



Civil Resolution Tribunal

Date Issued: June 6, 2022

File: SC-2021-006624

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lovas v. McDonald*, 2022 BCCRT 663

BETWEEN:

JOE LOVAS

APPLICANT

AND:

SHAWN MCDONALD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about damage to trees. The applicant, Joe Lovas, says his neighbour, the respondent Shawn McDonald, cut back Mr. Lovas' trees causing damage and making the trees unsightly. Mr. Lovas seeks \$1,500 to replace the trees. Mr. McDonald says the trees are actually on his property, so he had the right to trim them as he saw fit. Mr. McDonald denies owing Mr. Lovas any money.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
4. Section 39 of the CRTA says that 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.
5. Section 42 of the CRTA says that 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.

ISSUE

7. The issue in this dispute is to what extent, if any, Mr. Lovas is entitled to \$1,500 for damaged trees.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant Mr. Lovas must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
9. The following facts are not disputed. Mr. Lovas had trees planted between his and Mr. McDonald’s properties. Mr. McDonald sought to trim back the trees, and Mr. Lovas consented to him doing that.
10. Mr. Lovas now says the “trimming” Mr. McDonald did was excessive and that the trees are damaged “beyond self-repair”. Both parties allege the trees are on their own property.
11. As noted above, the onus is on Mr. Lovas to prove that the trees are on his property, and that they have been damaged beyond repair. Mr. Lovas and Mr. McDonald disagree about whose property the trees are on. Mr. McDonald says he had his property surveyed in 2007 and according to that survey the trees would be on Mr. McDonald’s property. Mr. McDonald says when Mr. Lovas planted the trees, he specifically asked why they were planted on Mr. McDonald’s property. Mr. Lovas does not address this submission, but instead says the property line is the edge of a concrete half-wall, and the trees are planted 10 inches away from that wall.
12. Mr. McDonald submitted his property’s survey documents, which indicate the width of Mr. McDonald’s property is 21.95 metres. Mr. McDonald says he measured that out, and submitted a picture of where he argues the property line is, which would mean at least some of the trees are planted on Mr. McDonald’s property. I cannot tell from the photographs submitted whether the location is in fact 21.95 metres from property edge to property edge.
13. On balance, I find Mr. Lovas has not proven the trees are on his own property.

14. The other difficulty for Mr. Lovas is that he has not shown the trees are damaged beyond repair. He submitted two quotes in evidence to remove and replace 23 trees, one for \$7,533.75 and one for \$5,250, but neither quote says the trees are permanently damaged. While I accept the trimming is unsightly facing Mr. McDonald's yard, I am not satisfied the trees need to be completely removed and replaced. Additionally, despite the quotes submitted, Mr. Lovas only seeks \$1,500 in damages, but does not explain how he arrived at that figure.
15. For the reasons, I dismiss Mr. Lovas' claims.
16. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Lovas was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. Mr. McDonald did not pay tribunal fees or claim dispute-related expenses.

ORDER

17. I order Mr. Lovas' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair