

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 20, 2023

CASE: 2022-00433N

Citation: Brady v. Peel Condominium Corporation No. 947, 2023 ONCAT 8

Order under section 1.44 of the *Condominium Act, 1998*

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Nadine Brady
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 947
Represented by Alon Meyer, Agent

Hearing: Written Online Hearing – November 9, 2022 to January 9, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Nadine Brady (the “Applicant”) is a unit owner in Peel Condominium Corporation No. 947 (“PCC 947”). Ms. Brady alleges that there is an unreasonable banging noise from the main ABS pipe running vertically through each floor of the condominium building. She states that she hears the noise each time she (or the unit owner above her unit) runs the faucet and that the noise is particularly pronounced in the colder months. The noise, she asserts, is interfering with her peaceful enjoyment of her property.
- [2] PCC 947, through its condominium manager Alon Meyer, states that PCC 947 is aware of the noise resulting from the pipe, but their position is that the issue was investigated, and reasonable due diligence was done. Further, they state that the plumbing meets the *Ontario Building Code* (“Code”) and that there is no repair that can be done that would eliminate the noise other than changing the entire drain system, which would need to be carried out throughout the building.
- [3] For the reasons set out below, after careful consideration of the evidence and submissions as well as the Tribunal’s jurisdiction in the context of this case, I dismiss the application.

B. BACKGROUND

[4] At the outset of this hearing, Ms. Brady stated that she was relying upon s. 89(1) of the *Condominium Act, 1998* (the “Act”) in making her application. Section 89(1) states that the corporation shall repair the common elements of the corporation. She stated that she was not relying upon any provisions in the governing documents. In response to this, I advised that the Tribunal does not have jurisdiction to enforce repair obligations under s. 89(1). The Tribunal’s jurisdiction to order a remedy with respect to noise arises under s. 117(2) of the Act which states:

(2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation;..

[5] The governing documents are relevant to the extent that they address activities that may result in the creation or continuation of unreasonable noise that is a nuisance, annoyance or disruption., and may, therefore engage the Tribunal’s jurisdiction under s. 1(1)(d)(iii.2) of Ontario Regulation 179/17 (the “O.Reg”) which states that the Tribunal may deal with a dispute with respect to:

(iii.2) Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements...

[6] Ms. Brady subsequently referred me to PCC 947’s By-law No. 1 where, in article 9.1(b) it reiterates that the corporation has a duty to operate and maintain the common elements of the corporation in a fit and proper condition. PCC 947’s obligation to maintain and repair the common elements is acknowledged, but whether it has met that obligation is not an issue for me to determine.

[7] Ms. Brady also referred me to several provisions in the declaration. Section 12(a) states “...no condition shall be permitted to exist (and no activity shall be carried on) in any unit, or upon the common elements that will unreasonably interfere with the use and enjoyment (by other unit owners) of the common elements and/or other units...” Further, Section 16(e) states: “No noise constituting an annoyance and/or nuisance or disrupting the normal use of a residential unit shall be permitted to be transmitted from one residential unit to another residential unit. If the board determines that any noise is being transmitted to another unit and that such noise is an annoyance and/or a nuisance and/or disruptive, then the owner of such unit shall, at his or her expense, take such reasonable steps...to rectify or abate such noise...”

[8] The issue in both Stages 2 and 3 was articulated as: has PCC 947 sufficiently addressed the Applicant’s noise concerns? In addition, the Applicant sought recovery of her costs.

C. EVIDENCE AND ANALYSIS

- [9] Based on the evidence and submissions before me, it is not disputed that there is a noise resulting from running water through the piping between the units. There is no evidence that it is the result of any activity by another unit owner, for example, from the unit above the Applicant's, other than the normal activity of turning on a faucet. Ms. Brady makes no such allegation. Mr. Meyer stated that the noise heard is not unique to Ms. Brady's unit. This is not then a question of whether PCC 947 is enforcing its declaration or the rules against another unit owner who may be creating an unreasonable noise in their unit which is being transmitted to Ms. Brady's and which that other owner can rectify.
- [10] As indicated above, there is no dispute that Ms. Brady is hearing a noise through the ABS piping when water flows through the pipes, which has been described as a banging or a popping noise. It is likely that she finds it to be, at a minimum, annoying and disruptive to life in her home. It has been an ongoing concern since she moved in in March 2021. Ms. Brady acknowledges that PCC 947 has made some attempts to resolve the issue but states that these efforts have not been sufficient and that the noise persists.
- [11] I will briefly describe these efforts as this is relevant to show that what is at issue here may be a possible repair and maintenance issue in relation to the building's plumbing system, but not an issue of an activity created or permitted to be carried on by an owner/tenant in another unit which is addressed by the provisions of the declaration or by s. 117(2) of the Act.
- [12] After Ms. Brady first complained about the noise in the pipes, PCC 947 investigated. It requested that Inter-Global Mechanical Services Inc. ("Inter-Global") provide it with a quotation for work to remedy the problem. In that quotation Inter-Global described its scope of work as including cutting access points in the drywall cabinetry to access the main stack in Ms. Brady's unit and the unit above, cutting subflooring to allow space for the expansion and contraction of the drainage piping, insulating the drainage pipe to provide adequate soundproofing and to test to ensure that the sound is no longer active. The price for that work was \$1895 plus HST.
- [13] The board did not approve this expense though, as stated by Mr. Meyer, it was a reasonable price for the work. The board's assessment was that other units would then require this work leading to increased costs. A tip of the iceberg type of reasoning. Ms. Brady also explored solutions to the problem; specifically, sound proof insulation where the pipe is located, at an approximate cost of \$1200, though she was of the view that this would lessen the noise, but not eliminate it.
- [14] PCC 947 attempted a repair in March 2022, retaining Progressive Plumbing Solutions Inc. ("Progressive") to cut a pipe and reconnect with femco couplings "in the hopes that the rubber femco will act as a shock absorber and take some of the movement away that results in a sound that disturbs the resident of the unit". Progressive gave no guarantee that this would work; however Progressive , thought it a cost effective option to try. Ms. Brady's evidence is that it did not work

and the noise continues.

- [15] Whether nothing is required to be done because, according to PCC 947, the condominium was built to all Code requirements, or whether, as submitted by Ms. Brady, “it is evident that an error was made during construction”, is a dispute beyond the jurisdiction of this Tribunal. What the evidence does highlight is that the noise complained of may result from a construction, maintenance, or repair problem, but this is not an issue which is captured by the wording of s. 117(2) of the Act, though it may relate to the corporation’s obligations under s. 89 of the Act.
- [16] A further question to consider is whether the issue is captured by s. 1(1)(d)(iii.2) of the O. Reg given s. 12(a) of the declaration which states that no condition shall be permitted to exist (and no activity carried on) in any unit which will unreasonably interfere with use or enjoyment (by other unit owners) of the common elements and/or other units. Its wording referencing a condition existing in a unit which interferes with the use or enjoyment of another unit also suggests a condition created within one unit affecting another. The evidence and submissions by both parties point to a possible structural issue, not an issue originating in one unit impacting others, such as Ms. Brady. PCC 947 has attempted to address the issue by focussing on the immediate area of Ms. Brady’s unit, but the reasonable inference is that the lack of success in eliminating the noise points to a more extensive and expensive change to the building’s plumbing system. There may be other provisions in the Act, which Ms. Brady, or other unit owners can pursue to effect these changes, but I find it is not through recourse to the Tribunal as this case is framed.
- [17] Ms. Brady referred me to the case of *Wong v. Toronto Standard Condominium Corporation No. 1918*¹ (“Wong”), submitting that there were clear similarities with her case “in that the noise is coming from a common element and the Corporation is taking a tight-fisted approach to a solution”. While there are several differences between the two cases, a significant one is that Wong was a case before the Superior Court of Justice which has a much broader jurisdiction than the Tribunal and can provide a range of remedies under the Act which are not available to the Tribunal. In Wong, the court considered the repair obligations under s. 89 and s. 90 of the Act as well as the maintenance and repair obligations under the corporation’s declaration and by-laws. Ms. Wong was seeking relief under s. 135 of the Act (the oppression remedy) and the court granted that relief, both in the form of damages and directing that remedial work be carried out. The Tribunal cannot provide a s. 135 remedy.
- [18] Finally, Ms. Brady requested her costs, being \$200 in Tribunal fees. The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act. Section 1.44(2) states that an order for costs “shall be determined ...in accordance with the rules of the Tribunal.” Rule 48.1 of the Tribunal’s Rules of Practice provides that

¹ 2022 ONSC 3409 (CanLII)

where a party is successful, the Tribunal fees may be recovered from unsuccessful party. In this case, the Applicant was not successful and is not entitled to recovery of the fees paid to the Tribunal.

D. CONCLUSION

[19] Though I am dismissing this case because the issue complained of does not fall within the parameters of s. 117(2) of the Act, I am sympathetic to Ms. Brady's circumstances. There is a noise emanating from the piping which is persistent and ongoing. This is occurring regardless of whether the plumbing installation is Code compliant. Ms. Brady has expressed in submissions a willingness to cooperate with PCC 947 and to contribute to costs of remedial work such as soundproofing. If indeed there is a structural or repair and maintenance issue as per the Act, declaration and by-laws, the condominium community as a whole would likely benefit from an independent assessment of the solution.

E. ORDER

[20] The Tribunal dismisses this application without costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: January 20, 2023