



# Civil Resolution Tribunal

Date Issued: December 9, 2019

File: SC-2019-002572

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Paduch v. Hiebert*, 2019 BCCRT 1381

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

MARIE JO PADUCH and ROBERT AUSTIN

**APPLICANT**

**A N D :**

PETER HIEBERT

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

### **INTRODUCTION**

1. This is a dispute about a shed. The applicants, Marie Jo Paduch and Robert Austin, own property in Vernon. The respondent, Peter Hiebert, also owns a property in Vernon which backs onto the applicants' property. The applicants want to build a fence or retaining wall along their property line shared with the respondent's property, but they say the respondent's shed is encroaching on their property and

the back slope of his property allows dirt to slide onto their property. The applicants want the respondent to pay them \$4,980 for the cost of removing the shed and re-grading the slope of his property. In the alternative, they want the respondent to remove his shed and re-grade his slope.

2. The applicants initially named Derryanne Hubbard as a respondent in this dispute but have since withdrawn their claims against them. I have amended the style of cause above accordingly.
3. All parties are self-represented.

## **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 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:

- 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. Does the respondent's shed encroach on the applicants' property, and if so, what is an appropriate remedy?
  - b. Is the back of the respondent's property falling onto the applicants' property, and if so, what is an appropriate remedy?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicants' position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I refuse to resolve the applicants' claims.

***Does the respondent's shed encroach on the applicants' property, and if so, what is an appropriate remedy?***

11. It is undisputed that when the respondent bought his property in 1994 the shed at the back of the property was already built.
12. The applicants say the respondent's shed is encroaching on their property. They submitted a January 14, 2019 lot plan prepared by a surveyor the applicants hired

which shows the respondent's shed encroaches on the applicants' property between 0.08 and 0.09 meters.

13. The respondent says the applicant's lot plan may not be accurate because he spoke with several land surveyors who told him there could be a degree of error in a land survey anywhere between 0.03 meters and 0.1 meters. He also says that even if his shed does encroach on the applicants' property, it was built before he bought it, and the City of Vernon has a "grandfather clause" to protect him in this situation.
14. Under section 36 of the *Property Law Act* (PLA), if a land survey shows that a building encroaches on adjoining land, the owner of the land encroached upon may apply to the BC Supreme Court, which can either:
  - a. declare that the owner of the land with the encroaching building has an easement on the land encroached upon and compensate the owner of the adjoining land,
  - b. vest title to the land encroached upon to the owner of the land with the encroaching building and compensate the owner of the encroached upon land, or
  - c. order the owner of the land with the encroaching building to remove the encroachment so that it no longer encroaches on any part of the adjoining land.
15. Under section 10(1) of the CRTA, the tribunal must refuse to resolve a claim that is outside the tribunal's jurisdiction. Given section 36 of the PLA, I find the question of whether the respondent's shed encroaches onto the applicants' property falls within the jurisdiction of the BC Supreme Court, and therefore it is outside the tribunal's jurisdiction. I therefore refuse to resolve this claim under section 10(1) of the CRTA.

***Is the back of the respondent's property falling onto the applicants' property, and if so, what is an appropriate remedy?***

16. The applicants also say the back of the respondent's property where the shed is located is "rolling onto" their property. They say there is a "continuous rolling of debris" from the respondent's property onto theirs, and neither the respondent nor his tenants take proper care of the slope at the back of the property. They also say the respondent's shed is a hazard in danger of collapsing onto their property. They submitted 3 photos which they say show the respondent's shed precariously perched on rocks for support.
17. Under section 11(1)(a)(i) of the CRTA, the tribunal may refuse to resolve a claim within its jurisdiction if it considers that the claim would be more appropriate for another legally binding process. Under section 11(1)(c) of the CRTA, the tribunal may refuse to resolve a claim within its jurisdiction if the issues are too complex or otherwise impractical for the tribunal to resolve.
18. On the evidence before me I find the shed is located on the slope of the respondent's property which is the subject of the applicants' claim. I find that it would be impractical to make a finding about the slope of the respondent's property when the shed on top of that slope may be the subject of a Supreme Court action under section 36 of the PLA. I also find that if the tribunal resolved this claim it would create the potential for inconsistent findings of fact if there is a Supreme Court action about the shed. I find this claim would be more appropriately addressed together with the issue of the encroaching shed in one dispute resolution process. Therefore, under sections 11(1)(a)(i) and 11(1)(c), I refuse to resolve this claim.
19. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Having refused to resolve the applicant's claims, neither of the parties were unsuccessful. I exercise my discretion to direct the tribunal to refund the applicants the \$175 paid for tribunal fees. Both parties claim \$75 in

dispute-related expenses for reports. In the circumstances I find that each party should bear their own dispute-related expenses.

## **ORDERS**

20. I refuse to resolve the applicants' claims under section 10(1), 11(1)(a)(i), and 11(1)(c) of the CRTA.

21. I order the parties to bear their own dispute-related expenses.

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Sarah Orr, Tribunal Member