



Civil Resolution Tribunal

Date Issued: June 22, 2022

File: SC-2021-009362

Type: Small Claims

Civil Resolution Tribunal

Indexed as *Kwok v. Alfa Pau*, 2022 BCCRT 725

BETWEEN:

MEIME KWOK

APPLICANT

AND:

YIU FAT ALFA PAU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about property boundary markers. The applicant, Meime Kwok, and the respondent, Yiu Fat Alfa Pau, are neighbours. Ms. Kwok attempted to replace the fence between their properties, but the parties disagreed about the property line's location. Ms. Kwok says Mr. Alfa Pau removed a survey pin that showed the property line's location, and she had to hire a surveyor to replace it so she could properly

position the new fence on her property. She claims \$1,255: \$1,155 in surveyor fees, and \$100 in labour to remove and shore up gravel from Mr. Alfa Pau's side of the property line that spilled onto Ms. Kwok's property when the fence was being replaced. Mr. Alfa Pau denies responsibility for either of these alleged costs.

2. The parties are each 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.

ISSUES

7. The issues in this dispute are:
 - a. Is Mr. Alfa Pau responsible for the \$1,155 cost of replacing the survey pin?
 - b. Is Mr. Alfa Pau responsible for \$100 in gravel removal and shoring costs?

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, Ms. Kwok must prove her 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.

Survey Pin Replacement

9. Ms. Kwok tore down the old fence between the parties’ yards so she could build a new fence in her yard. She says the old fence was entirely on her property, and Mr. Alfa Pau disagrees. I find nothing turns on this, because Mr. Alfa Pau makes no claims for the old fence’s destruction, and I find the old fence’s location does not determine the legal property boundary. I find surveyed boundary markers are the best evidence of the property line’s location.
10. I find photos, video, and a topographic site plan in evidence show that Ms. Kwok and her contractors located an “iron post” metal survey pin embedded in the ground where the parties’ shared property line ended at the back corner of their yards. I find the pin was identified with a white wooden survey stake that submitted video shows Mr. Alfa Pau removed and threw aside. I find the survey pin, and not the wooden stake, identified the location of the property boundary, as noted by surveyors in submitted video evidence. I find the photos also show that Ms. Kwok’s contractors attached string to the survey pin, to mark the location of the property line while they constructed the new fence in Ms. Kwok’s yard.

11. I find submitted video shows Mr. Alfa Pau straddling the parties' shared property line and repeatedly hitting the side of the metal survey pin with a hammer. Mr. Alfa Pau admits that he removed the pin. He says he did not notice the pin before Ms. Kwok's contractor identified it, that it "suddenly appeared" during the fence work, and that it could have been put there by anyone. I find that although Mr. Alfa Pau did not previously notice the pin, this does not necessarily mean that the pin was newly installed.
12. Mr. Alfa Pau says the pin extended 10 inches above ground and that he removed it "easily". I find Mr. Alfa Pau's own photo shows that the pin only extended 2 to 3 inches above ground. I also find the video evidence does not show that the pin came out easily. On the contrary, I find the video shows that Mr. Alfa Pau pulled on the pin with significant force after hammering its side, without successfully dislodging it. I find this discrepancy casts doubt on Mr. Alfa Pau's version of events.
13. As noted, Mr. Alfa Pau suggests that the survey pin he removed was not an official survey pin, which Ms. Kwok denies. I find none of the evidence before me shows that the removed pin was not an official survey pin. As noted, the evidence shows the pin was marked with an identifying wooden post, and was in the location shown on the submitted topographic site plan. Further, Mr. Alfa Pau does not deny that a surveyor later installed a replacement survey pin in the same location, as shown in submitted photos and video. On balance, I find the pin removed by Mr. Alfa Pau was an official survey pin. I find that Mr. Alfa Pau knew or ought to have known this, given that the pin's purpose was repeatedly described to him in submitted video.
14. Ms. Kwok notes that it is a *Criminal Code of Canada* (CCC) offence to remove a survey pin without proper authority. CCC section 442 says that it is an offence to remove anything planted or set up as the boundary line or part of the boundary line of land. More specifically, CCC section 443(1)(b) says it is an offence to remove a boundary mark lawfully placed by a land surveyor to mark any limit, boundary, or angle of a concession, range, lot, or parcel of land.

15. On the evidence before me, I find that the pin removed by Mr. Alfa Pau was likely placed by a land surveyor to mark the boundary of the parties' properties. Despite being informed that the pin was a property boundary marker, there is no evidence that Mr. Alfa Pau made any further inquiries before removing it, as would be expected of a reasonable person (see *R. v. Dicks*, 2007 CanLII 3093 (NL PC) at paragraph 11, and also *Laponder v. Birkich*, 2017 BCSC 1890 at paragraphs 59 to 61). I find that the pin removal appears to be contrary to the CCC, and that Mr. Pau knew, or ought to have known, that he should not remove the pin.
16. Given the disputed property line, incomplete fence construction, and lack of substitute survey markers shown on the topographic site plan, I find that the survey pin was needed to determine the location of the parties' shared property line and a proper location for the fence. So, in the circumstances, I find it was both reasonable and necessary for Ms. Kwok to have the pin replaced by a land surveyor, given that neither party claims to have any surveying expertise.
17. An invoice in evidence confirms that Ms. Kwok hired LNLS Metro Vancouver Land Surveyors to replace the survey pin for \$1,155. I find that Ms. Kwok would not have needed to incur this cost if Mr. Alfa Pau had not removed the original survey pin contrary to the prohibitions noted above. I find the survey pin likely straddled the property line, so I find its removal was also a trespass, meaning a direct interference with Ms. Kwok's land, and also involved Mr. Alfa Pau entering her land without lawful justification or consent (see *Lahti v Chateauvert*, 2019 BCSC 1081 at paragraph 6).
18. In *Graham v. Golden Gate Developments Inc.*, 2013 BCSC 1890, the court declined to order either party to pay for fence surveys because neither had "improperly caused the incurring" of the survey expenses. Here, for the above reasons, I find Mr. Alfa Pau improperly caused Ms. Kwok to incur the survey expenses. I find Mr. Alfa Pau's survey pin removal was entirely unjustified, and that he is responsible for the claimed \$1,155 in survey costs.

Gravel Removal and Shoring Costs

19. Ms. Kwok claims \$100 for the cost of labour to move gravel she says Mr. Alfa Pau had piled against the old fence, and which fell into her yard when the old fence was removed. She says this includes shoring costs to prevent further gravel spillage.
20. Ms. Kwok provided no evidence showing that she paid or owes anything for moving gravel or installing shoring. Further, submitted photos do not show the location or extent of any piled gravel before the original fence was removed, including in relation to the property line. Overall, I find there is insufficient evidence to show that Mr. Alfa Pau unreasonably piled gravel against the old fence, or that this caused unnatural spillage into Ms. Kwok's yard when she removed the old fence. I dismiss Ms. Kwok's claim for \$100 in labour and shoring costs.

CRT Fees, Expenses, and Interest

21. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, Ms. Kwok is entitled to pre-judgment interest on the \$1,155 owing, calculated from the date of the August 30, 2021 surveyor invoice that was due on receipt, until the date of this decision. This equals \$4.23.
22. 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. Ms. Kwok was substantially successful in this dispute, so I find she is entitled to reimbursement of the \$125 she paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

23. Within 30 days of the date of this decision, I order Mr. Alfa Pau to pay Ms. Kwok a total of \$1,284.23, broken down as follows:
 - a. \$1,155 in damages,

- b. \$4.23 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
24. Ms. Kwok is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
25. I dismiss Ms. Kwok's remaining claims.
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.

Chad McCarthy, Tribunal Member