



Civil Resolution Tribunal

Date Issued: March 19, 2024

File: SC-2023-001620

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Camarda v. City of Abbotsford*, 2024 BCCRT 284

B E T W E E N :

JOHN CAMARDA

APPLICANT

A N D :

CITY OF ABBOTSFORD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, John Camarda, owns a home in the respondent City of Abbotsford. A large tree fell from Abbotsford's land onto the applicant's property, damaging a fence and destroying a trampoline. The applicant wants Abbotsford to pay to repair the fence and replace the trampoline. The applicant also wants to be reimbursed for the

cost of a chainsaw they bought to clean up the debris. The applicant claims \$5,000. The applicant is self-represented.

2. Abbotsford denies any responsibility for the damage. It is represented by an in-house lawyer, Bailey Savage.

JURISDICTION AND PROCEDURE

3. 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 says 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.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide proportional and speedy dispute resolution. I find that an oral hearing is not necessary in the interests of justice.
5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
6. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
7. In the Dispute Notice and in submissions, the applicant says that Abbotsford should regularly inspect the trees in their area and remove other hazardous trees. The CRT has no legal authority to make this order. This is because CRTA section 118 provides

the CRT with limited authority to order a party to do something, which does not include things like ordering a municipality to inspect or remove trees.

ISSUE

8. The issue in this dispute is whether Abbotsford is responsible for the fallen tree and resulting damage.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The basic facts are not in dispute. There is a steep, Abbotsford-owned wooded area across the street and uphill from the applicant's property. On November 6, 2022, wind blew a large tree down. It landed squarely on the applicant's trampoline, crushing it and a portion of a fence beside it.
11. The applicant reported the damage to Abbotsford. After investigating, Abbotsford refused to compensate the applicant for the damage from the fallen tree.
12. The applicant does not say what the legal basis of their claim is. I agree with Abbotsford that it could either be negligence or nuisance. I will address them in turn.

Negligence

13. To prove negligence, the applicant must first prove that Abbotsford owed the applicant a duty of care. Abbotsford's primary argument is based on a legal principle called the "policy defence". The policy defence essentially says that governments cannot be held liable in negligence for "core policy decisions" because they do not owe a duty of care to citizens for policy decisions. This includes local governments. The reason this principle exists is that governments must make difficult public policy choices, and it is not the court's (or the CRT's) job to judge those choices. Instead,

voters judge government policy choices through elections. In contrast, governments can be liable for operational decisions, such as the implementation of a policy.

14. What is a “core policy decision”? In *Nelson (City) v. Marchi*, 2021 SCC 41, the Supreme Court of Canada set out four factors to consider when deciding this question:
 - a. The decision-maker’s level and responsibility.
 - b. The decision-making process.
 - c. The nature and extent of any budgetary constraints.
 - d. The extent to which the decision was based on objective criteria.
15. Here, Abbotsford’s General Manager of Operations provided a written statement about Abbotsford’s tree management policy. They explain that Abbotsford allocates a budget to the operations department, which is divided between parks, roads and fleet, facilities, and utilities. Within the parks department, tree management is one of three divisions (called “urban forestry”). Each year, Abbotsford’s senior staff discuss how to allocate the operations budget between its various departments and divisions. From that process, the urban forestry division receives a budget that does not allow Abbotsford to proactively assess the health of all its trees. Instead, it takes a reactive approach except in certain cases.
16. Abbotsford’s Manager of Urban Forestry also provided a written statement. They say that Abbotsford has hundreds of thousands of trees, but Abbotsford only proactively monitors about 13,000. Abbotsford proactively monitors trees generally because of past incidents or when its staff identify areas of increased risk. After November 6, 2022, staff assessed the trees in the area above the applicant’s house and removed five more.
17. Another Abbotsford employee provided a statement confirming that there had been no reports or complaints about the trees around the applicant’s property for the year before November 6, 2022.

18. I find that Abbotsford's decision to have a primarily reactive policy towards trees is a core policy decision. The policy is based on budgetary constraints, and high-level employees set the budget through a deliberative process. This means Abbotsford owed the applicant no duty of care. Abbotsford can only be liable for a policy decision if the policy itself was irrational or made in bad faith. There is no evidence that any of this is the case. There is also no evidence that Abbotsford failed to properly implement the policy in its handling of the tree. I therefore find that Abbotsford is not liable in negligence for the fallen tree.

Nuisance

19. The law of nuisance protects a person's right to use and enjoy their land without unreasonable interference. To prove a nuisance when a tree falls onto their property, a person must prove that the tree's owner knew or should have known the tree was a hazard or at risk of falling. Once the tree's owner is aware of a problem, they must take reasonable steps to address it. So, the question here is whether Abbotsford knew or should have known that the tree was at risk of falling onto the applicant's property.¹

20. As noted above, the tree fell under Abbotsford's reactive tree management policy. The applicant clearly believes that Abbotsford's tree management policy was inadequate because it failed to identify the tree as a possible hazard. The policy defence does not apply to nuisance claims because unlike negligence, nuisance does not depend on a duty of care. However, I find that the same underlying reasons for the policy defence mean that I cannot assess the reasonableness of Abbotsford's tree management policy itself. Instead, I find that the question is what Abbotsford knew or should have known about the tree based on its policy. There is no evidence here that anyone had complained about the tree or that there had been previous trees falling in the area. So, Abbotsford did not know and had no reason to know that the tree might fall. This means Abbotsford is not liable in nuisance.

¹ See *Hayes v. David*, 1991 CanLII 5716 (BC CA).

21. I note that the applicant relies on two previous CRT decisions, *Reynolds v. Delta municipality/corporation*, 2018 BCCRT 381, and *Plaxton v. City of Delta*, 2018 BCCRT 570. In both disputes, the CRT found a municipality liable in nuisance for damage from a fallen tree or tree branch. However, in both disputes, there had been previous complaints or warnings about the trees that fell. So, the municipality knew that the trees were a hazard and had failed to respond accordingly. That is different from the situation here, where there is no evidence of past complaints or incidents.
22. For these reasons, I dismiss the applicant's claims.
23. I note that in submissions, the applicant refers to a second tree falling in November 2023. Neither party provided any evidence about it. I find that this is a separate incident from the one the applicant started this dispute about, so it is not properly before me. Nothing in this decision prevents the applicant from starting a new CRT dispute about any damage from the second tree.
24. 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. The applicant was unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. Abbotsford did not claim any dispute-related expenses or pay any CRT fees.

ORDER

25. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Vice Chair