



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-006528

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mason v. Burgess*, 2019 BCCRT 340

B E T W E E N :

Jacqueline Mason

APPLICANT

A N D :

Lloyd Burgess

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute over an easement. The parties own neighbouring rural properties near Princeton. The applicant holds an easement over part of the respondent's property because the applicant's driveway passes through the respondent's property. The applicant claims that the respondent breached the easement agreement by building a cattleguard, gate and fence across the driveway without

the applicant's written consent. The applicant wants the respondent to pay to remove the cattleguard, gate and fence.

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 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.
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 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

7. The issues in this dispute are:
 - a. Did the respondent violate the easement agreement by installing a cattleguard and a gate across the driveway?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant must prove her 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. I have also read all of the cases that the parties rely on, even though I have not mentioned all of them in this decision.
9. The parties own neighbouring properties. In 2004, the prior owners of the 2 properties entered into an easement agreement, which is registered on the respondent's title. The easement runs with the land, meaning it binds the parties even though they were not the original parties to the easement.
10. The easement area is a driveway that connects the applicant's property to the public road, via the respondent's property. Clause 1 of the easement agreement says that the applicant has a right of way for people, vehicles and animals.
11. Clause 4 of the easement agreement requires the applicant to maintain the driveway in a reasonable state. Clause 5 of the easement agreement says that the respondent will not install, erect or construct a pit, well, foundation, building or other structure or installation on the easement without the applicant's prior written consent.
12. On March 22, 2018, the respondent installed a cattleguard and fence across the driveway, close to where it meets the public road. The respondent wished to increase the amount of his property that could be used as pasture for livestock. By

installing the cattleguard and fence, the applicant says that the respondent blocked the applicant's ability to use the easement road either by foot or horse. It is undisputed that they could still access their property with a vehicle.

13. In May 2018, the applicant wrote the respondent a letter demanding that the respondent remove the cattleguard and fence. The parties began engaging in facilitated negotiations to try to come to a resolution.
14. On August 17, 2018, the respondent installed a gate beside the cattleguard to allow easy access for people and animals. The respondent thought that the parties had agreed that the respondent could keep the cattleguard in place as long as he installed a gate beside the cattleguard. The applicant denies ever agreeing to this resolution, and in any event, the easement requires the applicant's consent to be in writing. It is undisputed that the applicant has never agreed in writing to the cattleguard, fence or gate.
15. The applicant also claims that the respondent breached the easement by padlocking a wire gate in a fence adjacent to the driveway. The respondent says that this gate is not part of the easement. The applicant tried to prove that the gate was in the easement area using photographs of a 20 metre rope. In the absence of a professional survey, I find that the applicant's evidence is insufficient to prove on a balance of probabilities that the wire gate is part of the easement. I dismiss the applicant's claim about the wire gate.
16. The applicant's primary submission is that the respondent breached the easement agreement by installing the cattleguard, fence and gate across the driveway without the applicant's prior written consent.
17. The respondent's primary submission is that the applicant is demanding greater rights over the driveway than the easement agreement provides. The respondent says that the cattleguard, fence and gate ensure access to vehicles, animals and people, which is all the easement agreement requires.

18. The respondent relies on *Lund et al v. Miles Farm Ltd. et al.*, 2002 BCSC 275, in which the Court found that a cattleguard was permitted under the terms of an easement. The relevant term of the easement in that case granted permission to construct, operate and maintain a road through a property. The easement agreement in this dispute has different terms, so this case does not assist the respondent.
19. I find that the respondent has misunderstood the terms of the easement agreement. The easement places a significant restriction on what the respondent can do without the applicant's written consent. The easement agreement says that the respondent cannot install, erect or construct a pit, well, foundation, building or other structure or installation. Whether the cattleguard, fence and gate restrict the applicant's access or not is beside the point. The easement agreement required the respondent to get written consent before making any alterations listed in Clause 5 of the easement agreement, even if the alterations do not restrict the applicant's access.
20. I find that the installation of a cattleguard, fence and gate falls within the scope of activities that Clause 5 of the easement requires written consent for. By failing to receive written consent from the applicant, I find that the respondent breached the easement agreement by installing the cattleguard, fence and gate.
21. I find that the easement road must be returned to its state prior to the installation of the cattleguard. In other words, the cattleguard, fence and gate must be removed at the respondent's expense. The applicant provided a quote of \$1,853.06 to remove the cattleguard, refill the area, and remove the gate. She also provided a quote of \$235 for a load of road base gravel. The respondent did not dispute these quotes or provide his own quotes.
22. I order that within 60 days of the date of this decision, the applicant will arrange for a contractor to remove the cattleguard, fence and gate. I order that within 14 days of the contractor providing the applicant with an invoice for the work, the applicant will provide a copy of the invoice to the respondent. I order that within 14 days of receiving the invoice, the respondent will reimburse the applicant for the cost of

restoring the driveway, up to a maximum of \$2,088.06, which is the combined amount of the quotes the applicant provided to support her claim.

23. The respondent says that the applicant breached the *Trespass Act* and the *Livestock Act* by removing fence rails on the respondent's land. The respondent also alleges that the applicant and her spouse have harassed the respondent's visitors and defamed the respondent. The respondent has not counterclaimed against the applicant and does not seek any orders about these matters. Therefore, these allegations are all outside of the scope of this dispute and I will not address them.
24. The respondent did ask that I make orders about how the applicant will maintain the road, which is the applicant's responsibility under the easement agreement. Because the respondent did not counterclaim against the applicant, I find that these matters are not properly before me. However, I find that it is appropriate for me to comment on these claims in accordance with the tribunal's mandate to recognize ongoing relationships between parties.
25. The respondent wants 72 hours' notice and detailed information about any road maintenance work that the applicant does. The easement agreement does not place any obligations on the applicant to provide this information. While open communication about maintenance may assist the parties develop a better functioning relationship, the easement agreement does not require the applicant to consult with or notify the respondent about its road maintenance plans.
26. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$14.69 in dispute-related expenses, for a total of \$139.69.

ORDERS

27. I order that:

- a. Within 60 days of the date of this order, the applicant will have a contractor remove the cattleguard, fence and gate.
- b. Within 14 days of the contractor providing the applicant with an invoice for the work, the applicant will provide a copy of the invoice to the respondent.
- c. Within 14 days of receiving the invoice, the respondent will reimburse the applicant for the cost of removing the cattleguard, fence and gate, up to a maximum of \$2,088.06.
- d. Within 14 days of the date of this order, the respondent will pay the applicant \$139.69 for \$125 in tribunal fees and \$14.69 in dispute-related expenses.

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

29. I dismiss the applicant's remaining claims.

30. 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.

31. 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.

Eric Regehr, Tribunal Member