



# Civil Resolution Tribunal

Date Issued: January 24, 2019

File: SC-2018-002807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BURTON v. VANCE et al*, 2019 BCCRT 90

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

Joanne BURTON

**APPLICANT**

**A N D :**

Craig VANCE and Daniel VANCE

**RESPONDENTS**

**A N D :**

Joanne BURTON

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The parties are neighbours in Langley. The applicant and respondent by counterclaim, Joanne Burton, claims that several plants on the property owned by the respondents, Craig Vance and Daniel Vance, intrude onto her property. Ms. Burton paid a landscaper to trim some of the vegetation to the property line and claims \$315 as reimbursement for the landscaper's invoice.
2. Ms. Burton also seeks an order requiring the Vances to have the vegetation trimmed by a professional company to the property line and an order that the Vances maintain their property in accordance with municipal bylaws.
3. Craig Vance counterclaims against Ms. Burton. He says that Ms. Burton is responsible for damage to his property during construction of a shared fence, which required him to resod part of his backyard and repair his irrigation system at a total cost of \$916. Craig Vance also says that Ms. Burton's landscaper crossed the property line by 8 inches and claims \$200 for the loss of quiet enjoyment of his property.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
6. 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.

7. 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.
8. 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**

9. The issues in this dispute are:
  - a. Who must pay the cost of trimming branches that cross the property line into Ms. Burton's property?
  - b. Should I order the Vances to comply with municipal bylaws?
  - c. Did Ms. Burton's landscaper cross the property line when trimming the tree, and if so, what remedy is appropriate?
  - d. Who is responsible for the cost of resodding Craig Vance's backyard and repairing Craig Vance's irrigation?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Ms. Burton must prove her case on a balance of probabilities. By the same token, Craig Vance must prove his case on a balance of

probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

11. As a preliminary matter, Daniel Vance says that he is not an owner of the property at issue. The applicant has failed to provide any evidence that Daniel Vance is an owner of the property. I dismiss the applicant's claims against Daniel Vance. For the remainder of this decision, I will refer to Craig Vance as Mr. Vance.
12. As mentioned above, the parties own neighbouring properties. Ms. Burton lives on her property with her husband. Mr. Vance does not live on his property, but rents it out.
13. There are 2 main areas of disagreement between the parties: the intruding vegetation and the backyard fence. I will deal with the 2 matters separately.

### ***The Intruding Vegetation***

14. The issue of intruding vegetation has been a source of conflict between the parties for several years. There are 2 trees in Mr. Vance's backyard that have branches that overhang into Ms. Burton's property. In the front yard, there are smaller ornamental plants that have, at times, grown over the property line. Over the years, Ms. Burton has asked Mr. Vance to prevent or remedy the intrusions into her property. Ms. Burton has not been happy with Mr. Vance's efforts.
15. On April 9, 2018, Ms. Burton hired a contractor to trim any shrubs and trees over the property line, charging \$300 plus GST. Ms. Burton demanded that Mr. Vance pay the invoice. Mr. Vance told Ms. Burton she had the right to trim overhanging vegetation if she wished, but he had no obligation to pay for it.
16. It is undisputed that the trunks and stems of the plants that intrude over the property line are all on Mr. Vance's property. It is also undisputed that parts of the plants have crossed the property line and that Ms. Burton is entitled to have her property free from such intrusions. Mr. Vance is correct that Ms. Burton is free to trim

intruding vegetation if she wishes (see *Anderson v. Skender*, 1993 CanLII 2772 (BC CA)). The question is who must pay for the trimming.

17. Ms. Burton appears to be under the impression that any vegetation that crosses the property line is Mr. Vance's responsibility. This is not necessarily the case. It is a general principle of the law of nuisance that a person is entitled to use and enjoy their land without unreasonable interference from a neighbour. The question in this dispute is whether the intruding vegetation caused an unreasonable interference. If the intruding vegetation was a nuisance, I find that Mr. Vance must reimburse Ms. Burton for the reasonable cost of trimming them. If the intruding vegetation was not a nuisance, then Ms. Burton must bear the cost.
18. Ms. Burton provided photos and videos of the property line. However, these photographs are from after the trimming, so there is not photographic evidence about how much vegetation crossed the property line before the trimming. There is no suggestion that any of the intruding vegetation caused any physical damage to Ms. Burton's property, or posed any risk of causing physical damage. Ms. Burton points to the fact that she has to rake up leaves from the trees.
19. While I accept that Ms. Burton finds the intruding vegetation annoying, I find that she did not prove that it unreasonably interfered with the use or enjoyment of her property. While the fact that the overhanging branches likely increase the amount of leaves that Ms. Burton has to rake, I find that this is not an unreasonable interference with her enjoyment of her property. Accordingly, while Ms. Burton was within her rights to trim intruding vegetation, I find that it was at her own expense. I dismiss Ms. Burton's claim for reimbursement of the landscaping cost.
20. Ms. Burton also seeks an order requiring Mr. Vance to hire a tree company to trim his vegetation to the property line. Again, Mr. Vance must only do so if the intruding branches cause a nuisance. The photographic evidence shows that only a small part of the trees' canopies now crosses the property line and only does so 20 to 40 feet above the top of the parties' fence. In the front yard, only a small amount of

vegetation crossed the property line. I find that the current state of any intruding vegetation is not a nuisance. I dismiss this claim.

21. That said, my finding does not mean that intruding vegetation can never be a nuisance. Future growth of Mr. Vance's plants may cause a nuisance that he would be obligated to remedy. It would therefore be prudent for Mr. Vance to monitor the growth of his plants to ensure that they do not unreasonably interfere with Ms. Burton's use or enjoyment of her property.
22. Ms. Burton also seeks an order that Mr. Vance to comply with municipal bylaws. I agree with Mr. Vance that if Ms. Burton has a complaint about his compliance with municipal bylaws, she should make a complaint to the Township of Langley. I dismiss this claim.
23. Turning to Mr. Vance's counterclaim, he claims that Ms. Burton's contractor crossed the property line by 8 inches and trimmed too much of one of the plants. Mr. Vance says that the plant provided a privacy screen and that by cutting over the property line, Ms. Burton's contractor negatively impacted the use and enjoyment of his property. Mr. Vance provided photographs that show the approximate property line and where the contractor cut. Mr. Vance initially claimed \$200 for the trespass, but in his submissions suggested \$120 in damages, being the approximate cost of 2 bamboo plants.
24. I accept that the contractor went slightly over the property line, but do not agree that the trespass will have any lasting negative impact on Mr. Vance's property. I do not agree that Mr. Vance requires new plants to maintain his privacy. That said, the trespass did damage Mr. Vance's plant and he is therefore entitled to general damages. In trespass cases, general damages are meant to compensate for the loss of use and enjoyment with the land while keeping in mind the trespasser's level of culpability of the trespasser.

25. For example, in *Bower v. Rosicky*, 2000 BCSC 85, the Court awarded \$100 in general damages when the defendant accidentally trespassed and cut down 17 of the plaintiffs' trees. The trees were not visible from the plaintiffs' residence.
26. In this dispute, there is no evidence that Ms. Burton directed her landscaper to trespass and the property line is not clearly marked. I conclude that this was an accidental trespass. The landscaper caused very minor damage to Mr. Vance's property that is only visible on close inspection. Taking everything into account, I award Mr. Vance \$50 in general damages.

### ***The Fence***

27. The parties' share a backyard fence along their property line. In 2015, a storm damaged the fence and it needed to be replaced.
28. In 2016, the parties decided to build a new fence. The parties agreed to split the cost of the fence.
29. Ms. Burton had already hired a contractor to complete some interior renovations, so the parties decided to hire the contractor for the fence project. Unfortunately, the relationship between Ms. Burton and the contractor deteriorated to the point where, on September 8, 2016, Ms. Burton and her husband fired the contractor.
30. Immediately after being fired, the contractor began tearing the fence down. The contractor left some debris in Mr. Vance's yard. Mr. Vance says that the contractor did so because Ms. Burton's husband told him to. Ms. Burton's husband denies instructing the contractor to leave debris in Mr. Vance's yard.
31. By this time, Mr. Vance had already given the contractor a \$1,000 deposit. Mr. Vance convinced Ms. Burton to allow the contractor to complete the fence project.
32. The contractor did no work on the fence project over the winter. During this time, the debris sat on Mr. Vance's back lawn.

33. Unfortunately, the problems with the contractor continued. To the frustration of both parties, the contractor worked very sporadically over the spring and summer of 2017. The precise dates are not in evidence, but at some point in the autumn of 2017, Ms. Burton got fed up waiting and hired a new contractor to finish the job. The fence was complete in early November 2017.
34. At some point during construction, Mr. Vance realized that construction of the new fence had damaged his irrigation system.
35. Mr. Vance makes 2 claims about the fencing. First, he claims that the contractor damaged his lawn and that Ms. Burton is responsible to repair the damage. Second, he claims the cost of repairing his irrigation system.
36. Turning first to the damage to Mr. Vance's lawn, the parties focused on whether the contractor placed the debris there because Ms. Burton's husband told him to. I find that this fact is not important. Mr. Vance says that the repairs to his lawn are necessary because the debris sat on the ground for the entire winter. He does not explain why he left it there for so long, especially since he was the contractor's primary contact person after Ms. Burton fired him in September 2016. I find that the damage to Mr. Vance's back lawn was the result of his own failure to remove the debris. I dismiss this claim.
37. As for the damage to Mr. Vance's irrigation system, the project to replace the fence was a joint project. The parties shared the cost. I accept that there was a small amount of damage to the irrigation system. I find that because it was damaged during a joint project, the parties should share the repair cost as a joint expense. Mr. Vance provided a receipt for \$39.77 and has not explained why he claims \$200. In the absence of any other evidence to support his claim, I find that Ms. Burton must reimburse Mr. Vance for half of this expense, which is \$19.89.
38. In his evidence, Mr. Vance refers to 2 more claims that he wishes to make against Ms. Burton. I have decided to consider these claims even though they were not part of his initial counterclaim. Ms. Burton had a reasonable opportunity to address both



claims. In addition, because I dismiss both claims, Ms. Burton is not prejudiced. Furthermore, I find that in the context of a neighbour dispute, it is consistent with the tribunal's mandate to recognize ongoing relationships for me to make a decision that provides the parties with finality.

39. Mr. Vance claims damages because in 2014, Ms. Burton trimmed his rhododendron tree, which he says ended up killing it. The *Limitation Act* applies to tribunal claims and provides for a 2 year limitation period for trespass claims. Therefore, Mr. Vance brought this claim too late. I dismiss this claim.

40. Mr. Vance also claims his legal fees. Tribunal rule 132 says that except in extraordinary cases, the tribunal will not order one party to pay another party's fees for getting assistance from a representative. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I find that there is nothing extraordinary in this case that justifies an award legal fees. I dismiss this claim.

41. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Ms. Burton has not been successful and Mr. Vance received only a small portion of his claim. I do not consider Mr. Vance to have been a successful party. I decline to order either party to reimburse the other for tribunal fees or dispute-related expenses.

## **ORDERS**

42. Within 14 days of the date of this order, I order Ms. Burton to pay Mr. Vance a total of \$70.45, broken down as follows:

- a. \$50 as damages for trespass.
- b. \$19.89 as reimbursement for the damaged irrigation.

c. \$0.56 in pre-judgment interest under the *Court Order Interest Act*.

43. Ms. Burton's claims are dismissed. Mr. Vance's remaining counterclaims are dismissed.
44. Mr. Vance is entitled to post-judgment interest, as applicable.
45. 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.
46. 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.

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Eric Regehr, Tribunal Member