



# Civil Resolution Tribunal

Date Issued: January 8, 2024

File: SC-2022-008657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hu v. Ding*, 2024 BCCRT 16

B E T W E E N :

LANA RUIJUAN HU and JASON YANJUN LIU

**APPLICANTS**

A N D :

ZHAO GANG DING

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This is a neighbour dispute about a fence.
2. The applicants, Lana Ruijuan Hu and Jason Yanjun Liu, live next door to the respondent, Zhao Gang Ding. The respondent built a fence on the applicants' property without their consent. The applicants ask for an order that the respondent

remove the fence. They also claim \$2,467.50 for a land survey fee, and \$160 for landscaping expenses they say they incurred because of the respondent's actions. In addition, the applicants claim \$3,000 in general and punitive damages for the respondent's alleged trespass, nuisance, and harassment in connection with the fence installation.

3. The respondent accepts the fence is on the applicants' property, based on the applicants' land survey in evidence. He offered to move the fence onto his property, but says the applicants unreasonably refused because he would not agree to place it at least 2 feet back from the property line. The respondent also says since the applicants challenged the status quo by disputing the default boundary along which he built the fence, they are responsible for the land survey fee. Finally, the respondent denies the applicants' claim for trespass, nuisance, and harassment damages.
4. Lana Ruijuan Hu represents the applicants. The respondent is self-represented.

## **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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and 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.

### ***Preliminary issues***

9. First, the respondent paid for but did not complete and submit a counterclaim application. So, while the respondent raises allegations against the applicants, I have not considered these except to the extent they relate to the applicants' claims.
10. Second, the CRT's monetary limit under its small claims jurisdiction is \$5,000 per claim. The applicants' damages claims total more than \$5,000. Since the claims all relate to the fence issue, I find treating them as separate "claims" would amount to inappropriate claim-splitting (see, for example, *De Bayer v. Yang*, 2019 BCCRT 298). So, I find the applicants are limited to a maximum of \$5,000 in damages, to the extent they prove their claims. Nothing turns on this in any event, given my decision.
11. Third, the applicants ask for an order that the respondent remove the fence. In submissions, they also ask that the respondent reinstate their lawn to its original condition, and that if the respondent rebuilds his fence, he be required to place it at least 2 feet back from the property line. These are all requests for "injunctive relief", meaning orders that a person do or stop doing something. With limited exceptions that do not apply here, injunctive orders are outside the CRT's small claims jurisdiction. So, I decline to make the requested orders. Since the applicants specifically value the fence removal at \$500, I have considered an alternative damages remedy for that part of the applicants' claim.
12. Fourth, in submissions, the applicants ask that I order the respondent to remove trees he planted on his side of the property line. For the same reasons as above, I decline to make the requested order. To the extent the applicants say the trees cause a nuisance, I address their claim for compensation below.
13. Fifth and finally, the applicants say the respondent harassed them by spreading rumours and making dishonest reports to the city, and the respondent's behaviour

could amount to criminal harassment contrary to the Criminal Code. I note there is no recognized tort of harassment in British Columbia (see *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61). Also, the CRT does not have jurisdiction over criminal matters. So, I make no findings about whether the respondent harassed the applicants as alleged.

## **ISSUES**

14. The issues in this dispute are whether the applicants are entitled to:
  - a. \$500 for fence removal,
  - b. \$2,467.50 for a land survey fee and \$160 for landscaping expenses, and
  - c. \$3,000 for trespass and nuisance.

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but refer only to that which I find necessary to explain my decision.
16. The parties became neighbours when the applicants purchased their property next to the respondent in July 2021. In September 2022, the respondent built a fence along the west edge of the applicants' driveway. The respondent described in detail the background to the fence installation, which I find unnecessary to summarize here because it is not relevant to the decision. However, it is clear there was tension between the parties.
17. The applicants wrote to the respondent asking him to remove the fence as it was on their property. The respondent declined to do so. His position was that the fence was on his property. In November 2022, the applicants had a land survey done to establish the property boundary. The survey undisputedly determined the respondent's fence was on the applicants' property.

18. As explained above, the applicants ask for an order that the respondent remove the fence, which I decline to make. I considered the applicants' \$500 valuation of the fence removal as a claim for damages. However, the applicants provided no evidence of the cost to remove the fence, such as an estimate or a quote. So, I find this part of their claim unproven, and I dismiss it.
19. The applicants also claim \$2,467.50 for the survey, supported by a paid December 6, 2022 invoice. The respondent says he is not responsible for this expense because the applicants challenged the status quo. That is, the respondent says since the edge of the applicants' driveway had been implicitly accepted as the default property boundary for 8 years, the applicants, as the parties disputing that boundary, are responsible for any expenses incurred to prove a different boundary.
20. I disagree that just because the applicants disputed the previously unchallenged boundary, they must bear the survey's cost. 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 (see paragraph 85). Based on *Graham*, I find the applicants must prove the respondent improperly caused them to incur the survey fee for him to be liable.
21. It is undisputed the respondent built the fence without getting a land survey, and the applicants had a survey done to prove the fence encroached on their property. The applicants did this after they asked the respondent to remove the fence from their property and the respondent refused. Since the survey proved the respondent's fence was on the applicants' property as they alleged, I find the respondent improperly caused the applicants to incur the survey fee. I find the respondent is liable for the survey fee, and I order him to pay the applicants \$2,467.50.
22. The applicants also claim \$160 for landscaping expenses. I find these arise in the context of the applicants' trespass claim, which I turn to now.
23. The applicants say the respondent trespassed on their land and caused a nuisance. They claim \$3,000 in damages under section 8 of the *Trespass Act*. That section

allows the Provincial Court to order a person convicted of an offence under section 2 to pay restitution to another person for the offence. The CRT is not the Provincial Court, and so has no jurisdiction to order restitution under section 8. However, I have considered the applicants' claim at common law.

24. As noted, the applicants also claim \$160 to landscape a narrow strip of land between the west edge of their driveway and the property line as determined by the survey.
25. Trespass to land occurs when someone enters another person's property without lawful justification and directly interferes with it. This is different to nuisance, which occurs when a person uses their own property in a way that indirectly affects another person's use of their property (see *Lahti v. Chateauvert*, 2019 BCSC 1081 at paragraph 6).
26. First, the landscaping expenses. The applicants submitted video evidence from November 1, 2022 of the respondent and his wife removing stones and gravel from the excavated strip of land that the applicants placed there. I find that in doing this, the respondent trespassed on the applicants' property. Absent extenuating circumstances, there are 3 types of damages for trespass: 1) nominal damages, where a party has not proven any actual loss, 2) actual damages suffered by a party, and 3) a sum that should reasonably be paid for use of the land (see *Manak v. Hanelt*, 2022 BCSC 1446). Here, I find it is appropriate to award actual damages the applicants suffered. Based on the strip of land's dimensions and the applicants' evidence of the estimated cost of new stones and gravel, I find \$160 a reasonable sum. I order the respondent to pay the applicants this amount for landscaping expenses.
27. Next, the \$3,000 for general and punitive trespass, and nuisance damages. The applicants say the respondent dug fencepost holes on their property and leaned the fence against their driveway, posing potential damage. They also say the fence's continuing trespass onto their land is causing them loss of use and enjoyment of their enclosed parking space and side driveway, which are adjacent to the fence. Specifically, they say their guests can no longer park there as the spaces are narrow,

and they risk damaging the fence or their vehicles. The respondent argues there is sufficient room to park standard-sized vehicles irrespective of the fence, so the applicants have suffered no loss.

28. While it is not obvious to me the fence is leaning on the applicants' driveway and potentially causing it damage, I find the applicants' photos show the fence likely makes it more difficult to access the enclosed parking space and side driveway, creating a risk to both the fence and vehicles. So, I find the applicants have lost the safe use of their enclosed parking space and side driveway due to the fence's continuing trespass. Though it is difficult to quantify the loss, I note the fence has been in place for over a year, despite the survey evidence. Even if the respondent wished to wait for the CRT's decision about the applicants' request that any new fence be set back 2 feet from the property line, he could have removed the fence in the meantime. He did not. So, on a judgment basis, I award the applicants \$300 in general damages for the fence's continuing trespass.
29. The applicants also say a planter box and hanging frame the respondent placed along their driveway encroach on their property. From photos in evidence, I find this is the case. The applicants do not say the planter box resulted in any loss, but say the hanging frame swayed dangerously in the wind, posing a potential risk to vehicles parked in the driveway. Given the hanging frame appears to have been removed and the applicants have suffered no loss from the planter box, I find the applicants are entitled to \$1 in nominal damages for this trespass. I order the respondent to pay this amount.
30. I turn to the applicants' nuisance claim. The respondent undisputedly planted hedging cedars along the property line on his side, from the end of the fence. The applicants say the cedars' branches now extend over the property line to obstruct their driveway. They also say the cedars' roots have encroached onto their property, though they provided no evidence of this. I find photos and video of the cedars show little encroachment over the property line, which does not rise to the level of substantially or unreasonably interfering with the applicants' use and enjoyment of their land as

required to constitute a nuisance (see *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13). I dismiss the applicants' nuisance claim.

31. Finally, the applicants claim punitive damages for the respondent's conduct in removing stones and gravel from the excavated strip of land, and refusing to remove the fence. Punitive damages are restricted to conduct that is so outrageous and malicious as to be deserving of punishment on its own (see *Honda Canada Inc. v. Keays*, [2008] 2 SCR 362). The respondent's actions regarding the applicants' landscaping may well have been upsetting and inconvenient, and his decision not to remove the fence pending the outcome of this dispute misguided. However, I do not find his conduct so wrongful as to support a punitive damages award. I dismiss the applicants' claim for punitive damages.
32. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the \$2,928.50 damages award. I calculated interest from the following dates to the date of this decision:
- a. December 6, 2022 for the \$2,467.50 paid survey invoice,
  - b. November 1, 2022 for the \$160 landscaping expenses, and
  - c. September 21, 2022, the date the respondent undisputedly began installing the fence, for the \$301 trespass damages.

This equals \$145.91.

33. 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. As the applicants were partly successful, they are entitled to \$87.50 for half their paid CRT fees. They are also entitled to \$18.31 for a land title search fee and \$23.19 for courier delivery of the Dispute Notice as supported by receipts, which I find are reasonable dispute-related expenses.



## ORDERS

34. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$3,203.41, broken down as follows:
- a. \$2,928.50 in damages,
  - b. \$145.91 in pre-judgment interest under the COIA, and
  - c. \$129, for \$87.50 in CRT fees and \$41.50 for dispute-related expenses.
35. The applicants are entitled to post-judgment interest, as applicable.
36. I dismiss the balance of the applicants' claims.
37. 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.

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Megan Stewart, Tribunal Member