IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan LMS 4255 v. Newell,* 2012 BCSC 1542

Date: 20121022
Docket: S123742
Registry: Vancouver

Between:

The Owners, Strata Plan LMS 4255

Petitioner

And:

Steven Newell, John Doe, Jane Doe and other persons unknown

Respondents

Before: The Honourable Madam Justice Adair

Reasons for Judgment

Counsel for the Petitioner:	John G. Mendes and Naomi Rozenberg
Counsel for the Respondent Steven Newell:	Jonathan Baker
Place and Date of Hearing:	Vancouver, B.C. July 25 and 26, 2012
Additional Affidavits filed by the Petitioner:	August 21 and 27, 2012
Additional Affidavit filed by the Respondent Steven Newell:	August 29, 2012
Written Submissions filed:	August 30, 2012 (by the Respondent Steven Newell) and September 4, 2012 (by the Petitioner)
Place and Date of Judgment:	Vancouver, B.C. October 22, 2012

Introduction

[1] Aquarius Mews is a condominium complex in the Yaletown area of Vancouver. It has two high-rise towers (No. 193 and No. 198) surrounding a central courtyard. The respondent Steven Newell is the registered owner of Unit 3701, 193 Aquarius Mews ("Unit 3701"), a penthouse unit. Mr. Newell has exclusive use of certain limited common property: a large roof deck above his unit (the "Deck") and a balcony adjacent to the unit (the "Balcony"). The views from the Deck and the Balcony are quite stunning.

[2] Mr. Newell equipped the outdoor space with a hot tub and a large barbeque grill. Mr. Newell also set up an entertainment system that includes a big-screen TV, two wall-mounted speakers above the hot tub, two speakers mounted into the Balcony railings on either side of the television and a large speaker below the grill. The music system was apparently removed from the Deck on August 28, 2012.

[3] The petitioner Strata Corporation says that, since Mr. Newell moved into Unit 3701 in June 2010, there have been many noisy gatherings at the Unit and on the Deck and the Balcony. Neighbours have complained about loud music being played and parties continuing into the early hours of the morning, among other things.

[4] The Strata Corporation says that the gatherings and the noise from Unit 3701 breach several of the bylaws that govern 193 Aquarius Mews (the "Bylaws"), including a Bylaw that establishes a quiet period in the complex from 11:00 p.m. to 8:00 a.m. every day. In addition, the Strata Corporation says that Mr. Newell installed his hot tub and air conditioning units contrary to the Bylaws, and despite permission being expressly refused. The Strata Corporation says that fining Mr. Newell for Bylaw breaches has been an ineffective deterrent.

[5] The Strata Corporation now seeks orders against Mr. Newell and the other respondents that:

> (a) the respondents be prohibited between the hours of 11:00 p.m. and 8:00 a.m. from making or allowing to be made at Unit 3701, the Deck,

the Balcony or the common property of the Strata Corporation noise that is audible in other strata lots;

(b) Mr. Newell be prohibited from having any entertainment system, television, speakers or musical instrument on the Deck or the Balcony; and

(c) Mr. Newell remove the hot tub and air conditioning units from the Deck and restore the Deck to its condition prior to the installation of these items.

[6] The Strata Corporation relies on a number of provisions of the ***Strata Property Act***, S.B.C. 1998, c. 43, including s. 173, which provides that:

> On application by the strata corporation, the Supreme Court may do one or more of the following:
>
> (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
>
> (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
>
> (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[7] Mr. Newell says that the Petition must be dismissed. He says, among other things, that social gatherings have rarely been enjoined and that the social gatherings about which the Strata Corporation complains are only occasional events. Mr. Newell says that there is, therefore, no basis for any kind of injunctive relief here. Mr. Newell says further that nothing about his hot tub is a breach of the Bylaws, and that there are no grounds on which he could be required to remove it or to curtail his (and his guests') use of it.

[8] The issues, accordingly, are:

(a) has the Strata Corporation established that Mr. Newell and the other respondents breached provisions of the Bylaws concerning noise?

(b) has the Strata Corporation established that Mr. Newell altered common property without written approval of the Strata Council, contrary to the Bylaws, by installing a hot tub and air conditioning units?

(c) if the Strata Corporation has established a breach or breaches of the Bylaws, should injunctive relief be granted?

Background

(a) The Bylaws

[9] The Bylaws provide in relevant part as follows:

> 3. **Use of property**
>
> (1) An owner, tenant, occupant 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,
>
> (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
>
> . . .
>
> (8) Owners, tenants, and occupants shall use their respective strata lot, the common property, the common facilities or other assets of the strata corporation in a manner which will not unreasonably directly or indirectly interfere with the use or enjoyment by any other resident of his strata lot, the common property or common facilities.
>
> . . .
>
> (10) All owners, tenants and occupants have a right to quiet and peace in their residence at all times. Undue and excessive noise by any owner, tenant, occupant, visitor, employee, pet or other invitee of a strata lot including but not limited to that from appliances, machinery, sound/music systems, televisions, instruments, wind chimes, computer, games and voices, is not permitted.
>
> (11) The owner of a strata lot shall be specifically responsible for the activities of co-owners, tenants, occupants, visitors, employees, pets or other invitees of his strata lot. A quiet period shall be in force in the entire complex from 11:00 p.m. until 8:00 a.m. every day, at which time owners and everyone else on the premises are expected to take special care and attention not to make noise.
>
> . . .

5. **Obtain approval before altering a strata lot**

(1) An owner must obtain the written approval of the council before making an alteration to a strata lot that involves any of the following:

. . .

(b) the exterior of the building;

(c) chimneys, stairs, balconies or other things attached to the exterior of a building;

. . .

(i) . . . air conditioning devices . . . attached on or placed on the outside of the building

. . .

6. **Obtain approval before altering common property**

(1) An owner must obtain the written approval of the council before making an alteration to common property, including limited common property, . . .

7. **Alterations to a strata lot or common property**

(1) Any alteration to a strata lot or to common property that has not received the prior written approval of council must be removed at the owner's expense if the council orders that the alteration be removed.
. . .

(2) . . .

(e) An owner, tenant or occupant who makes any alteration to a strata lot without first obtaining approval from council must restore the strata lot to its original condition and any costs, including legal costs, incurred by the Strata Corporation as a result of the failure to restore or remove an alteration will be the responsibility of the owner.

. . .

. . .

23. **Maximum fine**

(1) The Strata Corporation may fine an owner or tenant a maximum of

(a) $200.00 for each contravention of a Bylaw . . .

. . .

Division 16 – Hazards and Insurance

. . .

40 (8) No material or substance especially burning material such as cigarettes or matches shall be thrown out or permitted to fall out of any window or any other part of the strata lot or the common property.

[10] I will refer to Bylaw 3(11) as the "Quiet Hours Bylaw."

(b) Mr. Newell's use of Unit 3701

[11] Mr. Newell is in his late 30s. He is the President of Windset Farms, which Mr. Newell describes as one of North America's premier produce growers. He purchased Unit 3701 in October 2009. Mr. Newell made extensive renovations to the Unit, at a cost of over $800,000. Those renovations were completed in about June 2010. Mr. Newell then moved into Unit 3701.

[12] There are three penthouse units at 193 Aquarius Mews: 3701, 3702 and 3703.

[13] Previously Mr. Newell owned Unit 3703, which he purchased in 2003. That unit is now owned and occupied by J. B. Sugar and his spouse Jennifer Thompson. Unit 3702, which is adjacent to Unit 3701, is owned and occupied by Stanley Yu. Unit 3601 is directly below Unit 3701. Since September 22, 2011, that unit has been owned and occupied by David Beilhartz and his partner Yan Zhang.

[14] Both Mr. Beilhartz and Mr. Sugar swore affidavits in connection with this proceeding, Mr. Beilhartz in support of the Strata Corporation and Mr. Sugar in support of Mr. Newell. There is no affidavit evidence from Mr. Yu.

[15] Since Mr. Newell moved into Unit 3701, many of the noise complaints have come from his neighbours Mr. Yu and Mr. Beilhartz. However, some noise complaints have also come from owners of units at 198 Aquarius Mews. These include complaints after the hearing of the Petition.

[16] Before Mr. Newell moved into Unit 3701, the renovations to the unit generated a number of complaints and letters to Mr. Newell concerning breaches of the Bylaws, including Bylaws relating to noise. The letters were sent by Rancho Management Services (B.C.) Ltd. ("Rancho"), the company providing property management services for the Strata Corporation, on behalf of the Strata Council.

[17] The letters (the "Notice Letters") in evidence notifying Mr. Newell of complaints and Bylaw breaches, both before and after he moved into Unit 3701, are

all in the same form, and contain the information required by s. 135 of the ***Strata Property Act***. Each letter sets out the details of the complaint (including the date and relevant Bylaws), advises Mr. Newell of the steps he should take if he wishes to answer the complaint and advises him that the Strata Council will give him notice in writing of its decision concerning the complaint.

[18] A Notice Letter dated July 13, 2010 from Rancho to Mr. Newell is typical, and reads as follows (***bold italics*** in original):

> Re: Strata Plan LMS 4255, "Marinaside"
> Notice of Infraction – Unit 3701 – 193 Aquarius Mews
>
> I am writing to you on behalf of the Strata Council, Strata Plan LMS 4255, "Marinaside". Pursuant to Section 135 of the *Strata Property Act*, I am writing to advise you the Strata Council has received a complaint alleging a contravention of a Strata Bylaw by you. The details of the complaint are:
>
> Date: July 11, 2010
> Time: 23:30 – 2:30
> Place: Unit 3701 – Aquarius Mews
> Details of Infraction: Various complaints of loud party noise from the balcony of 3701, and guests trespassing onto neighbouring balconies.
> Contravention of Bylaw 3(1) (8) which read as follows:
>
> ***3. Use of property***
>
> ***(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that***
>
> ***(b) causes unreasonable noise,***
>
> ***(c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,***
>
> ***(d) is illegal, or***
>
> ***(8) Owners, tenants, and occupants shall use their respective strata lot, the common property, the common facilities or other assets of the strata corporation in a manner which will not unreasonably directly or indirectly interfere with the use or enjoyment by any other resident of his strata lot, the common property or common facilities.***
>
> ***(11) The owner of a strata lot shall be specifically responsible for the activities of co-owners, tenants, occupants, visitors, employees, pets or other invitees of his strata lot. A quiet period shall be in force in the entire complex from 11:00 p.m. until 8:00 a.m. every day, at which time owners***

> ***and everyone else on the premises are expected to take special care and attention to not make noise.***
>
> If you wish to answer the complaint, or if there is anything else you feel the Strata Council should consider in respect of the complaint, respond in writing within two weeks of the date of this letter to [Rancho]. If you would prefer a hearing in person before the Strata Council, again please advise [Rancho] within two weeks of the date of this letter, they will advise you of a mutually convenient, date and location of a hearing.
>
> After the Strata Council has reviewed the evidence of the complaint and any submissions you make in response to it, they will give notice in writing of their decision. The decision might include:
>
> - Dismissing the Complaint
> - Imposing a fine, and/or
> - Requiring you to pay the costs of remedying the breach of the Bylaw/Rule, and/or
> - Denial of the use of Recreational Facilities for a reasonable length of time, to you, your tenants, occupants or guests (as the case may be) if the contravened by law [sic] relates to said Recreational Facilities.
>
> This notice complies with section 135 of the *Strata Property Act*. If the Strata Corporation does not receive a response in the time stated, it will proceed with enforcement of the Bylaw/Rule, if deemed appropriate, after the Strata Council's examination of the matter.
>
> Should you have any further questions or concerns, please do not hesitate to contact the undersigned.

[19] With the exception of a complaint and Notice Letter dated May 6, 2010 about the installation of Mr. Newell's hot tub and air conditioning units, Mr. Newell did not challenge any of the complaints or respond to any of the Notice Letters sent in connection with the renovations to Unit 3701. Rather, he accepted and promptly paid all of the fines. However, in his Response to Petition (the "Response"), Mr. Newell was dismissive of the complaints and implied that he had no real responsibility for the activities that resulted in complaints.

[20] However, I think that Mr. Newell is missing the point. His neighbours and other unit owners and residents at 193 Aquarius Mews are entitled to expect Mr. Newell – as well as anyone working for him or attending at Unit 3701 – to respect the Bylaws. Instead, during the renovations, Mr. Newell appears to have treated the payment of the fines (which, based on the evidence, created no hardship

at all for him) as just another cost associated with completing the renovations. The fines (a few thousand dollars) represented a tiny fraction of the overall cost. The Strata Corporation relies on Mr. Newell's conduct in relation to the renovations to support its argument that fining Mr. Newell for Bylaw breaches is ineffective, and that an injunction will be the only effective remedy.

[21] In November 2009, as part of the renovations, Mr. Newell requested approval from the Strata Council to make several "improvements," including installing a hot tub and two air conditioning units on the Deck. The Deck is limited common property.

[22] By letter dated December 30, 2009 from Rancho, on behalf of the Strata Council, Mr. Newell was informed that his request had been denied. The denial was communicated to Mr. Newell in early January 2010, at the same time that he was advised the Strata Council had given conditional approval (pending receipt of the necessary permits) for the interior renovations of Unit 3701, pursuant to Bylaw 7.

[23] However, in late March 2010, Mr. Newell installed a hot tub and air conditioning units on the Deck, as well as speakers, an entertainment system and the large barbeque-grill. These items were hoisted up to the Deck by crane. Baldev Sondhi, a strata manager at Rancho, was one of the people monitoring the move. He says that, because the items were wrapped, he did not notice that they included a hot tub.

[24] Mr. Newell says that on or about March 31, 2010, he placed a "free standing" hot tub, air conditioning unit and barbeque-grill on the Deck. He confirms that he also placed speakers on the wall. He says that the speakers were "screwed onto the walls by two small screws and can easily be removed."

[25] By the Notice Letter dated May 6, 2010, Mr. Newell was advised on behalf of the Strata Council of a complaint alleging that he had breached a Bylaw. The "Details of Infraction" are: "Hot tub and air conditioners installed on balcony without prior approval of the Strata Council" contrary to Bylaw 5(1)(b), (c) and (j). As with all

Notice Letters, the letter advised that if Mr. Newell wished to answer the complaint or if he felt there was anything else the Strata Council should consider, he should respond within two weeks of the date of the letter. He was also advised that he could request a hearing in person.

[26] In addition, a letter dated May 7, 2010 was sent to Mr. Newell by the Strata Corporation's solicitors concerning the hot tub and air conditioning units (among other matters). The letter stated:

> Our client advises us that you are in the process of completing, or have in fact completed, alterations to your strata lot and the common property which have not been approved by the strata council.
>
> . . .
>
> As you know, the strata corporation's bylaws 5, 6 and 7 . . . provide that an owner must not undertake such alterations without the strata council's written approval. Our client's records indicate that it denied you permission . . . on December 30, 2009. Accordingly, you are in contravention of the above-noted bylaws.
>
> The strata corporation hereby demands that you immediately cease and desist from proceeding with these alterations. . . .
>
> If you do not comply with this demand, the strata corporation will take such steps as may be necessary to enforce the bylaws including, but not limited to, imposing fines and applying to the court for an order compelling you to comply with the bylaws. . . .
>
> Pursuant to section 135 of the *Strata Property Act*, you may respond to the above-noted complaints in writing. Further, you may request a hearing before the strata council to dispute these allegations. . . .

[27] In response to the May 7 letter, Mr. Newell sent an e-mail requesting a hearing. Prior to the Petition being filed, this is the only occasion on which Mr. Newell requested a hearing (or submitted any response) in connection with a complaint and Notice Letter. The hearing was held on June 16, 2010.

[28] In his Response, Mr. Newell says that he was "induced" by the Strata Council not to appeal fines in connection with noise complaints (particularly those after he moved into Unit 3701) because the Council never suggested to him that it would seek an injunction against him. He relies on the hearing in connection with the hot tub as conduct that "induced" him. Mr. Newell says that there was no suggestion at

that hearing that noise from the social gatherings would be the subject of an injunction; rather, it was never mentioned and never raised. Mr. Newell says that, instead, the Strata Council focussed narrowly on the issue of the hot tub and delayed for more than a year enforcement of that matter, while serving notices of infractions and collecting fines.

[29] However, Mr. Newell did not occupy Unit 3701 until after the renovations were finished. The first noise complaints resulting from one of Mr. Newell's social gatherings came on July 11 and 12, 2010 between 11:30 p.m. and 2:30 a.m. In other words, the complaints about the social gatherings came after the June 16, 2010 hearing and after Mr. Newell moved into Unit 3701. The June 16 hearing could not deal with events that had yet to take place, and could not therefore operate as any kind of inducement for Mr. Newell not to take steps in the future to make his position known in connection with noise complaints. Moreover, as of the date of the hearing, the noise complaints were associated with construction noise from the renovations. That noise was about to stop.

[30] In the result, in July 2010, Mr. Newell (through his counsel) was advised that the Strata Council had denied his application to install the hot tub and other items on the Deck.

[31] In October 2011, Mr. Sondhi was advised by Atlas Anchor Systems (B.C.) Ltd. that 193 Aquarius Mews failed its annual fall protection equipment inspection. The inspection report states that Mr. Newell's hot tub impedes the usage of two anchors for proper window-washing procedures, and that either the hot tub needs to be moved or new anchors or rope guides must be installed.

[32] In the table below, I summarize the Notice Letters sent to Mr. Newell, after he moved into Unit 3701, concerning noise during the "quiet hours":

Date of Notice Letter	Complaint	Bylaw(s) cited
July 13, 2010	Loud party noise from balcony of 3701 and guests trespassing onto neighbouring balconies on July 11, 2010	Bylaw 3(1) and (8) (Bylaw 3(11) also quoted)
September 16, 2010	Loud music coming from roof patio on September 10, 2010	Bylaw 3(1)(a) (b), (10) and (11)
October 15, 2010	Loud music coming from Unit on October 2, 2010	Bylaw 3(1)(a) (b), (10) and (11)
July 27, 2011	Loud music coming from Unit on July 24, 2011	Bylaw 3(1)(b) (c), (10) and (11)
August 15, 2011	Extremely loud music from party on roof top on August 6, 2011	Bylaw 3(1)(a) (b) and (c), (10) and (11)
September 21, 2011	Extremely loud music from party on September 19, 2011	Bylaw 3(1)(a) (b) and (c), (10) and (11)
October 4, 2011	Four separate complaints of loud music from Unit 3701 and rooftop; police called; on September 25, 2011	Bylaw 3(1)(a) (b) and (c), (10) and (11)
December 23 2011	Loud noise from Unit 3701 on December 17, 2011; police called to scene	Bylaw 3(1)(b) and (c), (10) and (11)
December 29, 2011	Four complaints of loud noise from Unit 3701 on December 21, 2011, police called to scene	Bylaw 3(1)(b) and (c), (10) and (11)

[33] The Notice Letters dated December 23 and December 29, 2011 are not in evidence. However, the Strata Council's decision letters dated February 29, 2012, giving its written decision to fine Mr. Newell $200 in respect of each of the complaints, are part of the record. There is also affidavit evidence from Mr. Beilhartz concerning a complaint he made on December 17, 2011. I conclude that the noise complaint arose from the events described by Mr. Beilhartz as occurring on December 17, 2011, rather than on December 19, 2011. The December 17, 2011 date is also consistent with the incident report attached as an exhibit to the affidavit No. 1 of Mr. Tak (Wilson) Lau.

[34] Based on the evidence submitted, the last Notice Letter sent to Mr. Newell before the Petition was filed was dated December 29, 2011, in relation to complaints on December 21, 2011.

[35] Mr. Newell did not respond in any way to any of these Notice Letters. The Strata Council fined Mr. Newell the maximum amount of $200 for each incident. Mr. Newell paid all of the fines. He explained that, in his capacity as President of Windset Farms, he was out of the country for 171 days (including a period of 14 straight weeks beginning in May) in 2011, overseeing the construction of a $97 million green house facility in California. He says that, rather than return from California to dispute the fines, he simply paid them. Mr. Newell says that he anticipates being out of the country for an even longer period of time in 2012.

[36] Mr. Lau, who works as a concierge at 193 Aquarius Mews on the "graveyard" shift (from 11 p.m. to 7 a.m.), was personally involved in investigating the incidents on July 11-12, 2010, October 2-3, 2010 and July 24-25, 2011, and has provided affidavit evidence concerning what he heard and observed. Mr. Lau's evidence confirms what is stated in the Notice Letters in relation to those incidents.

[37] Mr. Lau also investigated noise complaints on December 20-21, 2011 and March 19, 2012. He says that, on both occasions, he attended at Unit 3701 and could hear loud music coming from the Unit. Mr. Lau says that, since about December 2011, his experience has been that the occupants of Unit 3701 will not open the door when he attends to inform them of a noise complaint. He explains that, since about that time, he has called police to address complaints of noise from Unit 3701 or the Deck. Mr. Lau says that on May 12, 2012, he received a complaint from Mr. Yu (the owner of Unit 3702) of loud music coming from Unit 3701 at 11:10 p.m. He received a second complaint, at 11:20 p.m., from the owner of Unit 3702 at 198 Aquarius Mews about loud music from Unit 3701. Mr. Lau called the police.

[38] However, Mr. Sugar says that he was home on May 12, 2012 and "there were no audible sounds coming from Mr. Newell's unit."

[39] In his affidavit, Mr. Beilhartz describes his experience as Mr. Newell's neighbour, and how he has frequently complained of noise from Mr. Newell's unit during "quiet hours." Mr. Beilhartz's evidence generally confirms what is stated in the Notice Letters after September 2011. In connection with the first incident in December 2011, for example, Mr. Beilhartz says that he and his partner, Ms. Zhang, were "kept awake due to extremely loud noise from Unit 3701." He attaches as an exhibit to his affidavit a copy of an e-mail he sent to Mr. Sondhi at 8:43 a.m. on December 17, 2011 complaining about "loud music" at 3:00 a.m., and "numerous people running around on the hardwood floors in heeled shoes" at 5:00 a.m. He also complains about "[b]roken beer bottles on my balcony thrown from the apartment above."

[40] Mr. Beilhartz describes further incidents in March and April 2012. He says that in March 2012, he and Ms. Zhang were "again kept awake due to loud noise from Unit 3701." He attaches as an exhibit to his affidavit a copy of an e-mail he sent to Mr. Sondhi at 5:56 a.m. on March 16, 2012 saying:

> . . . We have been kept up all night from the noise above. . . . I am being denied the peace and quiet I am entitled to under the bylaws, suffering fatique [sic] and stress and possibly suffering financially with the impact this situation has on my resale value.

[41] Mr. Beilhartz sent another e-mail to Mr. Sondhi on April 1, 2012 at 4:15 a.m. The e-mail says in part: "It is 0400 AM Sunday morning and I am up due to banging on the floor above. I am 66 years old with a heart condition and need my uninterrupted sleep." Mr. Beilhartz sent a further e-mail to Mr. Sondhi on April 1, 2012 saying: "It is now 0500 AM and despite the appearance of the police (according to the concierge) the banging still goes on."

[42] Mr. Beilhartz sent a further e-mail to Mr. Sondhi on April 6, 2012 complaining about a "high pitch whining sound." According to Mr. Beilhartz's e-mail, no one at Unit 3701 would answer the door. Mr. Beilhartz says in his e-mail:

> There was clearly someone in the apartment as there was the usual banging on the hard wood floor with hard sole shoes. In addition to dragging furniture around, this noise goes on 24 hours a day.
>
> Another nite with very little sleep. This makes it difficult to function the next day[.]

[43] Mr. Newell explained that, when he arrived home on May 6, 2012 after a month-long business trip to California, a smoke detector with a low battery was "blasting away" and might have been the source of the "whining sound" reported by Mr. Beilhartz.

[44] Mr. Beilhartz says that he has also complained directly to the building concierge about noise coming from Unit 3701. He says that:

> The noise has included extremely loud music, hard-soled and possibly high-heeled shoes on the hardwood floor above, and objects dropped so loudly that it wakes me up at night.

[45] I note that only some of the statements made by Mr. Beilhartz in his e-mail messages have been separately verified by him in his affidavit. On their own, the e-mail messages are not admissible to prove the truth of the facts stated in them.

[46] According to the minutes of the annual general meeting of the Strata Corporation held on January 16, 2012, the following resolution (which, under s. 171(2) of the ***Strata Property Act*** required a "3/4 vote") was passed unanimously:

> A 3/4 Vote Resolution to authorize the Strata Corporation to commence legal proceedings against the registered owner of Strata Lot 213 located at 3701 – 193 Aquarius Mews, Vancouver, B.C. (the "Owner") to remedy contraventions of its bylaws . . . .

[47] These proceedings were then filed on May 25, 2012.

[48] After the Petition was filed (but before Mr. Newell filed his Response), Mr. Lau received further complaints in the early morning hours of June 3, 2012 from Mr. Beilhartz about noise from Unit 3701, and police were called. About 6:25 a.m., Mr. Beilhartz complained again about loud music. According to the incident report, Mr. Lau went up to Unit 3701 and warned the occupants. A Notice Letter dated

June 6, 2012, describing "[t]hree separate complaints of loud music and noise" was sent to Mr. Newell. This time, Mr. Newell (through legal counsel) responded by e-mail, which says in part:

> 1. This is one complaint that has been filed 3 times by the owner of the suite below mine.
>
> 2. This particular owner apparently moved from Millstream Road in West Vancouver. Located at a very high level in West Vancouver, it is probably as quiet a place as one can find in the region.
>
> 3. He chose to move to Yaletown which has been described in About.com (NT Times) as one of Vancouver's hottest neighbourhoods. It is home to many of the city's trendiest restaurants, bars and night spots, hip shopping boutiques, and celebrity haunts.
>
> . . .
>
> 5. Virtually all of the complaints that I have received have come from unit 3601 and 3702. . . .
>
> . . .
>
> 8. On June [3], I had 4 couples visiting. It was a social gathering of friends. The music was at an entirely reasonable level.
>
> . . .

[49] In his affidavit, Mr. Sugar says that he was at home on June 3, 2012. He says that he heard no music or sounds of a party either that evening or the following morning, and no music or loud voices were audible at all in Mr. Sugar's unit from Mr. Newell's unit. More generally, Mr. Sugar identifies only a single occasion, from 2011, when he heard music playing through an open window in Mr. Newell's unit. Mr. Sugar says that he asked Mr. Newell if he would mind turning it down, which Mr. Newell did promptly, and apologized to Mr. Sugar. Mr. Sugar says that, other than that one time, over the past several years, there has not been any occasion when music or noise of any kind from Mr. Newell's unit, deck or patio disturbed Mr. Sugar either inside or outside his unit.

[50] After the hearing of the Petition in July, and while judgment was reserved, counsel for the Strata Corporation requested leave to make further submissions and to present additional affidavit evidence concerning events that took place over the

B.C. Day long weekend. I granted leave, and both the Strata Corporation and Mr. Newell filed additional affidavit evidence and written submissions.

[51] According to the affidavits filed by the Strata Corporation, loud music coming from the Deck in the early morning hours of August 5, 2012, and beginning at about 11:00 p.m. on August 5 and continuing after Midnight into August 6, 2012, resulted in noise complaints from residents of two units in 198 Aquarius Mews, as well as from the resident of Unit 3601 (Mr. Beilhartz's unit, although he is not identified by name). Police were called at least twice in connection with the noise the evening of August 5 and into the early morning of August 6, and attended at 193 Aquarius Mews. According to these affidavits, the noise ceased some time between 12:30 a.m. and 1:00 a.m., after the second visit from the police.

[52] In response, Mr. Newell filed an affidavit sworn by Sarah Stephanson, who was present at Unit 3701 on August 4 and 5, 2012. She disputes some of the facts stated in the affidavits filed by the Strata Corporation, however, she does not dispute others.

[53] In connection with events in the early morning on August 5, 2012, Ms. Stephanson says that music "was kept to a very low level to be consistent with quiet hours regulations."

[54] In connection with the events the evening of August 5, 2012 and into the early morning of August 6, Ms. Stephanson says that she and Mr. Newell entertained about fifteen friends for a late dinner on the Deck after a day of boating. She says that music "was set at a low level," and that conversation was taking place "in low speaking voices." Ms. Stephanson says that music was played outside because she thought that if it was kept at a low level, it would not bother the neighbours next door or "the one below from whom most of the complaints had come" (presumably a reference to Mr. Beilhartz). She acknowledges that police officers attended twice. The second time was after Midnight, and on that occasion the officers advised they had received noise complaints. Ms. Stephanson says that, when the officers then

requested that everyone be sent home, she and Mr. Newell turned off the music and all of their guests left by about 12:30 a.m.

[55] Ms. Stephanson also says that: "On August 28th, I removed the music system from the rooftop deck." She does not explain why, or whether it was done at Mr. Newell's direction, or even with his knowledge.

[56] There is no additional evidence from Mr. Newell.

Positions of the Parties

(a) Position of the Strata Corporation

[57] The specific relief sought by the Strata Corporation in the Petition (paraphrased slightly) is as follows:

1. a declaration that the respondents have used Unit 3701, the Deck and Balcony, or allowed them to be used, in a way that:

    a. causes a nuisance or hazard to other persons,

    b. causes unreasonable noise, and

    c. unreasonably interferes with the rights of other persons to use and enjoy their strata lots and the common property of the Strata Corporation;

2. an order that the respondents be prohibited between the hours of 11:00 p.m. and 8:00 a.m. from making or allowing to be made at Unit 3701, the Deck, Balcony or common property any noise that is audible in other strata lots;

3. an order that Mr. Newell be prohibited from having any entertainment system, television, speakers or musical instrument on the Deck or Balcony;

4. in the alternative, an order that the respondents be prohibited between the hours of 11:00 p.m. and 8:00 a.m. from using or operating any entertainment system, television, speakers or musical instrument on the Deck or Balcony;

5. a declaration that Mr. Newell altered the common property without written approval of the Strata Council, contrary to Bylaw 6(1), by installing a hot tub and air conditioning unit;

6. an order that Mr. Newell remove the hot tub and air conditioning unit from the Deck and restore the Deck to its condition prior to the installation of these items, at his sole expense and in compliance with the Strata Corporation's Bylaws and all applicable laws, within 30 days of pronouncement of this order;

7. in the alternative, an order that the respondents be prohibited between the hours of 11:00 p.m. and 8:00 a.m. from using or operating the hot tub on the Deck;

8. an order for costs payable by Mr. Newell to the Strata Corporation;

9. an order that any party may apply to the Court for further directions or to vary the terms of this order.

[58] The Strata Corporation says that, since moving into Unit 3701, Mr. Newell and others he has permitted to use the Unit have persistently and flagrantly violated their neighbours' right to quiet enjoyment of their homes. It says that it has received more than thirty-five complaints of disturbances between 11:00 p.m. and 8:00 a.m., relating primarily to loud music and noise. It says that much of the noise was generated by Mr. Newell and his guests and by the indoor and outdoor sound systems. The music and noise has resulted in complaints from Mr. Newell's neighbours and also owners living in 198 Aquarius Mews, and numerous calls to and interventions by the police. The Strata Corporation says that Mr. Newell has

demonstrated a pattern of behaviour consistent with his conduct during the renovations, and when he owned Unit 3703. In other words, fines are no deterrent.

[59] The Strata Corporation says that it does not have to prove that the conduct of Mr. Newell or his guests constitutes a legal nuisance to establish a breach of the Bylaws, particularly Bylaws 3(1)(b) and (c), 3(8), 3(10) and 3(11) relating to noise. It says that the evidence clearly establishes that Mr. Newell and his guests have failed to take special care to not make noise during the condominium's quiet hours, and have interfered with other owners' rights to use and enjoy their homes. The Strata Corporation points in particular to the direct evidence from Mr. Lau concerning what he heard and saw, to Mr. Beilhartz's evidence, and to the fact that Mr. Newell did not contest any of the Notice Letters prior to the Petition being filed.

[60] The Strata Corporation says that the fines imposed on Mr. Newell for violating the Bylaws have had no deterrent effect. Accordingly, an injunction is both appropriate and necessary in the circumstances to address Mr. Newell's persistent and intentional disregard of the Bylaws, and the behaviour of others using Unit 3701. The Strata Corporation says that the Petition has the support of the owners, as demonstrated by the unanimous approval, in January 2012, of the resolution authorizing the Strata Corporation to bring these proceedings.

[61] In support of its request for injunctive relief, the Strata Corporation relies on ***The Owners, Strata Plan VR 2000 v. Grabarczyk***, 2006 BCSC 1960, aff'd 2007 BCCA 295. It says that, there, Mr. Justice Cullen (as he then was) considered a bylaw virtually identical to Bylaw 3(1), and held that Ms. Grabarczyk had breached the noise bylaw by deliberately and repeatedly making loud noises disruptive to her neighbour's entitlement to enjoy her property with a reasonable threshold of peace and quiet. Cullen J. concluded that it was appropriate to issue an injunction.

[62] The Strata Corporation also relies on ***The Owners Strata Plan LMS 2768 v. Jordison***, 2012 BCCA 303. There, the Court of Appeal upheld an injunction ordered under s. 173 of the ***Strata Property Act*** against a background of what Mr. Justice Hall described (at para. 4) as a "well-documented litany of complaints

about the longstanding unsatisfactory and disruptive conduct" of the occupants of the unit owned by Ms. Jordison.

[63] The Strata Corporation says that the injunction should include orders that Mr. Newell be prohibited from having any entertainment system, television, speakers or musical instrument on the Deck or Balcony, and that he remove the hot tub from the Deck at his own expense. In the Strata Corporation's submission, such orders are warranted by s. 173 of the ***Strata Property Act***, which allows a Court to order an owner to stop contravening a strata corporation's bylaws and to "make any other orders it considers necessary" to give effect to such an order.

[64] The Strata Corporation says that the events of the B.C. Day long weekend show that the activity it seeks to have enjoined has not stopped, and show that Mr. Newell and his guests continue to disturb Mr. Newell's neighbours during the "quiet hours." The Strata Corporation says that, despite Ms. Stephanson's subjective opinion that the music on the Deck was set at a low level, and that activities were consistent with the Quiet Hours Bylaw, the music levels prompted at least three owners to complain to the concierge, the property manager and the police about noise. In the Strata Corporation's submission, this demonstrates that Mr. Newell and his guests have no ability to self-regulate their conduct and noise levels.

[65] The Strata Corporation argues further that Ms. Stephanson's removal of the sound system from the Deck is tantamount to an admission that music from the Deck has disturbed Mr. Newell's neighbours. The Strata Corporation submits that the removal does not provide the Court with any assurance that there will not be future noise Bylaw infractions or that Mr. Newell himself will not re-install the sound system.

[66] The Strata Corporation argues further that removal of the hot tub is justified on the basis that it is an unapproved alteration to the common property. It notes that the hot tub was transported to the 37th floor by a hoist. It says that, even if the hot tub was freestanding and did not require alterations to the condominium's plumbing,

electrical or building envelope (a point that has not been verified), it is so large and difficult to move from the roof that it constitutes an alteration. In its submission, the hot tub has become a permanent part of the Deck, just as the hot tub Mr. Newell installed at Unit 3703 remains there.

[67] The Strata Corporation says that granting the injunction it seeks would fulfill the principle that condominium owners must take care to respect the rights of their neighbours, a principle reflected in the comments of Hall J.A. in ***Jordison***, at para. 3:

> Persons who own and inhabit condominiums, or what is often termed strata title property, reside in close proximity to fellow owners and inhabitants. This proximity dictates that some forbearance and discretion is required of the occupants of such properties in order to avoid the infliction of misery upon fellow occupants.

(b) Mr. Newell's Position

[68] Except for the noise complaints on June 3, 2012, and certain aspects of the most recent incidents over the B.C. Day long weekend, Mr. Newell does not dispute many of the basic facts, at least as reflected in the Notice Letters. For example, he does not say that there were no gatherings on the dates in question, although he says they were not as large as claimed. He does not say that there was no loud music coming from his unit at 5:50 a.m. on July 24, 2011, or that there was no "extremely loud" music at 12:45 a.m. and 1:30 a.m. on August 6, 2011 coming from a party on the Deck.

[69] Instead, Mr. Newell says that almost all of the complaints have come from his two neighbours, Mr. Lu and Mr. Beilhartz, who sometimes made three or four complaints a night. Thus, the volume of complaints is misleading. Mr. Newell also disputes Mr. Beilhartz's complaints about banging on the floor of his unit. In Mr. Newell's submission, Mr. Yu's and Mr. Beilhartz's complaints are insufficient to support the relief sought. Mr. Newell says, looking at all of the gatherings that have taken place since he moved into Unit 3701, there is simply no evidence of any activities that could be considered a continuous nuisance, sufficient to justify an

injunction. From Mr. Newell's perspective, the gatherings at his place are simply normal social gatherings of normal frequency.

[70] Mr. Newell points to the fact that Aquarius Mews is located in Yaletown, and he relies on the description of Yaletown in the New York Times at "About.com" to argue that Yaletown is not quiet and the ambient noise level is high. He says that, from his penthouse, he can hear screaming from games at B.C. Place Stadium, bongo drums during the jazz festival, music and voices of parties on cruises, diners arriving and leaving restaurants, and the like. Mr. Newell says that these sounds were some of the things that attracted him to the area. He suggests that since Mr. Beilhartz apparently moved from what, in Mr. Newell's opinion, is a very quiet part of West Vancouver, Aquarius Mews and Yaletown are simply not the place for Mr. Beilhartz. He offers the opinion that Mr. Beilhartz is "extremely sensitive to sound."

[71] Mr. Newell also says that he is able to hear loud conversations, walking and opening and closing drawers from both Mr. Beilhartz's and Mr. Yu's units because the sound insulation in the building is inadequate. He says that, although the building has concrete construction, "a lot of sound transmission occurs." I give Mr. Newell's opinions about the building's construction and sound insulation little weight. However, his evidence about his personal experience of sound and sound transmission within the building and between units is entitled to weight.

[72] Mr. Newell says that a series of small, private social gatherings have never been found to be a nuisance, and for an injunction to issue, there must be evidence of such frequency as to constitute continuity. The events in question – a relatively short list in Mr. Newell's submission – have occurred over several years. Mr. Newell says that no injunction can be granted where the alleged nuisance is not continuous or has stopped. He says that the Strata Corporation's failure to continue in 2012 to process complaints by sending him Notice Letters should be considered fatal to its request for an injunction.

[73] Mr. Newell says further that there is no objective measure of the level of noise, and that no injunction should be granted where the evidence is that only one or two people in the vicinity have been disturbed by lawful activities. Mr. Newell observes that neither Mr. Beilhartz nor Mr. Yu have been subjected to cross-examination, so their assertions have never been tested.

[74] However, I note that none of the affidavit evidence has been tested by cross-examination, and no one requested the opportunity to do so.

[75] Mr. Newell says that the particulars of the complaints advanced by the Strata Corporation in the Petition are merely incidents of daily living. As such, they cannot be subject to an injunction. Mr. Newell says that Mr. Beilhartz's and Mr. Yu's "expectations for peace and tranquility" exceed what prevails generally in the neighbourhood and the standards of reasonable people living in the same area.

[76] With respect to the events over the B.C. Day long weekend, Mr. Newell says that Ms. Stephanson's evidence – in particular, her evidence that music and conversation were kept at a low level – contradicts the evidence filed by the Strata Corporation that the events violated the Quiet Hours Bylaw. He submits that these events are not evidence that the activity sought to be enjoined is continuing. Mr. Newell argues that, if the Court holds that there is a violation of a "quiet hours" bylaw whenever sounds after 11:00 p.m. are audible beyond the boundaries of a strata lot, then "a level of monastic silence would effectively be imposed, even on a celebratory holiday weekend."

[77] With respect to the request that the hot tub and air conditioning units be removed, Mr. Newell says that these were never "installed" and are not fixtures or "alterations" of common property. He says that they are free-standing movable items, and he did not require the permission of the Strata Council to place them on the Deck. Mr. Newell relies on ***Wentworth Condominium Corp. No. 198 v. McMahon***, 2009 ONCA 870, where the Ontario Court of Appeal concluded that a hot tub that was hard-wired was neither an "addition" nor an "alteration," to argue that on the facts here, there is no breach of any Bylaw.

Discussion and Analysis

[78] Pursuant to s. 26 of the ***Strata Property Act***, the Strata Council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. Levying fines is a form of punishment; it is not an enforcement of a strata corporation's bylaws: see ***Willson v. Highlands Strata Corporation***, 1999 CanLII 2900 (B.C.S.C.), at para. 28. There comes a point where a strata corporation must pursue injunctive relief.

(a) Have Bylaws been breached?

[79] The first question is whether Mr. Newell has breached the noise Bylaws, specifically Bylaws 3(1)(b) and (c), 3(10) and 3(11).

[80] I find that Mr. Newell and others at Unit 3701 breached these Bylaws on the following dates: July 11, 2010 beginning at about 11:30 p.m. and continuing into July 12, 2010 at about 2:30 a.m.; September 10, 2010 beginning at about 11:55 p.m.; October 2, 2010 at about 11.40 p.m.; July 24, 2011 at about 5:50 a.m.; August 6, 2011 beginning at about 11.45 p.m. and at about 1:30 a.m. on August 7, 2011; September 19, 2011 at about 5:50 a.m.; September 25, 2011 beginning at about 1:35 a.m. and thereafter; December 17, 2011 at about 3:40 a.m.; December 21, 2011 beginning at about 12:45 a.m.; March 19, 2012 at about 4:25 a.m.; May 12, 2012 at about 11:10 p.m.; and June 3, 2012 beginning at about 3:25 a.m. I make those findings based on: the Notice Letters sent to Mr. Newell, and (with the exception of the June 3, 2012 event) the absence of any dispute from Mr. Newell; Mr. Lau's evidence concerning what he personally heard and when he heard it; and, with respect to events after September 22, 2011, Mr. Beilhartz's evidence.

[81] Although Mr. Newell argues in effect that Mr. Beilhartz is simply overly sensitive to noise and that his evidence should be given little weight, there was no suggestion that this was true in Mr. Lau's case. His evidence about what he heard and observed is essentially unchallenged. Given that Mr. Newell could have disputed a Notice Letter by sending an e-mail setting out his position (as he did with

the hot tub in May 2010), I do not find his explanation for not disputing any of the Notice Letters after June 2010 (except for the most recent one) either convincing or credible. Being out of the country would not prevent Mr. Newell from sending an e-mail responding to a Notice Letter. I think a more likely explanation is that Mr. Newell recognized the merit of the complaint and concluded it was not worth his time or effort to dispute it. Rather, it was easier for him to accept payment of a fine as part of the cost of throwing a party. I agree with Mr. Mendes' submission that Mr. Newell's failure to dispute any of the complaints in the Notice Letters and his acceptance of fines are additional pieces of evidence supporting the conclusion that the breaches in fact occurred.

[82] I have not ignored Mr. Sugar's affidavit evidence. However, his evidence that, with one exception (which he discussed directly with Mr. Newell), there has not been any occasion when music or noise of any kind from Unit 3701, the Deck or the Balcony disturbed him, is lacking in details and conclusory rather than factual. For example, I do not know whether (other than May 12 and June 3, 2012) Mr. Sugar was at home during any of the other dates in question. Moreover, it does not follow from Mr. Sugar's statement that he was not disturbed that Mr. Newell did not breach the noise Bylaws. I therefore give Mr. Sugar's affidavit evidence less weight.

[83] I find the evidence of Mr. Beilhartz concerning the variety of noises he claims to hear from Unit 3701 (as opposed to sound and music from the outdoor space – the Deck and the Balcony), particularly in the light of Mr. Newell's evidence concerning his personal experience of noise transmission from unit to unit, insufficient to make findings concerning any noise coming from Unit 3701 that is audible in another unit (such as Mr. Beilhartz's).

[84] With respect to events after the hearing of the Petition, I find that the activities on the Deck in the early morning hours of August 5, 2012, and in the late evening (after 11:00 p.m.) and into the early morning of August 6, 2012, breached Bylaws 3(1)(b), 3(10) and 3(11).

[85] Ms. Stephanson does not dispute that music was playing in the early morning hours of August 5. She may have thought it was at a low level, but it prompted a complaint from a neighbour (Dr. Wong) in another building. There is also no dispute that music was being played on the Deck after 11:00 p.m. on August 5, 2012. Again, although Ms. Stephanson may have considered the volume to be low, three neighbours complained about noise, and the police were called (twice) to Unit 3701. I agree with Mr. Mendes' submission that the conflict between Ms. Stephanson's views, and those of Mr. Newell's neighbours, demonstrates that Mr. Newell and his guests have no ability or inclination to regulate their conduct and noise levels. Even if they make some effort, the effort is insufficient, and they fail to satisfy the requirements of Bylaws 3(10) and 3(11). This is not imposing a level of "monastic silence" on Mr. Newell and his friends. Rather, it is ensuring that they are respectful of Mr. Newell's neighbouring owners, who have a right to peace and quiet in their residences, and to not be subjected to undue and excessive noise. Ms. Stephanson says that the sound system has been removed from the Deck. But in the absence of evidence from Mr. Newell, I am not prepared to conclude this is a permanent move.

[86] It is true that Mr. Newell was not throwing a party every night, or every weekend, or even every month. In that sense, his conduct was not "continuous." However, by the end of 2010, based on the Notice Letters he had received (which began very shortly after he moved into Unit 3701), Mr. Newell should have appreciated that the way he was entertaining friends and guests was disturbing neighbours during hours in which the unit owners and residents at both 193 and 198 Aquarius Mews were entitled to peace and quiet, and he was therefore breaching the Bylaws. Bylaws 3(10) and 3(11) do not have an exception for the occasional party. Unfortunately, the fines did not deter Mr. Newell in any way.

[87] I do not accept Mr. Baker's submission (on behalf of Mr. Newell) that the failure of the Strata Corporation to continue to send Notice Letters to Mr. Newell in 2012 must be fatal to the Petition. Clearly, fines were not having the desired effect. While it may have been advisable to continue to send Notice Letters to Mr. Newell in

2012, by the time the special resolution had been passed at the January 16, 2012 annual general meeting, the owners had spoken.

[88] Mr. Newell's attitude seems to be that his closest neighbours – Mr. Yu and Mr. Beilhartz – are killjoys and do not belong in Yaletown. But Yaletown living does not give Mr. Newell an excuse for ignoring the Bylaws of his strata corporation. From the time he moved into Unit 3701 through to the filing of the Petition in May 2012, Mr. Newell's conduct and the manner in which he used – and permitted others to use – the outdoor space (the Deck and the Balcony) associated with Unit 3701 were disrespectful of his neighbours and in breach of the Bylaws. The conduct continued after the hearing of the Petition. Mr. Newell has displayed a poor grasp of one of the basic principles of condominium living – even in Yaletown – so aptly described by Mr. Justice Hall: that the proximity dictates that some forbearance and discretion is required of the occupants of such properties in order to avoid the infliction of misery upon fellow occupants. The Bylaws – which bind Mr. Newell so long as he owns Unit 3701 – exist to that end.

[89] I have come to a different conclusion concerning hot tub and air conditioning units, which the Strata Corporation claims were installed in breach of Bylaw 6(1). Mr. Mendes, on behalf of the Strata Corporation, conceded in oral argument that Strata Corporation was less concerned about the air conditioning units than the hot tub, and that one of the main concerns (although not the only concern) about the hot tub was how its use contributed to breach of the noise Bylaws.

[90] On the facts before me, I find that none of the hot tub and air conditioning units is an "alteration" to common property. None were designed to be permanent, and the fact that a crane was required to hoist the hot tub up to its current home is not determinative. I find there has been no breach of Bylaw 6(1).

[91] However, based on the advice that the Strata Corporation (through Mr. Sondhi) received in October 2011 from Atlas Anchors, the placement of the hot tub is a problem. The Strata Corporation did not seek any specific relief to deal with this particular problem; rather it sought an order that Mr. Newell remove the hot tub

altogether. If the placement of the hot tub continues to be a problem, the Strata Corporation has leave to apply for further relief.

(b) Should an injunction be granted?

[92] Based on my findings concerning the respondents' breaches of the noise Bylaws, should an injunction be granted?

[93] I do not see that there is a proper basis to grant an injunction in the terms of para. 2 of the orders requested in the Petition, prohibiting between the hours of 11:00 p.m. and 8:00 a.m. "any noise that is audible in other strata lots." I have concluded that Mr. Beilhartz's evidence is insufficient to support such a sweeping order. Moreover, based on Mr. Newell's evidence concerning his personal experience, I doubt that, despite an individual's best efforts, it would be possible to comply with such an order given the manner in which the building seems to be constructed.

[94] I turn then to paras. 3 and 4 of the relief sought in the Petition, concerning the entertainment system Mr. Newell installed. Based on Ms. Stephanson's affidavit, the music system was removed from the Deck on August 28, 2012. However, that does not deal with the entirety of the entertainment system Mr. Newell had installed – the big screen TV is still there, for example. Moreover, I have not heard anything from Mr. Newell about his future plans. Based on my findings concerning the breaches of the noise Bylaws, I have concluded that an order should be made in the terms of the alternative relief requested in para. 4. In my view, this primarily reinforces that Mr. Newell, and others he invites to his home, must comply with Bylaw 3(11).

[95] Based on my conclusion that the hot tub and air conditioning units do not constitute "alterations" of the common property, the relief requested in paras. 5 and 6 of the Petition is dismissed. However, in the light of my findings concerning the breaches of the noise Bylaws, I conclude that an order in the terms of para. 7, prohibiting use or operating of the hot tub during "quiet hours" is justified.

Disposition and Summary

[96] In summary, I grant the following relief in favour of the Strata Corporation:

(a) the respondents are prohibited, between the hours of 11:00 p.m. and 8:00 a.m., from using or operating any entertainment system, television, speakers or musical instrument on the Deck or Balcony;

(b) the respondents are prohibited, between the hours of 11:00 p.m. and 8:00 a.m., from using or operating the hot tub on the Deck; and

(c) if the placement of Mr. Newell's hot tub continues to be a problem in relation to the annual protection equipment inspection for 193 Aquarius Mews, the Strata Corporation has leave to apply for further relief.

[97] If the parties wish to make submissions on costs, they must do so within 30 days of the date of these reasons. Otherwise, I order that the Strata Corporation have costs on Scale B payable by Mr. Newell.

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The Honourable Madam Justice Adair