



Civil Resolution Tribunal

Date Issued: June 7, 2022

File: SC-2021-007928

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hsu v. Lu*, 2022 BCCRT 666

BETWEEN:

RICHARD HSU

APPLICANT

AND:

LING LU and QING DONG ZHANG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a small claims dispute about two trees located on property owned by the respondents, Ling Lu and Qing Dong Zhang. The applicant, Richard Hsu, says the trees' branches are overhanging onto his property and causing damage to his roof. Mr. Hsu seeks \$2,000 to cut the trees' branches that extend over to his property.

2. The respondents do not deny that the trees' branches overhang onto Mr. Hsu's property but say that the branches are not close enough to his roof to cause damage.
3. Mr. Hsu is self-represented. Ms. Lu represents both respondents.

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.

Preliminary Issue

8. In their submissions, the respondents refer to discussions between the parties during the CRT's facilitation stage, including a settlement offer. CRTA rule 1.11 says that communications made attempting to settle claims by agreement in the tribunal process are confidential and must not be disclosed during the tribunal decision process. CRTA rule 1.11 exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. However, if the parties agree, settlement discussions from the CRT's facilitation stage may be disclosed. Here, I have no evidence of such an agreement between the parties. So, given the confidential nature of discussions between parties during the CRT's facilitation stage and the absence of an agreement between the parties to disclose such information, I have not considered these discussions in reaching my decision.

ISSUES

9. The issues in this dispute are:
 - a. Whether the respondents' trees are a nuisance for Mr. Hsu, including causing damage to his property, and
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Mr. Hsu must prove his claims on a balance of probabilities, meaning "more likely than not". I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
11. It is undisputed that the two trees at issue here are a maple tree and a pine tree, both located on the respondents' property, next to the fence separating the parties' respective properties. Mr. Hsu alleges that he has had problems with raccoons and

squirrels jumping onto his roof from the trees' branches, digging up shingles and causing water damage inside. He says that he has had to do multiple repairs on his roof. His evidence includes a September 22, 2021 invoice for a new roof. Mr. Hsu says that he spoke to the respondents in July 2019 and 2020 about trimming their trees but nothing was done. In July 2021, he hired a contractor to trim some of his own trees and offered to trim the respondents' trees at his own cost but says the respondents' refused.

12. The respondents say that they have regularly maintained the trees, including as recently as November 2021. They say that the trees' branches are too thin for any wild animals to climb on as Mr. Hsu alleges. The respondents say that there are trees in Mr. Hsu's backyard that are much closer to his house compared to the respondents' trees. The respondents further say that when Mr. Hsu approached them in July 2021, he asked the contractor to cut their maple tree in half without their permission. The respondents say that cutting the young maple tree in half would make the tree unhealthy and potentially dangerous in windy weather.
13. I turn to the law of nuisance, which is what applies here. A nuisance is defined as the unreasonable interference with the use and enjoyment of property. The focus is on the harm suffered, rather than the wrongful conduct. Whether the interference is from intentional, negligent, or non-faulty conduct is of no consequence, provided that the harm can be characterized as a nuisance (*St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64 at paragraph 77).
14. The law is clear that a homeowner is entitled to trim their neighbour's trees' branches to the extent those branches extend over the property line onto the homeowner's property, and so long as the homeowner does not trespass in doing so (see *Anderson v. Skender*, 1993 CanLII 2772 (BCCA) at paragraph 15). It is the respondents' obligation to trim the trees when they cause a nuisance for others.
15. To be a nuisance, the interference must be both substantial and unreasonable. "Substantial" interference has been defined as non-trivial. Generally, if the interference causes physical damage, it will usually be "unreasonable" (see *Antrim*

Truck Centre Ltd. v. Ontario (Transportation), 2013 SCC 13 at paragraphs 19 and 50, and *Royal Ann Hotel Co. v. Village of Ashcroft*, 1979 CanLII 2776 (BCCA)).

16. When it comes to trees, an award of damages will depend on whether the nuisance was known or ought to have been known and whether reasonable steps were taken to remedy the nuisance (see *Hayes v. Davis*, 1991 CanLII 5716 (BCCA) and *Lee v. Shalom Branch #178 Building Society*, 2001 BCSC 1760).
17. As mentioned, the burden of proof is on Mr. Hsu. Based on the evidence before me, I find that Mr. Hsu has not proven that the trees' overhanging branches unreasonably interfere with the use or enjoyment of his property. I find the photographs in evidence do not prove, on a balance of probabilities, that animals could jump onto Mr. Hsu's roof from the trees' branches and cause damage. Further, there is insufficient evidence before me to prove that any alleged damage to Mr. Hsu's roof was related to the overhanging branches. In any event, based on the respondents' photographs, I find that any nuisance that may have existed has been remedied by the November 2021 trimming. So, I find that the trees' current state is not a nuisance and I dismiss Mr. Hsu's claim for \$2,000 to trim the trees' branches.
18. My findings do not mean that the trees can never be a nuisance. In the future, the respondents' trees may grow and cause a nuisance that the respondents would be obligated to remedy.
19. In addition to Mr. Hsu's nuisance claim about the trees' branches, in his submissions, Mr. Hsu also says that the maple tree's roots are extending close to his house's foundation. However, in his Dispute Notice, Mr. Hsu does not plead any specific claim about the maple tree's roots and he seeks no specific remedy relating to this issue. So, I find that Mr. Hsu's allegations about the maple tree's roots are not properly before me and make no findings about them.
20. 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.

Since Mr. Hsu was unsuccessful, I dismiss his claim for CRT fees and dispute-related expenses. The respondents did not claim reimbursement of any CRT fees or dispute-related expenses.

ORDER

21. I dismiss Mr. Hsu's claims and this dispute.

Nav Shukla, Tribunal Member