

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 10, 2022

CASE: 2022-00064N

Citation: York Condominium Corporation No. 229 v. Rockson, 2022 ONCAT 46

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

Member: Mary Ann Spencer, Member

The Applicant,

York Condominium Corporation No. 229

Represented by Dominique Menard, Counsel

The Respondent,

Chris Rockson

Self-Represented

Hearing: Written Online Hearing – March 23, 2022 to May 3, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] York Condominium Corporation No. 229 (“YCC 229”) requests the Tribunal order the Respondent, owner Chris Rockson, to comply with its noise rules and to indemnify it for its legal costs and expenses in this matter pursuant to the indemnification provisions in its rules. YCC 229 also requests the Tribunal order that if Mr. Rockson continues to violate the rules, the corporation may give him notice to soundproof his and neighbouring units and, if he fails to do the soundproofing, YCC 229 may have it done at Mr. Rockson’s expense.
- [2] Chris Rockson did not participate in the Stage 3 -Tribunal Decision process. When he failed to join the proceeding at its onset, I asked Tribunal staff to contact him. He then posted a brief message in the CAT-ODR system indicating he was interested in resolving this matter. However, he did not participate further in the proceeding notwithstanding that staff contacted him a second time at my request. Therefore, my decision in this case is based solely on the evidence and submissions of YCC 229.
- [3] For the reasons set out below, I find that Mr. Rockson has failed to comply with

YCC 229's noise rules and order him to do so. I also order him to pay compensation of \$547.49 and costs of \$9,301.02 to YCC 229 within 30 days of the date of this decision.

B. ISSUES & ANALYSIS

[4] The issues to be addressed in this matter are:

1. Is Chris Rockson in violation of YCC 229's noise rules, and, if the Tribunal finds he is, what order(s) should the Tribunal issue?
2. Should an award of costs and/or compensation be assessed?

Issue 1: Is Chris Rockson in violation of YCC 229's noise rules, and, if the Tribunal finds he is, what order(s) should the Tribunal issue?

[5] Counsel for YCC 229 submits that Mr. Rockson is in violation of section 117 (2) of the *Condominium Act, 1998* (the "Act") which states:

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

Counsel further submits that Mr. Rockson has failed to comply with YCC 229's noise rule A-1 which states:

1. Owners, their families, guests, visitors and servants shall not create or permit the creation or continuation of any noise or nuisance which, in the opinion of the Board of Directors or the Manager, may or does disturb the comfort or quiet enjoyment of the property by other owners, their families, guests, visitors, servants and persons having business with them.
2. No noise, caused by any instrument or other device or otherwise which, in the opinion of the Board of Directors, may be calculated to disturb the comfort of the residents, shall be permitted.

[6] YCC 229 entered 94 security incident reports dated between August 17, 2019, and March 20, 2022, as evidence in this case, all of which document security's investigation of complaints it received about loud music emanating from Mr. Rockson's unit. The majority of the complaints were made about music being

played with loud bass after 11 p.m. and many note that the bass frequency of the music was interfering with the ability of Mr. Rockson's neighbours to sleep. I note that a number of the complaints indicate that Mr. Rockson co-operated when security staff requested that he lower the music.

- [7] The evidence is that the number of complaints investigated by security escalated in 2021 with 64 reports filed. Fourteen complaints were filed and investigated between January and March 2022. In addition, YCC 229 entered a series of e-mails it received during 2021 from Mr. Rockson's neighbour reporting the noise and requesting that the corporation enforce its rules.
- [8] Mr. Rockson is required to comply with the Act and with the rules of YCC 229. Section 119 (1) of the Act sets out the requirement that owners and occupiers of units comply with the Act, the declaration, by-laws and the rules of a corporation:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

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:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

- [9] Mr. Rockson was notified of YCC 229's noise rules and his obligation to comply with them on multiple occasions. The evidence is that YCC 229's condominium management provider Larlyn Property Management Ltd. sent him a letter on July 2, 2019, setting out the noise rule and requesting his co-operation and compliance. Further letters from Nadlan-Harris Property Management Inc. were sent on August 26, 2019, June 3, 2020, and December 9, 2020. The August 26, 2019, and June 3, 2020 letters both advised Mr. Rockson that if he failed to comply with the noise rules, the matter would be referred to the corporation's counsel and he would be held responsible for the associated legal costs.
- [10] Letters from YCC 229's legal counsel, Miller Thomson, were sent to Mr. Rockson on October 23, 2019, December 17, 2019, and February 28, 2021, advising him that complaints about loud music in his unit were continuing and that his conduct must stop. Each of those letters advised him of the corporation's noise rule and

that he would be charged the costs the corporation incurred to obtain his compliance. The corporation subsequently billed him \$547.49, \$418.67 and \$624.33 representing the legal costs it incurred for those letters. Counsel for the Applicant advised that these amounts were later added to the common expenses payable for Mr. Rockson's unit.

- [11] On September 16, 2021, a further letter was sent to Mr. Rockson from Sutherland Law which stated:

The Corporation's Board has rightfully determined that the behaviour described in the Complaints constitutes a nuisance. Every resident in the building has the right to the peaceful enjoyment of their space. The excessive noise coming from your suite and [sic] are disturbing nearby residents and preventing them from enjoying what is rightfully theirs. Although you have been informed several times about the effects your conduct is having on your neighbours, you have chosen to ignore these warnings. Your continued lack of respect in this manner will not be tolerated.

I note that over 40 of the security reports documenting complaints about noise from Mr. Rockson's unit are dated after this letter was sent. Further, witness Charles Singh, YCC 229's condominium manager, testified that one complainant maintained a noise log which showed that excessive noise has emanated from Mr. Rockson's unit on an almost daily basis "in recent months."

- [12] YCC 229's evidence of Mr. Rockson's violation of its noise rule is not disputed given that Mr. Rockson chose not to participate in this proceeding. Based on the evidence, I find that Mr. Rockson is in violation of YCC 229's noise rules and I will order his immediate compliance.

- [13] YCC 229's Counsel also requested an order that should Mr. Rockson fail to comply with the Tribunal's compliance order, the corporation may give notice requiring him to soundproof his unit and neighbouring units within 10 days of the date of the notice and, if he fails to undertake the soundproofing, the corporation will do so at his expense. Counsel noted these orders are requested to allow YCC 229 to "take additional steps without incurring the unnecessary expense of bringing this matter back before the Tribunal or otherwise re-litigating this issue."

- [14] Given the evidence of Mr. Rockson's history of non-compliance, it is understandable that YCC 229 has some well-founded doubt that he will comply with the Tribunal's order, and soundproofing Mr. Rockson's unit is not an unreasonable way to resolve what has been an ongoing issue of noise disturbance to other residents. However, YCC 229 proposed no criteria indicating what would

constitute the non-compliance that would trigger notice to soundproof. Further, there is no indication of how YCC 229 would decide which neighbouring units, if any, might require soundproofing or whether that decision would be made after Mr. Rockson's unit was soundproofed or contemporaneously. For these reasons, I will not issue the requested orders. I note that Mr. Rockson would be well-advised to comply with the Tribunal's order. Should YCC 229 be required to pursue further litigation to resolve the issue of noise emanating from his unit, he risks incurring not only the potentially significant cost and disruption of soundproofing should such an order be issued, but also being held liable for potentially substantial legal costs.

Issue 2: Should an award of compensation and/or costs be assessed?

- [15] Pursuant to Section I of its Rules, YCC 229 is requesting that the Tribunal order Mr. Rockson to pay \$9,848.51, the costs it has incurred to obtain his compliance. The section states:

Any loss, cost or damages incurred by the Corporation by reason of any breach of any Rules and Regulations in force from time to time by any owner, his family, guests, servants, agents, pets or occupants of his unit shall be borne by such owner and may be recovered by the Corporation against such owner in the same manner as common expenses.

YCC 229's Counsel submits that the corporation is entitled to full indemnification for its costs; as required by section 17 (3) of the Act, it took all reasonable steps to obtain Mr. Rockson's compliance with its noise rule. Counsel noted that Mr. Rockson was given multiple notices from both management and the corporation's legal counsel and had ample opportunity to comply and his refusal to do so left the corporation with no choice but to file its application with the Tribunal.

- [16] The \$9,848.51 requested by YCC 229 is comprised of \$200 in Tribunal filing fees, \$9,101.02 in legal fees associated with this proceeding and \$547.49 in legal fees incurred by the corporation to send the September 16, 2021 letter from Sutherland Law to Mr. Rockson before it filed its application with the Tribunal. Counsel for the Applicant confirmed that the corporation was not seeking an order with respect to the costs it incurred for the legal letters sent by Miller Thomson.
- [17] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (1) 4 states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Section 1.44 (2) states that an order for costs "shall be determined...in accordance

with the rules of the Tribunal.” The cost-related rules of the Tribunal’s Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party’s CAT fees unless the CAT member decides otherwise.

48.2 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 behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[18] YCC 229 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order Mr. Rockson to pay \$200 in costs in respect of the Tribunal fees it paid.

[19] With respect to the \$9,101.02 in legal fees the YCC 229 incurred relating to this proceeding, I am guided by the Tribunal’s “Practice Direction: Approach to Ordering Costs” which includes, among other factors to be considered, whether the parties attempted to resolve the issues before the case was filed, and the provisions of the governing documents and whether the parties had clear understanding of the potential consequences for contravening them.

[20] I have also reviewed the cases to which YCC 229’s Counsel referred me. In *Muskoka Condominium Corporation No. 39 v. Kreutzweiser*, 2010 ONSC 2463 (CanLII), a case in which the Court found the respondent to be in breach of the corporation’s pet rules, the Court wrote:

The Corporation repeatedly warned the respondent of the cost consequences of enforcement proceedings. The respondent failed to respond to any communication from the corporation or to comply with its directions. Therefore the costs are to a large extent the consequences of the respondent’s own actions.

No part of these costs should be borne by the respondent’s neighbours who are blameless in this matter. The Corporation declaration provides that any owner is bound to indemnify the corporation for any loss occasioned by his or her action. For these reasons it is appropriate that the corporation’s costs be on a full recovery basis.

In *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 (CanLii), the Tribunal awarded 100% of the applicant corporation's requested legal costs. The Tribunal noted that the corporation was required to request an order from the Tribunal "only because Mr. Psofimis deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters and blatantly disregarded the agreement entered into by him, evidently not in good faith, promising to comply...."

- [21] In the case before me, Mr. Rockson received multiple notices between October 2019 and September 2021 advising him of the corporation's noise rules and requesting his co-operation and compliance. Those included four letters from the corporation's legal counsel. The legal letters advised him that the costs YCC 229 incurred to obtain his compliance would be payable in accordance with Section I of its rules and he was billed for the costs of producing three of the legal letters. However, he still continued to violate YCC 229's noise rules with, as noted above in paragraph 7, an apparent escalation of the number of incidents after receipt of the September 16, 2021 legal letter. He did not participate in this proceeding although he was given multiple opportunities to do so. While there is some evidence in the security reports that Mr. Rockson co-operated by lowering the music volume when he was approached by security, this co-operation is negated by the fact that the behaviour was repeated and the complaints continued. Mr. Rockson's actions indicate that he has little regard for his obligations as a condominium owner or his responsibilities as a neighbour in a condominium community.
- [22] Legal fees not awarded as costs are ultimately paid by all owners of a corporation. It would be neither reasonable nor fair if the owners whose quiet enjoyment of their premises was disrupted by what I can only describe as Mr. Rockson's wilful refusal to comply with YCC 229's noise rules were to be liable for the corporation's cost of obtaining Mr. Rockson's compliance. I have reviewed the legal fees billed to YCC 229 for this proceeding and find them to be reasonable. In the circumstances of this case, I do not need to rely on the indemnification provision of the corporation's rules. I am ordering Mr. Rockson to pay costs of \$9,101.02, that is 100% of the legal fees and expenses the corporation incurred with respect to this proceeding.
- [23] For the same reasons set out above, I am also ordering Mr. Rockson to pay \$547.49 to YCC 229 as compensation for damages, which in this case, are the costs the corporation incurred to have Sutherland Law send the September 16, 2021 legal letter before it filed its application with the Tribunal.

[24] I note that if Mr. Rockson fails to pay either the awarded costs or compensation as ordered, that, pursuant to section 1.45 (2) of the Act, the corporation may add the amounts ordered to the common expenses payable for Mr. Rockson's unit. Therefore, it is not necessary for me to make the order in this regard which YCC 229's Counsel requested.

ORDER

[25] The Tribunal Orders:

1. Under section 1.44 (1) 1 of the Act, Chris Rockson shall immediately comply with section 117 (2) of the Act and Rule A-1 of York Condominium Corporation 229's Rules respecting noise.
2. Under section 1.44 (1) 3 of the Act, within 30 days of the date of this Order, Chris Rockson shall pay compensation of \$547.49 to York Condominium Corporation No. 229.
3. Under section 1.44 (1) 4 of the Act, within 30 days of the date of this Order, Chris Rockson shall pay costs of \$9,301.02 to York Condominium Corporation No. 229.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: May 10, 2022