



Civil Resolution Tribunal

Date Issued: March 16, 2018

File: SC-2017-003079

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heo v. Da Silva et al*, 2018 BCCRT 82

BETWEEN:

Won Heo

APPLICANT

AND:

Kevin Michael Da Silva and Corinne Da Silva

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about the applicant Won Heo's cedar hedge (hedge). The applicant says without his permission the father of the respondent Kevin Michael Da Silva trimmed the hedge on June 7, 2017. The applicant claims \$2,000 for a damaged tree line that he says exposed his property to strangers and \$500 for

compensation for his family's labour, time and emotional distress in dealing with the incident.

2. The respondents Kevin and Corinne Da Silva say Mr. Da Silva's father trimmed the applicant's hedge without their knowledge, because it was growing over the property line. The respondents say the applicant had failed to maintain the hedge, allowing it to extend 3 feet beyond his property line. They deny that the hedge was damaged in any way and that the applicant's property was exposed in any event. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - (a) whether the applicant's hedge was wrongfully trimmed, and
 - (b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities.
9. The applicant has produced a photo of the hedge taken from his yard, which shows on his yard's side bare wood trunks and thin branches up until the very top where there is greenery. There is a gap on the respondents' side, past the trunks, where there is no greenery and which I presume is the area that was trimmed. Based on this photo, it appears the hedge area that was trimmed likely was branches overhanging onto the respondents' property.
10. Another photo shows a street view, which shows the hedge trimming. I cannot tell from this photo whether the branches that were trimmed were on the applicant's property or on the respondents'.
11. A third photo shows a "front view of damaged tree line", which shows greenery on the respondents' side of the hedge having been cut back from the ground to about 6 feet high, leaving the trunks on the applicant's side exposed.
12. The respondents have produced 2 photos, which show their driveway and a somewhat overgrown hedge. In what I infer was the section that had been trimmed, there is a fence piece that I assume was installed by the applicant, as referenced in his submission.
13. The applicant says the respondent's father cut his hedge by trespassing onto his property, which the respondents deny. The applicant does not state that the

branches cut were entirely on his property. Rather, he says the bottom half of his tree line “lost its entire branches”, which the respondents deny and say the applicant has failed to maintain the hedge for years.

14. I find that the branches that were trimmed were overhanging onto the respondents’ property. The law of nuisance is clear that a homeowner is entitled to trim the branches of their neighbour’s tree to the extent those branches extend over the property line onto the homeowner’s property (see *Anderson v. Skender*, 1993 Canlii 2772 (BCCA) at paragraph 15).
15. Based on the evidence before me, I further find that the applicant has not proven that the respondent’s father, who is not named as a respondent, trespassed onto the applicant’s property to cut the hedge’s branches. The photos provided support the conclusion that the respondent’s father trimmed the hedge from the respondents’ side of the property line.
16. The applicant provided a City of Coquitlam Tree Management Bylaw (Bylaw). According to the City’s Bylaw overview document also provided, the City does not regulate tree trimming on private property as long as it does not violate the Bylaw. The Bylaw expressly states that the City will not get involved where trees overhang property lines. The Bylaw does say that “you cannot prune incorrectly” or “damage” a tree, as doing so would violate the Bylaw. The Bylaw itself states that no one must cut down or damage a protected tree without a permit. Damage is defined in the Bylaw as altering a protected tree or its growing environment in a manner detrimental to its present and future health and development. Protected Tree is defined as: a) any living, erect, woody plant that is 20 cm or more in diameter measured 1.4 metres from the base of the tree stem, or on a steep slope, measured 5 or more metres in height, b) a replacement tree, as defined in specified standards, or c) a tree planted or retained as required by permit or application.
17. I have no evidence before me that the hedge fell within the definition of Protected Tree under the Bylaw. Based on the photos, it is unlikely that the hedge fell within

that definition. I also have no expert evidence before me that the hedge was damaged within the meaning of the Bylaw.

18. The applicant says the hedge's trimming has caused a loss of "tree health" and loss of "structural integrity". However, there is no expert evidence before me to that effect, such as from an arborist or even a gardener. The applicant's text to the respondent indicated his gardener said the branches would grow back in a year or two, which suggests there was no fatal damage. In any event, based on the photos before me, I am not able to agree with the applicant's submissions in this respect.
19. I find the applicant has not proven that the respondents wrongfully cut his hedge's branches, or wrongfully permitted their cutting. The applicant also has not proven the respondents wrongfully damaged his hedge. As such, I do not need to address the applicant's claims for damages. As he was not successful in this dispute, I find the applicant is not entitled to reimbursement of tribunal fees paid.

ORDER

20. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair