



Civil Resolution Tribunal

Date Issued: April 24, 2023

File: SC-2022-004672

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *City of Surrey v. Tu*, 2023 BCCRT 332

BETWEEN:

CITY OF SURREY

APPLICANT

AND:

LIAN GONG TU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant, the City of Surrey (Surrey), says the respondent, Lian Gong Tu, painted lines on a Surrey road for use as a sports court without Surrey's consent. Surrey claims \$1,623.33 in damages for its costs to remove the paint lines from the road.

2. Mr. Tu does not dispute that he painted badminton court lines on a Surrey road. However, Mr. Tu says he is not responsible to reimburse Surrey for its claimed paint removal costs because he says he was not the only person who painted the road.
3. Surrey is represented by its in-house legal counsel, Wassan Aujla. Mr. Tu is self-represented.

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.

ISSUE

8. The issue in this dispute is whether Mr. Tu must reimburse Surrey for its costs to remove lines Mr. Tu painted on its road, and if so, what amount.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Surrey must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
10. It is undisputed that the road at issue in this dispute is a cul-de-sac located within Surrey's municipal boundaries, and it is owned and maintained by Surrey. As noted, Mr. Tu undisputedly painted lines on its road without Surrey's permission or consent.
11. Mr. Tu does not argue he was entitled to paint badminton court lines on Surrey's road. However, Mr. Tu says pickleball court lines were already painted on the road by other neighbours and used to play pickleball.
12. Mr. Tu provided a signed statement from MW and DB. MW and DB say they live on a property beside Surrey's road. They said they began using Surrey's road as a pickleball court beginning in April 2020, at the beginning of the COVID-19 lockdown. They say they initially used chalk lines for the pickleball court, but eventually replaced them with painted lines. They said they agreed to share the space with Mr. Tu. Later on, they said Mr. Tu painted lines adjacent to the pickleball court for badminton.
13. Surrey provided an affidavit from EH, who says they witnessed Mr. Tu paint the badminton court lines. In EH's email to Surrey bylaw services, EH said there were 2 courts on Surrey's road, but they did not see who painted the pickleball court lines.
14. Together, I find EH's affidavit evidence and MW and DB's statement support a finding that Mr. Tu only painted the badminton court lines on Surrey's road, and did not paint

the adjacent pickleball court lines on Surrey's road. This relates to Mr. Tu's obligations to compensate Surrey, as discussed later below.

15. Surrey bases its claims against Mr. Tu in negligence, nuisance, and trespass. I do not see how Mr. Tu painting the road could be grounded in negligence, as it was undisputedly a deliberate and intentional act. I turn then to Surrey's claims in trespass and nuisance.
16. Trespass to land consists of entering onto the property of another without lawful justification, or placing, throwing or erecting some material object thereon without the legal right to do so. To constitute trespass, Mr. Tu must directly interfere with property possessed by Surrey in some way. The requirement of directness differentiates trespass from nuisance, which is committed if Mr. Tu makes use of his own property in a manner that indirectly affects Surrey's property. See *Lahti v. Chateaufvert*, 2019 BCSC 1081, at paragraph 6, citing G.H.L. Fridman *The Law of Torts in Canada* by 3rd ed. (Toronto: Carswell, 2010) at page 29.
17. Applying the law to the facts before me, it is clear that Mr. Tu applying paint to Surrey's road without any right to do so is a direct interference with Surrey's property that amounts to trespass. For the same reason, I find Mr. Tu's actions do not constitute a nuisance.
18. Motive or purpose is not relevant in determining liability for trespass, because a person in possession of land is not required to accommodate others. See *Shaman v. Meek*, 2019 BCSC 9 at paragraph 36. Therefore, although Mr. Tu says his reason for painting the badminton court lines on Surrey's road was to provide outdoor recreation opportunities for children when indoor facilities were closed during COVID-19, he is still liable in trespass for painting Surrey's road without its consent.
19. I turn now to damages. Absent extenuating circumstances, there are 3 types of damages available for trespass:
 - a. Nominal damages if Surrey has not proven any actual loss,
 - b. Actual damages suffered by Surrey, or

c. A sum that should reasonably be paid for the use of the land. See *Manak v. Hanelt*, 2022 BCSC 1446.

20. Here, I find Mr. Tu painting badminton court lines on the road altered Surrey's property. So, I find it appropriate to award Surrey its actual proven damages, and not nominal damages.
21. Mr. Tu says he is not responsible to reimburse Surrey for its claimed costs to remove the paint lines from the road because he is not the only person who painted the road and Surrey is not seeking payment from anyone else. Surrey did not address this allegation in its submissions, and did not specifically say whether its claimed costs are the costs to remove the painted lines for both courts, or just the badminton court. I find Surrey has only proved that Mr. Tu painted the badminton court lines. Therefore, I find Surrey is only entitled to its proven costs to remove the badminton court lines, and not the pickleball court lines.
22. Turning to the value of the actual damages, Surrey says it suffered a loss of \$1,623.33 for the cost incurred "in removing the painted white lines" from the road. Surrey provided photographs that I find show two courts painted on Surrey's road, and another photograph that I find shows the paint lines for both courts removed. I also find the photographs show that each of the two courts are around the same size with roughly the same amount of paint lines.
23. Surrey also provided an affidavit from RZ, a former Surrey employee. RZ said they generated a Surrey invoice for the costs to remove "the painted lines" from Surrey's road. The invoice includes road cleaning costs, an engineering administrative fee, and GST. I find the road cleaning costs are based on Surrey's city works "work order cost summary report", and are based on Surrey's labour, material and equipment costs. I find the evidence RZ provided shows that Surrey reasonably incurred costs of \$1,623.33 to remove the paint lines from Surrey's road. However, based on the photographs and RZ's affidavit evidence, I find the \$1,623.33 claimed reflects the cost to remove both the pickleball court lines and the badminton court lines from Surrey's road. As noted, I find Mr. Tu only painted the badminton court lines. Surrey

did not provide any breakdown of the costs it says incurred to remove only the badminton court lines. Given that there were 2 courts, I find the cost to remove the paint lines from 1 court is likely around half of Surrey's total costs. Therefore, on a judgment basis, I find Surrey is entitled to \$811.67 in actual damages for its costs to remove the badminton court lines.

Interest, CRT fees and expenses

24. The *Court Order Interest Act* applies to the CRT. However, Surrey expressly waived its right to interest, so I order none.

25. 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. Surrey was only partially successful in this dispute, so I find Surrey is entitled to reimbursement of \$62.50 for half of its paid CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Tu to pay Surrey a total of \$874.17, broken down as follows:

- a. \$811.67 in damages for paint removal costs,
- b. \$62.50 in CRT fees.

27. Surrey is entitled to post-judgment interest, as applicable.

28. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Leah Volkens, Tribunal Member