Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as*: Lau et al v.Oak Lake Developments Corp. et al ,* 2019 BCCRT 611

B E T W E E N :

Suk Han Lau, Chuen Kwan Lau, Lin Li, Dmitriy Minenko, and Hian Kee Tan

**APPLICANTS**

A N D :

Oak Lake Developments Corp., JB&Sons Excavation Ltd, and City of Coquitlam

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member: Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about trees, and damages claims related to their removal. The applicants, Suk Han Lau, Chuen Kwan Lau, Lin Li, Dmitriy Minenko, and Hian Kee Tan, each reside in neighbouring homes on Sylvia Place, in Coquitlam. The large

property behind the applicants' homes is being developed by the respondent Oak Lake Developments Corp. (developer), who hired the respondent JB&Sons Excavation Ltd (contractor) to excavate it.

2. The applicants say the respondents improperly removed 3 trees located on property owned by Lin Lee. For this, the applicants claim $3,100 from the developer and contractor, for the trespass and tree removal without authority, permission and notification.

3. The applicants also claim $1,890 from the developer and contractor because they allegedly breached an access agreement for the applicants' removal of 13 other trees, which the applicants say caused them to incur an extra fee from their own tradesperson.

4. The applicants want the developer to clearly mark the property line dividing the developer's property and the applicants' properties, "to prevent future misunderstanding and conflicts with future 12 town home owners". The applicants also want a professionally-approved retaining wall built as soon as possible to prevent their homes from sustaining landslide damage. Finally, the applicants want the respondent, City of Coquitlam (City), to assist them to identify their property line shared with the developer, in order to accomplish these requests.

5. The applicants are represented by Suk Han Lau. The developer is represented by Waled Harb, who I infer is an employee or principal. The contractor is represented by Jeff Bouffard, who I infer is an employee or principal. The City is represented by Sandra Mayo, who I infer is an employee.

6. For the reasons that follow, I dismiss the applicants' claims.

## JURISDICTION AND PROCEDURE

7. 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* (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.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

9. 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.

10. Under tribunal rule 9.3(2), 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

11. The issues are whether a) the developer and/or contractor owe the applicants compensation for removal of 3 trees and for breach of an access agreement for removal of other trees, b) the respondents must build a retaining wall, and c) the respondents must assist the applicants with marking the relevant property line boundary.

## EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the burden of proof is on the applicants, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

***Removal of 3 trees - $3,100 claim for trespass***

13. The applicants say the developer and contractor removed 3 trees on Lin Li's property. The developer says its survey showed 2 of the trees were on its property, and 1 tree was growing out of the retaining wall towering over its property, presenting a hazard. The developer says it was entitled to cut that third tree down.

14. There are a number of reasons why the applicants' claim must fail.

15. First, contrary to the applicants' apparent belief, there is no legal basis to conclude the City is required to assist with or identify the legal property boundary. When the City issued the developer a tree cutting permit (TCP), the evidence shows it told the developer it must confirm all property boundaries. A licensed surveyor is the appropriate professional to conduct a property survey and identify the boundary line. For reasons unknown to me, the applicants have not obtained a legal survey. Apart from the request for assistance in marking the parties' property boundary, there is no other relief sought against the City, and in particular, no claim for damages. I dismiss the applicants' claims against the City.

16. Second, as noted above, in this dispute the applicants bear the burden of proof. Again, the applicants have not provided a legal survey, so I have no evidence before me on which I could conclude at least 2 of the 3 removed trees belonged to Lin Li. I acknowledge Hian Kee Tan's evidence of a photo showing sticks and orange ribbon, which they say indicate the property line and that this photo is consistent with the City's maps that show the line is about 4 feet from the retaining wall. However, the photo does not show the retaining wall. The orange line drawn on it was made by someone editing the photo. I cannot rely on the photos in evidence to determine the property line and the ownership of the 3 trees.

17. The developer provided a land survey that shows the property line between its property and the applicants' is at the edge of the retaining wall. I note the surveyor who laid the pins in the photos would have been unable to place a property line pin in the retaining wall, if the property line was at the retaining wall. The respondent says the surveyor pins on site verify the property line was at the retaining wall. I find the applicants have not proved the 2 trees located away from the retaining wall (trees marked 2 and 3 in the photos) were owned by any of the applicants.

18. What about the 3rd tree that was growing out of the retaining wall (marked as tree 1 in the photos) and which towered over the developer's property as shown in the photos? Based on the evidence, this may have been a shared tree. However, the photo shows the cut was made about a couple of feet up from the visible base extending out from the retaining wall, at a point where the tree was overhanging onto the developer's property if I accept the property line was at the retaining wall. A June 28, 2018 email from a City forest management technician noted that the trees growing "on top of the wall may be on the private property" of the applicants. This statement is support for the conclusion that the retaining wall was the boundary, and the other trees directly in front of the retaining wall were on the developer's property.

19. A property owner is entitled to cut down overhanging branches, and the applicants have not provided sufficient evidence that this tree was not overhanging. The evidence is clear the 3 trees were accessed from the developer's side of the property line.

20. The applicants also do not dispute the 3 trees were a hazard, and given the uncontested evidence about the hazard presented by the other trees growing on the retaining wall (discussed further below), I accept the 3rd tree removed by the contractor was a hazard.

21. Next, the applicants have not given any explanation of how they arrived at the $3,100 figure. Even if the trees were on the applicants' property, the trespass was

nominal and related to a group of trees the applicants later agreed to cut down anyway.

22. Finally, even if I had made an award of damages for the 3 trees' removal, based on the applicants' evidence they were owned by Lin Li, damages would have been payable only to Lin Li, not all applicants.

23. The applicants also ask for the developer to clearly mark the property line. I decline to make such an order. Nothing prevents the applicants from obtaining a legal survey and taking legal steps to identify the boundary.

24. Next, as referenced above, the applicants allege that the soil foundation has been compromised after the developer removed at least 30 trees on its property, and that in turn the soil foundation "may be weakened" to support the applicants' existing trees. However, as noted, the applicants have provided no evidence to support the claim of weakened soil foundation. The fact that trees growing out of the retaining wall presented a hazard is not necessarily the same thing as compromised soil foundation. I note the City gave the developer a permit to remove 33 trees for land development.

25. Finally, the applicants ask for the construction of a professionally-approved retaining wall. The tribunal's monetary jurisdiction in small claims disputes is $5,000, and the applicants' claims already total $4,990. In any event, there is no evidence before me in this dispute to support a conclusion the developer is obliged to build such a wall. While the applicants allege soil erosion and potential landslides, they have provided no evidence in support of those allegations. The trees presenting the hazard were removed. That said, nothing in this decision precludes the parties from working together to see if such a wall is necessary and if it is, who should pay for it.

26. For all of the reasons above, I dismiss the applicants' claims for $3,100.

***Access agreement - $1,890 claim for damages***

27. Based on an August 2, 2018 letter to the applicants from the developer's lawyer, the City and the developer later identified a number of cottonwood trees on the applicants' property that were a hazard, as they were growing on top of the retaining wall near the property line. This is confirmed in an email from the City, which is in evidence. Based on the photos in evidence, these trees, which the applicants say were 13, were located in the same general area as the other 3 trees discussed above. The letter stated that the failure of the retaining wall would be catastrophic, and so the lawyer recommended that the applicants remove the trees "ASAP".

28. The August 2, 2018 letter gave the applicants 2 weeks from the date of the letter to enter onto the developer's property in order to remove the cottonwood trees. The letter stated that after that date, the developer could not guarantee access from its property as there would be work commencing. The letter also stated that in order to lessen the applicants' expenses in the trees' removal, they could contact the contractor who was already on-site with the appropriate tree-removal equipment, and obtain a quote and "arrange his services". The letter concluded that confirmation of ownership of the trees must occur before removal, with the contractor requiring written approval to remove trees before he would cut them down.

29. Contrary to the applicants' submission, I do not agree the lawyer's August 2, 2018 letter was "bully tactics". The letter fairly put the applicants on notice about their trees and provided the applicants with a reasonable option to deal with them.

30. The evidence shows the applicants' worker did not start until after the 2-week period was up.

31. The applicants say they had a verbal and email agreement for 3 days' access to remove the trees, but the developer refused to honour this because the contractor was working on the site on the first day of access. The applicants say this cost them $1,890 because their own worker was unable to work at all on day 1 of access. The

applicants allege the developer misrepresented and breached the access agreement.

32. The applicants' worker emailed the developer that they would start work on Friday, August 18, and continue Monday August 20, "with the possibility of it stretching" to Tuesday. It appears these dates were in error, as Friday was August 17, not 18.

33. On Friday August 17, "Jim", on the applicants' behalf, wrote the developer's engineer AF and said his worker arrived with 3 trucks and was turned away. Later, AF replied that he was not informed about "today's trucks". AF referred to a meeting on August 16 with Jim and that after that he informed the contractor's supervisor about the tree removal to start August 17, "but it seems that they did not coordinate internally". The evidence shows Jim only provided the required confirmation on August 16, which would allow the applicants' worker to access the developer's property. However, AF also wrote that the trucks come to the site every 1.5 to 2 hours and are only there for 10 minutes. AF wrote the parties could "co-work". Later, AF agreed that on August 21 and 22 its contractor would have no trucks present, to give the applicants greater access, which was causing the developer to lose money.

34. On balance, I find the applicants have not proved the developer breached any agreement about access. There was confusion about the start date based on the email described above. The applicants did not provide the required information to permit their access until August 16. More importantly, the applicants have not proved that their tradesperson could not reasonably work with the developer's trucks coming and going. Finally, the applicants have not proved the developer ever agreed to not have their own trucks coming and going on the first day of the applicants' access. There is no evidence the contractor had any direct agreement with the applicants about access and so it would not be liable in any event.

35. For all these reasons, I dismiss the applicant's claim for $1,890 that they paid to their own worker.

36. The applicants were unsuccessful. In accordance with the Act and the tribunal's rules, I find they are not entitled to reimbursement of any tribunal fees or dispute-related expenses.

## ORDER

37. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair