

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 10, 2023

**CASE:** 2023-00174N

**Citation:** Park v. Toronto Standard Condominium Corporation No. 2775, 2023 ONCAT 171

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

**Member:** Brian Cook, Member

**The Applicant,**

Junyoung Park  
Self-represented

**The Respondent,**

Toronto Standard Condominium Corporation No. 2775  
Represented by Mankee Mah, Agent

**Hearing:** Written Online Hearing – May 11, 2023 to October 18, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] Junyoung Park is the owner and resident of a unit in Toronto Standard Condominium Corporation No. 2775 (TSCC 2775). Mr. Park's unit is directly above the condominium gym, and he alleges that noise from the gym interferes with his quiet enjoyment of his unit. TSCC 2775 argues that any noise coming from the gym is not unreasonable and that Mr. Park should have anticipated some noise when he bought a unit that is above the gym.
- [2] Both parties have expended considerable time and resources on this dispute and some mutual animosity has developed.
- [3] Mr. Park has engaged two different acoustical engineers and TSCC 2775 retained a third engineer. All three tested in the gym and in Mr. Park's unit. There are disputes between the parties about the meaning and accuracy of findings by the engineers and the testing conditions.
- [4] All three acoustical reports confirm that impulse noise and vibration is transmitted

to Mr. Park's unit when gym equipment, particularly barbells or free weights, are misused. The engineers all comment on the gym flooring, noting that a thicker flooring would help reduce impact noise and vibration from dropping weights. The engineers also identified door latches in the gym area as a potential source of noise and vibration although their findings differ with respect to how disruptive the noise from the latches may be.

- [5] Ontario Regulation 179/17 gives the tribunal jurisdiction over section 117(2) of the *Condominium Act, 1998* ("the Act") which provides as follows:

117(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; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

- [6] The TSCC 2775 declaration similarly prohibits unreasonable noise.

- [7] For the reasons that follow, I find that Mr. Park experiences unreasonable annoyance and disruption as a result of misuse of some of the gym equipment, and operation of the gym door.

## **B. ANALYSIS**

- [8] Mr. Park's evidence is that he experiences loud noises coming from the gym. He has complained of loud crashing, banging and clanging. In his final submissions, he maintained that the noise from the gym has resulted in an "unbearable living environment" because of excessive noise and vibrations that happen "many times throughout the day and night for periods of an hour or more". His evidence is that the noise has resulted in emotional distress requiring medical treatment.

- [9] Mr. Park has provided copies of over 50 text messages he sent to the condo security for the period from April 2022 (he moved into his unit in March 2022) to April 2023. From some of the messages, it is apparent that they were sent from the gym because Mr. Park provides a description of the person responsible for the noise. The majority appear to have been sent from his unit regarding noise he was hearing.

- [10] For most of the text messages from Mr. Park, there is no response from security

(or none has been provided). However, there is a response to some of the texts. Some of these indicate that there was no apparent problem or noise when security went to the gym, but on other occasions security reported to Mr. Park that they had spoken to people in the gym to ask them to be more careful and not misuse the equipment (for example, July 6, 18, and 25, 2022; August 4 and 13, 2022; February 28, 2023; March 8 and 16, 2023; April 4 and 14, 2023).

- [11] Some of the complaints from Mr. Park were about people being in the gym after 9:00 pm when the gym is supposed to be closed. These complaints were verified by security.
- [12] Mr. Park has repeatedly complained to the TSCC 2775 board about the noise. According to TSCC 2775, he sent 28 emails to the Board from April 2022 to March 2023. He has suggested that a board member come to his unit to hear for themselves what he is experiencing but this has not happened.

### **Evidence of TSCC 2775**

- [13] TSCC 2775 states that their information from security is that Mr. Park's complaints of excessive noise were not verified except for three occasions when a resident dropped a barbell by accident.
- [14] TSCC 2775 asserts that it has taken appropriate actions. On April 6, 2022, the condominium manager sent a notice to all residents:

It has been brought to our attention that some residents are dropping weights and exercise equipment on the floor which is causing disturbing noises to surrounding units in the building. We ask that you be mindful of the noise you are creating when using the gym facilities to not disturb other residents who live close to the gym.
- [15] On April 7, 2022, this notice was posted on the gym wall in the barbell area. The notice was sent out again in August 2022. A further notice was sent in October 2022.
- [16] In August 2022, the gym entrance door was fixed so that it would not open after 9 pm.
- [17] In October 2022, security cameras were installed in the gym.
- [18] In January 2023, a notice was posted prohibiting bouncing medicine balls.
- [19] As discussed below, the board has also expended resources in retaining a sound engineering firm and disputing the findings of the reports from the engineers

retained by Mr. Park.

### **The sound engineers**

- [20] The first sound engineer retained by Mr. Park measured only noise resulting from dropping bar bells. The second sound engineer retained by Mr. Park was Ivan Kovals, with the firm Reliable Connections ('Reliable'). TSCC 2775 retained WPS. Reliable and WPS measured the noise in Mr. Park's unit resulting from activities in the gym. Vibration was not measured. WPS had equipment in the gym and Mr. Park's unit so that it could simultaneously measure the noise levels in both areas. Mr. Kovals did not have this capability and used a stopwatch to correlate the noise levels with activities in the gym.
- [21] The engineers all agree that the noise transmitted to Mr. Park's unit is structure borne, and not air borne. This means that the sound is being transmitted through the building structure, which is predominantly concrete.

### **The decibel scale is logarithmic**

- [22] To understand the decibel readings in this case, it is necessary to appreciate that the decibel scale is logarithmic rather than linear. On a linear scale, 60dB would be twice as loud as 30dB. On the logarithmic decibel scale, 60dB is 100 times more intense than 30dB although this does not translate directly to the loudness of the noise as registered by the human ear.

### **Standards referred to by the engineers**

- [23] Both WSP and Reliable indicated that 35dB is a recognized standard for ordinary domestic background noise. In fact, the background noise in Mr. Park's unit was measured by WPS at 32 dB, and by Reliable at 28, so less than the standard. The difference may be attributable to the fact that the HVAC system in Mr. Park's unit was not running during testing.
- [24] Both WSP and Reliable engineers quote the same information regarding the intrusiveness of noise. WPS provided the following chart to show the "qualitative rating for increase in sound level":

<b>Sound level increase dB</b>	<b>Qualitative rating</b>
1 to < 3	insignificant
>3 to < 5	noticeable

>5 to < 10	significant
>10	very significant

[25] Reliable provided the same information but not in chart form.

[26] At the video conference call, there was some contention concerning these standards. On behalf of TSCC 2775, Ms. Mah suggested that these standards come from the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and they are intended only as standards for the operation of the HVAC equipment. The Reliable report cites ASHRAE as the source of the standard. Ms. Mah asked to be permitted to clarify the use of the standard with WPS and to provide a further report and submission. A further lengthy submission was received but no clarification from WSP was provided. A lengthy report from the World Health Organization was also provided, although it does not refer to the standards in question.

[27] On the basis of the evidence before me, I accept that 35 dB is an accepted standard for ordinary domestic background noise. I also accept that the chart provided by WSP and reproduced above provides a standard for a qualitative measurement of the intrusiveness of noise above that background noise.

### Noise measurements

[28] The results of the testing conducted by WSP and Reliable are set out in this table, The numbers represent the decibel reading and the annotation refers to the qualitative intrusiveness scale:

	<b>TSCC 2775 WSP Canada</b>	<b>Mr. Park Reliable Connections</b>
Barbell drop	65 <i>very significant</i>	62 <i>very significant</i>
Yoga door	37 <i>noticeable</i>	45 <i>very significant</i>
Gym door	42 <i>significant</i>	51 <i>very significant</i>
Medicine ball drop	44 <i>significant</i>	32 <i>insignificant</i>
Smith machine	-	39.5 <i>noticeable</i>

Multi function machine	-	41 <i>significant</i>
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### Issues concerning the noise measurements

- [29] TSCC 2775 takes considerable exception to the methods used by Mr. Koval for the Reliable report with respect to the gym and yoga door measurements. Board members reviewed the security video taken by the security camera during Mr. Koval's visit to the gym. TSCC 2775 alleges that Mr. Koval's description of what he did to take the sound readings for the doors does not accord with his actions as depicted in the video. TSCC 2775 advised that they were so disturbed by this that a complaint has been made to the engineering regulatory body. TSCC 2775 suggests that Mr. Park knew or ought to have known about the errors and that the case should be dismissed on that basis.
- [30] I note that the difference between the door sounds as measured by Reliable as compared to WSP is whether the noise from the gym door is "very significant" or "significant" and whether the yoga door noise is significant or insignificant.
- [31] In submissions, TSCC 2775 emphasizes that not all of the noise that was measured in Mr. Park's unit came from the gym. The engineers agree that noise from sources other than the gym were recorded. Mr. Park's consultant felt these were likely due to traffic noise. One of these noises captured by TSCC 2775's consultant, was close to 60dB. A concern about Mr. Koval's report is whether it accurately ascribed noise to gym equipment as opposed to some other cause.
- [32] On this point, I accept that the WSP measurement is more reliable because it used equipment for simultaneous measurement between the gym and Mr. Park's unit whereas Mr. Kovals used a stopwatch. This difference may be important because there were other noises registered that were not coming from the gym.
- [33] The World Health Organization document (Guidelines for Community Noise) submitted by TSCC 2775, notes, at paragraph 2.7.3, that sudden impulsive noise such as from gun shots or hammer blows are difficult to measure accurately. The difficulty results from the short latency of the noise which makes it difficult to precisely measure the intensity of the sound. In the absence of expert evidence on this point, it seems likely that this difficulty could mean that the intrusiveness of impact noise may be greater than measured. In any event, the statement in the WHO document would not be sufficient to allow me to conclude that noise as measured by the sound engineers is actually less than they recorded, as

suggested by TSCC 2775.

### **How often do these noises happen?**

- [34] Mr. Park's evidence is that the noise from people dropping barbells from a height happens regularly. TSCC 2775 disputes this. They note (and Mr. Park agrees) that there is now signage in the gym telling people to not let weights drop. TSCC 2775 has included this direction in communications to the owners and residents. TSCC 2775 notes that allowing weights to fall to the floor or allowing weights on the weight machine to fall is not permitted. Not only does it result in noise, but it can damage the equipment and the floor.
- [35] There was a suggestion, though not confirmed by evidence, that some people who use barbells will typically drop them as part of the routine, rather than placing them carefully down.
- [36] The evidence of TSCC 2775 is that Board members spent a lot of time reviewing security video of the gym, trying to determine if someone was abusing the equipment by letting weights fall.
- [37] The Board members' review indicated that the person who was most responsible for causing noise in the gym is Mr. Park. According to the Board members' review, in the same 14-month period, Mr. Park "directly or indirectly dropped dumbbells purposely from a height in excess of 3' over 50 times, particularly in front of the dumbbell rack, and caused disc weights from the [free weights] Smith machine to be bounced on the floor over 120 times." They assume that Mr. Park is doing this to prove a point. Mr. Park disputes these findings. If TSCC 2775 is correct, Mr. Park must of course stop such activity. However, this is not an issue that bears directly on the issue of whether Mr. Park experiences unreasonable nuisance, annoyance, or disruption.
- [38] The security texts provided by Mr. Park indicate that there were several occasions where security had to ask residents to be careful with the equipment and to be aware of noise and to not drop barbells.
- [39] Assuming for the purpose of this analysis that people who drop barbells are doing so accidentally, this activity would more probably than not happen only occasionally. I find that the issue of gym users dropping barbells has not been resolved by signage and the general communications to residents that have been sent out. I find that it is more probable than not that Mr. Park hears noise from barbells being dropped on an occasional and irregular basis but not something that happens daily. However, this noise is "very significant" on the qualitative scale

noted above.

- [40] Any noise from the operation of the door latches is something that would happen frequently during the times the gym is open. It is not clear if there is significant noise when the door opens and again when it closes, or if the noise is only associated with the door closing.
- [41] There is no evidence about how often the Smith machine and multi-function machine are used and what specific aspects of this equipment produces noise. The WSP report does not seem to provide a noise level for this equipment, although the report indicates that the equipment was assessed.
- [42] My understanding is that the medicine ball is no longer used in the yoga room and that it may no longer be a cause of noise.

### **The effect on Mr. Park**

- [43] Mr. Park's evidence is that the noise coming from the gym significantly interferes with his quiet enjoyment of his unit. As noted, his evidence is that the noise has resulted in psychological and emotional issues requiring medical intervention.
- [44] No one from the board or management company has ever attended Mr. Park's unit to hear the noise that Mr. Park experiences. There is no evidence to contradict Mr. Park's testimony about the effect the noise has on him.
- [45] I accept that the fact that the noises are random and unexpected makes the noise more disruptive. For example, a person living on a street with streetcars will be disrupted by the noise of a streetcar passing by. However, that noise will be anticipated and becomes louder as the streetcar comes closer. The noise from the gym, especially noise from dropping barbells is sudden, impact noise. That sort of noise is more disruptive because it cannot be anticipated.
- [46] I am not certain that the disruption is as severe as Mr. Park describes or that it occurs throughout the day and night for periods of an hour or more. The noise from the gym is not occurring throughout the night because the gym is closed after 9:00 pm. Earlier on, there was an issue of people using the gym after hours, but the entry key system was modified to stop this, although there may be a problem of people extending their stay in the gym past 9:00 pm. The texts provided by Mr. Park show that his complaints of after-hours gym use are quickly dealt with by security.
- [47] Despite these concerns, I accept that Mr. Park's quiet enjoyment of his unit is disrupted by noises from the gym. The most disruptive noise happens when



barbells are dropped. That is something that happens occasionally. Noise is also transmitted from the operation of the gym door, which happens frequently and regularly.

### **Does “buyer beware” apply?**

[48] TSCC 2775 submits that Mr. Park is seeking to eliminate all noise from the gym. They argue that this is unreasonable and that some noise from the gym would have been reasonably foreseeable when Mr. Park purchased the unit, knowing that it was directly above the gym. They cite *Wong v. TSCC NO. 1918, 2022 ONSC 3409* (“Wong”) as an analogous case. In Wong, the owner resident of a unit was bothered by noise from the garbage chute and compactor that was in a space adjacent to her unit. The Court commented:

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.

[49] However, the Court went on to find 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.

[50] The legal issues in Wong were different than those in this case. However, the decision suggests that while the owner ought to have anticipated some degree of noise because of the location of her unit, the condominium corporation nevertheless has a responsibility to investigate concerns and participate in finding solutions and that this is to be done in a timely fashion.

[51] Mr. Park submits that he is not seeking to eliminate all the noise coming from the gym, but only those noises that are intrusive.

[52] I find that Mr. Park knew, or ought to have known, that the unit he purchased was above the gym and that some level of noise from the gym would result. However, it does not follow that Mr. Park is required to live with unreasonable noise that results in nuisance, annoyance, or disruption.

### **Is this case about maintenance and repair?**

[53] The Tribunal has found that it does not have jurisdiction over section 89 and 90 of the Act, which concern a corporation's obligations to repair and maintain the common elements (see for example: *Brady v Peel Condominium Corporation No 947*, 2023 ONCAT 8 and *Rahman v. Peel Standard Condominium Corporation No. 779*, 2023 ONCAT 37).

[54] The instant case is not a repair and maintenance case because the noises from the gym are not related to a repair or maintenance problem. There is no evidence that there is anything wrong with the equipment in question other than it produces noise. There is no suggestion that the noise could be reduced by repairing anything or that problem is related to a lack of maintenance. Any noise that comes from the equipment results from people using the equipment, including opening the gym door. It is these activities that results in the noise. If there was no activity – if people did not use the equipment or open the door – there would be no noise. It is this activity that the Tribunal has jurisdiction over under section 117(2) of the Act.

### **Is the noise unreasonable?**

[55] Section 117(2) of the Act establishes a two-part test for noise cases. One part is the subjective experience of the person complaining of the noise and whether the person experiences the noise as a nuisance, annoyance, or disruption. The second part of the test is whether the noise is “unreasonable”.

[56] For a person who is experiencing noise that results in nuisance, annoyance, or disruption, it could seem that the noise must be unreasonable, almost by definition – it is unreasonable for them to experience a nuisance, annoyance, or disruption. However, the requirement that the noise that the person experiences as a nuisance, annoyance, or disruption also be unreasonable, indicates that the noise must be *objectively* unreasonable.

[57] In this case, the reports from the sound engineers provide objective evidence that the noise is unreasonable. Those reports show that Mr. Park experiences noises from the gym that are either very significant or significantly impactful on a scale referred to by both engineers as reflecting industry standards for the impact of

noise. As discussed, whatever the limitations of the sound measurements may be, apart from Mr. Park's evidence, this is the only objective evidence before me of the intrusiveness of the noise.

- [58] I have found that the noise that is particularly impactful comes from misuse of the barbell equipment and that while this is not a regular occurrence, it does happen occasionally. The issue has not been resolved by the messages posted in the gym and sent to owners. The noise from the gym door happens every time someone goes in or out of the gym. That noise, while not "very significant" is nevertheless "significant".
- [59] As noted, there may be other noises coming from the use of the Smith machine or multi-function machine.
- [60] It seems likely that Mr. Park hears other noises coming from the gym, including noises that are "noticeable" on the intrusiveness scale. Some noticeable noise in a unit directly above a gym would be reasonably expected.
- [61] I conclude that there is objective evidence to support Mr. Park's contention that some of the noise he hears from the gym is unreasonable.

### **Is there a reasonable solution?**

- [62] In my view, another important consideration in determining whether the noise experienced is unreasonable is if there is a reasonable solution.
- [63] For example, one possible solution in this case would be to close the gym. If no one was using the equipment or entering the gym, there would be no noise. However, that would not be a reasonable solution because it would adversely affect all the owners who use the gym and for whom the gym is an important facility that may have affected their decision to buy.
- [64] Solutions that require a major expense may also be unreasonable. Anything that is spent by a condominium corporation is ultimately paid by the owners of the units in the condominium. One of the concerns expressed by TSCC 2775 in this case is that it is unreasonable for the other owners to have to fund improvements to the gym which will benefit only Mr. Park, and perhaps some of his immediate neighbours.
- [65] Section 97 of the Act sets out the procedures to be followed if there is a proposed addition, alteration, improvement or change (as distinct from maintenance or repair). An important consideration is the amount of money that will be involved. Section 98 outlines a procedure where an owner can fund improvements to

common elements in certain circumstances.

[66] In this case, both engineers commented on the flooring in the gym area. They suggest that thicker flooring would help to absorb the noise and vibration from the barbell area. Mr. Koval estimated that this would cost about \$5,000. Other proposed solutions include replacing all the equipment with equipment that would be quieter. I note that there may be low-cost solutions that have not been explored, such as adding padding to equipment. Mr. Koval also recommended replacing the door latches with a quieter mechanism but did not provide a cost estimate for this. I note that there does not seem to have been any investigation into whether the existing latches could be modified to reduce the noise they produce.

[67] I find that it is more likely than not that reasonable solutions exist that would reduce the noise experienced by Mr. Park.

### **C. CONCLUSION**

[68] I find that Mr. Park has established that it is more probable than not that he experiences disruption, which results in annoyance, as a result of noises coming from the gym caused by misuse of the barbell equipment and the gym door. I find that there is evidence that the noise experienced is objectively unreasonable. I further find that there are probably reasonable solutions which have not yet been adequately explored.

[69] TSCC 2775 has responded to Mr. Park's complaints by having signs posted and messages sent to owners reminding them to not misuse gym equipment. The board has also expended significant resources, including their own time, in dealing with this case. Unfortunately, however, those resources have been primarily used to try to establish that Mr. Park is not experiencing unreasonable noise. This has continued even after the sound engineer retained by the board advised the board that Mr. Park was experiencing noise that was qualitatively significant or very significantly impactful.

[70] TSCC 2775 must now redirect its efforts to properly investigating the causes of the noise and what can reasonably be done to reduce the impact of the noise on Mr. Park. Despite some animosity that has developed between the parties, a meaningful solution will likely need to involve Mr. Park.

[71] Under the Tribunal's Rule 48.1, as the successful party, Mr. Park is entitled to payment of the CAT fees of \$200.

[72] Mr. Park also asked that TSCC 2775 pay for the cost of Mr. Koval's testing and report. Rule 48.2 provides that the Tribunal will not generally order payment of a party's legal fees or costs incurred in the course of the proceeding. I find that there is no reason to depart from that approach in this case and find that Mr. Park is not entitled to payment for Mr. Koval's testing and report.

**D. ORDER**

[73] The Tribunal Orders that:

1. Within 30 days of the date of this decision, TSCC 2775 shall advise Mr. Park in writing of the steps that will be taken to investigate the causes of the unreasonable noise coming from the gym and a plan to ensure that noises that are very significantly or significantly intrusive do not result from activity in the gym.
2. Within 30 days, TSCC 2775 shall pay Mr. Park \$200, representing the Tribunal fees incurred.

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Brian Cook  
Member, Condominium Authority Tribunal

Released on: November 10, 2023