Civil Resolution Tribunal

Date Issued: February 23, 2024

File: SC-2022-009650

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schnurr v. Sorensen*, 2024 BCCRT 174

B E T W E E N :

SHARON SCHNURR

APPLICANT

A N D :

MARY LOU SORENSEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about an agreement respecting generator noise.

2. The applicant, Sharon Schnurr, and the respondent, Mary Lou Sorensen, are neighbours. In 2021, the parties filed a claim and counterclaim in the Provincial Court

of British Columbia about the respondent's generator noise. In February 2022, they came to a settlement agreement and ended their respective claims. Among the agreement's terms, the respondent had to move her generator and keep it in an insulated enclosure. The respondent also agreed to keep the enclosure closed while running the generator to reduce the noise it created.

3. The applicant says the respondent has breached the parties' agreement by running the generator while leaving the enclosure's doors open. She claims $1,000 and an order that the respondent build a "proper" enclosure for the generator.

4. The respondent says she has followed the agreement's terms and is not breaching any bylaws. She argues the Civil Resolution Tribunal (CRT) does not have jurisdiction to enforce a settlement agreement made pursuant to a Provincial Court small claims file. Finally, she argues the issue is *res judicata*, which I explain below. She asks me to dismiss the applicant's claim.

5. The parties are each self-represented.

6. For the reasons that follow, I partially allow the applicant's claim.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely

account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

9. CRTA section 42 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 the parties and witnesses questions and inform itself in any other way it considers appropriate.

10. Where permitted by CRTA section 118, 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

11. The respondent argues the CRT does not have jurisdiction to enforce a settlement agreement made pursuant to a Provincial Court small claims file but does not point to any authority in support of her position.

12. That said, the parties refer to the agreement as a "small claims signed agreement" or "court agreement" in their submissions. I infer the respondent is arguing that since the agreement is about a withdrawn small claims matter, it should be treated as part of the small claims proceeding.

13. However, the agreement is simply a settlement reached between the parties to avoid litigation. There is no evidence it was entered as a consent order or otherwise filed with the Provincial Court. As the settlement agreement is a contract, I find the CRT has jurisdiction to consider this claim as a breach of contract under the CRT's small claims jurisdiction.

14. The respondent also argues this issue is *res judicata*. *Res judicata* (meaning "already decided") is a legal principle that prevents people from bringing multiple legal proceedings about the same issue. Since the applicant's claim is about a breach of the parties' agreement, an issue that has not been the subject of a previous legal proceeding, I find *res judicata* does not apply.

ISSUE

15. The issue in this dispute is whether the respondent breached the parties' agreement, and if so, the nature and extent of the applicant's remedy.

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. This means "more likely than not". 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.

17. The parties' agreement includes information about their original dispute. At its heart, the applicant said the respondent's generator interfered with the applicant's quiet enjoyment of her property.

18. The respondent's property is next to the applicant's. The residence on the respondent's property is located roughly in the middle of her property, such that its southeastern wall faces the applicant, and its northwestern wall is furthest from the applicant.

19. Initially, the respondent had set up her generator on the southeastern wall, closest to the applicant's property. However, the applicant was unhappy with the generator's noise, so in January 2021, she filed a claim in Provincial Court. In February 2021, the respondent filed a counterclaim. On February 22, 2022, the parties resolved their original dispute in a written agreement.

20. The respondent agreed to relocate the generator to the northwestern half of her property by October 1, 2022, with the residence positioned between the generator and the applicant's property. The respondent undisputedly moved the generator on October 18, 2022.

21. The respondent also agreed to build an insulated structure enclosing the generator to reduce its noise. The structure had to fully enclose the generator while it is operating. Photos show the respondent fully enclosed the generator in a plywood box, with a cut-open grate allowing the generator's fumes to escape and prevent overheating. Access to the generator is through two plywood doors that latch together.

22. In support of her claim, the applicant obtained a written statement from a local bylaw officer who personally inspected the generator's enclosure on February 10, 2023. The bylaw officer says they believe the enclosure is fully insulated with rockwool, including the doors.

Breach of Contract –Operating the Generator

23. The applicant alleges the respondent breached the parties' agreement by running the generator with one or both doors open, which she impliedly argues means the generator is not fully enclosed.

24. The applicant alleges two different ways in which the respondent left one or both doors open: first, by leaving the doors slightly ajar to allow a cord to pass through, and second, by fully running the generator with one or both doors open or while it is outside of the enclosure.

25. The respondent says she purchased a new, quieter generator in January 2023. The respondent acknowledges the new generator requires her to leave the doors slightly ajar to allow the generator's cord to pass through. The respondent says she otherwise leaves the doors closed. The respondent says after speaking to the bylaw officer, she cut a venting area into the generator's enclosure to allow fumes to escape and

prevent the generator from overheating. Finally, the respondent says, generally, she complies with the agreement.

26. First, I address whether leaving the doors slightly ajar for the cord constitutes a breach of the parties' agreement.

27. When interpreting a contract, like the parties' agreement, I must consider the plain and ordinary meaning of its words within the whole agreement's context rather than the meaning of a provision standing alone.[1]

28. Here, along with ending their litigation, the contract's key purpose was to reduce the amount of generator noise the applicant could hear. The respondent has generally complied with the agreement's terms designed to achieve that purpose.

29. To the extent the applicant argues the generator is not fully enclosed when the doors are slightly ajar, but not wide open, I disagree.

30. When the doors are slightly ajar, the generator is surrounded on all sides by material. While there is a small space between the doors to allow the cord out, I find this is consistent within the agreement's overall context. I find it apparent that the generator requires connection by wires or cords to the thing or things it is powering. So, it would be impossible to "fully enclose" the generator within a structure while it is running such that there are no gaps or openings. To do so would mean the generator is running for no purpose.

31. Instead, I find "fully enclose" must mean that the generator is surrounded on all sides by some material or materials to muffle the noise it produces. Photos show that it is. The enclosure undisputedly contains rockwool insulation as well as its plywood shell. These, together, function to fully enclose the generator and reduce the noise it produces.

[1] See the discussion about principles of contract interpretation in *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489, at paragraphs 19 to 22.

32. While neither party specifically addressed the vent cut into the structure to allow the generator's fumes to escape, I consider the vent to be similar to the small gap for the cord between the doors. Despite the vent, the generator remains fully enclosed by the structure, within the agreement's ordinary meaning. The generator's noise is muffled but it is still able to run.

33. Next, I address the applicant's allegation about the generator running with one or both doors fully open, or outside of the enclosure. The applicant says that in mid-November 2022, she could hear the generator very loudly. She says she used a drone to take video of the generator being run with both doors open. The applicant also says she lost the video and did not wish to run the drone again, for fear of damaging it.

34. On November 24, 2022, the applicant says she believed the respondent ran her generator with the doors open, or outside of the enclosure, based on the amount of noise she could hear. However, the applicant says she could not see the generator, as it was on the other side of the respondent's house.

35. The applicant does not provide any evidence the respondent ran the generator outside its enclosure, so I find she did not.

36. The bylaw officer's written statement says the respondent told them if she runs the generator with the doors closed, the generator overheats. The applicant also recorded a conversation with the bylaw officer, where the bylaw officer says the respondent told them she had to leave one door open, or the generator would overheat.

37. The bylaw officer's statements are hearsay evidence. Tribunals like the CRT may accept hearsay evidence where relevant but must weigh the evidence based on its reliability and other factors.

38. The respondent acknowledges she cut the vent after she spoke with the by law officer. So, I find the bylaw officer's statement is credible, and the respondent likely

told the bylaw officer the generator was overheating when running with the doors closed, and then installed the vent to address the issue.

39. Taking the evidence as a whole, I find the respondent must have run the generator with one door open on at least one occasion. I agree with the applicant's position that running the generator with one or both doors open means the generator is not fully enclosed. By doing so, one side of the enclosure is open, which I find is a breach of the agreement.

40. The respondent does not specifically dispute the applicant's allegations that she ran the generator with the doors open once in mid-November and again on November 24, 2022. So, I find she did. I address the remedy for those breaches below.

41. In her defence, the respondent argues that she complies with local bylaws and is not causing a nuisance and cites *Royal Anne Hotel Co. Ltd. v. Ashcroft*, [1979] 2 W.W.R. 462. Neither bylaw infractions nor nuisance are at issue here, as the applicant brought her claim for breach of contract. The *Royal Anne* case addresses negligence and nuisance, so I find it does not assist the respondent.

Breach of Contract - Relocating the Generator

42. The applicant also argues, in passing, that the respondent breached the agreement by not moving the generator until October 18, 2022 which is undisputedly after October 1, 2022. The respondent does not specifically address this allegation, though as noted above, she makes a general statement that she has complied with the agreement.

43. The applicant provides a photograph dated October 18 of what she says is the generator being moved late. The respondent does not dispute the allegation or comment on the photograph. So, I find the respondent breached the parties' agreement by moving the generator on October 18 instead of October 1.

44. However, as above, I must consider the context of this provision in the agreement as a whole. The purpose of the parties' agreement was to reduce the amount of noise

the applicant could hear from the generator. The applicant does not say whether the respondent ran the generator at all from October 1 to October 18. If the respondent was not running the generator during this period, it would not have made any noise. Since the applicant has not shown the respondent ran the generator between October 1 and October 18, I find she has not proved any loss, and so is not entitled to damages for the breach.

Remedy

45. The usual remedy for breach of contract is damages.

46. Much of the applicant's evidence addresses medical conditions she relates to stress from the generator's noise. However, she admits to a number of sources of stress other than the generator's noise, including what she calls "bullying" actions of her other neighbours. Even if I accepted that her medical condition was caused by stress, the applicant did not prove the generator was the sole or predominant source of her stress. While she links her medical conditions to changes in the seasons, when the generator runs more or less often, I find this is speculative at best. So, I have not considered her medical conditions in determining her remedy.

47. As noted above, the applicant alleges the respondent's breaches have interfered with her quiet enjoyment of the property. "Quiet enjoyment" is also a common law principle that says parties are able to use a property for the purposes that typically go with using a property.[2] However, it is not what entitles to the applicant to damages in this case. Here, it is the agreement's breach that entitles her to a remedy.

48. I find the applicant has not proved any specific monetary loss flowing from the agreement's breach. She does not explain how she determined her claim for $1,000. In circumstances like these, where the evidence does not establish compensable damages, the courts or the CRT may award nominal damages to recognize the

[2] Paraphrased from *Heckert v. 5470 Investments Ltd.*, 2008 BCSC 1298, at paragraph 99.

violation of a legal right.[3] In this case, I award the applicant nominal damages of $20, which is $10 for each of the two breaches in November.

49. I also considered whether I had discretion under CRTA section 118 to issue an order for specific performance requiring the respondent to construct a "proper" enclosure for the generator. However, I find the evidence shows the respondent has complied with her obligations to build a structure that fully encloses the generator, and I would not make that order in any event.

50. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the $20 in nominal damages from November 24, 2022, when the respondent breached the agreement, to the date of this decision. This equals $1.13.

51. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. In this case, the applicant was substantially unsuccessful in her claim, so I dismiss her claim for dispute-related expenses. The respondent did not pay any CRT fees or claim dispute-related expenses.

ORDERS

52. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $21.13, broken down as follows:

    a. $20 in nominal damages, and

    b. $1.13 in pre-judgment interest under the *Court Order Interest Act*.

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

54. I dismiss the applicant's remaining claims.

[3] See: *Davidson v. Tahtsa Timber Ltd.,* 2010 BCCA 538.

55. Under section CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member