



Civil Resolution Tribunal

Date Issued: February 27, 2020

File: SC-2019-009071

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wolf v. McElderry*, 2020 BCCRT 223

BETWEEN:

CHRISTOPHER GERHARD WOLF

APPLICANT

AND:

KELVIN MCELDERRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a dispute over a tree cut down by the respondent, Kelvin McElderry, on land owned by the applicant, Christopher Gerhard Wolf. The applicant seeks damages of \$300, his estimated value of the tree. The respondent admits he cut down the tree, and says he had a right to do so because of an easement and a restrictive covenant

on the applicant's land. The respondent says he owes the applicant nothing, and seeks reimbursement of legal fees.

2. Both parties are 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 (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.
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 only, 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
7. The respondent withdrew his counterclaim and the applicant withdrew some of his claims before this adjudication. So, those issues are not before me in this decision.

ISSUE

8. The issue in this dispute is whether the respondent owes the applicant \$300, or another amount, for removing the applicant's tree.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proving its claim, on a balance of probabilities. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties are neighbours. There is a road on one side of the applicant's lot. The respondent's lot is also adjacent to the applicant's lot, but on the opposite side from the road. There is a driveway running through the applicant's lot between the road and the respondent's lot. In the past, the driveway was used by both parties to access their lots from the road.
11. Recently, the parties have disagreed about use of the driveway, including their respective rights in a portion of the applicant's lot. I touch on this matter below, but only for the purposes of explaining my decision. As discussed below, the issue before me is about whether the respondent kept the tree after cutting it down, not whether the respondent was permitted to enter onto the applicant's lot and cut it down.
12. The content of land title documents submitted by the respondent is not disputed. These documents include an easement and a restrictive covenant over the applicant's lot, in favour of the respondent. The parties do not deny that both the easement and the covenant apply to the same large area of the applicant's lot (restricted area), including the entire driveway.
13. The easement allows the respondent to access the restricted area for various purposes, including to use and maintain the driveway. The restrictive covenant prevents the applicant from accessing the restricted area for nearly any purpose

without the respondent's permission. The parties agree that the tree cut down by the respondent was within the restricted area, near the driveway.

14. The parties' submissions show they generally disagree about their rights in the restricted area. The tribunal lacks jurisdiction to decide claims about land ownership issues, so I make no decision about the content or effect of the easement or the restrictive covenant. However, I refer to those documents in addressing the parties' arguments about the tree.
15. The respondent says he cut down the tree because it was leaning over the driveway, and he felt it was in danger of falling onto the driveway. The respondent says the easement and restrictive covenant effectively give him exclusive access to the restricted area for the purpose of maintaining the driveway, so he was allowed to remove the tree. The respondent also says the easement does not require him to consult with or to reimburse the applicant for maintaining the driveway.
16. Even if the easement allowed the respondent to access the restricted area for the purpose of cutting down the tree, neither the easement, the restrictive covenant, nor any other evidence suggests that the respondent owns the land in the restricted area or anything growing on it, including the tree. The respondent does not deny that the applicant owns the applicant's lot and the tree. On the evidence before me, I find the applicant owned the tree both while it was still standing on his lot and after the respondent cut it down.
17. Having considered the evidence, I find the applicant owns the felled tree, and the respondent either removed it from the applicant's lot, or otherwise failed to deliver it to the applicant.
18. Turning to the applicable law, the applicant's claim for the value of the tree is what is known in law as the tort of conversion. The tort of conversion is wrongfully keeping another person's property and claiming title or ownership of that property. According to *Li v. Li*, 2017 BCSC 1312, the applicant must prove:
 - a. a wrongful act by the respondent involving the applicant's goods,

- b. that the act consisted of handling, disposing, or destroying the goods, and
- c. the respondent's actions effectively or intentionally interfered with, or denied, the applicant's right or title to the goods.

19. I find the tree became a "good" when the respondent severed it from the applicant's lot (see *Scott v. Filipovic*, 2015 BCCA 409). I find there was a wrongful act consisting of handling, disposing, or destroying the applicant's tree, because the respondent did not provide the resulting timber to the applicant, who owned it. I find the respondent's actions effectively denied the applicant's ownership right to the tree. The respondent may have felt entitled to cut down the tree, but he deprived the applicant of its use after it was cut down. Therefore, I find the respondent is liable in conversion for the value of the tree.
20. But what is the tree worth? The evidence does not contain a professional estimate of the tree's replacement value, or the value of its timber. The applicant says he planted the tree many years ago along with several others, but he did not provide evidence of what the tree was worth when planted, or if its value had increased. However, the respondent does not directly dispute the applicant's estimated \$300 valuation of the tree. Therefore, on a judgment basis, I find the respondent owes the applicant \$300 for the tree.
21. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgment interest under the COIA on the \$300 owed. The evidence does not confirm the exact date the tree was cut down. However, the applicant says he became aware of the tree removal in August 2019. In the circumstances, I find that pre-judgment interest applies from August 31, 2019 until the date of this decision. This equals \$2.90.
22. 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. However, the applicant's tribunal fees were waived for

this dispute, and he did not claim dispute-related expenses, so I order no reimbursement.

23. The respondent claimed \$1,143.71 in legal fees. The respondent was not successful in this dispute, so I find he is not entitled to reimbursement of any dispute-related expenses, including legal fees. Further, tribunal rule 9.5(3)(b) says the tribunal does not order payment of legal fees except in extraordinary circumstances, and I find the present circumstances are not extraordinary. In addition, the payment receipts provided by the respondent only show the amount paid for an “Easement Issue,” which I presume was advice about land ownership, a topic outside of the tribunal’s jurisdiction.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$302.90, broken down as follows:
- a. \$300 for the value of the tree removed by the respondent, and
 - b. \$2.90 in pre-judgment interest under the *Court Order Interest Act*.
25. The applicant is entitled to post-judgment interest, as applicable.
26. Under section 48 of the CRTA, 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.

27. Under section 58.1 of the CRTA, 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.

Chad McCarthy, Tribunal Member