



Civil Resolution Tribunal

Date Issued: September 18, 2023

File: SC-2023-007203

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milne v. McGregor*, 2024 BCCRT 922

BETWEEN:

GILBERT STEPHEN MILNE

APPLICANT

AND:

RYAN VERNON MCGREGOR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about a building scheme registered on neighbourhood property.
2. The applicant, Gilbert Stephen Milne, and the respondent, Ryan Vernon McGregor, own homes in the same neighbourhood. Mr. McGregor set up a basketball net on his property. Mr. Milne says this is not allowed under the building scheme registered

on Mr. McGregor's property. Mr. Milne asks for an order that Mr. McGregor remove the basketball net and also asks for monetary damages.

3. Mr. McGregor says that his basketball net is permitted under the building scheme.
4. Both parties are 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.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing or videoconferencing. In this case, I find that I can decide this matter based on written evidence and submissions.
7. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
8. 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.
9. 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

10. The issues in this dispute are:

- a. Does the building scheme allow Mr. McGregor to have a basketball net on his property and, if not, does Mr. McGregor have to remove the basketball net?
- b. Should Mr. McGregor pay damages to Mr. Milne?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Milne must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The background facts are not in dispute. Mr. McGregor set up a basketball net in his backyard. Mr. Milne owns a property across from Mr. McGregor's backyard. Mr. Milne says that neighbourhood children playing basketball are noisy and basketballs have caused damage to his property.
13. Mr. McGregor's property is subject to a statutory building scheme which is registered at the Land Title Office. A building scheme is a set of rules about how Mr. McGregor can use his property. Section 9.18 of the building scheme says that any yard visible from the street cannot have "play equipment." Mr. Milne says that the basketball net is "play equipment" and is visible from the street so it violates Mr. McGregor's building scheme.
14. I start with Mr. Milne's request to enforce section 9.18 of the building scheme. "Injunctive relief" means an order that a person do or stop doing something. Section 118 of the CRTA gives the CRT jurisdiction to order injunctive relief in limited circumstances, including the recovery of personal property or specific performance of an agreement relating to personal property or services. However, the CRT does not have jurisdiction to order injunctive relief to enforce a building scheme registered on real property.
15. Mr. Milne seeks an order that Mr. McGregor remove the basketball net which means that he is seeking injunctive relief. I find that section 118 of the CRTA does not give the CRT jurisdiction to order Mr. McGregor to comply with his building

scheme. Section 10(1) of the CRTA says that the CRT must refuse to resolve a claim that is not within the CRT's jurisdiction. So, I refuse to resolve Mr. Milne's claim for an order that Mr. McGregor comply with section 9.18 of the building scheme. I make no findings about whether the basketball net is a violation of the building scheme.

16. I turn to Mr. Milne's claim for damages. Mr. Milne asks for \$100 to \$1,000 in damages, but did not identify a legal basis for his claim. From his submissions, I infer that he is claiming under the law of nuisance. Mr. Milne says that basketballs have caused damage to a flowerpot, hummingbird feeders, and his fence. He also says that the children playing basketball are loud.
17. A nuisance occurs when a person substantially and unreasonably interferes with another person's quiet use and enjoyment of their property. A substantial interference is one that is "more than mere inconvenience or minor discomfort." The test is objective, meaning the interference must be something that would not be tolerated by an ordinary person (see *Wasserman v. Hall*, 2009 BCSC 1318 at paragraph 85).
18. I find that Mr. Milne has not proven a claim in nuisance. Mr. Milne provided photos of a flowerpot and his yard, however these photos do not show any damage caused by basketballs. He has not provided any photos of a basketball in his yard or receipts for replacement items that were allegedly destroyed. I also find that Mr. Milne has not proven that the noise associated with the basketball net goes beyond an ordinary level expected in a residential neighbourhood. It follows that I dismiss Mr. Milne's claim for damages.
19. 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. Mr. Milne was not successful, so I dismiss his claim for reimbursement of his fees and dispute-related expenses.

ORDERS

20. Under CRTA section 10(1), I refuse to resolve Mr. Milne's claim to enforce section 9.18 of the building scheme.

21. I dismiss Mr. Milne's claim for damages.

Peter Mennie, Tribunal Member