Civil Resolution Tribunal

Date Issued: June 29, 2018

File: SC-2017-004947

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tessaro v. Langlois*, 2018 BCCRT 296

B E T W E E N :

Angela Tessaro

**APPLICANT**

A N D :

Brian Langlois

**RESPONDENT**

---

**REASONS FOR DECISION**

---

Tribunal Member: Kate Campbell

## INTRODUCTION

1. This is a dispute between neighbours. The applicant, Angela Tessaro, says the respondent's property is a visual nuisance. She seeks a number of specific orders requiring the respondent to remove various items from his property, to change and maintain vegetation on his property, and to change his fence and gate.

2. The respondent, Brian Langlois, disagrees with the applicant's description of his property. He says the applicant's claim is frivolous, and that it was initiated in response to an active legal dispute between the parties over an easement and right-of-way.

3. The applicants are self-represented.

## JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.

5. 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. Neither party requested an oral hearing.

6. 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.

7. 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.

*Easement*

8. The applicant made submissions about the respondent's driveway, which she says is partly located on her property. The respondent says there is an active legal dispute about easement and right-of-way. As there is no remedy requested regarding the driveway, I have not addressed it in this decision.

## ISSUES

9. The issues in this dispute are whether the respondent should be ordered to do the following:

- Refrain from storing equipment such as boats and off-road vehicles in his yard.
- Refrain from storing items on his carport roof and garage doors.
- Remove wood and other items stored between his garage and the applicant's property.
- Trim and maintain trees and shrubs that block the applicant's view, and remove dead branches.
- Remove all vegetation on his driveway access at the side of the applicant's front yard.
- Treat the driveway surface to eliminate dust, and maintain the driveway in keeping with the neighbourhood.
- Landscape and maintain the municipal land adjacent to his property.

- Lower his gate post to a maximum of 6 feet, 2 inches.

- Refrain from using netting material as a driveway gate.

## EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

*Nuisance*

11. The applicant says the respondent's property is a visual nuisance. She says she can see it from most areas of her home, and its appearance interferes with her enjoyment of her property.

12. In law, a private nuisance is a significant interference with use and enjoyment of property: *Royal Anne Hotel Co. Ltd. v. Village of Ashcroft* (1979), 1979 CanLII 2776 (BCCA).

13. The leading legal precedent on nuisance in BC is *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024 (CanLII).[1] *Sutherland* summarized the legal test for nuisance, as follows: whether the applicants suffered a substantial interference which affects the use or enjoyment of their property, and if so, whether that interference is unreasonable in light of all the surrounding circumstances.

14. In *Sutherland,* the court said the following factors must be applied to assess a nuisance claim:

    - Substantial and unreasonable interference which affects the use or enjoyment of property;

    - Substantial and serious interference of such a nature that it should be an "actionable wrong" (a wrongful action causing actual harm or injury);

[1] This decision was varied on other grounds by the Court of Appeal: 2002 BCCA 416 (CanLII)

- The interference must be viewed with regard to its nature, duration and effect;
- Subjective complaints must be viewed in the context of the objective standard of the average reasonable area resident, to guard against those with abnormal sensitivity or unreasonable expectations;
- Nuisance must be determined within context; and
- Consideration is to be given to the character of the neighborhood and the utility of the impugned conduct.

15. Most nuisance cases involve factors such as noise, water, vibration, or industrial odour, rather than visual appearance. This is because noises, water, vibrations, and odours physically travel onto adjacent properties. Courts have not found liability for "visual nuisance" because it is considered non-intrusive, since it does not travel across boundaries. Also, tort liability for unattractiveness would intrude onto a defendant's freedom of land use, and effectively allow neighbours to "zone" surrounding properties rather than leaving that to municipal code enforcement.

16. For these reasons, courts have held that blocking or changing a view is not a legal nuisance. For example, in *Zhang v. Davies*, 2017 BCSC 1180, the BC Supreme Court said in paragraph 83 that loss of a view – even a beautiful view – cannot be characterized as interference with the use of land that would be intolerable to an ordinary person, so as to create an actionable nuisance. This principle was also set out by the BC Provincial Court in *Strachan v. Sterling and Sterling*, 2004 BCPC 203, and by the BC Supreme Court in *Christensen v. District of Highlands,* 2000 BCSC 196. In paragraph 13 of *Christensen,* the Court quoted the following passage from Linden's *Canadian Tort Law, third edition*:

> …just because a person's peace of mind may be affected, an action in nuisance does not necessarily lie. For example, the use of land for an isolation hospital, however unpopular and disconcerting that may be, rarely amounts to a nuisance. Neither does a defendant cause a nuisance if he fails to preserve the aesthetic appearance of his land for his neighbour's benefit.

17. In paragraph 14 of *Christensen,* the Court said that dilapidated or unclean structures would not fall within the definition of nuisance at common law.

18. Similarly, in *St. Pierre v. Ontario (Minister of Transportation)*, [1987] 1 S.C.R. 906, the Supreme Court said that building a highway next to a home in a quiet, rural area with a "pleasing view" did not constitute a nuisance. The Court said in paragraph 13, "From the very earliest times, the courts have consistently held that there can be no recovery for the loss of prospect."

19. In this case, most of the applicant's claims relate to the view from her home. She says that items and vegetation on the respondent's property are unsightly, and that some vegetation blocks her view. For the reasons set out above, I find that the applicant is not entitled to any remedy for these claims. While I accept that her home is located in an attractive area on valuable land, there is no legal remedy available for "visual nuisance" or loss of view. I am bound by the case law cited above.

20. In her submissions, the applicant relied on a prior tribunal decision, *Bourque et al v. McKnight et al*, 2017 BCCRT 26. While the vice chair's decision in *Bourque* discussed unsightly conditions on a neighbour's property in the context of nuisance, I find that *Bourque* can be distinguished from the facts in this case because the neighbours in Bourque were part of a strata complex governed by the *Strata Property Act* (SPA), and subject to strata corporation bylaws. As explained by the Vice Chair in paragraph 106 of *Bourque*, the laws of private nuisance were not necessarily determinative in that case, as the dispute arose under the SPA and the strata corporation's bylaws expressly prohibited a party from causing a nuisance or interfering with another owner's right to use and enjoy their property.

21. Because the SPA and strata bylaws do not apply in this case, I find that the reasoning in *Bourque* is not applicable. As explained above, there is no legal remedy for aesthetic or visual nuisance at common law, and so I dismiss the applicant's claims.

22. As the tribunal's mandate includes being mindful of parties' ongoing relationships, I make the following comments about the applicant's neighbouring property owned by the respondent. Having reviewed the photographs provided by the applicant, I find that while the respondent's property is not as tidy as that of his surrounding neighbours, it is not egregiously unattractive. Many of the items described by the applicant as a visual nuisance, such as a green metal post, tree branches, and small items on a carport roof, are relatively innocuous.

23. In *Sutherland,* the court said that in assessing nuisance, the standard is that of an ordinary person, rather than that of a particular individual. While I accept that the overall effect of the respondent's items is messier than the prevailing neighbourhood aesthetic, I find it would not constitute an unreasonable interference with an ordinary person's use and enjoyment of the adjacent property.

*24.* In *Sutherland,* the court also said that in a nuisance case, the relevant evidence must be weighed to determine if the alleged nuisance "is an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions".[2]

25. Based on the photographs provided in evidence, I find that the alleged nuisance created by the items and vegetation on the respondent's property, while extremely annoying to the applicant, do not interfere with the ordinary physical comfort of her existence.

*Driveway Dust*

26. The applicant requested an order that the respondent treat the surface of his driveway to eliminate dust. While driveway dust might be an "intrusion" onto the applicant's property constituting a legal nuisance, the applicant has provided no supporting evidence to prove that such dust exists, or that it interferes with the use

[2] This quote was adapted from an English case, *Walter v. Selfe* (1851), 4 De G. & Sm. 315, 64 E.R. 849, as cited by the Ontario High Court in *Appleby v. Erie Tobacco Co.* (1910), 22 O.L.R. 533.

and enjoyment of her property. The photographs she provided show an unpaved driveway that appears to be hard-packed, with no visible dust.

27. The applicant's request for an order to eliminate driveway dust appears to be part of her general objection to the upkeep and appearance of the respondent's property. As there is no evidence of significant (or any) interference with use and enjoyment, I make no order about driveway dust.

28. Nothing in this decision prevents the applicant from pursuing enforcement of applicable municipal bylaws through her local government.

29. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful, so I dismiss her claim for reimbursement of tribunal fees. The respondent did not pay any fees and did not claim any dispute-related expenses.

## ORDERS

30. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member