Unpacking the Impact of Noise Transmission: Nuisance or Not?

Noise is a perennial concern that often sparks conversations among neighbors in strata communities. In terms of determining the level of noise that can qualify as a nuisance, one that unreasonably disrupts the use or enjoyment of any other lot, a recent Tribunal case has shed light on this matter, offering valuable insights.

Under section 153 of the Strata Schemes Management Act 2015 ("**SSMA**"), both lot owners and occupants are obliged to refrain from causing nuisances or hazards that disrupt the peaceful occupation of any other lot. To ensure these standards are upheld, standard by-laws typically include provisions prohibiting the creation of nuisances.

The case of *O'Riordan v Chu [2023] NSWCATCD 61* addresses a dispute revolving around noise complaints between two lot owners residing in a strata building, one upstairs and the other downstairs. These grievances trace back to 2019 when the Applicant first noticed noise disturbances emanating from the Respondent's downstairs lot. In 2021, the Applicant took the matter to the NSW Civil and Administrative Tribunal (the "**Tribunal**"), seeking orders for the Respondent to comply with the nuisance related by-law and section 153 of the SSMA.

The Tribunal issued an order requiring the Respondent to install a floor covering with a six-star AAAC rating in all tiled areas in the kitchen (the "**2021 orders**"). In response, the Respondent complied with the orders by placing new floor tiles over the existing ones in their kitchen. Regrettably, the noise issues persisted, prompting the Applicant to file another application with the Tribunal, asserting a breach of Section 153 of the SSMA.

As substantiating evidence, the Applicant submitted a noise diary documenting various noise incidents from the past twelve months (the "**lay evidence**") and an acoustic report (the "**expert evidence**"). These materials aimed to establish that the recently installed floor tiles, which were placed over the existing kitchen floor tiles, were insufficient in mitigating noise transmission. In response, the Respondent also presented their own acoustic report, which asserted that the current performance of the kitchen tiles was in compliance with the Building Code of Australia, the SSMA, and the by-laws.

The Tribunal evaluated the evidence presented by both parties and past cases with respect to section 153 of the SSMA, in order to determine whether the Respondent's use or enjoyment of their lot, with the existing kitchen flooring, constituted or would constitute an actionable nuisance.

With respect to the lay evidence submitted by the Applicant, the Tribunal found that the noise diary did not convincingly demonstrate excessive or unreasonable noise transfer. The available evidence provided very limited insight into the magnitude or impact of the sounds, and there was a notable absence of evidence pertaining to other potential sources of noise, such as voices, music, television, or other common daily sounds, apart from the mention of "*footsteps and undefined banging*".

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

© Copyright Bannermans Lawyers 2023.

The Tribunal also found that the Applicant's expert evidence did not sufficiently establish non-compliance. It was found that "*the report contains no information regarding the volume of the noise made by the various activities in situ so that it is difficult to assess the significance of the data given about the noise transmission.*"

Regarding the by-laws governing the strata scheme, the noise related by-law explicitly excludes "*floor space comprising a kitchen, laundry, lavatory, or bathroom*" from the areas where floor coverings are prohibited from transmitting noise likely to disrupt the peaceful enjoyment of other lot owners or occupiers.

Furthermore, the Tribunal found that the orders sought by the Applicant were unacceptably vague, lacking a clear scope of work or specific details outlining what actions the Respondent would need to take to achieve a 5-star rating.

Additionally, the Tribunal took into account other pertinent factors, including the Respondent's good faith efforts to comply with the 2021 orders. The Tribunal also recognised that the matter of sound transmission through the floors might be more appropriately addressed by the owners corporation rather than individual lot owners, particularly given that no additional modifications or enhancements had been made to the kitchen floor following compliance with the 2021 orders.

As a result of these considerations, the Tribunal chose not to exercise its discretion in favour of granting the order sought, albeit the nuisance approach was a good approach to getting around limitation in the standard by-law which excludes noise transmission through wet arrears.

Better evidence of the volume of noise may have significantly turned the outcome of the case.
If you find yourself in such a strata dispute, feel free to reach out for some advice and assistance from our North Sydney Strata lawyers.

Key takeaways

- Under section 153 of the SSMA, lot owners must avoid causing nuisances that disrupt others' enjoyment of their property.
- The Tribunal case O'Riordan v Chu highlights the importance of substantial evidence in noise nuisance claims.
- The Applicant's noise diary and acoustic report were deemed insufficient to prove excessive noise transfer.
- By-laws may exclude certain areas from noise transmission restrictions, affecting nuisance claims.
- The Tribunal requires clear and specific orders to address compliance with noise-related by-laws.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers
10 October 2023

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
Liability limited by a scheme approved under Professional Standards Legislation
© Copyright Bannermans Lawyers 2023.

BANNERMANS
LAWYERS

T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation