



Civil Resolution Tribunal

Date Issued: December 21, 2018

File: SC-2018-003533

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McColl v. Stoll*, 2018 BCCRT 889

B E T W E E N :

Carla McColl

APPLICANT

A N D :

Sylvia Stoll

RESPONDENT

A N D :

Carla McColl

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shaun Ramdin

INTRODUCTION

1. This is a dispute about damages to the parties' respective properties related to flooding of a nearby creek. The parties are self-represented.
2. The parties share a property line. The applicant, Carla McColl, claims that the respondent, Sylvia Stoll, intentionally diverted water that was flooding onto Ms. Stoll's property towards and onto Ms. McColl's property. To remedy this flooding of her property, Ms. McColl hired an excavator to dig a trench on her side of the parties' shared property line. In digging, the excavator damaged Ms. McColl's chicken coop and fencing. Ms. McColl seeks damages of \$1,500 to replace these items as she claims that they were damaged only as a result of requiring the excavator to deal with the water Ms. Stoll allegedly directed onto her property. Ms. Stoll disputes Ms. McColl's claim.
3. Ms. Stoll also counterclaims against Ms. McColl. She claims that the digging done by Ms. McColl's excavator damaged her fence and underground irrigation on her side of the parties' shared property line. She claims damages of \$1,975 in repairs. Ms. McColl disputes the counterclaim.

JURISDICTION AND PROCEDURE

4. 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.
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.

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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. to what extent, if any, is Ms. Stoll responsible for the damage to Ms. McColl's chicken coop and fencing;
 - b. to what extent, if any, is Ms. McColl responsible for the damage to Ms. Stoll's fencing and underground irrigation.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the claimant bears the burden, on a balance of probabilities, to prove their claim. This means that Ms. McColl must prove her claim of damages to her chicken coop and fencing, and Ms. Stoll must prove her claim of damages to her fencing and underground irrigation. I have only addressed the evidence and arguments to the extent necessary to explain my decisions.

10. The parties reside in the interior in British Columbia. As noted above, their properties share a property line.
11. On May 8, 2018, Ms. Stoll's property was flooded as a result of water overflowing from a nearby creek. Ms. McColl claims that Ms. Stoll dug two trenches on her property to guide the overflowing water towards Ms. McColl's property, rather than diverting it back to the creek. Ms. McColl claims that as a result of the alleged trenches, her property began flooding.
12. Ms. McColl used an excavator to dig a trench on her side of the property line shared with the respondent to divert the flood water back to the creek. In digging, the excavator damaged her chicken coop and fencing. She claims this damage is Ms. Stoll's responsibility as the excavator's digging would not have been required had Ms. Stoll not diverted the water as alleged.
13. Ms. Stoll denies that she trenched the water flooding onto her property towards Ms. McColl's property. She states that at first she tried to trench the water back towards the creek. This was unsuccessful. She then used some sandbagging to protect certain structures on her property but, as her property is elevated above Ms. McColl's, the water naturally flowed downward towards and onto Ms. McColl's property. She also states that it was not necessary for Ms. McColl to use an excavator in the way she did to deal with the water on her property.
14. Further, Ms. Stoll claims that the excavation undertaken by Ms. McColl damaged her fence and irrigation on her side of their shared property line. Ms. Stoll claims this damage is therefore Ms. McColl's responsibility.

The applicant's claim

15. As noted above, Ms. McColl alleges that Ms. Stoll dug trenches to intentionally divert the flooding water to her property. In claims such as this, the law of nuisance applies. The general principle is that people are entitled to use and enjoy their land without unreasonable interference (*Royal Ann Hotel Co. v. Ashcroft*, 1979 CanLII

2776 (BCCA)). Interference with the natural flow of surface water that results in water running off onto a neighbour's property is unreasonable and may give rise to damages (*Manhas v. Michael Landon Homes Ltd.*, [1998] B.C.J. No. 1897 (PC) (QL), *Medema v. McCreight and McCreight*, 2016 BCPC 205 [*Medema*]).

16. In support of her claim, Ms. McColl provided photos of the flooding on the parties' property and her damaged chicken coop and fencing. She states that two of her photos show that Ms. Stoll intentionally dug two trenches on her property to divert water towards her property.
17. When looked at as a whole, I find the evidence supports a finding that these two streams were the natural flow of the surface water and were not the result of interference by Ms. Stoll. In particular, Ms. McColl's photos do not show dug trenches. Rather they show the water pooling and running in two undirected lines or streams on Ms. Stoll's property and towards Ms. McColl's. This is confirmed in the other photos provided by the parties.
18. Further, Ms. Stoll provided an annotated satellite photo and map. It shows that Ms. McColl's property is directly south of Ms. Stoll's. The creek runs west along the north side of the property that is directly north of Ms. Stoll's property, then curves south and runs down the west sides of the parties' properties. Ms. Stoll explained that the creek overflowed onto her northern neighbour's property. That water flowed downward from the neighbour's property onto hers, and then in two surface streams to Ms. McColl's property. Ms. McColl did not dispute that her property is below Ms. Stoll's.
19. I acknowledge Ms. McColl's position that the excavation was required to re-direct the flood water away from her property and back to the creek. However, she did not provide evidence that the excavation as undertaken was the only way to re-direct the water back to the creek or that the damage to her chicken coop and fencing was necessary for the excavation. Given this, I am unable to relate the damages claimed to the natural flow of water from Ms. Stoll's property.

20. Finally, there is insufficient evidence of the damages claimed. I acknowledge that Ms. McColl states that the costs of repairing her chicken coop and fencing totals \$1,500. However, she did not provide evidence itemizing the actual value of the allegedly damaged items, or independently confirming their replacement or repair costs.

21. Given all of this, I find that Ms. Stoll is not responsible for the damage to Ms. McColl's chicken coop and fencing. I therefore dismiss Ms. McColl's claim.

The respondent's counterclaim

22. As noted above, Ms. Stoll claims for damages to her fence and underground irrigation, allegedly resulting from Ms. McColl's excavation work. She claims that the fence posts have been loosened and her irrigation pipe has been cracked.

23. There is insufficient evidence to support Ms. Stoll's counterclaim. I acknowledge that she provided a photo she says shows her fence sagging. In my view, that is not established in the photo. Further, Ms. Stoll did not provide evidence of damage to her irrigation. There is also no evidence itemizing the value of these allegedly damaged items, or independently confirming their replacement or repair is necessary or related costs.

24. Given all of this, I find that Ms. McColl is not responsible for damage to Ms. Stoll's fencing or irrigation. I therefore dismiss Ms. Stoll's counterclaim.

Tribunal-related expenses

25. Both parties claims for tribunal-related expenses for their respective claims. Under section 49 of the *Act* and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. In this case, neither party was successful with their claim. Ms. McColl was not successful with her claim and Ms. Stoll was not successful with her counterclaim. I therefore decline to order reimbursement of either party for their respective tribunal fees and expenses.

ORDERS

26. I dismiss the applicant's claim. I dismiss the respondent's counterclaim.

Shaun Ramdin, Tribunal Member