



# Civil Resolution Tribunal

Date Issued: May 9, 2022

File: SC-2021-008439

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Iyer*, 2022 BCCRT 551

BETWEEN:

LUCILLE WONG

**APPLICANT**

AND:

JAYAKANTH IYER also known as JAY IYER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about removing hedges. The applicant, Lucille Wong, says her neighbour, the respondent Jayakanth Iyer also known as Jay Iyer, cut down several tree hedges straddling their shared property line without her permission. She claims \$1,800 in damages: \$800 for “illegally” cutting the hedges, and \$1,000 to replace them. Mr. Iyer says Mrs. Wong gave him permission to cut the hedges and as

agreed paid for half of the contractor cost to remove them. He says he owes nothing.

2. Each party is self-represented in this dispute.
3. For the reasons set out below, I dismiss Mrs. Wong's claim.

## **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). 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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.
8. Mrs. Wong objects to the signed statement of PR, the contractor who cut the hedges, which was submitted by Mr. Iyer. Mrs. Wong says she is pursuing a separate CRT dispute against PR for alleged poor installation of fence posts, so PR's statement is "inadmissible" and a "conflict of interest." I know of no rule that renders a witness statement inadmissible simply because the objecting party and witness are also parties to a different CRT dispute. I allow PR's witness statement as evidence.

## **ISSUE**

9. The issue in this dispute is whether Mrs. Wong permitted Mr. Iyer to cut down the hedges, and if not, does Mr. Iyer owe her \$1,800 in damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mrs. Wong as the applicant must prove her claim on a balance of probabilities, meaning "more likely than not." I have read all the parties' submissions and evidence but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I find the parties' undisputed submissions and evidence show that the trunks of the disputed hedge trees were on the property line between the parties' properties. So, I find that the hedges were the property of both parties (see *Anderson v. Skender*, 1993 CanLII 2772 (BC CA) at paragraph 21). As noted, the parties disagree about whether Mrs. Wong gave permission to cut the hedges.
12. Mrs. Wong suggests that Mr. Iyer cut the hedges in contravention of municipal bylaws. However, she does not identify which bylaws he allegedly broke, or explain

how that would make him responsible for the claimed damages. I find the evidence fails to show that Mr. Iyer breached any municipal bylaw.

13. I find Mrs. Wong's primary allegation is essentially that, in removing the hedges allegedly without permission, PR trespassed on her property on Mr. Iyer's instructions. PR is not a party to this CRT dispute.
14. The tort of trespass is when one enters onto a person's land without express or implied permission. Trespass can occur when one cuts part of a tree that is on another's property (see *Anderson* at paragraph 18). In this case, it is undisputed that PR cut down the hedges that were partially on Mrs. Wong's property. However, there is no liability for trespass when a person is on land with the possessor's permission. This includes when consent is given to a tree cutting contractor, even if it is only implied consent known as "leave and license" (see *Demenuk v. Dhadwal*, 2013 BCSC 2111 at paragraph 49).
15. As further explained below, Mr. Iyer undisputedly knew that the disputed hedges were partially on Mrs. Wong's property, and instructed PR to cut them down. The key question here is whether Mrs. Wong gave Mr. Iyer (and by extension, PR) permission to cut down the hedges. I find that if Mrs. Wong did not provide permission, Mr. Iyer would be responsible in trespass for any damages related to the cutting. *Demenuk* cited with approval a passage from G.H.L. Fridman, *The Law of Torts in Canada*, 2nd ed. (Toronto: Thomson Canada Limited, 2002), that says the burden of proving consent to enter land is on the person who asserts it. Here, that is Mr. Iyer.
16. Mr. Iyer says that near the end of August 2020, he approached Mrs. Wong about cutting down the hedges. He says Mrs. Wong verbally agreed, and said she would share the cost of PR cutting them down. Mrs. Wong undisputedly paid half the cost of cutting down the hedges. The parties disagree about the exact amount paid, but I find nothing turns on that. Mr. Iyer says he heard nothing further about the hedges until a year later, when Mrs. Wong emailed that she had not approved their removal and asked him to replace them. Emails in evidence are consistent with this account,

and show no hedge-related communication between the parties in the year following the hedge cutting.

17. I find PR's witness statement fully supports Mr. Iyer's version of events. PR said he had a conversation with both parties, and that both parties agreed to have the hedges removed. He confirmed that the parties shared the costs of removal he charged, and that neither party had any complaints at the time.
18. Mrs. Wong says she never agreed to have the hedges removed. She says Mr. Iyer unexpectedly asked for money for hedge cutting. She says she paid because she was "caught off guard" and because she thought it was for hedge trimming, not cutting them down completely. In the circumstances, I find it unlikely that Mrs. Wong would pay for hedge cutting that she had not authorized and without verifying that the degree of cutting was acceptable, especially given that photos show the hedges were visible from inside her home.
19. Mrs. Wong says she did not immediately complain about the cut-down hedges because she was waiting for Mr. Iyer to replace them. She says the parties verbally discussed types of replacement plants. Mr. Iyer denies agreeing to provide replacement plants. On balance, I find the evidence does not show that Mr. Iyer agreed to replace the hedges, or that Mrs. Wong requested their replacement until a year after they were cut down.
20. Mrs. Wong says that the hedges were cut "quickly and underhandedly" and "clandestinely." However, I find there is no evidence showing that Mr. Iyer or PR attempted to conceal the hedge-cutting from Mrs. Wong. Further, she admits that she did not hear the "commotion outdoors" from the cutting because she was wearing earphones. I find that a "commotion" is inconsistent with "clandestine" tree cutting. I also find that Mr. Iyer seeking payment for the cutting afterward is inconsistent with concealed cutting.

21. Mrs. Wong also says that Mr. Iyer and PR colluded to fabricate their version of events, to avoid responsibility for replacing the hedges. However, I find none of the evidence before me supports a conclusion that Mr. Iyer or PR fabricated their evidence or were purposefully untruthful. I find Mr. Iyer's and PR's statements are consistent with each other and make logical sense. In contrast, I find that Mrs. Wong's submission, that she did not approve the hedges' removal, is unsupported by other evidence such as her payment for half of it. Further, my findings that Mrs. Wong paid for her share of the hedge cutting and waited 1 year before explicitly seeking replacement hedges, support a finding that she provided permission for the cutting at the outset, contrary to her submission. Overall, I find Mr. Iyer's and PR's evidence is more persuasive.
22. Having weighed the evidence, I find it is more likely than not that Mrs. Wong gave Mr. Iyer and PR verbal permission to cut down the hedges before the cutting occurred. Even if I found she did not authorize the cutting in advance, and I do not, I find that paying for the cutting afterward and not complaining about it for a year shows that Mrs. Wong acquiesced to the cutting and provided her "leave and license."
23. So, I find that Mr. Iyer is not liable for cutting down the hedges, either in trespass or otherwise. I find Mr. Iyer is not responsible for the claimed damages, and I dismiss Mrs. Wong's claim for \$1,800.

### ***CRT Fees and Expenses***

24. Under section 49 of the CRTA, and the 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. Mrs. Wong was unsuccessful, Mr. Iyer paid no CRT fees, and neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

## **ORDER**

25. I dismiss Mrs. Wong's claims, and this dispute.

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Chad McCarthy, Tribunal Member