



# Civil Resolution Tribunal

Date Issued: May 3, 2018

File: SC-2017-004121

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bonilla v. Francescini et al*, 2018 BCCRT 169

**B E T W E E N :**

Agustin Bonilla

**APPLICANT**

**A N D :**

Paul Francescini and Nancy Francescini

**RESPONDENTS**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This is a dispute about a tree (Tree), located in the respondents' back yard. The applicant says the Tree's branches are overhanging onto his property and its leaves are causing damage. The applicant has described it as an almond Tree, but I accept the evidence of the respondents Paul and Nancy Francescini that the Tree is in fact a black walnut tree. Nothing turns on the difference.

2. 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 126, 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 respondents' Tree is a nuisance for the applicant, including causing damage to his property, 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 says the respondents have several big trees in their back yard. One of them, the Tree, is located on the east side of their property, near the north corner of the applicant's backyard.
10. A few of the photos before me are somewhat difficult to assess, as they are either grainy or lack context. Other photos are clearer. Given the totality of the evidence before me I find I am able to come to an assessment of the relevant layout of the properties. I find the respondents' Tree is significant in both its height and diameter.
11. The applicant provided a photo of his roof when it was new in September 2010, which shows a roof clear of leaves. Photos dating back to 2013 show a significant amount of leaves collecting on the applicant's shed roof and in his yard. Similar photos from 2017 were also provided. August 2017 photos indicate the roof shingles appear worn and the roof is covered in leaf debris. Given the evidence, I find those leaves and related debris came from the Tree.
12. I do not accept the respondents' unsupported and general assertion that the applicant has "artificially and misleadingly altered" his satellite view and street view photographs. While the respondents suggest an on-site inspection would clarify matters, they did not provide any further explanation. I do not find an on-site inspection to be necessary here nor would it be in keeping with the tribunal's mandate to provide speedy, efficient, and proportionate dispute resolution services.
13. The applicant says the Tree is trespassing about 30 feet into his lot, along a 50 foot length of the property line. Based on the photos, including satellite images, I accept the Tree is significantly overhanging over the applicant's property. I do not need to determine the extent with precision.

14. The applicant says the Tree has caused damage to his tool shed roof and walls, which he has repaired twice in the 16 years he has lived there. He also says he has lost several fruit trees and sustained other damage caused by the Tree's leaves and branches. He says the Tree is throwing "so much mess and so much damage". Based on the photos, I find the Tree is dropping a significant and unreasonable amount of leaves on the applicant's shed roof and into his yard. I find it is causing a nuisance and damage, the extent of which I have discussed below.
15. That the Tree is overhanging and causing damage is supported by the applicant's neighbour's July 12, 2017 witness statement and the respondents' own submission that the applicant could trim the Tree "with obligations". In particular, the neighbour wrote that the Tree was causing a lot of damage and was a "big hazard to all three properties". I accept this evidence.
16. In particular, I find the respondents' submission that the applicant "could trim the tree" does not assist their position. Instead, I find it is an acknowledgement that their Tree is overhanging onto the applicant's property.
17. The respondents said in their Dispute Response they have an arborist report saying the Tree is healthy and that it is "well within our property". Yet, the respondents did not produce this arborist report or reference it in their submissions. In any event, I accept that the Tree's roots and trunk are on the respondents' property. The drawn survey showing the property line boundaries submitted by the respondents does not assist them on this issue. While the survey shows the Tree in the southeast corner of the respondents' property, the survey does not indicate the Tree's canopy or the extent to which its branches overhang.
18. The material point is that I find the Tree's branches are clearly overhanging onto the applicant's property and are causing a nuisance and damage. The scope of the applicant's damages and available remedies are discussed under the heading for damages below.

19. 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).
20. Contrary to the respondents' suggestion, nothing requires the applicant to trim the Tree. Doing so is the respondents' obligation when it causes a nuisance for others. In this respect, the City of Coquitlam's Tree By-law is of no assistance to the respondents.
21. The relevant issue in this dispute is that a person is entitled to use and enjoy their land without unreasonable interference. This is a general principle of the law of nuisance. When there is actual physical damage, there is a strong indication that the interference is not reasonable (see *Royal Ann Hotel Co. v. Ashcroft*, 1979 CanLii 2776 BCCA).
22. I accept that the applicant has raised his concerns about the Tree and find that the respondents were aware of the potential for damage. As such, the applicant is entitled to an award for damages because the respondents failed to take reasonable steps to remedy the nuisance (see *Lee v. Shalom Branch #178 Building Society*, CanLii 2001 BCSC 1760). On the latter point, there is no evidence before me that the respondents have done anything to prevent the Tree's leaves from dropping onto the applicant's property.
23. I find the respondents must prevent their Tree from causing a nuisance and damage to the applicant's property. As noted above, the extent of the damages is discussed below.
24. In summary, I accept that the Tree's branches and leaves significantly overhang onto the applicant's property, and in particular over his shed roof and his yard. These overhanging branches have caused excessive leaves to drop onto the applicant's property, causing significant damage.

25. Given the overall evidence before me, I find the Tree is causing a nuisance for the applicant. I have addressed the applicant's damages claims below.

### **Damages**

26. The applicant's claims totaling \$4,900 are as follows, which I note were broken down in more detail in the Dispute Notice than in the later submissions:
- a. **Remedy #1:** \$2,200 for the respondents to "look for this cost of theirs tree damages",
  - b. **Remedy #2:** \$600 for "fruit trees lost and damage",
  - c. **Remedy #3:** \$600 for his swimming pool breaking down and "killing my trees and damage others", and
  - d. **Remedy #4:** \$1,500 "more than one estimate: each one".
27. The applicant provided a July 25, 2017 quotation for \$2,310 inclusive of GST, with a description "we are going to replace damage 2 x 4 and damage plywood. We are going to replace the roof and 30 min paper. Install new shingles". I find this relates to the claimed Remedy #1. Given my conclusions above, I find the applicant has proven that he is entitled to an order that the respondents pay for his damaged shed, in the amount of \$2,310. I find the applicant has not proven he has incurred this expense yet, and therefore he has no entitlement to pre-judgment interest on this amount.
28. The applicant's Dispute Notice was issued on August 14, 2017. As referenced by the respondents, there is a time limit for bringing a claim. In particular, given the *Limitation Act*, the applicant can only claim for damages caused by the tree after August 14, 2015. Damage claims that arose before that date are out of time. Given the limited evidence before me, including the applicant's 2010 photo annotation "evidence from a broken down swimming pool on 7-23-2010", I find the applicant's claims related to the pool are out of time. The photos' annotations all refer to pool

water running down the applicant's back yard and allegedly killing 3 fruit trees. I dismiss the applicant's \$600 Remedy #3, as it was filed out of time.

29. The applicant did not provide any supporting evidence for his \$600 Remedy #2, which may be a duplicate of Remedy #3 given the underlying evidence refers to the fruit trees being killed by the pool water. Given the lack of evidence, I dismiss the applicant's \$600 claim in Remedy #2.
30. The applicant also provided a July 2017 estimate from a different company for \$1,575 inclusive of GST, with the description "we are going to remove 2 tree branches and disposal". This is the quote I find is related to the claimed Remedy #4. However, I find the applicant has not actually incurred this expense. I infer he provided the quote in the event he was granted an order that he could prune the Tree. I say the same about the July 2017 invoice for \$950 the applicant provided, which he appears to reference in his Remedy #4.
31. I find the most appropriate order for Remedy #4 is not a monetary order to the applicant, given he has not incurred any expense. I also find it would not be appropriate to order that the applicant to prune the Tree, given it is the respondents' property and they are participating in this dispute. Rather, as I am empowered to do under the Act and the tribunal's rule 126, I find the respondents must prune the Tree so that its branches do not overhang onto the applicant's property. It may be that some leaves from the Tree will still blow into the applicant's yard, but I find for the purposes of this decision my order to prune the overhanging branches is sufficient. Nothing in this decision prevents the applicant from pursuing a fresh dispute if the Tree's branches or leaves continue to be a nuisance.
32. The applicant was substantially successful in this dispute, and therefore in accordance with the Act and the tribunal's rules, he is entitled to reimbursement of \$200 for tribunal fees paid.

## ORDERS

33. I order that:

- a. Within 30 days the respondents must pay the applicant a total of \$2,510, comprised of \$2,310 for the applicant's damaged shed and \$200 in tribunal fees, and
- b. As soon as is practicable in terms of pruning season for the Tree, the respondents must prune the Tree so that its branches do not overhang onto the applicant's property.

34. The applicant is entitled to post-judgment interest, as applicable.

35. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Shelley Lopez, Vice Chair