Civil Resolution Tribunal

Date Issued: June 27, 2024

File: SC-2023-006704

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Smith*, 2024 BCCRT 614

BETWEEN:

ADAM SMITH

APPLICANT

AND:

GRAHAM SMITH

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a tree removal. The applicant, Adam Smith, and the respondent, Graham Smith, own neighbouring properties. The roots of a large cedar tree located on the respondent's property crossed the property line and caused damage to the applicant's home. The parties had the tree removed, but the respondent refuses to pay for the removal. The applicant seeks $3,675 for the removal cost.

2. The respondent agrees the tree was on their property and caused damage to the applicant's property. However, the respondent says they should not have to pay more than 25% of the removal cost.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (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. These are the CRT's formal written reasons.

5. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. There are no credibility concerns here, and neither party requested an oral hearing. I find that I am properly able to assess and weigh the documentary evidence and submissions before me. So, I decided to hear this dispute through written submissions.

6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

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 the respondent is responsible for the tree removal expenses, and if so, whether they owe the applicant $3,675.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. The respondent did not provide any documentary evidence despite the opportunity to do so.

10. As noted, the parties own neighbouring properties. The roots of a large cedar tree located on the respondent's property crossed the property line onto the applicant's property and began growing into the applicant's home. The tree roots started to buckle the applicant's basement floor, among other things. The applicant first notified the respondent about the tree in July 2022.

11. The parties agreed to have the tree removed in May 2023, and each party agreed to pay 50% for the removal costs. The day before removal, the respondent advised the applicant that, based on legal advice, they were no longer willing to pay more than 25%. The applicant paid $3,675 to have the tree removed as scheduled, and now claims the full amount from the respondent in this dispute.

12. The applicant provided various emails and recordings of phone conversations between the parties. I accept that the respondent agreed to pay 50%, but later lowered this amount to 25%. Although the respondent did not raise it with the applicant before this dispute, in this dispute the respondent appears to argue the applicant's property damage must have existed for at least 5 years. The applicant denies this, saying he had not even owned the home for 5 years by the time the tree was removed. I accept the applicant's version of events, which is generally supported by the phone recordings. Given the respondent agreed, both in multiple phone conversations and in their Dispute Response, that their tree caused the damage, I accept that it did. I find the tree was a danger to the applicant's property.

13. The general principle of the law of nuisance is that people are entitled to use and enjoy their land without unreasonable interference (see: *St. Lawrence Cement Inc. v.*

Barrette, 2008 SCC 64). Where there is actual physical damage, it is a strong indication that the interference is unreasonable (see: *Murray v. Langley (Township)*, 2010 BCSC 102 at paragraph 33). I find the respondent's large cedar tree was a nuisance, and they took no reasonable steps to remedy it. I find the respondent would be liable for any resulting damage (see: *Lee v. Shalom Branch #178*, 2001 BCSC 1760). However, the applicant did not claim for any property damage in this dispute. I find the applicant's decision to continue with the tree removal despite the respondent's last minute refusal to pay was reasonable, and in fact, I find the tree's removal likely avoided further property damage.

14. Here, I find the respondent failed to adequately deal with the nuisance cedar, despite consistently acknowledging it was a nuisance and causing damage. So, does the respondent owe anything for the cost of removing the nuisance? I find that they do.

15. The law of unjust enrichment applies to this dispute. To prove unjust enrichment, the applicant must show that (1) the respondent was enriched, (2) the applicant suffered a corresponding deprivation or loss, and (3) there is no "juristic reason" or valid basis for the enrichment (see: *Kerr v. Baranow*, 2011 SCC 10).

16. I find the respondent was enriched because they had a nuisance tree on their property removed at no expense to them. The applicant undisputedly paid to have the tree removed, which resulted in an economic loss. I also find there was no valid basis for the respondent's enrichment. The respondent must pay the applicant $3,675 for the tree removal. I find the applicant is not bound by his earlier offer to share the expense equally because the respondent rejected that offer.

17. The applicant is entitled to pre-judgment interest on the $3,675 under the *Court Order Interest* Act. Calculated from May 25, 2023, the date the tree was removed, this equals $185.77.

18. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the

applicant was successful, the respondent must reimburse him $175 in tribunal fees. He did not claim any dispute-related expenses.

ORDERS

19. Within 21 days of the date of this decision, I order the respondent to pay the applicant a total of $4,035.77, broken down as follows:

    a. $3,675 in damages for unjust enrichment,

    b. $185.77 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

20. The applicant is also entitled to post-judgment interest, as applicable.

21. This is a validated decision and order. 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.

Andrea Ritchie, Vice Chair