$2,500 for the loss of use and enjoyment of their strata lot.

49. The applicants also seek an order for the strata to follow its bylaws by fining the SL72 owner for every bylaw infraction and to keep the applicants updated about fine dates and amounts. In their Dispute Notice, the applicants also seek a \$2,000 monetary award for this order. Since the strata is legally required to enforce its bylaws, I dismiss the applicants' claim for an order that the strata fine the SL72 owner for every infraction. I also decline to order the strata to provide the applicants with ongoing updates about fines levied. I find that the applicants have not established an entitlement under the SPA to such a remedy. While the applicants can make a separate request for correspondence under SPA section 36, such a request would not permit ongoing access to future correspondence that has not been issued. So, I dismiss this part of their claim. Since I have dismissed the applicants' request for these orders, I also dismiss the applicants' claim for a further \$2,000.

CRT FEES, EXPENSES AND INTEREST

50. 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. I therefore order the strata to reimburse the applicants for CRT fees of \$225. Neither party claimed dispute-related expenses.

51. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to prejudgment interest on the \$2,500 damage award from January 25, 2022, to the date of this decision. This equals \$316.01.

52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

53. Within 30 days of the date of this decision, I order The Owners, Strata Plan VIS4023, to pay the applicants, Wesley Walter Chambers and Sasha Appleton, a total of \$3,041.01, broken down as follows:
- a. \$2,500 in damages,
 - b. \$316.01 in prejudgment interest under the COIA, and
 - c. \$225 in CRT fees.
54. The applicants are also entitled to post-judgment interest under the COIA.
55. I dismiss the applicants' other claims.
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 that it is filed in.

Mark Henderson, Tribunal Member