Civil Resolution Tribunal

Date Issued: June 1, 2022

File: SC-2021-008782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Verheul v. Heathcote*, 2022 BCCRT 641

B E T W E E N :

GLENN VERHEUL

APPLICANT

A N D :

BRUCE HEATHCOTE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about dead tree removal. The applicant, Glenn Verheul, and the respondent, Bruce Heathcote, own neighbouring lots on a BC island. Dr. Verheul says a dead tree on Mr. Heathcote's property was leaning toward Dr. Verheul's lot and threatening to fall on his pumphouse. Mr. Heathcote undisputedly said Dr. Verheul

could remove the tree if Dr. Verheul paid for it, among other conditions. Dr. Verheul says because Mr. Heathcote refused to remove the tree or pay for the removal, Dr. Verheul had the tree removed. Dr. Verheul claims $1,799.99 in removal costs from Mr. Heathcote. Mr. Heathcote says he owes nothing because Dr. Verheul agreed to pay for the tree removal.

2. Each party is self-represented in this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal 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.

4. 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.

5. 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.

6. 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.

7. Mr. Heathcote says his island property is for sale. There is no evidence that it has been sold, so I assume Mr. Heathcote still owns it, although nothing turns on this.

ISSUES

8. The issue in this dispute is whether Mr. Heathcote is responsible for the tree's removal expenses, and if so, does he owe Dr. Verheul $1,799.99 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Dr. Verheul must prove his claims 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.

10. Dr. Verheul lives on his island lot, which includes a main house and a detached pumphouse shed. Photos show Mr. Heathcote's adjacent lot is undeveloped forest. Mr. Heathcote says he has not visited the island since mid-2018. I find the evidence shows he did not do any significant tree maintenance until after the events disputed here, preferring to leave the trees largely in their natural state. Further, as Mr. Heathcote does not directly dispute the descriptions of his trees provided by Dr. Verheul and another eyewitness, I accept those descriptions at face value.

11. In 2018 Dr. Verheul asked about removing allegedly diseased trees on Mr. Heathcote's lot. Mr. Heathcote responded that Dr. Verheul could cut down problem trees and keep the resulting firewood if Dr. Verheul paid for their removal, among other conditions. However, Mr. Heathcote ultimately decided the trees should remain standing because they were not considered a threat to safety or property at that time.

12. In January 2021, a tree in Mr. Heathcote's yard undisputedly fell onto the front yard of a different neighbour. Photos show that the large tree missed that neighbour's house by approximately 10 feet. In an email, Mr. Heathcote agreed that tree was "obviously dead." He said he would allow the neighbour to remove other trees on his

property if they met several conditions. There is no evidence that the neighbours removed any of Mr. Heathcote's trees.

13. In May 2021, Dr. Verheul emailed Mr. Heathcote that, among other dead or diseased trees on Mr. Heathcote's property, one was leaning over Dr. Verheul's pumphouse and was threatening to fall on it. Photos accompanied the email, although the copies in evidence are indistinct. I find that the tree was likely leaning toward the pumphouse, as this is not disputed. Mr. Heathcote gave Dr. Verheul permission to cut down the tree if he met certain conditions, including paying for the removal.

14. Dr. Verheul emailed Mr. Heathcote on August 6, 2021 that the leaning tree had broken off near its base and was hung up and leaning on adjacent trees toward the pumphouse. Photos show the pumphouse contained water and electrical utility equipment for the main house, among other things. Dr. Verheul said he hired an arborist to investigate this high-risk situation, but Mr. Heathcote was responsible for the tree. Joshua Spears, a certified arborist with The Coastal Arborist, undisputedly viewed Mr. Heathcote's trees on August 10, 2021. Dr. Verheul says Mr. Spears identified 4 of Mr. Heathcote's trees that needed removal, including the broken one, and said that the area around the broken tree, including the pumphouse, should not be used until the broken tree was removed. Mr. Spears' August 10, 2021 quotation said, "STAY CLEAR OF THE FAILED GRAND FIR DURING WIND EVENTS UNTIL IT HAS BEEN DEALT WITH. YOU ARE FIRST ON OUR LIST!!!!" (emphasis in the original). I infer that Mr. Spears was unable to remove the tree at that time because of seasonal fire restrictions on such activities.

15. *Hitchings v. Anmore Camplands Inc.*, 2008 BCPC 257, noted that dead trees will eventually fall over, and they require inspections and trimming and/or removal if they are potentially hazardous to people or their possessions nearby. The court in *Marliese v. West Kootenay Power Ltd.*, 1993 CanLII 1139 (BCSC) also found that a dead tree would inevitably fall, and that leaving it in place presented foreseeable risks. Here, Mr. Heathcote's tree was not only dead, but it was already severed and leaning

against other trees toward Dr. Verheul's lot. As noted, another of Mr. Heathcote's trees had recently fallen and narrowly missed a neighbour's house.

16. I find the evidence shows that the dead and broken tree was an imminent threat to both the pumphouse and anyone present on Dr. Verheul's lot within the tree's falling radius. I also find that Mr. Heathcote was aware of the hazard his tree posed to Dr. Verheul's property and its occupants, but he did not take any steps to address it other than granting Dr. Verheul permission to remove the tree at his own expense if he wished. Mr. Spears undisputedly removed the tree on October 4, 2021 on Dr. Verheul's instructions, and as noted Mr. Heathcote says he owes nothing.

17. I find the law of unjust enrichment applies to this dispute. To prove unjust enrichment, Dr. Verheul must show that (1) Mr. Heathcote was enriched, (2) Dr. Verheul suffered a corresponding deprivation or loss, and (3) there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467).

18. I find Mr. Heathcote was enriched because he had a dangerous tree on his property taken down at no expense to him. I find Dr. Verheul undisputedly paid to have the tree removed, which resulted in an economic loss. The final question is whether there was a valid basis for Mr. Heathcote's enrichment, which I will now address.

19. The general principle of the law of nuisance is that people are entitled to use and enjoy their land without reasonable interference (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64). In *Royal Anne Hotel Co. v. Ashcroft*, 1979 CanLII 2776 (BCCA), the court agreed that no use of property is reasonable which causes substantial discomfort to another or is a source of damage to their property. Here, I find the hazardous tree's presence interfered with Dr. Verheul's reasonable use and enjoyment of the portions of his lot threatened by the tree during wind events. I find that was a nuisance known to Mr. Heathcote and which he took no reasonable steps to remedy, so he would be liable for resulting damage (see *Lee v. Shalom Branch #178*, 2001 BCSC 1760). I note no direct property damage is alleged here. However, I find that Dr. Verheul's removal of the tree was reasonable in the circumstances

because it likely avoided significant property damage from the tree's inevitable fall, and mitigated both the tree risks and the costs of those risks.

20. I find submitted invoices and other evidence show that Mr. Heathcote first took steps to address hazardous trees on his property after Dr. Verheul had removed the leaning tree, which was several months after the first tree fell over and Dr. Verheul informed him about the second, leaning tree. So, I find nothing turns on the fact that Mr. Heathcote later hired another tree professional to investigate and remove other trees on his property.

21. Finally, Mr. Heathcote says Dr. Verheul agreed to pay for the tree's removal. I find the correspondence in evidence shows Mr. Heathcote did not agree to remove any trees in 2018. I also find it shows Dr. Verheul did not agree to pay for the leaning tree's removal in 2021.

22. Overall, I find there was no valid basis for Mr. Heathcote's enrichment, because there was no valid agreement about paying to remove the nuisance tree, which Mr. Heathcote refused to remove despite the obvious risks to Dr. Verheul. So, I find Mr. Heathcote was unjustly enriched, and Dr. Verheul is entitled to compensation.

23. The tree removal invoice was for removing both Mr. Heathcote's tree and another tree on Dr. Verheul's property. Mr. Spears confirmed in an email that the cost for removing Mr. Heathcote's tree was $1,200 plus $200 for travel, plus GST. I find this totals $1,470. Dr. Verheul says Mr. Heathcote should pay 2/3 of the $400 in billed travel costs plus tax, because Mr. Heathcote's tree removal cost was 2/3 of the total removal costs billed. I find that is not a reasonable division of the travel costs, and the parties should share them equally, as stated in Mr. Spears' email. Dr. Verheul also claims $250 for the cost of Mr. Spears' supporting letter about Mr. Heathcote's trees. In the circumstances, I find the letter did not enrich Mr. Heathcote and was not required to investigate or remove his dead tree, so I find Dr. Verheul is not entitled to compensation for it. I allow Dr. Verheul's claim in the amount of $1,470.

CRT Fees, Expenses, and Interest

24. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, Dr. Verheul is entitled to pre-judgment interest on the $1,470 owing, calculated from the October 9, 2021 payment date shown on The Coastal Arborist invoice until the date of this decision. This equals $4.28.

25. 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. Here, I see no reason to depart from that general rule. Dr. Verheul was largely successful in this dispute, so I find he is entitled to reimbursement of the $125 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

26. Within 30 days of the date of this decision, I order Mr. Heathcote to pay Dr. Verheul a total of $1,599.28, broken down as follows:

    a. $1,470 in damages for unjust enrichment,

    b. $4.28 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

27. Dr. Verheul is also entitled to post-judgment interest, as applicable.

28. 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.

29. 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.

Chad McCarthy, Tribunal Member