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Date:	June 5, 2007	Pages:	8
Subject:	Halton Standard Condominium Corporation No. 434 et al. ats Yashars Claim No.: 0500118531 Date of Loss: November 1, 2004		

Please see attached Judgment of Judge Henderson.

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FILED MAY 25 2007

Court File No. 854/05

**ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT**

BETWEEN:

NEGGIE YASHAR AND FRANCES YASHAR

Plaintiffs

- and -

**HALTON STANDARD CONDOMINIUM CORPORATION NO. 434
AND NIGEL BROWN**

Defendants

REASONS FOR JUDGMENT

The Trial of this Action took place on November 17, 2006 and February 16, 2007 before His Honour S. W. Henderson at the Burlington Small Claims Court.

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Solicitors for the Defendant, Nigel Brown.

The Plaintiffs, Neggie Yashar and Frances Yashar, purchased and moved into Unit #7, Halton Standard Condominium Corporation No. 434, Burlington, Ontario in July of 2003. Up until that time they had primarily resided in detached homes but had experienced condo and apartment living over the years.

In October of 2004 the Defendant, Nigel Brown, moved into the adjoining Unit # 8 of the same complex. The project as a whole is made up of two storey abutting town homes and Units 7 and 8 share a common inner wall. Soon thereafter the Yashers began complaining of excessive noise and vibrations emanating from Mr. Brown's unit. It was described in various ways by the Plaintiffs as "excessive", "loud", "vibrating", "pounding", "booming" and "sounding like elephants". All of which on numerous occasions, and in Mr. Yasher's evidence almost sixty percent of the time, resulted in the Plaintiffs' losing sleep, becoming agitated and having an overall negative impact on their quality of life resulting, in Mrs. Yasher's case, in having to seek medical attention.

What we have before us is essentially an action framed in nuisance, that is, an allegation by the Plaintiffs that the use and enjoyment of their property has been unreasonably interfered with by the conduct of Mr. Brown and/or the occupants of his unit. The crux of the case is: Did the actions of Mr. Brown create excessive noise with a frequency that then caused the Plaintiffs' damages for nuisance and related damages for pain and suffering as a consequence of such conduct? If so, then is the Condominium Corporation jointly and severally liable for such damages for failing to

fulfill its statutory obligations to ensure the conflict between the neighbours was properly dealt with by the Board of the Condominium Corporation?

The Plaintiffs feel the evidence tendered overwhelmingly points to the behaviour and conduct of Mr. Brown as being excessive, unconscionable and therefore actionable.

They also are of the belief that the Condominium Corporation Board's response to their concerns was woefully inadequate and as a result of its' inaction in taking steps to curtail Mr. Brown's activities it too is liable as an aiding and abetting party.

The Plaintiffs feel the failure of the Board to enforce Rule 20 of the Condominium By-Law exacerbated their suffering. Rule 20 states:

"Owners, their families, guests, 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 property by other owners, their families, guests, visitors, servants and persons having business with them, and no owner shall make any excessive noise after 11:00 p.m. on any day."

The following is a summary of the Plaintiffs' evidence of Mr. Brown's alleged transgressions:

- i) noise loud enough, in the Plaintiffs' opinion, to contact the local Police on over a dozen occasions;
- ii) disruption that resulted in the City of Burlington's by-law enforcement office to become involved for investigation;

- iii) extensive personal journal entries, audio tapes purporting to support their position, and numerous testimonials from family and friends attesting to the witnessing of the noise and vibration occurrences; and
- iv) a medical report from Mrs. Yasher's attending General Practitioner seemingly identifying a link between her failing health and her noisy neighbour.

From Mr. Brown's perspective, while he doesn't deny the occasional incident of excessive noise, he believes that such occurrences for a family with teenage sons were within the reasonable norm. He detailed how he took steps to raise his stereo's speakers off of the floor, placed them on rubber grommets and reduced the bass level of the amplifier. If anything else, he believes the Plaintiffs are hyper-sensitive and felt their behaviour towards him was harassment. Ms. Dawn Byers, the occupant of Unit 8 prior to Mr. Brown, testified that she also felt harassed by the Plaintiffs over the smallest emanations of noise from her unit and had the police visit her six to eight times as a result of the Plaintiffs' complaints.

An objective analysis of the law of nuisance was succinctly summarized in Salmond on Torts Vol. 17, p. 56:

The question in every case is not whether the individual plaintiff suffers what he regards as substantial discomfort or inconvenience, but whether the reasonable man who resides in that locality would take the same view of the matter. The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose

disposition is equitable. He is not necessarily the same as the average man a term which implies an amalgamation of counter-balancing extremes.

To assist us in this case an objective examination of the facts is essential.

Notwithstanding the input of the Plaintiffs' family and friends as to the noise levels not one citation or by-law infraction notice was served on Mr. Brown by the police or city officials even though it is clear that they attended on numerous occasions. The Plaintiffs failed to produce any truly independent corroborative evidence as to the level of excessive noise they alleged was occurring.


An independent sound audiologist or technician could have been retained to monitor the noise and measured that against generally accepted and objective sound levels. A private investigator could have been hired to independently monitor the frequency and level of noise. A general contractor could have investigated the nature of composition of the building and wall itself to determine whether steps could be taken to curtail or insulate the area. The medical letter of Dr. Duguid must be given limited weight due to its affidavit format and inability to be subject to cross-examination.

It is due to the Plaintiff's failure to corroborate this reasonable man standard that their claim must fail. This is unfortunately a circumstance where neighbours simply have different tolerance levels and in the absence of independent objective evidence that Mr. Brown's activities enter the realm of intolerant behaviour from a socially repugnant perspective this action in nuisance cannot be made out.

I also find that the Condominium Corporation and its representatives did all it could do under the circumstances to attempt to mediate the dispute between the neighbours.

In light of the Plaintiffs' failure to prove an actionable wrong their claim is hereby dismissed as against both Defendants. As a result, the Plaintiffs are to pay the amount of \$400.00 to each of the Defendants in costs. If there are Offers to Settle which have been submitted or circumstances which the parties feel would effect my costs award, I will accept costs submissions within seven days of today's date no longer than one page in length.

Dated at Oakville this day of May, 2007.



DEPUTY JUDGE
STUART W. HENDERSON