



Civil Resolution Tribunal

Date Issued: September 2, 2020

File: SC-2020-002767

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Feuring v. City of Surrey*, 2020 BCCRT 975

BETWEEN:

DAVID BARRY WALTER FEURING

APPLICANT

AND:

CITY OF SURREY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about car damage caused by a tree. The applicant, David Barry Walter Feuring, says that a tree on the respondent City Of Surrey's land fell onto his car and damaged it. Mr. Feuring says the City of Surrey (Surrey) was negligent in failing to inspect and maintain the tree. He says Surrey owes him \$5,000 for car repairs and because of the resulting suffering he says he has endured.

2. Surrey denies that it was negligent in inspecting and maintaining the tree, and says that it owes nothing.
3. Mr. Feuring is self-represented in this dispute. Surrey is represented by lawyer Wassan Aujla, a Surrey employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. Surrey says that if Mr. Feuring's claims involve alleged unlawful actions by Surrey, they cannot be pursued against the City because they were filed too late, as set out in section 735 of the *Local Government Act*. I find the dispute claims allege

negligence by Surrey, but no unlawful actions, so the section 735 limitation does not apply here.

ISSUE

9. The issue in this dispute is whether Mr. Feuring's car was damaged because Surrey was negligent in inspecting and maintaining the tree that fell, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant, Mr. Feuring must prove his claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.
11. Mr. Feuring says there was a major wind and rain storm in the city of Surrey, BC just before December 25, 2018. Surrey says there was an additional storm on December 29, 2018 at the time the tree fell. There are no weather reports in evidence for late December 2018. Regardless, based on photos of Mr. Feuring's damaged car and his correspondence with Surrey, I find that a tree fell onto the car in the early morning of December 29, 2018. The parties do not dispute that the tree was located on an undeveloped Surrey road allowance. For the purposes of this dispute, I find Surrey owned the tree. Mr. Feuring says neither his car insurance nor his landlord's house insurance covered the damage to his car.
12. Surrey's May 17, 2019 letter to Mr. Feuring said that after Surrey was notified of the fallen tree, employees of its Urban Forestry and Environmental Programs Division visited the area and investigated the incident. In the letter, Surrey says it determined that the tree fell because of poor health and a recent windstorm, not because of any Surrey negligence. It is undisputed that shortly after the incident, Surrey removed several other similar trees in the same area.

13. Mr. Feuring hired Davey Resource Group (DRG), to provide an expert report on the tree's condition before it failed, the reason it fell, and whether the incident was foreseeable and preventable. Lucian Serban, a DRG arborist and registered professional forester, wrote a May 27, 2020 report. Based on Mr. Serban's credentials in the report, I find that he is a properly-qualified expert, and I accept the report as expert evidence under the CRT's rules.
14. The report was largely based on Mr. Serban's May 21, 2020 inspection of the tree stump and surrounding area, nearly 17 months after the tree fell and was removed by a Surrey crew. It was also based on Mr. Feuring's photos of the fallen, broken tree trunk. The report noted that the tree's overturned stump was still lying in a "natural area". The report said the stump and photos of the broken tree trunk showed signs of fungal infections and root rot at the roots' breakage points, and that the trunk was rotten. However, it is not clear from the report whether these signs of infection and rot were visible before the tree fell and broke apart 17 months earlier.
15. The report concluded that before it fell, the tree was in poor condition and its failure was foreseeable and preventable. Having reviewed the expert report and other evidence, I find that before the tree fell, a tree inspection by a qualified professional would have revealed that there was a significant risk of the tree falling and damaging either nearby structures or vehicles.
16. The report also said that inspecting the interface between natural forested areas and structures and roads should be part of the tree owner's due diligence process, to minimize the risk of damage and injury from falling trees. I place no weight on this statement, because it does not directly relate to DRG's arboriculture and forestry expertise, but rather draws a conclusion about landowners' risk assessments and legal standard of care. I find these subjects are beyond DRG's expert tree knowledge.
17. Mr. Feuring says that other BC cities regularly inspect similar trees, implying that Surrey should too. However, I find that Surrey is not necessarily required to adopt

the same tree inspection practices as other BC cities, whose practices are not in evidence in any case.

18. The question is, should Surrey have inspected the tree and taken steps to eliminate its risk of falling on the car? Mr. Feuring thinks so, and says Surrey was negligent because it failed to inspect the tree, especially because there is a spillway nearby which he says makes the soil very soft.
19. According to *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3, to show Surrey was negligent, Mr. Feuring must prove each of the following on a balance of probabilities:
 - a. Surrey owed Mr. Feuring a duty of care;
 - b. Surrey breached the applicable standard of care;
 - c. Mr. Feuring sustained a loss; and
 - d. Surrey's breach cause Mr. Feuring's loss.
20. Surrey admits it owned the tree, and does not say that anyone else was responsible for it. But does this mean that Surrey owed Mr. Feuring a duty of care to regularly inspect and maintain the tree?
21. Surrey provided witness statements from employees and managers in its Engineering and Urban Forestry departments, including RL, the Urban Forestry Manager. RL said that Surrey has 10 arborists who manage over 100,000 "inventoried" trees along Surrey boulevards and parks, and 7 arborists who manage 1,600 acres of natural areas consisting mostly of forests, grasslands, and wetlands. RL says that "non-inventoried" trees are native, remnant, or homeowner-planted trees located on Surrey road allowances or parks that are not included in the formal inventory. Surrey says, and Mr. Feuring does not deny, that the tree that damaged Mr. Feuring's car was located on an undeveloped Surrey road allowance, and is a non-inventoried street tree.

22. According to RL, and Surrey's Shade Tree Management Plan (STMP), Surrey inspects and maintains inventoried trees at specified intervals, and also responds to requests from the public about those trees. But unlike inventoried trees, RL and the STMP say that non-inventoried trees, such as those on road allowances, are maintained at a lower service level. Specifically, the STMP says that Surrey only performs non-inventoried street tree risk assessments and inspections on a demand basis, in response to service requests it receives. Surrey then carries out further work if the risk of tree failure meets or exceeds the applicable Surrey tree standards. I find Surrey has decided not to regularly inspect or maintain non-inventoried trees, such as the one that fell on Mr. Feuring's car, and only does so upon requests it receives.
23. RL says the decision not to regularly inspect non-inventoried trees was a Surrey policy decision, as set out in the STMP. RL says that Surrey's Urban Forestry Section was limited by its budget, and did not have the resources to conduct regular inspections of non-inventoried trees. Mr. Feuring does not directly comment on whether this was a policy decision, or whether Surrey was required to inspect all of its non-inventoried trees or all of those similar to the one that fell on his car.
24. I note that public authorities such as Surrey do not owe a duty of care for properly-exercised policy decisions such as allocating budgets. But they can be liable for operational decisions that implement and perform policy decisions, including those based on administrative directions, professional opinion, or technical standards: see *Lowe v. Sidney (Town of)*, 2020 BCSC 335 at paragraphs 23 to 28.
25. So, is Surrey's decision not to regularly inspect and maintain non-inventoried street trees a properly-exercised policy decision? I find that it is. First, I find there is no evidence that this decision was made in bad faith. Further, I find it was a rational decision that attempted to strike a balance between the limited Surrey Urban Forestry budget and human resources, which are not disputed, and the very significant number of trees Surrey owns. *Lowe* says that budgetary allotments for departments are generally classified as policy decisions. On balance, I find the

policy not to regularly inspect non-inventoried trees was related to budgetary constraints.

26. Surrey cited a British Columbia Supreme Court decision, *Oser v. Nelson (City of)*, 1997 CanLII 1388 (BCSC), which is binding on me, and which I find supports the Surrey decision being a policy decision. In *Oser*, the court found that the city was not negligent in its policy decision not to regularly inspect an alley where the plaintiff fell and injured herself. At paragraph 12, the court said the mere fact there were no scheduled inspections was not enough to conclude that the policy decision was irrational or unreasonable, and therefore invalid. There was no evidence that dangerous situations were being ignored, or that the risk of non-inspection was irresponsibly high or arbitrary. The court also noted that the city was not an insurer respecting any mishap on its public places.
27. On the evidence before me, I find Surrey's policy of not regularly inspecting non-inventoried street trees was not unreasonable or irrational. On balance, I find Surrey's tree policy was a bona fide or good faith policy decision, and that Surrey was not negligent in adopting that policy.
28. I also find the policy said that Surrey would only inspect non-inventoried street trees upon request. This raises the question of whether Surrey negligently failed to follow its policy of responding to service requests about the tree before it fell, which I find involves operational decisions. I find Surrey followed its policy, for the reasons below. The parties agree that while Surrey received two previous maintenance requests in the area where the tree later fell, including for brush trimming following reported property crime, these previous requests were unrelated to tree hazards or inspections. So, Surrey performed no tree inspections before the tree fell, which I find is consistent with its policy of only inspecting non-inventoried street trees upon request.
29. There is no dispute that within days of the tree falling, Surrey received a tree service request and a Surrey crew attended the site. This crew removed the fallen tree trunk, and removed several other, similar trees from the area. Mr. Feuring says that

in June 2020, after Surrey received a copy of the DRG report, a Surrey crew again attended the area and removed dead standing trees. Mr. Feuring says this was a sign of Surrey's "incompetence". However, I find it shows that Surrey responded to information in the report about potentially at-risk trees in the area, as required by its policy. There is no evidence that the trees removed in June 2020 were dead or at-risk when Surrey last attended the site in January 2019.

30. On the evidence before me, I find Surrey responded to tree hazard requests and information in the area of the fallen tree in accordance with its policy, and was not negligent in responding, or failing to respond, to those requests.
31. Overall, I find that Mr. Feuring has not met his burden of proving that Surrey was negligent in failing to regularly inspect, or respond to service requests about, the non-inventoried street tree that fell and damaged his car. I dismiss Mr. Feuring's claims.

CRT FEES AND EXPENSES

32. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Surrey was successful, but did not pay any CRT fees or claim any expenses. Mr. Feuring claimed \$577.50 for the cost of the DRG expert report. As he was unsuccessful, I dismiss this expense claim.

ORDER

33. I dismiss Mr. Feuring's claims and this dispute.

Chad McCarthy, Tribunal Member