



Civil Resolution Tribunal

Date Issued: April 5, 2022

File: SC-2021-006445

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Riley v. Graf*, 2022 BCCRT 381

B E T W E E N :

LAURIE RILEY

APPLICANT

A N D :

CANDICE GRAF also known as CANDI HAYWARD and CLAIRE
ROSEMARIE BAKKER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a dismantled cedar fence. The applicant, Laurie Riley, says she partially owned the fence and it bordered her strata lot and the strata lot of the

respondent, Claire Rosemarie Bakker. Ms. Riley says the other respondent, Candice Graf also known as Candi Hayward, resides at Claire Bakker's strata lot and represents herself as its equitable or beneficial owner. Ms. Riley says Candice Graf, with Claire Bakker's permission or encouragement, dismantled the fence without justification. Ms. Riley claims \$2,141 as compensation.

2. The respondents take the same position and deny liability. They say Candice Graf removed the fence because it breached the strata's bylaws.
3. The parties are self-represented.
4. For the reasons that follow, I find Ms. Riley has only proven a limited portion of her claim.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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. I have considered the parties' evidence and submissions and where relevant address the weight I give them below.
9. The respondents say that Ms. Riley provided false information contrary to CRTA section 92. That section says it is an offence to provide false or misleading information. The CRT has no jurisdiction to impose fines or a conviction under section 92.

ISSUES

10. As explained below, I find Ms. Riley essentially relies on the law of trespass. So, I find the issue is whether respondents trespassed on Ms. Riley's property, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Riley must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. The background facts are outlined in the evidence and the CRT's June 17, 2021 decision indexed as *The Owners, Strata Plan KAS 1201 v. Neilson*, 2021 BCCRT 667 (June 2021 decision). Ms. Riley owns strata lot 9 in the bare land strata corporation Strata Plan KAS 1201 (strata). Emails shows that in April 2020, Ms. Riley agreed to split the cost of a fence with Carl Neilson, the former owner of the neighboring strata lot 10. Claire Bakker later bought strata lot 10.

13. Around May 2020, Mr. Neilson built the cedar fence. That same month he unsuccessfully asked the strata for permission to build it. His application materials show the fence generally straddled the property line between strata lots 9 and 10. None of it was on common property. He then sold strata lot 10 to Claire Bakker who took possession on May 31, 2021. Accordingly, I find that Mr. Neilson sold his interest in the fence to Claire Bakker. Candice Graf currently resides at strata lot 10 and the respondents agree Candice Graf is strata lot 10's beneficial owner.
14. Shortly after the sale of lot 10 to Claire Bakker, the CRT issued the June 2021 decision. It found that Mr. Neilson built the fence without the strata's permission and in breach of the strata's bylaws. However, it declined to order Mr. Neilson to remove the fence because he was no longer an owner. It also declined to order Mr. Neilson to indemnify the strata for the cost of removing the fence because the strata provided insufficient notice to do so.
15. In light of this, the strata wrote a July 16, 2021 letter to the parties in this current dispute. It said that the strata would take at least a month to consider what to do about the fence. On July 21, 2021, Ms. Riley emailed Candice Graf with 3 suggestions on how to proceed: 1) together, ask the strata to approve the fence, 2) have Candice Graf dismantle the fence but compensate Ms. Riley \$2,141, or 3) wait for the strata's decision.
16. It is undisputed that on August 6, 2021, Candice Graf decided to remove the fence without consulting Ms. Riley or the strata. Ms. Riley was away at the time. Candice Graf kept the disassembled fence, but Ms. Riley says she has no interest in it.

Did the respondents trespass on Ms. Riley's property, and if so, what the appropriate remedy?

17. Ms. Riley says she does not want any fence parts returned to her and I find the fence, while standing, was not personal property. Given this, I find Mr. Riley bases her claim on the law of trespass. Trespass consists of entering upon the land of another without lawful justification. To constitute trespass the respondent must in some direct way

interfere with land possessed by the applicant. See *Lahti v. Chateauvert*, 2019 BCSC 1081 at paragraph 6, citing G.H.L. Fridman, *The Law of Torts in Canada*, 3rd ed. (Toronto: Carswell, 2010) at 29.

18. Mistake is not a defence to trespass. Trespass will occur, even if the respondent is not conscious of wrongdoing, so long as the respondent intends to conduct themselves in a certain way and willingly does so. See *Lahti* at paragraph 8.
19. For the reasons that follow, I find that Candice Graf trespassed on Ms. Riley's land.
20. As noted above, Candice Graf removed the fence between strata lots 9 and 10 without permission. I find that it was generally on the property line and at least some portions were entirely on strata lot 9. This is because after the fence was dismantled, Candice Graf emailed Mr. Neilson to ask about the fence's former location. Mr. Neilson replied on August 12, 2021 and carbon copied Ms. Riley. He confirmed Ms. Riley's position that the fence did not exactly follow the property line and that at least some of the fence rested entirely on Ms. Riley's strata lot. There is no evidence that contradicts Mr. Neilson's email, so I choose to rely on it.
21. The respondents submitted that they did not know or could not have known that some of the fence was on Ms. Riley's property. However, as stated above, mistake is not a defence to trespass. Further, given the fence's purpose, I find it likely that some parts of the fence straddled both strata lots 9 and 10. So, I find Candice Graf trespassed by entering Ms. Riley's strata lot to dismantle the fence. However, I dismiss Ms. Riley's claim against Claire Bakker because there is no indication that they personally trespassed or otherwise entered strata lot 9.
22. I find the difficulty with Ms. Riley's claim is proving damages. As noted in the June 2021 decision, Mr. Neilson built the fence without permission and in breach of the bylaws. Put another way, it should never have been built. Further, I find it clear that the strata would have eventually removed the fence. This is because the strata council provided an October 28, 2021 letter addressed to the CRT about this dispute.

It says it had resolved to remove the fence when Candice Graf suddenly took matters into her own hands.

23. Courts and the CRT have previously awarded nominal damages for “technical trespass”, where the applicant suffered no “real damage”. See, for example, the Vice Chair’s non-binding decision of *Genaille v. Gorilla Property Services Ltd.*, 2020 BCCRT 88, citing *Greenwood v. Hoffer*, 2017 BCSC 884.
24. I find this is a case where it is appropriate to award Ms. Riley, on a judgment basis, damages of \$200. I find this was not a case of “technical trespass” because Ms. Riley specifically told the respondents in August 2021 that she wanted to keep the fence or be paid compensation for it. I find an award of nominal damages would be insufficient.
25. However, I am equally of the view that it would be unfair to order Candice Graf to pay more than \$200. I have found it inevitable that the strata would have removed the fence. Further, the June 2021 decision suggests that the strata’s bylaws allowed it to charge back the cost of removing the fence to Ms. Riley, since she was involved in funding its construction. So, it is arguable that Candice Graf saved Ms. Riley some expense.
26. The *Court Order Interest Act* applies to the CRT. Ms. Riley is entitled to pre-judgment interest on the damages of \$200 from August 6, 2021, the date of the trespass, to the date of this decision. This equals \$0.60.
27. 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. Ms. Riley proved only a small portion of her claim. So, I find it appropriate to dismiss her claims for reimbursement. The respondents claimed no specific dispute-related expenses.

ORDERS

28. Within 14 days of the date of this order, I order Candice Graf to pay Ms. Riley a total of \$200.60, broken down as follows:
 - a. \$200 in damages for trespass, and
 - b. \$0.60 in pre-judgment interest under the *Court Order Interest Act*.
29. Ms. Riley is entitled to post-judgment interest, as applicable.
30. I dismiss Ms. Riley's remaining claims, including all claims against Claire Bakker.
31. 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.
32. 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.

David Jiang, Tribunal Member