**CITATION:** *Wong v. TSCC NO. 1918*, 2022 ONSC 3409
**COURT FILE NO.:** CV-21-00658289
**DATE:** 20220607

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **BETWEEN:** | ) | |
| | ) | |
| Fung-Ling Wong | ) | *Andrea Lusk and An Nguyen*, for the Applicant |
| Applicant | ) | |
| | ) | |
| **– and –** | ) | |
| | ) | *Mikel Pearce*, for the Respondent |
| Toronto Standard Condominium Corporation No. 1918 | ) | |
| Respondent | ) | |
| | ) | |
| | ) | **HEARD: November 9, 2021** |

**VELLA J.**

## REASONS FOR JUDGMENT

[1] Fung-Ling Wong ("Wong") is the owner of Suite 101 (the "Unit"), 30 Canterbury Place, at Toronto Standard Condominium Corporation No. 1918 (the "Corporation" or "TSCC 1918"). Her unit is next door to the garbage room that contains a compactor and is the termination point of the garbage chute used by all of the condominium residents.

[2] Wong seeks various orders in the nature of declaratory relief and damages under the oppression remedy provision of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "Act"), including damages for nuisance and mental distress. In essence she wants an order requiring the Corporation to fix the noise and vibration problem to her satisfaction, which she submits falls within her reasonable expectations as a unit owner.

[3] The Corporation had initially indicated an intention to raise a defence under the *Limitations Act, 2002*, but abandoned that defence.

[4] At the heart of this issue is whether TSCC 1918's response to Wong's years of complaints relating to the noise and vibrations she experiences in her Unit have been reasonable or, put another way, violate the reasonable expectations of Wong as a unit owner and constitutes a failure to repair common elements under the Act or interferes with the quiet enjoyment of the Unit.

**[5]** For the reasons that follow, I find that TSCC 1918's response to Wong's complaints after May 2017 unfairly disregarded her interests, as a unit owner, and is thus oppressive conduct warranting a remedy in the form of damages. I also direct TSCC 1918 to complete the remediation work that it had commissioned but stopped after Wong commenced this application.



**BACKGROUND**

[6] Wong purchased her unit in 2010. It is the only unit on the ground floor and it is located adjacent to the garbage room, sharing a demising wall.

[7] Wong immediately began experiencing loud noise at all hours of the day and night from the garbage room: both due to the noise generated by the compactor, and also from the noise and crashing caused by other unit owners sending their garbage down the chute. In addition, she was experiencing vibrations in her unit as a result of the day-to-day functioning of the garbage system.

[8] Wong described the noise as hearing loud and intermittent crashing and tremors in her Unit caused by large heavy objects being thrown down the garbage chute and a loud motor wheezing and metal thumping when the compactor is operating.

[9] Wong made her first complaint to the Corporation by email dated November 11, 2010.

[10] Between May and June 2011, Wong continued to make complaints about the excessive noise and vibration caused by the use of the garbage room. The Corporation's management directed her to file a complaint with Tarion. However, after an inspection in December 2011, Tarion advised Wong that it is not responsible for these structural deficiencies and directed her back to the Corporation's property manager.

[11] Throughout 2012, Wong persisted in making complaints to the Corporation and the issue reached its Board (of which she was a member). The Corporation sought legal advice, and undertook some informal testing of the noise levels. The property manager determined that the noise was "unbearable". As a result, on August 15, 2012, the Board directed management to conduct meter readings and advised Wong of their intended next steps to deal with her complaint.

[12] On September 21, 2012, further sound testing is conducted by property management with the conclusion that the noise was coming from the compactor in the garbage room, and the chute system which is above and adjacent to Wong's master bedroom ceiling.

[13] The issue languished until in or around August to September 2013, at which time certain repairs were undertaken to the compactor. However, Wong complained that the noise and vibration issues were still not resolved to her satisfaction.

[14] Wong persisted in pressuring the Board and management to remedy the situation, and on November 21, 2013, the Board instructed management to post a notice advising unit owners not to use the chute overnight with a view to minimizing the noise caused by use of the chute. This step helped with respect to reducing the noise and vibration overnight. However, Wong complained that the hours of use were not being respected by some of the unit owners. It also did not deal with the underlying problems causing the noise and vibrations in the first place.

[15] Between December 2013 and May 2014, in response to Wong's ongoing complaints, the Board approved some fixes, such as installing a checkpoint alarm light at the security desk which triggers whenever the compactor is jammed, running too long, or running at night.

[16] In addition, locks were installed on the garbage chute doors, which were supposed to be locked each night to prevent their use overnight. The intention was to reduce, if not eliminate, the amount of time that the compactor would run overnight.

[17] On August 26, 2015, the president of the Corporation's Board advised Wong that she should have known there would be noise emanating from the garbage room which was clearly adjacent to her Unit and visible to her when she bought the Unit.

[18] In May of 2017, Wong agreed that the efforts taken by the Corporation to enforce the garbage chute hours as a compromise solution was satisfactory. However, in 2017 Wong began working from home and hence, to her, the noise and vibration issues that she said she experienced during the daytime became more disruptive to her use and enjoyment of the Unit.

[19] Meanwhile, in 2018 a new property management firm, Maple Ridge Community Management ("MRCM"), was hired by the Corporation. It took a renewed interest regarding Wong's ongoing complaints.

[20] In or around January 2018, the property manager engaged an engineer who recommended installing cement block in the garbage room to further insulate it.

[21] In February 2018, the Corporation took some steps to remediate the noise and vibrations issues such as replacing the hoses to the compactor, relocating the garbage compactor to the wall furthest away from Wong's Unit and insulating the compactor. These steps reduced the noise issue to some extent, as acknowledged by Wong.

[22] In light of Wong's ongoing complaints, however, the new property manager asked Wong to locate a sound insulation or soundproofing company on behalf of the Corporation.

[23] Wong found a company called So Quiet Soundproofing ("So Quiet"). The property manager approved the choice, and So Quiet was engaged to conduct sound testing. The Corporation paid for So Quiet's assessment.

[24] On March 5, 2018, So Quiet conducted on site testing. Wong was present, but the property manager was not.

[25] So Quiet provided its report concerning the testing results on March 13, 2018, concluding that the noise and vibrations emanating from the garage room and transmitting to Wong's unit were excessive. So Quiet conducted its tests by setting up speakers in the garbage room to transmit noise. It found the noise and vibrations to be "unacceptable" and causing "human annoyance" to the resident of Wong's Unit.

[26] So Quiet provided its soundproofing recommendation on November 23, 2018. The recommendations were to:

a. improve the demising wall construction to Sound Transmission Class ("STC") 65 or higher (from STC 55); and

b. mount the compactor and chute installations above the floor.

[27] It estimated the entire cost of the proposals to be $19,984 plus HST (of which about $7,600 was for the shock and vibration mounts).

[28] In November and December 2018, the Board was presented with Wong's history of complaints and had the So Quiet report and recommendations. Wong persisted in making requests of the Board to deal with her complaints.

[29] On December 1, 2019, the Board responded that its lawyers recommended that it obtain a peer review of So Quiet's report and recommendations.

[30] The peer review report retained by the Board, dated March 10, 2020, was conducted by HCG Engineering and provides a critique of So Quiet's process and recommendations but does not provide any of its own recommendations. The peer review did not involve any new testing or onsite inspections. HCG concluded So Quiet's test was fundamentally flawed as it did not measure the sound and vibrations actually caused by the operation of the chute and compactor system. This seems to result in a further paralysis of the Board as to what to do about Wong's complaints. As a result of the Board's inaction, Wong retained a lawyer who provided a demand letter requesting that, at minimum, the Board retain a new expert to conduct new sound and vibration testing onsite.

[31] In the interim, the Board passed a policy prohibiting certain objects from being thrown down the garbage chute. It had scheduled an informal noise test but then cancelled it.

[32] On October 6, 2020, noise testing was conducted by JAD Contracting Ltd. on behalf of the Corporation. JAD's report was provided to Wong on November 25, 2020 – some two and one-half years following the So Quiet report. The report confirms that the noise permeates Wong's Unit and that it comes from the garbage system.

[33] JAD's report of October 20, 2020 made recommendations after having thrown garbage bags down the chute and observing there was a rather "large noise" coming from the foyer of Wong's Unit.

[34] JAD recommended opening an access point in Wong's ceiling to verify the location of the chute and investigate the source of the noise.

[35] On January 21, 2021, JAD provided a proposal to install absorption and noise blocking barriers in Wong's bathroom wall and ceiling, hallway ceiling and master bedroom ceiling for a cost of $5,117.55 and $5,817 plus taxes ("JAD Remediation Plan"). The Corporation accepted this proposal.

[36] Wong did not agree that the JAD Remediation Plan was adequate, preferring the recommendations from the 2018 So Quiet report instead. Wong insisted that the Corporation's consultants' recommendations would not go far enough in terms of noise reduction within her Unit and would do nothing to reduce the vibrations.

[37] Further, Wong documented incidents in 2021 when the garbage chute was being used after midnight and before 8:00 a.m., contrary to the Corporation's rule on hours of operation, and sent emails to, and telephoned, security to report those breaches contemporaneously.

[38] By March 2021, with the JAD remediation work incomplete, Wong issued this application.

**POSITION OF THE PARTIES**

[39] Wong states that she has had to live with unacceptable noise and vibration levels in her Unit and that by taking up time to respond, inadequately and in a piecemeal manner, the Corporation has unfairly disregarded her interests.

[40] The Corporation responds that this application "arises out of a long standing but intermittent noise complaint". It points out that Wong was a member of the Board of Directors from May 2011 to December 2019 (though she recused herself for discussion involving her Unit). It also points to the fact that Wong's walls were built in compliance with the Ontario *Building Code* with respect to the issue of noise cancelling or absorption properties. The Corporation relies on the fact that there is no "expert" evidence that supports Wong's claim that any repair or remedial work is necessary.

[41] The Corporation says that it completed repairs and other remedial work to the garbage compactor in 2018 and approved the JAD Remediation Plan in 2021. It states that its repair efforts were hampered by the COVID-19 pandemic, though it did not provide any substantive evidence to support this claim.

[42] The Corporation submits that it has done what it is obliged to do, and that Wong's demands are unreasonable. It says nothing short of ensuring complete silence will satisfy Wong, and this is not a reasonable expectation given the location of the Unit was next to the garbage room – a fact which she knew when she purchased the Unit.

[43] The Corporation submits, that in light of Wong's acceptance of the Corporation's remedial steps taken as of May 2017 that it is only the subsequent conduct that is at issue for purposes of determining the reasonableness of the Corporation's actions. However, the fact that this same

issue has persisted since 2010 is relevant context. Furthermore, the fact that Wong agreed with the interim remediation efforts tends to demonstrate that, contrary to the Corporation's chief submission, Wong is prepared to compromise and be reasonable to some degree.

[44] The Corporation relies on the 2009 HCG report for the proposition that because there were no deficiencies in the walls and the walls met the requirements of the Ontario *Building Code*, it was not obliged to undertake any remedial work as there was no breach of its repair obligations. However, that submission is undercut by the fact that, notwithstanding the 2009 HCG report, it did undertake some remedial work in 2017 and had proposed to undertake further work to further ameliorate the noise complaint in 2021 prior to it being advised of this application. Furthermore, the fact that the walls meet the building code requirements is not a complete answer to whether or not Wong's Unit has been properly insulated from the noise and vibrations emanating from the chute and compactor in the adjacent garbage room.

[45] The Corporation also submits that there was no independent testing to support Wong's assertion that the noise levels in her Unit have not changed since the remedial work that was undertaken in 2017. Again, it says that there is no "expert" report, including the So Quiet report dated March 13, 2018, that finds that the common elements (particularly the garbage room) are deficient. The So Quiet report speaks to reducing noise and vibration levels in Wong's Unit that are emanating from the garbage room.

[46] Wong, in turn, relies on the So Quiet report as setting out the baseline for the remedial work that needs to be done in order to improve the to bring the noise and vibration to adequate levels.

**THE LAW**

[47] The unit owners (and occupiers) of a condominium building agree to abide by the rules of their governing condominium corporation when they purchase or occupy a unit. The rights and obligations of the condominium corporation and its unit owners/occupiers are enshrined in the Act.

[48] Under sections 89(1) and 90(1) of the Act, Article 6.02(a) of the Corporation's Declaration, and Article 4.1(a) of its Bylaw No. 1, the Corporation is responsible for the maintenance, repair and operation and upkeep of its common elements. The parties agree that the garbage room and chute fall under the common elements.

[49] Furthermore, pursuant to s. 119 of the Act, the Corporation bears the statutory obligation to enforce and obey its declaration, by-laws and rules. This includes enforcing its own rules forbidding undue nuisance and noise such as ensure that the garbage chutes are closed between 10 p.m. and 8 a.m. each night.

[50] As Wong admits, the scope of the Corporation's obligation, in this case, is to ensure that the noise and vibration levels within her Unit are within an acceptable range such that the noise and vibrations do not interfere with her reasonable expectations and quiet enjoyment of the use of her Unit. Wong elaborates on this obligation by submitting that the Corporation has an obligation

to "ensure" that all appropriate sound attenuation barriers or insulation are installed between her Unit and the adjacent garbage room.

[51] As stated in *Estanol v. York Condominium Corporation No. 299*, 2020 ONSC 298 (citing, in turn, *Ryan v. York Condominium Corporation No. 340*, 2016 ONSC 2740), at para 75, the court must apply a "fact-specific test of reasonableness" in determining whether the condominium corporation has discharged its statutory duties to maintain and repair the common elements. The court, at para. 75 stated:

> In considering whether the condominium corporation has met the reasonableness standard for repairs, I am to consider all pertinent factors to achieve a fair and equitable result, having regard to:
>
> a. The relationship of the parties (which involved a history of complaints by the applicant, some of which were valid and some not);
>
> b. Their contractual obligations (which in this case, mirror the *Condominium Act* and regulations for all intents and purposes);
>
> c. The cost and work required…;
>
> d. The benefit to all parties if the repairs are affected, compared to the detriment which may be occasioned by the failure to undertake them….

[52] In *Zaman v. Toronto Standard Condominium Corporation No. 1643*, 2020 ONSC 1262, 12 R.P.R. (6th) 99, at para. 24, the court set out the test under the oppression remedy provision of the Act:

> Unlike other disputes under the Act, which must be submitted to mediation and arbitration, it is common ground than an owner may apply directly to the court for an order under s. 135. The remedy is broad and flexible; the court must balance the objectively reasonable expectations of an applicant and the welfare of all owners and the condominium's assets. In *McKinstry v. York Condominium Corp. no 472* (2003), 68 O.R. (3d) 557 (S.C.), Juriansz J. (as he then was) reviewed the purpose of the section and its commonality with the oppression remedy in corporate law, and stated at para. 33:
>
> > This new creature of statute should not be unduly restricted but given a broad and flexible interpretation that will give effect to the remedy it created. Stakeholders may apply to protect their legitimate expectations from conduct that is unlawful or without authority, and even from conduct that may be technically authorized and ostensibly legal. The only prerequisite to the court's jurisdiction to fashion a remedy is that the conduct must be or threaten to be oppressive or unfairly prejudicial to the applicant, or unfairly disregard the interests of the applicant. Once that prerequisite is established, the court may "make any order the judge deems proper" including prohibiting the conduct and requiring the payment of compensation. This broad powerful remedy and the potential protection it offers

> are appropriately described as "awesome". It must be remembered that the section protects legitimate expectations and not individual wish lists, and that the court must balance the objectively reasonable expectations of the owner with the condominium board's ability to exercise judgment and secure the safety, security and welfare all owners and the condominium's property and assets. [emphasis added in *Zaman*]



[53] Wong has the burden to prove that the Condominium Corporation has breached its statutory duty to repair the garbage system, as a common element, or breached her right to quiet enjoyment by failing to implement remedial repairs that would have the effect of reducing noise and vibration levels experienced in her Unit to a reasonable level.

**ANALYSIS**

[54] The Corporation retained a peer review report from the engineering firm it hired in 2009 to initially investigate the noise and vibration complains of Wong. In 2009 HCG Engineers concluded there was no problem that required the Corporation's intervention because the demising wall between the garbage room and the Unit met the *Building Code* requirements. HCG specializes in noise, sound and vibrations.

[55] The 2018 So Quiet Soundproofing report concluded that, through its sound test, the decibel level of sound and vibration was "unacceptable" and would create "human annoyance" to the resident of Unit 101.

[56] On advice of its lawyers, the Corporation hired HCG to conduct a peer review of the So Quiet report. This was deemed prudent since So Quiet's conclusions contradicted HCG's 2009 conclusions (that there were no noise issues) and HCG's report was outdated. HCG concluded that the So Quiet report was fundamentally flawed as it did not purport to measure the sound or vibration levels caused directly by the operation of the compactor or chute system. HCG concluded that no further study was warranted.

[57] On the other hand, the 2020 HCG report provided insight into the process that is generally followed where a condominium unit owner is complaining about sound and vibration:

> In our experience addressing complaints from residents in multi-family buildings regarding noises from common equipment and services, the typical procedure to be followed starts with having representatives of the condominium (members of the Board and/or property management) visit the unit and listen to the noises being complained about. If the condominium representatives feel subjectively that the noises are excessive, then they may commission their own professional study to determine if there is a warrant to reduce the noises, and to identify the specific options for recommended controls or upgrades. Alternatively, the onus is on the owner of the residential unit to commission such a study.

[58] In this case, while it does not appear that any representatives of the Corporation personally attended in Wong's Unit (after 2017) to form a subjective impression of the noise and vibrations, it did commission a report by JAD Contracting in 2020 to undertake an inspection and review.

[59] Following the *Estanol* test:

a. There has been a history of complaints by Wong to the Corporation which has been met with, at best, a delayed and inadequate responses up to 2021 (including what can be best described as a piecemeal approach by the Corporation);

b. The parties' contractual obligations are substantially reflected in the Act, Declaration, and by-laws of the Corporation as well as its Rules;

c. The Corporation has proposed a further solution consistent with proposals in the JAD Report (dated January 29, 2021). Furthermore, the costs of JAD's proposals had been approved and therefore are not a barrier to the Corporation;

d. The only benefactor of the requested work would be Wong since only her unit is impacted by the noise and vibrations caused by operation of the garbage system.

[60] Furthermore, there is evidence in the record to support the finding that, notwithstanding the fact that the demising wall between the garbage room and Wong's Unit met the Ontario *Building Code* standard, Wong has continuously experienced sound and vibration in her Unit as a result of the operation of the garbage system at the condominium building that was at minimum annoying and the Corporation's own property management has acknowledged that this problem warrants a remedial response. Indeed, as stated the Corporation has engaged in some remedial efforts.

[61] There is no evidence from the Corporation to support its position that the noise and vibrations have been sufficiently remediated. No person from the Corporation has attended in Wong's unit to experience first-hand the noise or vibrations caused by the chute and compactor since the 2017 remedial steps were undertaken.

[62] On the other hand, Wong has not led any expert evidence to support her claim that the level of noise and vibrations are excessive and originate from a duty to repair the common elements and are in breach of her quiet enjoyment.

[63] The various reports tendered by both parties are hearsay evidence and therefore are not admissible for the truth of their contents. They are admissible to show what steps were taken by each party in relation to this noise and vibration issue, inform their respective states of knowledge, and to assess the reasonable expectations on the part of Wong and the reasonableness of the responses on the part of the Corporation but not the adequacy of the proposed solutions to remedy the noise and vibration complaints.

[64] I find that the fact that the Corporation undertook remedial efforts in 2017 and then authorized further remedial steps to be taken by JAD in 2021 leads to the inference that the

Corporation has acknowledge that the noise and vibrations emanating from the garbage room both triggered a duty to repair the common elements, and breached Wong's quiet enjoyment of her Unit and therefore her reasonable expectations. The JAD proposal, in particular, set out construction steps that would be undertaken in Wong's Unit to insulate it from at least the noises.

[65] Wong is seeking a remedy under s. 135 of the Act. Section 135 states:

> **135** (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section.
>
> (2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter.
>
> (3) On an application, the judge may make any order the judge deems proper including,
>
> (a) an order prohibiting the conduct referred to in the application; and
>
> (b) an order requiring the payment of compensation.

[66] Both parties relied upon *Hakim v. Toronto Standard Condominium No. 1737*, 2012 ONSC 404, 16 R.P.R. (5th) 315, as setting out the requirements under s. 135. In order to establish an entitlement to relief under s. 135, Wong must prove that she has suffered from oppression, unfair prejudice, or an unfair disregard of her rights. (para 31).

[67] In this case, Wong relies particularly on the Corporation's conduct (or lack thereof) as unfairly disregarding her rights as a unit owner, which rights are primarily defined by the Act, regulations, Declaration and by-laws. On this point, the court in *Hakim* stated, at para. 36:

> Courts in Ontario have held that the use of the word "unfairly" to qualify the words "prejudice" and "disregard" suggest that some prejudice or disregard is acceptable provided it is not unfair.

[68] Furthermore, at paras 37 and 40 of *Hakim*, the court highlighted the important context of this analysis; namely, that the legislative intent of the oppression remedy is "to balance the interests of those claiming rights from the Corporation against the ability of management to conduct business in an efficient manner" and "it must be recognized that the Board is charged with the responsibility of balancing the private and communal interests of the unit owners, and their behaviour must be measured against that duty". Furthermore, in *Estanol*, the court at para. 76 noted that a condominium corporation is not to be held to a standard of perfection.

[69] Hence the focus of the oppression remedy test is to determine the reasonable expectations of the unit owner, and balance those expectations against the broader duties owed by the condominium corporation to its community of residents.

[70] The courts have set out a two-part test for determining whether a condominium corporation's conduct is captured by s. 135 warranting the exercise of the broad remedial powers the court has under that provision (see *Hakim*, para 42-43; *Estanol*, at para. 102). First the applicant must demonstrate that there has been a breach of her reasonable expectations as assessed on an objective basis. Second, whether the impugned conduct, or lack thereof, amounts to "oppression", "unfair prejudice" or "unfair disregard" of the applicant's interests.

[71] In this case, Wong's reasonable expectations are informed by the Corporation's duty to repair the common elements and ensure that she has quiet enjoyment of her premises. They are also informed by the Corporation's own rules, notably that the garbage chute was to be locked at night and not used between 10:00 p.m. and 8:00 a.m. The reasonableness of her expectations was supported by the fact that the Corporation has taken remedial steps over the past 10 – 11 years to do something about the noise issue. However, they must also be informed by the fact that she was aware that she was purchasing a unit (the only unit) on the first floor and that it shared a common wall with the garbage room.

[72] Furthermore, the Corporation has a duty to be fiscally responsible to all of the unit owners. It was reasonable for the Corporation to have the So Quiet report peer reviewed by HCG whom it had retained in 2009. It is noteworthy that the Corporation, through its property management, asked Wong to select So Quiet and the Corporation paid for it. But it was within the Corporation's rights, in balancing Wong's interests with those of the broader community of unit owners, to have that report peer reviewed. It was also within its discretion, acting reasonably and in the best interests of the Corporation, to accept or reject 2018 So Quiet's recommendations and findings based on HCG's 2020 peer review.

[73] What stands out in this situation is the fact that this singular issue has been outstanding, subject to intermittent steps taken here and there, for the better part of ten to eleven years. There is no direct evidence of whether the level of noise was unacceptable other than Wong's and, prior to 2017, the property manager who corroborated the noise level was unacceptable.

[74] The reasonable inference from its actions is that the Corporation, acting in a prudent matter, took some steps to ameliorate Wong's noise complaints, including approving the JAD 2021 Proposal because it considered her complaints to be reasonable and to fall within its statutory obligations.

[75] The main factors that the corporation had to balance in this claim was Wong's right to quiet enjoyment of the use of her unit, its statutory obligation to repair common elements, its obligation to enforce its internal rules regarding the use of the garbage chute, and the financial cost of any potential solution which must be borne by all of the unit owners by way of their common expenses. This assessment must recognize that no unit owner is entitled to perfection which in this case means a completely silent and vibration-free unit.

[76] The court will not micromanage the internal governance affairs of a board of directors acting in the best interests of the condominium corporation and its stakeholders. By the same

token, the court will intervene where there is oppressive conduct within the meaning of s. 135 of the Act and/or where there has been non-compliance with s. 119 of the Act.

**CONCLUSION AND DISPOSITION**

[77] The evidentiary record does not allow the court to determine whether the remedial work reflected in the JAD Proposal will be sufficient to remedy the noise and vibration issue so that the noise and vibrations caused by the chute and compactor will be reduced to a tolerable level. The evidentiary record also does not allow the court to determine whether the recommendations proposed by So Quiet are the only way in which the noise and vibrations can be adequately remediated.

[78] The burden of proof is on Wong. Without expert evidence, Wong has failed to discharge her burden of proof supporting the requested finding that the JAD Remediation Plan, when fully implemented, will still be inadequate such that her right to quiet enjoyment and/or the Corporation's duty to repair common elements has been breached. That said, given the Corporation's conduct and authorization of the JAD Remediation Plan, it is within Wong's reasonable expectations that JAD will be permitted to proceed with its remedial work as reflected in the 2021 JAD Proposal.

[79] As stated in *Zaman*, at para 28: "[e]xpectations of privacy and quiet may also be diminished somewhat due to the nature of apartment living in which some noise from neighbours must be expected, and tolerated". I agree with the Corporation's submission that the present situation is analogous and it ought to have been within the reasonable expectations of Wong to experience some enhanced noise and vibrations during waking hours due to having purchased a unit whose demising wall is shared with the garbage room. Furthermore, the fact that Wong has apparently not attempted to sell her unit over these past twelve years is also suggestive of the fact that she expects to have to tolerate some level of noise and vibration emanating from the garbage room and system, particularly given the proximity of the Unit to the garbage room.

[80] On the other hand, the evidentiary record does support a finding that Wong's interests have been unfairly disregarded by virtue of the inexcusable length of time the Corporation has taken to address Wong's real and demonstrated concerns about the functioning of the chute and compactor, and the interference with her peaceful enjoyment of her Unit. It was within Wong's reasonable expectations that the Corporation would take her concerns seriously and attend to remediating the noise and vibration problem more quickly, particularly when it is considered that as of 2017 the Corporation had already been apprised of the problems for seven years and taken a few steps towards remediation. There are unacceptable gaps in time between the Corporation's responses, and it is apparent on the record that the Corporation or its agents are responsible.

[81] Furthermore, I find that the Corporation advice to Wong's lawyer that no further remediation work by JAD would be done unless and until Wong rescinded this application was inappropriate. This response suggests that the Corporation has engaged in reprisal against Wong in light of her decision to start this proceeding and is an unacceptable response.

[82] Accordingly, Wong has proven that the Corporation is in violation of s. 135 of the Act with respect to the lack of timeliness of its responses and its decision to stop work as a result of this application as having unfairly disregarded her interests as a unit owner.

[83] The appropriate remedy in this case is an award of damages under s. 135 of the Act (*Wu v. Peel Condominium Corporation No. 245*, 2015 ONSC 2801, at para. 172) for the period of time from 2017 to 2021. In *Wu*, the court recognized that it had to do the best it could on the basis of a limited written record concerning assessing the appropriate quantum of damages under s. 135 of the Act. In that case the court found that Wu had been left in a "difficult situation" for almost 5 years as a result of having to put up with elevated noise created by the condominium corporation's elevator modernization. It assessed damages at $30,000. Similar to the case before me, the court found that the condominium corporation had dragged its feet on the elevator modernization program to the detriment of Wu.

[84] In this case, Wong has had to endure unacceptable noise and vibration levels while TSCC No. 1918 reacted in a piecemeal fashion and then, impermissibly stopped the work it had authorized to remediate the noise when Wong exercised her legal right to start this application. I am assessing damages at $30,000 to reflect the interference with the use and enjoyment of her unit as a result of the ongoing excessive noise and vibrations caused by the use of the garbage system.

[85] In addition, an order under s. 135 of the Act requiring the Corporation to cause JAD to proceed with the remedial work specified in the JAD Proposal will be issued. In this regard, Wong is directed to cooperate with reasonable requests by JAD to access her Unit in order to proceed with this work.

**COSTS**

[86] I have the parties' respective cost outlines. If the parties cannot agree on costs, Wong will have 10 business days to provide written submissions no longer than two pages in length, and the Corporation will have 10 business days to provide a reply, also not to exceed two pages in length. The submissions will be provided to my judicial assistant.

Justice S. Vella

**Date: June 07, 2022**

**CITATION:** *Wong v. TSCC NO. 1918*, 2022 ONSC 3409
**COURT FILE NO.:** CV-21-00658289
**DATE:** 20220607



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Fung-Ling Wong

Applicant

**– and –**

Toronto Standard Condominium Corporation No. 1918

Respondent

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**REASONS FOR JUDGMENT**

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VELLA J.

**Released: June 7, 2022**