Civil Resolution Tribunal

Date Issued: January 27, 2020

File: SC-2019-003282

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Genaille v. Peters,* 2020 BCCRT 86

B E T W E E N :

LISA GENAILLE and ANDREW GENAILLE

APPLICANTS

A N D :

PHILLIP PETERS and RHONDA PETERS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is 1 of 4 disputes brought by the applicants, Lisa Genaille and her brother Andrew Genaille. All disputes allege various trespasses on their

property located on the Peters First Nation reserve. The named respondents are different for each dispute. Where there is some overlap in terms of the underlying facts across the other 3 disputes, the facts in this dispute are not at issue in any of the other 3 disputes.

2. In this dispute, the applicants allege the respondents, Phillip Peters and his wife Rhonda Peters, engaged in various harassing behaviours and trespass, relating to 4 specific incidents in May 2017, May 2018, January 29, 2019, and April 26, 2019.

3. In this dispute, the applicants claim $4,745: $1,500 in punitive damages, $1,245 for the cost of security cameras and $2,000 for "loss of security and enjoyment" of their home and property. As discussed below, the respondents deny the allegations and ask the dispute be dismissed.

4. The parties are each self-represented. For the reasons that follow, I dismiss the applicants' claims in this dispute.

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* (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.

6. 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.

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. Where permitted by section 118 of the CRTA, 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.

9. As noted, the applicants filed 3 other disputes that allege trespass, but none of those are against these respondents and they all refer to different underlying facts. As noted above, those other disputes are the subject of separate decisions.

10. At one point in their arguments the applicants ask for production of "the underrated email supplied in evidence by Phillip Peters of [NW] to the RCMP on his behalf" together with the RCMP's response. I infer the applicants refer to an 'unredacted' email they believe Mr. Peters sent to the RCMP. There is no indication in the materials before me that the applicants ever pursued this documentation before they made the above statement in their arguments. I decline to pursue that documentation for 2 reasons. First, the applicants should have raised the issue before this late stage of the proceeding. The tribunal's mandate is to provide speedy, efficient and proportionate dispute resolution. Two, the applicants provided insufficient specifics about the referenced correspondence and why it is necessary for their claim. In particular, there is no explanation about why NW's evidence is relevant. In any event, I find it would be disproportionate to pursue the requested correspondence at this late stage of this proceeding.

ISSUE

11. The issue in this dispute is whether the respondents are liable for alleged trespasses and harassing behaviour, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

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

Law of trespass

13. The law of trespass is well summarized in *Lahti v. Chateauvert*, 2019 BCSC 1081, which at paragraph 6 quotes from Fridman, *The Law of Torts in Canada*:

> Trespass to land consists of entering upon the land of another without lawful justification … . To constitute trespass the defendant must in some direct way interfere with land possessed by the plaintiff. The requirement of directness differentiates trespass from nuisance, which is committed when the defendant makes a use of his land that indirectly affects the land of the plaintiff.

14. A "mistaken trespass" is not a defence (see *Lahti*, paragraph 8). However, the interference with land must be direct, and, intentional or negligent. As applied to this dispute, the "intentional act" refers to the completion of a voluntary and affirmative act (attendance on the applicants' property), rather than an intention to do something wrongful (trespass).

Tort of harassment

15. While the applicants do not specifically allege the tort of harassment, I find that is the substance of some of their claims. However, in *Total Credit Recovery v. Roach,* 2007 BCSC 530, a decision binding on me, Madam Justice Koenigsberg found that "the weight of authority in this Province is against the development of such a tort". I therefore find that there is currently no recognized cause of action in British Columbia for the tort of harassment.

16. Even if there was such a recognized tort in this province, the case law indicates the following are the relevant criteria which I find are not established on the evidence before me (see *Mainland Sawmills Ltd. v IWA-Canada, Local 1-3567 Society*, 2006 BCSC 1195 in which the court had assumed without deciding the tort of harassment existed in British Columbia). The criteria are: a) outrageous conduct by the respondent, b) intention to cause the applicant emotional distress or reckless disregard, c) the applicant suffered "severe or extreme emotional distress", and d) was the respondent's outrageous conduct the actual and proximate cause of the distress.

17. At minimum, the applicants have not proved either of them suffered "severe or extreme emotional distress" as a result of either respondent's conduct. There is no medical documentation before me and no evidence that would otherwise support there was such distress. I find even if a tort of harassment existed, the applicants have not proved the required elements, as discussed further below.

Background facts

18. It is undisputed that in accordance with section 19 of the federal *Indian Act* FG holds a Certificate of Possession for the property in question, located on the Peters First Nation reserve. I accept the applicants both live on the property with their mother FG and together with FG enjoy an exclusive right of possession. While I acknowledge Mr. Peters says Ms. Genaille does not live on the property, I find she does and given my conclusion below nothing turns on it for the purpose of this dispute.

19. The applicants say as co-occupants of the property with their mother, they have a possessory right to the property and so have standing to claim in trespass. For the purposes of this decision I agree. I turn to the alleged incidents, in chronological order.

May 2017 incident – Rhonda Peters

20. The applicants say that in or around May 2017 Rhonda Peters “tailgated” them and another brother onto a private road, parked in front of the applicants’ home and then followed the applicants onto their private driveway, shouting. Ms. Peters denies any trespass.

21. Ms. Peters denies the tailgating incident. The applicants did not submit a statement from their other brother who they say was present at the time. They made only a passing reference to this episode in their argument. I find the weight of the evidence does not support a conclusion Ms. Peters trespassed onto the applicants’ property during this alleged incident. I am left with an evidentiary tie and the applicants bear the burden of proof. Further, as noted above, there is no tort of harassment recognized in BC. I find the alleged episode as described does not rise to the level of harassment such that any compensation would be warranted, even if there was a recognized tort of harassment. For the reasons above, I dismiss this aspect of the applicants’ claim.

May 2018 incident – Phillip Peters

22. The applicants say that Phillip Peters was “caught” by the RCMP intoxicated and firing a weapon “adjacent” to their private property. They also say following that incident Mr. Peters “mimed a gun shooting” at Mr. Genaille, and then 3 days after that Mr. Peters admitted to the RCMP that he had trespassed on the applicants’ property.

23. Mr. Peters denies the RCMP “caught” him intoxicated and denies admitting to the RCMP he trespassed. Mr. Peters says he participated in target practice with other parties on reserve lands across the river from the applicant, as they had done routinely over the years. He says the RCMP attended without incident and found Mr. Peters was conducting himself lawfully. Mr. Peters denies he ever “mimed a gun shooting”. Again, I am left with an evidentiary tie and the applicants have the burden of proof.

24. The applicants submitted in evidence a heavily redacted RCMP "occurrence" report for the date April 11, 2018. There is no explanation before me as to the discrepancy between that date and the applicants' allegation that the alleged incident took place in May 2018. The redacted RCMP report in evidence shows that "Phillip Peters reported", followed by 2 paragraphs of redaction. At the end of the redacted paragraphs, the only other thing visible on the report is "Peter's was on Gennel's property" (quote reproduced as written). I do not agree with the applicants that this shows Phillip Peters was on the applicants' property or that he admitted to being on it. The applicants do not describe when and how Mr. Peters allegedly trespass, given the target practice admittedly did not take place on the applicants' property. I have addressed above the applicants' late request for production of RCMP-related correspondence. I dismiss this aspect of the applicants' claim.

25. While the applicants allege Mr. Peters "previously has been caught on Camera driving onto our property and parking for over 5 minutes", the applicants provide no details and no associated camera footage. I dismiss this aspect of the applicants' trespass claim as unproven.

January 29, 2019 incident – Phillip Peters

26. The applicants say Mr. Peters was caught on camera "surveying" their property, "driving unusually", and parking outside their property's gate, while their mother FG was home alone. As noted, FG is not a party to this dispute and there is no evidence from her before me.

27. Mr. Peters denies any harassment or trespass. The evidence shows the road outside the applicants' home is a public road on the reserve that Mr. Peters uses, as his home is on that road (along with other members of the band). The applicants submitted a 1-minute video where a white car is seen slowing down a little as it drives past the applicants' property, outside their closed gate. They also submitted some still shots they "estimated 2019" that show a car on either the edge of the road or the applicants' driveway that abuts the road, outside their closed gate. I find there is nothing in this video or in the photos that is unusual. I find the evidence also

does not establish Mr. Peters parking or driving on the applicants' property without consent. I dismiss this aspect of the applicants' claim.

28. While the applicants generally allege Phillip Peters trespassed "multiple times", I find the evidence before me does not support this assertion.

April 26, 2019 incident – Rhonda Peters

29. The applicants say Ms. Peters turned before witnesses and verbally threated Mr. Genaille and their mother FG, by "telling us that we would see a lot more of her".

30. Ms. Peters says the applicants mocked the death of her son, which the applicants deny. While in court on April 26, 2019 on an unrelated matter involving the applicants, Ms. Peters says that was the first time she had seen the applicants since the death of her son. Ms. Peters submits she simply said words to the effect, "shame on you". She denies threatening the applicants.

31. I listened to the 16-second audio recording submitted by Ms. Genaille. It was difficult to hear, but a woman's voice is heard "if you ever mock my son's death again, we'll see you again". I accept the speaker was Ms. Peters given the context. However, I find in the circumstances her comments were not a physical threat and do not rise to the level of compensable harassment, even if the tort of harassment existed in BC. I dismiss this aspect of applicants' claim.

32. Given all my conclusions above, I dismiss the applicants' claims.

Damages

33. Even if I had found either or both respondents liable, I would not have awarded the applicants their claimed damages. They claim $1,500 for punitive damages. The court has held that the purpose of punitive damages is to punish extreme conduct worthy of condemnation, and can only be awarded to punish harsh, vindictive, reprehensible and malicious behaviour (see *Vorvis v. ICBC*, [1989] 1 SCR 1085).

There is simply no evidence before me in this dispute that would warrant punitive damages.

34. As for the $1,245 claim for security cameras, there is no evidence before me to support a conclusion the respondents should be responsible for the applicants' security camera purchase. Even if the alleged trespasses had been proven, they at most involved a minor pause on the edge of the applicants' driveway abutting the road, outside their closed gate. Plus, the applicants did not provide any supporting documentation to support the amount of this claim. I would have dismissed it in any event.

35. The applicants also claim $2,000 for loss of security and enjoyment of their home. I find the applicants have not shown they sustained that loss. The alleged incidents in May 2017, May 2018, January 2019 and April 26, 2019 would not justify an award of $2,000, even if I had found the respondents had acted unlawfully. If I had found liability for a trespass, I would have awarded only nominal damages as the evidence before me does not support a conclusion a trespass was anything more than technical. However, as noted above, I find the applicants have not proved any trespass by either respondent.

36. Under the CRTA and the tribunal's rules, as the applicants were unsuccessful, I find they are not entitled to reimbursement of tribunal fees or dispute-related expenses. The successful respondents did not pay fees or claim expenses.

ORDER

37. I order the applicants' claims and this dispute dismissed.

Shelley Lopez, Vice Chair