



Civil Resolution Tribunal

Date Issued: June 14, 2022

File: SC-2021-007382

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Osborne v. Bhullar*, 2022 BCCRT 693

BETWEEN:

CALVIN JOHN OSBORNE

APPLICANT

AND:

GURCHARAN SINGH BHULLAR and HARSHBIR KAUR BHULLAR

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a retaining wall. The applicant, Calvin John Osborne, says his respondent neighbours, Mr. Gurcharan Singh Bhullar and Mrs. Harshbir Kaur Bhullar, damaged his retaining wall in July and September 2019. Mr. Osborne claims for \$2,000 in damages for trespass.

2. The Bhullars deny trespassing. However, in submissions uploaded as evidence, they admit to hitting Mr. Osborne's retaining wall with a mini excavator. They say their main concern is that Mr. Osborne is seeking compensation to repair pre-existing damage that the Bhullars did not cause.
3. Mr. Osborne represents himself. Mr. Bhullar represents the Bhullars.
4. For the reasons that follow, I find Mr. Osborne has proven his claims.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

ISSUE

9. The issue in this dispute is to whether the Bhullars trespassed and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Osborne 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.
11. The background facts are summarized in Mr. Osborne's timeline of events and are largely undisputed. Mr. Osborne and the Bhullars own and live in neighbouring houses. Photos show their front yards both have an elevated area held in place by 2 separate retaining walls. Their walls meet at the property line. The Osbornes' retaining wall consists of masonry with large irregular rocks embedded in it.
12. In late 2018 or early 2019 the Bhullars began renovations. In July 2019, Mr. Bhullar and his contractors used a mini excavator to remove a bush on the Bhullars' property. On September 28, 2019, the Bhullars' mini excavator undisputedly bumped Mr. Osborne's retaining wall. A video, taken from behind and above Mr. Osborne's wall, clearly shows the excavator moved and pushed Mr. Osborne's retaining wall. This affected an L-shaped section of Mr. Osborne's wall, located at the parties' property

line. Mr. Osborne referred to this section as including an anchoring leg. The wall section moved outwards, away from Mr. Osborne's house, and out of place.

13. The Bhullars voluntarily conducted repairs on Mr. Osborne's wall on September 30, 2019. The Bhullars also poured their new retaining wall into place on November 1, 2019. Mr. Osborne was of the view that repairs were incomplete. In April 2020 he asked Mr. Bhullar when he would complete repairs to the retaining wall. The Bhullars did not agree to any further repairs.

Did the Bhullars trespass, and if so, what is the appropriate remedy?

14. Mr. Osborne alleges 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. 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. If trespass is proven, one measure of damages is the actual damages suffered by the owner. See *Kolny (Litigation Guardian of) v. Moghaddam*, 2021 BCSC 1243.
15. Mr. Osborne also says the Bhullars' trespass and inadequate repairs caused the following ongoing issues:
 - a. There is now a large unsightly gap between the 2 retaining walls.
 - b. The top of his wall dips where it connects to the Bhullar's wall.
 - c. The wall no longer runs parallel to the front property line and instead forms a slight arc.
 - d. There is no longer an anchoring leg at the end of the wall where it meets the Bhullar's property line. I note this appeared in the video but appears absent in the photos.

- e. The spacing of the rocks in a repaired section of wall are inconsistent with the rest of the wall. In particular, 2 of the rocks touch each other.
 - f. There is a hole in the repaired section where there is no concrete between the stones.
 - g. Two large stones on the bottom of the repaired section are touching with no spacing between them and no concrete to secure them in place.
 - h. The Bhullars left concrete wash on 3 stones and a large “blob” of waste concrete which is now attached to the bottom of the wall.
 - i. The Bhullars’ repairs placed a stone with a rectangular shape into the face of the wall in a vertical position, which does not match the stones in the rest of the wall.
16. Overall, I find the evidence supports Mr. Osborne’s allegations about trespass and the inadequacy of the repairs. As noted earlier, the evidence shows Mr. Bhullars’ mini excavator moved into Mr. Osborne’s retaining wall, shifting it out of place. I find that Mr. Bhullar trespassed by doing so. Further, the problems listed above can be clearly seen in Mr. Osborne’s photographs and they affect his land. The problems are clearly circled and labelled in one of the photographs.
17. On balance, I am also satisfied that these were not pre-existing issues. This is because Mr. Osborne provided photos of his retaining wall before construction began on the Bhullars’ retaining wall. These included photos from Google Street View that are undated, but show the Bhullars’ old retaining wall. I find these older photos are sufficiently detailed to show that Mr. Osborne’s retaining wall was previously free of these issues. I find it likely that Mr. Bhullars’ renovations caused this damage because they involved significant work in this area.
18. The Bhullars disagree that they trespassed. However, there is no indication that Mr. Osborne provided the Bhullars permission to enter his land or damage it. I find that

Mr. Osborne likely provided permission for the repairs, but I find they did not repair all the damage given the photographs in evidence, as discussed above.

19. There is no indication that Mrs. Bhullar was involved in this dispute or trespassed on Mr. Osborne's property. In contrast, it is undisputed that Mr. Bhullar was involved in the work at issue. So, I dismiss all claims against Mrs. Bhullar only.
20. This leaves the question of damages. Mr. Osborne provided a January 26, 2022 quote for \$1,995 to repair the wall. He also provided a February 18, 2022 quote for \$2,205 for repairs. Mr. Osborne also submits that he received a verbal quote on December 16, 2021, for \$3,000 from another contractor. The Bhullars provided a February 25, 2022 quote of \$473.50 to pour concrete and make touchups. Given the wording of the quote, I find the quote covers less repairs than the damage Mr. Osborne has proven. Ultimately, I find Mr. Osborne's claim of \$2,000 for repairs is supported by the evidence and I order Mr. Bhullar to pay it.
21. The *Court Order Interest Act* applies to the CRT. Mr. Osborne is entitled to pre-judgment interest on the damages award of \$2,000 from September 28, 2019, the date the excavator hit Mr. Osborne's retaining wall, to the date of this decision. This equals \$47.15.
22. 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. I find Mr. Osborne is entitled to reimbursement of \$125 in CRT fees. The parties did not claim for any specific dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order Mr. Bhullar to pay Mr. Osborne a total of \$2,175.15, broken down as follows:
 - a. \$2,000 as damages,

- b. \$47.15 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

24. Mr. Osborne is entitled to post-judgment interest, as applicable.

25. I dismiss Mr. Osborne's claims against Mrs. Bhullar.

26. 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.

27. 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