



# Civil Resolution Tribunal

Date Issued: December 30, 2020

File: SC-2020-001998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilkie v. 1073832 B.C. Ltd.*, 2020 BCCRT 1465

B E T W E E N :

JUSTIN WILKIE

**APPLICANT**

A N D :

1073832 B.C. LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about damages for tree removal. The applicant, Justin Wilkie, says the respondent corporation, 1073832 B.C. Ltd. (107), removed a shared tree located on the boundary of Mr. Wilkie's property without his permission. Mr. Wilkie says 107 trespassed and it was negligent when it removed the tree. Mr. Wilkie says the loss of the tree has reduced his privacy and he requests \$5,000 in damages.

2. 107 denies Mr. Wilkie's claims. 107 says the tree removal was authorized by the municipality's tree removal permit.
3. Mr. Wilkie is self-represented. An employee, officer or principal represents 107.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did 107 trespass on Mr. Wilkie's property by cutting down the tree, and if so, what damages does 107 owe?
  - b. Did 107 negligently cut down a tree partially on Mr. Wilkie's property, and if so, what damages does 107 owe?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicant, Mr. Wilkie, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. I note that 107 did not make any submissions, though CRT staff reminded it of the opportunity to do so.
10. Mr. Wilkie says 107 removed a mature maple tree located at his property boundary without his permission in April 2019. Mr. Wilkie says the trunk straddled his property line and was located partially on his land. Since 107 does not dispute these allegations, I accept them as correct.
11. I have also considered a survey map dated March 8, 2017. Since the survey map was prepared by a licensed surveyor, I find the surveyor had sufficient education, training and expertise to prepare the survey. So, I find that the survey plan meets the criteria for an expert report under CRT rule 8.3.
12. The survey shows that the tree trunk is located at the property boundary. However, I find that the survey does not clearly show whether the trunk crosses Mr. Wilkie's side of the property line because the surveyor's notation for the property boundary covers the notation for the tree trunk. However, as discussed above, I am satisfied that the tree did straddle the property boundary because 107 did not dispute this.

13. Mr. Wilkie says that 107 trespassed and that 107 was negligent when it cut down the tree. I will consider Mr. Wilkie's trespass claim first.
14. BC law says that a person commits a trespass if they enter a neighbour's property to cut a tree without consent (See *Anderson v. Skender*, 1993 CanLII 2772 (BC CA), *Demenuk v. Dhadwal*, 2013 BCSC 2111, and *Glashutter v. Bell*, 2001 BCSC 1581). In *Anderson*, the BC Court of Appeals noted that, when a tree straddles the property line, the tree cannot be cut at ground level without entering the other's property because the cut will occur at least partly on the neighbouring property. Further, in *Anderson v. Skender*, 1991 CanLII 260 (BC SC), the BC Supreme Court said that a tree trunk straddling a property line is owned by both adjoining owners and an owner trespasses if they cut down the tree without the other's consent.
15. Since I find that the tree was partially on Mr. Wilkie's land, and that 107 removed the tree without consent, I find that 107 trespassed on Mr. Wilkie's property when it cut down the tree.
16. 107 argues that it was allowed to cut down the tree because it had a city tree removal permit. Mr. Wilkie says that 107 did not have a permit to remove this tree. Rather, Mr. Wilkie argues that 107's tree removal permit related to a different tree. Further, Mr. Wilkie says the municipality requires the written consent of both owners to cut down a shared tree. Mr. Wilkie says he did not consent to the removal of the tree. Since 107 did not dispute this allegation or provide evidence of Mr. Wilkie's consent, I find that Mr. Wilkie did not consent to the tree's removal.
17. The municipality's bylaws say a permit is required to cut down trees and, if a tree is cut down without a permit, an owner can be fined and ordered to plant a replacement tree. However, this CRT dispute is about property rights, not bylaw compliance. I find that the existence of a tree removal permit is not relevant to Mr. Wilkie's property rights, so I find it unnecessary to determine whether 107 had a tree removal permit.
18. For the above reasons, I find that 107 trespassed on Mr. Wilkie's property when it cut down the tree.

19. In *Anderson v. Skender*, 1991 CanLII 260 (BC SC), the BC Supreme Court calculated trespass damages based on the value of the tree on the applicant's property.
20. Mr. Wilkie provided an arborist's valuation of the tree to prove the extent of his damages. The arborist prepared a report dated October 31, 2019. Since the arborist is certified as an International Society of Arboriculture arborist, I find he had sufficient education, training and expertise to prepare the report. So, I find that the arborist report meets the criteria for an expert report under CRT rule 8.3.
21. The arborist calculated the tree's value using the functional replacement method which takes the cost of the largest available transplantable replacement tree and adds the costs necessary to grow the tree to the same size. In the arborist's opinion, the total value of the tree was \$6,700. 107 did not dispute the arborist's appraisal. I find that the arborist's appraisal method is a reasonable way of calculating the tree's value.
22. Mr. Wilkie argues that the arborist's report also had higher alternative appraisals of the tree at \$9,950 and \$17,000 which should be used to value the tree. I disagree. The arborist says that it is his opinion that the alternative appraisal methods overvalue the tree. I am satisfied that the arborist's undisputed expert opinion is the best evidence of the tree's value. So, I find that the tree's value was \$6,700.
23. In *Anderson v. Skender*, 1991 CanLII 260 (BC SC), the BC Supreme Court awarded less than the full amount of the trees' value because only a portion of the trees were located on the applicant's property. Similarly, in this dispute only a portion of the tree was located on Mr. Wilkie's property. In the absence of evidence of the exact proportion of the tree located on Mr. Wilkie's property, I find it appropriate to award Mr. Wilkie trespass damages for one-half of the tree's value, being \$3,350.
24. As I find that 107 owes Mr. Wilkie damages for trespass, I find it unnecessary to determine whether 107 was also negligent.
25. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Wilkie is entitled to pre-judgment interest on the damages from the date the tree was cut down to the date of

this decision. Since Mr. Wilkie does not specify which day in April 2019 the tree was cut down, I find that Mr. Wilkie is entitled to pre-judgment interest from April 30, 2019 to the date of this decision. This equals \$125.58.

26. 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. I see no reason in this case not to follow that general rule. I find Mr. Wilkie is entitled to reimbursement of \$200 in CRT fees. Since 107 was not successful, I find that it is not entitled to reimbursement of its CRT fees.

## **ORDERS**

27. Within 30 days of the date of this order, I order 107 to pay Mr. Wilkie a total of \$3,675.58, broken down as follows:

- a. \$3,350 in damages for trespass,
- b. \$125.58 in pre-judgment interest under the COIA, and
- c. \$200 in CRT fees.

28. Mr. Wilkie is entitled to post-judgment interest, as applicable.

29. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider

waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

30. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Richard McAndrew, Tribunal Member