

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 18, 2023

CASE: 2023-00071N

Citation: Mermut v. York Region Standard Condominium Corporation No. 1381 et al., 2023 ONCAT 93

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

Member: Dawn Wickett, Member

The Applicant,

Ozzy Mermut

Represented by Jackie Bartlett, Counsel

The Respondents,

York Region Standard Condominium Corporation No. 1381

Represented by Bharat Kapoor, Counsel

Shagun Dhir

Represented by Jaskaran Sandhu, Counsel

Kledi Hasani

Self-Represented

Hearing: Written Online Hearing – June 1, 2023 to June 30, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in the Respondent condominium corporation, York Standard Condominium Corporation No. 1381 ("YRSCC 1381"), residing there since July 2018. The Respondent, Shagun Dhir, ("Dhir") is the owner of the unit above the Applicant's. The Respondent, Kledi Hasani, ("Hasani") resides in Dhir's unit. The evidence before me indicates that Hasani's spouse and baby reside with them in Dhir's unit.

[2] The Applicant brings this application to the Tribunal alleging Hasani and their family interfere with the Applicant's quiet enjoyment by creating unreasonable noise which is contrary to the corporation's governing documents. The Applicant

alleges they have experienced unreasonable noise since August 2022, and that both Dhir and YRSCC 1381 have failed to meet their obligations pursuant to the corporation's declaration and rules by not taking the necessary steps to thoroughly investigate and mitigate the unreasonable noise.

- [3] Hasani joined the case but never participated in the hearing.
- [4] The Applicant seeks orders requiring YRSCC 1381 to enforce its governing documents and requiring Dhir and Hasani to comply with the same.
- [5] Dhir takes the position that they have gone "above and beyond" in dealing with the Applicant's noise complaints in relation to the occupants of their unit. Dhir rejects the Applicant's assertion that they have failed to comply with the YRSCC 1381's declarations and rules. Dhir submits that YRSCC 1381 "failed to take any meaningful action of its own" to determine if the nuisances as complained of by the Applicant violate the *Condominium Act, 1998* (the "Act") or the corporation's governing documents. Dhir submits that the complaints against them should be dismissed. Dhir has requested an order for costs to be reimbursed by the Applicant and/or YRSCC 1381.
- [6] YRSCC 138 takes the position that this application is not about noise related disputes, but rather about the Applicant alleging they have been "unfairly prejudiced and/or his complaints have been ignored", which falls under section 135 of the Act and is not within the Tribunal's jurisdiction. YRSCC 1381 further submits that only the Superior Court of Justice ("SCJ") has jurisdiction to determine whether a corporation "threatens to be oppressive or unfairly prejudicial or unfairly disregards the interests of an applicant". YRSCC 1381 submits that in the event the Tribunal finds it does have jurisdiction to hear this application, it takes the position that the Applicant is overly sensitive to noise and is not entitled to "absolute quiet" as some noise transmission between units is to be expected. As such, YRSCC 1381 believes the application should be dismissed. YRSCC 1381 seeks an order for costs payable by the Applicant.
- [7] For the reasons that follow, I find the Applicant has established that they experience unreasonable noise which is transmitted into their unit from Dhir's unit. The noise stems from activities carried out by Hasani and the other occupants of Dhir's unit. Further, I find the unreasonable noise has been permitted to continue because Dhir and YRSCC 1381 have failed to enforce the provisions of the corporations governing documents which prohibits owners, their families, guests, tenants, invitees, licensees, and visitors from the creation of unreasonable noise which constitutes a nuisance, annoyance, or disruption. I also find it appropriate to make an order for costs, compensation, and the application filing fee, payable to

the Applicant by Dhir, YRSCC 1381 and Hasani.

B. ISSUE OF JURISDICTION AND RULINGS MADE DURING THE HEARING

Does the Tribunal have jurisdiction to hear this application?

- [8] YRSCC 1381's Counsel submits that the Tribunal does not have jurisdiction to hear this application because it is not about nuisance, annoyance, or disruption, but rather about the Applicant alleging they have been "unfairly prejudiced and/or his [*sic*] complaints have been ignored", which falls under the provisions of section 135 of the Act. Counsel submits the Tribunal does not have jurisdiction over this section of the Act and that only the SCJ has the jurisdiction "to make an order to rectify the matter." As such, Counsel requested that this application be dismissed.
- [9] The Applicant's Counsel submits that the Tribunal has jurisdiction to hear this application. Counsel submits that the Tribunal jurisdiction is set out in section 1(1)(d) (iii.1) and (iii.2) of the Ontario Regulation 179/17 which states the Tribunal has jurisdiction over noise disputes, specifically those under section 117 (2) of the Act. Counsel rejects the assertion that the Applicant alleges oppression as part of this application.
- [10] Dhir did not provide any submissions on the issue of the Tribunal's jurisdiction to hear this application.
- [11] I have considered the submissions of the YRSCC 1381 and the Applicant. In doing so, I find the Tribunal does have jurisdiction to hear this application because it is based on allegations of unreasonable annoyance, nuisance, and disruption, pursuant to section 117(2) of the Act and provisions of YRSCC 1381's declaration, by-laws, and rules. The Tribunal's jurisdiction arises from section 1(1) (c.1) and (d) (iii.1) of the Ontario Regulation 179/17 which states:
1. (1) The prescribed disputes for the purposes of subsections 1.36 (1) and of the Act are,
 - (c.1) subject to subsection (3), a dispute with respect to subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General) and
 - (d) subject to subsection (3), a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:
 - (iii.1) Provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General).
- [12] Based on the material before me, I find there is no reasonable basis for the position advanced by YRSCC 1381's Counsel and that the Tribunal does have

jurisdiction to hear this application.

Should YRSCC 1381 be allowed to file late documents/evidence?

- [13] On June 23, 2023, more than three weeks after the start of the hearing, and after all the parties submitted their documentary evidence and witness statements, YRSCC 1381's Counsel requested to add additional documents to challenge the Applicant's evidence and to establish that the Applicant is sensitive to noise. Counsel advised that the additional documents would consist of noise complaints made by the Applicant, but not specific to those set out in the application. Counsel advised that he only learned about the evidence when YRSCC 1381 responded to the questions I posed.
- [14] The Applicant's Counsel objected to YRSCC 1381's request to file additional documents not related to the allegation set out in the application as they are not relevant. Further, YRSCC 1381 missed the deadline set out in the Tribunal's ODR system, which was prior to witness statements having been provided.
- [15] Dhir did not provide any submissions on this issue.
- [16] Upon reviewing YRSCC 1381's and the Applicant's submissions, I denied the request to file late documents. In making this finding, I considered the fact that documents were to be uploaded no later than June 14, 2023, which means this request came nearly 10 days after the set deadline. Further, the request came after the other parties to this proceeding already provided their witness statements. Allowing the addition of the late evidence would unfairly prejudice the other parties as they were not given the opportunity to review and respond. In the alternative, if the other parties were given an opportunity to amend their witness statements to address the late evidence, the hearing would have been delayed, and the parties would likely incur additional costs, also potentially prejudicing the parties.
- [17] The suggestion by YRSCC 1381's Counsel that they were not aware of this evidence until YRSCC 1381 answered the questions I posed is not credible, given the allegation of the Applicant being sensitive to noise, and having a "long-standing history" of making unsubstantiated noise complaints was raised in their opening submissions. Rather, it appears that YRSCC 1381's Counsel was merely late in deciding that the evidence on that point should have been submitted. Had YRSCC 1381's Counsel exercised due diligence when asserting these allegations, the supporting evidence could have been provided by the deadline of June 14, 2023.

Should the hearing be paused so that YRSCC 1381 can complete acoustical

testing?

- [18] On June 22, 2023, while responding to my questions, YRSCC 1381's Counsel stated that the corporation would be conducting acoustical testing and that proposed dates for the testing would be provided by end of day on June 26, 2023. YRSCC 1381's Counsel indicated that the testing would assist in better understanding the issues in dispute.
- [19] I requested submissions on the issue of acoustical testing from YRSCC 1381, the Applicant and Dhir. All three parties provided submissions.
- [20] YRSCC 1381's Counsel submitted that the testing would provide "valuable evidence in evaluating the legitimacy of the complaints" and if the flooring meets acceptable acoustical standards. It further submitted that testing would be done by professionals and the assessment would be unbiased and objective.
- [21] The Applicant's Counsel and Dhir's Counsel agreed that the acoustical testing could be beneficial and that if YRSCC 1381 was willing to perform the testing with certain agreed upon terms (who would pay the cost of the testing, timing, etc.), then the hearing should be paused to accommodate.
- [22] Given the submissions of the parties, I asked YRSCC 1381's Counsel to provide the proposed testing dates by his own deadline of end of day on June 26, 2023. If the parties agreed with the dates and that no significant delay would occur in the hearing, then we would pause the hearing to allow for the testing.
- [23] YRSCC 1381's Counsel never provided potential dates for testing, and never responded to my messages about the issue. The deadline passed without any further information on the issue of testing. As such, the issue of acoustical testing was moot, and the hearing proceeded as scheduled.

Should late filing of YRSCC 1381's answers to cross-examination questions be allowed?

- [24] YRSCC 1381's Counsel was to post their cross-examination questions for the other parties no later than 5:00pm on June 23, 2023. It was to file their responses to cross-examination questions no later than 4:00pm on June 26, 2023. YRSCC 1381 missed both deadlines.
- [25] In response to the missed deadlines, I sent a total of five messages asking about the missed deadlines. YRSCC 1381's Counsel never responded.
- [26] On June 28, 2023, at 4:24pm, after the Applicant posted their reply evidence and

closing submissions. YRSCC 1381's Counsel posted the answers without asking permission or for an extension of time. I asked Counsel why the answers were not posted by the deadline. Counsel submitted that IT issues in their office deleted some due dates in their Outlook calendar and as such, they missed some deadlines.

- [27] I asked the parties to provide me with submissions on YRSCC 1381's late filing of the answers.
- [28] The Applicant's Counsel submitted that the answers to cross examination should not be accepted as "it will significantly prejudice" if accepted this late in the hearing process, particularly since the Applicant already filed their reply evidence and closing submissions without the opportunity to review the answers. The Applicant's Counsel also submitted that YRSCC 1381's Counsel demonstrated no regard for the legal process given their pattern of behaviour in missing deadlines and not responding to messages.
- [29] Dhir did not provide submissions on the issue.
- [30] I found it appropriate to deny YRSCC 1381's late filing of the answers to cross-examination questions. In making this finding, I considered the fact that YRSCC 1381's Counsel signed into the CAT ODR-system on several occasions and saw the hearing schedule as well as my messages about missed deadlines. This is confirmed given that he uploaded evidence in the CAT-ODR system after missed deadlines and posted information in the discussions threads without acknowledging my posted messages. This alone negates their excuse of IT issues being the reason for missing deadlines. Also, their IT issues do not explain why at the time of filing the answers, YRSCC 1382's Counsel did not request an extension or provide an explanation. Although YRSCC 1381's answers are in the CAT ODR-system, I did not consider them in making this decision.

Should Dhir be given an additional extension of time to file submissions on the details of their costs?

- [31] Dhir's closing submissions were to be filed on June 29, 2023. In my review of the closing submissions, I note Dhir's Counsel did not include any details with respect to their claim for costs.
- [32] Given there was still a day before the hearing was scheduled to end, I gave Dhir's Counsel the opportunity to provide additional submissions on the details of the costs they are seeking. The deadline was 4:00pm on June 30, 2023. This deadline passed and no additional submissions were submitted.

- [33] On July 1, 2023, Dhir's Counsel sent a request in the CAT ODR-system for an extension of time to file their details on costs. Dhir's Counsel stated that their office is now closed for the holiday long weekend and they "need to pull the information from accounting."
- [34] In response to the request, the Applicant's Counsel submitted that the request should be denied as Dhir's Counsel was aware of the deadline and failed to ask for an extension.
- [35] YRSCC 1381 did not make submissions on this issue.
- [36] Having reviewed the submissions, I found it appropriate to deny Dhir's request for an extension of time to file details about their costs. In denying this request, I considered the fact that Dhir is represented by Counsel who made the closing submissions on their behalf. While the closing submissions made a request for a costs order, it did not provide details about the costs being claimed. Counsel ought to have known that when making such a claim, details need to be provided for the decision maker's consideration. Given Dhir's Counsel ought to have provided the details in closing submissions and did not, I am satisfied that the one extension of time I already provided was more than fair and adequate, and any further extension is not appropriate. Furthermore, if Dhir's Counsel thought they may need additional time to provide the details on costs, the request should have been made prior to the deadline and not after. I say this because by the time Dhir's Counsel made the request on July 1, 2023, the other parties already provided their closing submissions which do not address details of Dhir's costs. Had the request been made prior to the deadline, I could have given all the parties extensions of time to ensure all parties had an opportunity to respond.

C. ISSUES & ANALYSIS

Issue 1: Are the occupants causing an unreasonable nuisance, annoyance or disruption that violates the Act and/or YRSCC 1381's governing documents?

- [37] The Applicant provided a significant amount of documentary evidence and audio recordings in support of their position that the unit above transmits unreasonable noise which is contrary to the Act and the corporation's governing documents.
- [38] The Applicant testified that they have been subjected to the unreasonable noise since August 2022. The noise occurs at all hours of the day and night. Despite having made numerous complaints to Dhir and YRSCC 1381, the issue has not resolved. The noises experienced by the Applicant are banging, knocking, dropping, bouncing, rolling, hitting, striking, "thunking", throwing of heavy objects

onto the hard floors, dragging of furniture and motorized sounds.

- [39] The Applicant testified that they reported the noise concerns to YRSCC 1381. The reports were made by the Applicant in person and by telephone to the concierge desk, and by email to the corporation's management company. The noise interrupted the Applicant's sleep and ability to work from home.
- [40] Initially, YRSCC 1381 was responsive to the Applicant's concerns and advised that it spoke to Dhir about the issue. YRSCC 1381 also scheduled a virtual meeting with both the Applicant and Dhir to discuss the issue. The meeting was held on September 29, 2022. After the meeting, the Applicant felt hopeful that the noise issue would resolve. Part of the resolution included Dhir keeping the Applicant and YRSCC 1381 apprised of the steps taken to address the noise issue. Dhir and YRSCC 1381 both confirmed having attended this meeting. Dhir testified that they contacted the occupants and spoke to them about the concerns. They also scheduled an inspection of their unit for October 2, 2022.
- [41] In an attempt to assist Dhir and the occupants with mitigating the noise issue, the Applicant purchased vibration absorbing and child play mats. The Applicant advised Dhir that they could give the mats to the occupants to place under their child while playing on the hard floor surfaces. Neither Dhir nor the occupants accepted the mats.
- [42] On October 2, 2022, Dhir contacted the Applicant and advised that they were at their unit with the occupants to address the noise issue. Dhir told the Applicant they were conducting testing to try and better understand the issue. Dhir proposed that their spouse would stay in their unit with the occupants to try and recreate the noises and Dhir would go into the Applicant's unit to listen. Although the Applicant had no prior notice of this proposed plan, they agreed to participate and allow Dhir entry to their unit. During the testing, none of the noises the Applicant complained about were recreated or heard. While some noise was heard, Dhir told the Applicant it was not unreasonable. The Applicant believes the unreasonable noise they had been experiencing was not heard given the occupants were given notice of the testing and refrained from activities responsible for the concerning noise. Dhir testified that in addition to not having heard the noises the Applicant complained about during the testing, they observed that the occupants had a thick rug and playmats on the floor in the areas where the baby played. In addition to the rug and playmats, Dhir requested that the occupants place silicone sleeves on the baby bottles and felt under the feet of the furniture. Dhir testified that the occupants agreed and complied with their requests.
- [43] Within an hour of Dhir leaving the condominium complex, the Applicant emailed

them to thank them for their assistance and told them that the unreasonable noise started again. The Applicant did not receive a response until October 17, 2022, when Dhir told the Applicant they were doing everything they could to address the issue. However, Dhir did not provide the details of how they were addressing the noise issue.

- [44] On October 13, 2022, the Applicant emailed YRSCC 1381 advising that they would be sending a formal demand letter to the corporation and its board. The Applicant also requested to attend the next board meeting to explain the noise issue. YRSCC 1381 responded to the Applicant and advised that it had the occupants place a mat and rug on the floors in their unit. YRSCC 1381's manager also advised that the Applicant's letter would be added to the management report to be addressed. YRSCC 1381's manager also indicated that it may need to recommend to the Board to hire an engineer to complete sound testing. The Applicant testified that sound testing never occurred and her complaints were repeatedly dismissed by the corporation's management stating such noises are part of a "condo lifestyle." The Applicant failed to understand how this determination could be made given no member of the corporation's management ever witnessed or inspected the noise complaints in "real-time." In fact, no member of management for YRSCC 1381 even attended the Applicant's unit to try to garner a better understanding of the issue.
- [45] Dhir testified that despite the occupants' attempts to mitigate the noise, the Applicant continued to make complaints. As such, on October 18, 2022, Dhir, along with a building security representative, a management representative, and the building superintendent met with the occupants. Dhir indicated that an inspection was completed, and the group determined that the occupants were not engaging in activities that would produce significant noise that would transmit into the Applicant's unit.
- [46] As time passed, the Applicant continued to experience noise from the unit above. The Applicant made numerous complaints and inquiries with YRSCC 1381 and Dhir about what was being done to address the issue. YRSCC 1381 responded and advised that it requested an in-person meeting with Dhir, but Dhir did not attend. The Applicant further indicated that Dhir stopped replying to their emails. Dhir testified that they did not attend another meeting as requested by YRSCC 1381 because by this time, all parties were retaining legal representation and believed that it would be best that further communication be done through the legal representatives.
- [47] In November 2022, the Applicant continued to make noise complaints to YRSCC

1381. The Applicant also recorded the noise on their cell phone. The Applicant brought the recording to an agent of YRSCC 1381 who listened to the recording and told the Applicant they believed them and thanked the Applicant for the evidence. On November 28, 2022, YRSCC 1381 advised the Applicant that it was obtaining quotes for acoustical testing. Despite having made this statement, the Applicant asserts that YRSCC 1381 took no meaningful action to enforce the corporation's governing documents regarding the creation of unreasonable noise.

- [48] On November 23, 2022, YRSCC 1381 sent Dhir a formal letter stating that the noise issue was not resolved and that it had "enough noise records and evidence to prove that the issue hasn't been addressed from your end". The letter further states that YRSCC 1381 had "confirmation and records, regarding the noise coming from your unit". The letter concluded by threatening to send the file to YRSCC 1381's lawyer to seek compliance. Additionally, YRSCC 1381 verified at least three noise complaints made by the Applicant with respect to the occupants living in Dhir's unit. Dhir testified that in response to YRSCC 1381's letter, their Counsel requested to be provided with copies of all the noise complaints/records, however they were never received. On June 6, 2023, Dhir again requested a copy of the noise complaints/records and YRSCC 1381 advised that a virus had wiped out all the records pertaining to this matter. Despite its assertion, in support of their position, YRSCC 1381 did submit in the CAT ODR-system, nineteen incident reports depicting the Applicant's concerns about alleged unreasonable noise being created by the occupants of Dhir's unit.
- [49] It was clear during the hearing that YRSCC 1381 takes the position that the Applicant is sensitive to noise and that the occupants do not produce unreasonable noise. Given this position, I asked YRSCC 1381 why they sent the November 23, 2022, letter to Dhir. YRSCC 1381 said they sent it because of the ongoing complaints from the Applicant which, in their opinion, were unsubstantiated.
- [50] On December 7, 2022, YRSCC 1381 responded to one of the Applicant's inquiries as to the status of their noise complaints. In the response, YRSCC 1381 told the Applicant that it "must step out of this issue and both owners should go through their respective lawyers to resolve the matter". I asked YRSCC 1381 for their rationale for removing themselves from the dispute. YRSCC 1381 testified that they only verified three noise complaints which in their opinion were not severe, and they also believed the Applicant to be sensitive to noise. The Applicant denies being sensitive to noise and claims they never had an issue with noise from the unit above prior to August 2022.

- [51] YRSCC 1381 testified that they have “diligently addressed and took seriously the complaints” and that they were thoroughly investigated by the security team which is “standard industry practices”.
- [52] When YRSCC 1381 told the Applicant it would no longer get involved in the noise issue, the Applicant retained counsel to address the issue. The Applicant’s Counsel sent letters to YRSCC 1381 and Dhir to try and address the noise issue before filing an application with this Tribunal. YRSCC 1381 advised that they could act as a mediator between the Applicant and Dhir. Dhir’s Counsel advised that Dhir already exceeded all reasonable expectations and that that the Applicant’s complaints were “exaggerated or non-existent.” Given no resolution was reached between the parties, on February 7, 2023, the Applicant filed their application with the Tribunal. The Applicant notes that the noise has not stopped and remains ongoing during the hearing process.
- [53] The three confirmed noise complaints were on June 12, 2023, at 6:33am, 7:37am and 9:44pm. In two incidents, the security personnel could hear the noise emanating from the unit and advised the occupants to stop, and in the third incident, a guest of the Applicant confirmed to the security personnel that the occupants were creating noise that could be heard in the Applicant’s unit.
- [54] In further support to the Applicant’s position that the occupants create unreasonable noise, Olga Amdriyevsja (“Olga”) provided a witness statement. In the statement, Olga stated that she had visited the Applicant a few times and heard noises emanating from the unit above. The noises were “sharp clear sounds that made me think a plastic object like a ball was thrown at the hardwood or tile floor.” The Respondents did not challenge this evidence during cross examination.
- [55] Having reviewed all the evidence, I find the Respondent, Hasani, and their occupants, create unreasonable noise constituting a nuisance contrary to the corporation’s governing documents, specifically section 6 of the Rules which states:
- Owners, their families, guests, tenants, invitees, licensees, visitors and servants shall not create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners, their families, tenants, invitees, licensees, guests, visitors, servants and person having business with them.
- [56] In making this finding, I considered the fact that the occupant, Hasani, did not participate in the hearing and did not provide any documentary evidence. As such, the Applicant’s evidence that the activities conducted by Hasani in Dhir’s unit are

the cause of the noise nuisance, is the most compelling. I say this because Dhir and YRSCC 1381 did not reasonably challenge the Applicant's evidence, but rather provided their own opinions that the noise was not unreasonable or that the Applicant was simply sensitive to noise. The only person who heard the noise and can speak to the frequency and duration is the Applicant. No personnel from YRSCC 1381 or Dhir attended the Applicant's unit in the absence of Hasani's knowledge to listen for the noise complained about by the Applicant, despite the Applicant having made numerous noise complaints over a span of nearly 10 months. The complaints were sometimes made multiple times a day as confirmed by the three verified noise complaints made on June 12, 2023. Further corroboration of the Applicant's position is Olga's witness statement indicating they heard the noises on a few occasions while they visited with the Applicant. This witness statement was not challenged by YRSCC 1381 or Dhir.

[57] I will issue an order under section 1.44 (1) of the Act directing Hasani and their family to comply with YRSCC 1381's rules 6 and 8, and section 16 (a) of its declaration.

Issue 2: Has Dhir taken reasonable steps to address the Applicant's noise complaints in accordance with their obligations under the Act and the declaration?

[58] As set out above, this has been a lengthy and contentious dispute between the parties. There has been numerous email correspondence, a meeting, complaints, letters, and subjective testing completed by Dhir. However, in October 2022, Dhir stopped responding to the Applicant's communication and YRSCC 1381's request for a meeting. In December 2022, YRSCC 1381 made the decision to no longer involve themselves in the dispute. Meanwhile, the Applicant continued to experience unreasonable noise from the occupants of Dhir's unit.

[59] Section 119 (2) of the Act requires an owner to take all reasonable steps to ensure that an occupant of their unit complies with the Act, the declaration, the by-laws, and the rules of the corporation. In addition, YRSCC 1381's declaration at section 16 (b) states that "the owner of each unit shall comply, and shall require all residence, tenants, invites and licensees of his unit, to comply with the Act, the declaration, the by-laws, the rules".

[60] In this matter, while Dhir initially took steps to address the noise complaints, in mid October 2022, they removed themselves from the dispute because, in their opinion, the occupants were not creating unreasonable noise. Dhir stopped responding to the Applicant and would not agree to meet with YRSCC 1381 to address the ongoing noise complaints that continued well beyond the last visit to

their unit on October 18, 2022. This was despite having received emails from the Applicant and a letter from YRSCC 1381 which confirmed the noise issue was not resolved.

- [61] I have no evidence before me that since October 18, 2022, Dhir took any measure to ensure the occupants of their unit complied with the provisions of the corporation's governing documents, namely section 6 and 8 of the rules, and section 16 (a) of the declaration. Because of their inaction, the Applicant has experienced unreasonable noise transmitting from Dhir's unit, which has been ongoing up to the period of this hearing.
- [62] For the reasons set out above, I find Dhir has failed to discharge their obligations under section 119 (2) of the Act and section 16 (b) of the declaration by failing to ensure the occupants of their unit do not create noise that interferes with the enjoyment of another unit, namely that of the Applicant.
- [63] I will issue an order under section 1.44 (1) of the Act directing Dhir to comply with the Act, and section 16 (b) of YRSCC 1381's declaration.

Issue 3: Has YRSCC 1381 taken reasonable steps to address the Applicant's noise complaints in accordance with the Act and its own governing documents?

- [64] As a condominium corporation, YRSCC 1381 has the responsibility to ensure unit owners comply with the Act and the governing documents. It is not permitted to simply "step out" of issues because they take the position that complaints may be frivolous or that someone may be sensitive to noise. They have a duty to adequately investigate complaints and work towards a resolution, which in this case is to address the issue of noise transmitting into the Applicant's unit.
- [65] Section 119 (1) of the Act sets out the requirement that a corporation, its directors, officers and employees of the corporation must comply with the Act, the declaration, by-laws, and rules of a corporation. Section 17 (3) of the Act sets out the duty of a corporation to ensure owners and occupiers of units comply with the Act and its governing documents. Section 5.01 (i) of the corporation's by-law no.1 states YRSCC 1381's duties include "effecting compliance by the owners with the Act, declaration, the by-laws and rules".
- [66] I note that YRSCC 1381's position in this case has seriously lacked consistency. Its evidence is contradictory as to incidents and positions taken both prior to and during the hearing. In review of the evidence, YRSCC 1381 has told the Applicant it believes their complaints about the noise, then determined that the complaints were frivolous and accused the Applicant of being sensitive to noise. Then on

multiple occasions it said it would do acoustical testing and never followed through. It sent a letter to Dhir stating it had evidence and records that Dhir was not addressing the noise emanating from their unit, and then never followed through on threats of legal action because the noise complaints, in their opinion, were unsubstantiated. When the complaints did not stop, YRSCC 1381 told the parties it stepped out of the dispute and to deal with the issue by way of their legal representatives. Given the contradictory nature of YRSCC 1381's evidence, I find it unreliable and does not support their position that they have met their obligations under the Act or its governing documents.

[67] I find YRSCC 1381 breached its obligation under sections 119 (1) and 17 (3) of the Act, and 5.01 (i) of its by-law no.1. In making this finding, I considered the Applicant's and Dhir's consistent evidence that YRSCC 1381 "stepped out" of the dispute before resolution and before adequately investigating the noise complaints.

[68] I will issue an order under section 1.44 (1) of the Act directing YRSCC 1381 to comply with section 5.01 (i) of its by-law no.1, and its obligations under the Act.

Issue 4: Costs

[69] The Applicant seeks an order to recover the legal fees they incurred in addressing this matter. The Applicant's Counsel submitted that the cost, inclusive of HST, is \$20,330. This amount is reflective of legal services which commenced in January 2023 when the Applicant retained counsel for assistance in resolving this matter after Dhir and YRSCC 1381 stopped responding to the noise complaints.

[70] The Applicant's Counsel takes the position that YRSCC 1381 should be responsible for 66% of the cost given it "shirked" its duties when making it clear on December 7, 2022, that it was no longer going to be involved in the dispute. Further, the Applicant's Counsel submits that an order for costs against YRSCC 1381 is appropriate given its conduct during the hearing caused delays and additional legal expenses.

[71] With respect to the balance of the Applicant's costs, the Applicant's Counsel submits that the amount should be divided equally between Dhir and Hasani. The Applicant's Counsel submits that Dhir did not uphold their obligations under the Act and the corporation's governing documents. Dhir stopped responding to the Applicant and YRSCC 1381, and in turn obtained legal representation when advised the occupants of their unit were breaching the noise rules. The Applicant's Counsel submits that because of Dhir's actions, this application was filed out of necessity to resolve the issues.

- [72] Regarding Hasani, the Applicant's Counsel submits that they were aware of this application and of the numerous noise complaints made against them yet chose not to participate in the hearing. As such, they should be accountable for their share of the Applicant's legal fees.
- [73] The Applicant is also seeking an order for the Respondents to reimburse the fee (\$200) for filing this application. The Applicant's Counsel submits that had the Respondents collaborated with the Applicant to resolve this matter, an application to the Tribunal likely would not have been necessary.
- [74] Dhir's Counsel submits that Dhir has incurred significant financial losses and stress related anxiety because of this ongoing dispute. Further, it is Dhir's position that they have been more than reasonable in addressing, in their opinion, the frivolous noise complaints of the Applicant. As such they are seeking an order to recover their legal costs, to be paid jointly or separately by the Applicant and YRSCC 1381. While Dhir requested an order for costs, they did not provide any details as to the amount.
- [75] YRSCC 1381's Counsel also requested an order to recover their legal costs. YRSCC 1381's did not provide reasons for this request. They also did not provide any details on the amount.
- [76] The Tribunal's Rule 48.2, provides:
- The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.
- [77] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" (the "Practice Direction"), states that a determination of costs, including indemnification, shall consider,
- (i) whether a party's conduct was unreasonable, for an improper purpose, or caused a delay or expense;
 - (ii) the conduct of all parties and representatives requesting costs;
 - (iii) the potential impact an order for costs would have on the parties;
 - (iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[78] The Applicant requests reimbursement of her legal expenses starting from January 2023. Those expenses that pre-date the commencement of Tribunal proceedings cannot form part of a costs order under clause 1.44 (1) 4 of the Act, but they can be awarded as compensation for damages under clause 1.44 (1) 3. Regardless of whether the amount claimed can be ordered as costs or as compensation, the factors considered in my analysis in this case are the same. Therefore, I do not make a distinction between these two categories of monetary award.

[79] In making my finding about the Applicant's legal costs, there are many factors I have considered. I am going to first address the conduct of YRSCC 1381 during this proceeding. As the Applicant's Counsel has correctly identified, YRSCC 1381's Counsel missed deadlines and ignored many of my messages, and requests for submissions. In fact, this conduct led me to inquire about YRSCC 1381's intention of continuing to participate in the proceeding. While this conduct may not have resulted in significant delays in the proceedings, it did lead to the other parties incurring additional legal costs to respond to YRSCC 1381's late filing of evidence and procedural issues. I also considered the fact that YRSCC 1381 did not reasonably try to resolve this issue before the hearing. This fact is clear by the undisputed evidence that it "stepped out" of the dispute and told the Applicant and Dhir to deal with the matter amongst themselves and their legal representative. I find this conduct unnecessarily contributed to the amount of legal costs incurred by the Applicant and Dhir. For these reasons, I find it appropriate that YRSCC 1381 be ordered to pay a portion of the Applicant's legal costs.

[80] Now I turn my mind to consider other factors when making my determination about the Applicant's costs. During the hearing, I had no concerns about the conduct of Dhir, or their Counsel. However, their conduct prior to the hearing is concerning. While Dhir takes the position that they went "above and beyond" to address the Applicant's noise complaints, the evidentiary record clearly demonstrates that they only actively did so from September to October 18, 2022. After this time, Dhir also removed themselves from the dispute, including refusing to attend a meeting to try and work on a resolution. Essentially, Dhir participated in trying to resolve the noise complaints for 1 to 1.5 months out of 10 months of ongoing complaints. Given Dhir's lack of effort in trying to resolve this dispute prior to the hearing, I find it appropriate that they also be responsible to reimburse the Applicant a portion of their legal costs. Had Dhir attended meetings and responded to the Applicant's

and YRSCC 1381's communications, there may have been an opportunity for resolution before the hearing.

[81] Regarding the Applicant's submission that Hasani also be responsible to reimburse a portion of their legal costs, I agree. Hasani is the occupant of Dhir's unit and is responsible for creating the noise nuisance contrary to YRSCC 1381's governing documents. They did not participate in the hearing and did not provide any evidence to challenge this finding. They did not engage with the other parties in attempt to resolve this issue which fundamentally contradicts the principle of community living within a condominium complex. For these reasons, I find it appropriate to make an order for Hasani to reimburse the Applicant a portion of their legal costs. Further, the issues in dispute might have resolved prior to this hearing had they actively engaged in discussions with the other parties.

[82] Having considered the above factors, I find it appropriate that the Respondents reimburse the Applicant 60% of her legal costs, for a total of \$12,198. Further, in accordance with the Tribunal's Rule 48.1, I am ordering the Respondents to pay the Applicant their fee (\$200.00) for having filed this application. The total amount payable by the Respondents to the Applicant is \$12,398.

[83] In determining the amount each Respondent is responsible to pay the Applicant for their legal costs and filing fee, I considered their roles and responsibilities in addressing the issues in dispute. Ultimately, YRSCC 1381 had the primary responsibility to ensure Dhir and Hasani complied with the governing documents. As such, they I find it appropriate that they incur most of the costs order at a rate of 60% (\$7,438.80). The balance of the amount of costs and filing fee is to be paid equally by Dhir and Hasani. This means Dhir and Hasani will each pay the Applicant \$2,479.60.

[84] Given that neither YRSCC 1381 nor Dhir were successful in this matter, I find there is no basis for an award of costs.

D. ORDER

[85] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act, Kledi Hasani shall comply with YRSCC 1381's Rules 6 and 8, and section 16 (a) of its Declaration.
2. Under section 1.44 (1) 1 of the Act, Shagun Dhir shall comply with YRSCC 1381's Rule 6 and section 16 (b) of its Declaration as well as their statutory obligation to take all reasonable steps to obtain Kledi Hasani's compliance

with YRSCC 1381's governing documents to cease the activity of creating unreasonable noise constituting a nuisance.

3. Under section 1.44 (1) 1 of the Act, YRSCC 1381 shall comply with its section 5.01 (i) of its By-law No.1 to ensure Shagun Dhir's and Kledi Hasani's compliance with its Rules 6 and 8, and section 16 (a) and (b) of its Declaration.
4. Under section 1.44 (1) 3 and 4 of the Act, within 30 days of this Order, YRSCC 1381 shall pay costs of \$7,438.80 to Ozzy Mermut.
5. Under section 1.44 (1) 3 and 4 of the Act, within 30 days of this Order, Shagun Dhir shall pay costs of \$2,479.60 to Ozzy Mermut.
6. Under section 1.44 (1) 3 and 4 of the Act, within 30 days of this Order, Kledi Hasani shall pay costs of \$2,479.60 to Ozzy Mermut.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: July 18, 2023