



# Civil Resolution Tribunal

Date Issued: December 19, 2024

File: SC-2023-008106

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hagen v. 1260885 B.C. Ltd.*, 2024 BCCRT 1288

B E T W E E N :

AARON HAGEN

**APPLICANT**

A N D :

1260885 B.C. LTD. and JARETT BORSOI

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Jeffrey Drozdiak

## INTRODUCTION

1. This dispute is about trespassing.
2. On June 1, 2023, the applicant, Aaron Hagen, sold land to one or both respondents, 1260885 B.C. Ltd. (126) and Jarett Borsoi. Mr. Hagen says the respondents stored building supplies on the land for 16 days before the possession date. He says he

did not consent to early possession and argues the respondents were trespassing. Mr. Hagen claims \$45 per day for storage fees, totaling \$720.

3. Jarett Borsoi does not dispute that they stored building supplies on the land before the possession date. Instead, Jarett Borsoi argues Mr. Hagen is claiming an unrealistic storage fee. They also argue Mr. Hagen has only proven that the building supplies were on the land for three days and not 16 days.
4. Jarett Borsoi says 126 does not own the land and Mr. Hagen incorrectly included it in this dispute. 126 did not submit a Dispute Response, and so technically is in default. I address this further below.
5. The parties are self-represented. Jarett Borsoi did not provide pronouns or a title on request, so I respectfully refer to them as Jarett Borsoi and use “they” in this decision.

## **JURISDICTION AND PROCEDURE**

6. 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)*. CRTA section 2 says that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. 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. I considered the potential benefits of an oral hearing. Here, there are no significant credibility issues, and I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT’s mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. Overall, I find that an oral hearing is not necessary in the interests of justice, and I decided to hear this dispute through written submissions.

8. 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 court.
9. 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.

### ***Respondents' Names***

10. In the Dispute Notice, Mr. Hagen named 126 as "1260885 B.C. Ltd". However, 126's corporate search in evidence shows that its correct name is "1260885 B.C. Ltd." Mr. Hagen also named Jarett Borsoi as "Jarret Borsoi". Documentary evidence provided by Jarett Borsoi shows that their name is spelt "Jarett Borsoi".
11. The parties moved forward on the basis that both respondents had been correctly named in all documents and submissions. So, I have exercised my discretion under CRTA section 61 and amended 126 and Jarett Borsoi's names in the style of cause to reflect the evidence before me.

### ***126's Default Status***

12. As noted, 126 did not submit a Dispute Response as required under CRT rule 3.1. So, technically it is in default. Generally, liability is assumed where a respondent is in default.
13. However, as explained further below, Jarett Borsoi was 126's sole director. They filed a Dispute Response in their personal capacity, and they provided submissions on 126's behalf during the adjudication stage. It is common at the CRT for respondents to misunderstand their obligations to respond in both their personal and corporate capacities when both are named in a Dispute Notice. Here, I find all materials provided by Jarett Borsoi were intended to apply to both respondents. So, I decline to assume liability against 126.

## ISSUES

14. The issues in this dispute are:

- a. Are either of the respondents liable for trespassing on Mr. Hagen's land?
- b. If so, how much is Mr. Hagen entitled to for the trespass?

## EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, Mr. Hagen, as the applicant, must prove his claims on a balance of probabilities (meaning "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.

### ***Background***

16. On April 14, 2023, Mr. Hagen and CH signed a contract of purchase and sale to sell land to JZ, JL, and 126. Mr. Hagen describes the land as "acreage". The contract included several conditions for the buyers' benefit with a subject removal date of April 25, 2023. The completion and possession dates are listed as June 1, 2023.

17. On May 29, 2023, Mr. Hagen says his realtor called him to discuss building supplies that had been placed on the land. Mr. Hagen says the realtor had assumed they were his, but he confirmed they were not. After some inquiries, Mr. Hagen says his realtor discovered that the building supplies belonged to the "buyers".

18. Mr. Hagen says his realtor and the buyers' realtor tried to negotiate a settlement over the building supplies, but Jarett Borsoi did not respond.

### ***Are Either of the Respondents Liable for Trespassing on Mr. Hagen's Land?***

19. Trespass to land occurs when someone enters another person's land without lawful justification, or places a material object on the land without a legal right to do so. They must do so intentionally. This does not mean that they intended to commit a

wrongful act, but that their actions were voluntary. Mistake is not a defence to trespass (see *Lahti v. Chateauvert*, 2019 BCSC 1081 at paragraph 6).

20. In his Dispute Notice, Mr. Hagen named both 126 and Jarett Borsoi as respondents. I infer Mr. Hagen argues that both respondents were trespassing on the land. In response, Jarett Borsoi says 126 does not have any ownership stake in the land. From this, I infer Jarett Borsoi argues 126 did not trespass on the land.
21. 126's historical corporate search in evidence shows Jarett Borsoi was the sole director of the company, but it amalgamated with 1108489 B.C. Ltd. on April 21, 2022. Jarett Borsoi does not say why 126 was listed as a buyer on the purchase contract one year later. In any event, nothing turns on this given my conclusion below that 126 never bought the land.
22. To prove 126 did not buy the land, Jarett Borsoi provided two letters from a notary and two property tax notices from the District of Kitimat. The notary letters list JZ, JL, EB, and Jarett Borsoi as the buyers. The 2023 and 2024 property tax notices are addressed to EB and Jarett Borsoi. Mr. Hagen does not dispute this evidence. Presumably, these parties would have been on the transfer documents signed by Mr. Hagen before the completion date.
23. Based on the evidence before me, I am satisfied that 126 never bought the land. As for its name appearing on the purchase contract, I find 126 likely assigned its interest in the contract to Jarett Borsoi and EB before completion. Other than the purchase contract, Mr. Hagen did not provide any evidence to link 126 to the building supplies on the land. So, I find Mr. Hagen has not proven 126 trespassed on the land, and I dismiss his claim against 126.
24. To support his trespass claim, Mr. Hagen provided a text message from Jarett Borsoi, and a May 29, 2023 picture showing stored building supplies for a shop.
25. In the May 29, 2023 message, Jarett Borsoi apologizes and says they put a couple of things on the land because their trailer was out of commission. They ask Mr.

Hagen if he needs somewhere to put his stuff “while you get it all back home”. Mr. Hagen responds that this was trespassing, and they did not have permission.

26. Based on Jarett Borsoi’s message, I find they intentionally put the building supplies on the land. Since the building supplies were on the land before the June 1 possession date, I find Jarett Borsoi was trespassing.

***How Much Is Mr. Hagen Entitled to for the Trespass?***

27. In *Volovsek v. Boisvenu Alter-Ego Trust #1*, 2021 BCCA 179 at paragraph 62, the BC Court of Appeal noted that there are three types of damages available for trespassing:

- a. Nominal damages if the owner has not proven actual loss,
- b. Actual damages suffered by the owner, or
- c. A sum that the occupier should reasonably pay for the use of the land.

28. Mr. Hagen claims \$45 per day in storage fees. From this, I infer Mr. Hagen argues he is entitled to a reasonable sum for the use of the land. In *Volovsek*, the court listed several factors I should consider when assessing these damages, including:

- a. The terms the owner could have used to lease the property to another during the trespass period.
- b. The rent the occupier paid before the trespass began.
- c. Actual profits obtained by the occupier during the trespass.
- d. Rents paid by occupiers of similar properties.

29. Since Mr. Hagen had already signed a contract to sell the land, I find it unlikely that he could have leased the property to another person during the trespass period. There is no evidence before me that Jarett Borsoi paid any rent before the trespass occurred. There is also no evidence that Jarett Borsoi profited from the trespass. So, this leaves rents paid by occupiers of similar properties.

30. Mr. Hagen says he inquired about short-term rental space in Kitimat and there is a waiting list. He claims the price is \$100 per day or higher. Mr. Hagen did not provide any evidence to support this claim. In response, Jarett Borsoi provided Stats Canada search results for the average storage costs in BC and Kitimat. The results show a range of \$75 to \$350 per month for BC and \$33 to \$110 for Kitimat. It is unclear from these general results whether these rates are comparable to the circumstances here.
31. Overall, I find there is not enough evidence before me to show how much rent occupiers pay for similar properties. So, I cannot award damages on this basis. There is also no evidence before me that the trespass caused Mr. Hagen to suffer a loss. So, I find it is appropriate to award nominal damages.
32. The purpose of nominal damages is to recognize the infringement of a legal right (see *Skrypnyk v. Crispin*, 2010 BCSC 140 at paragraph 18). Nominal damages are often only \$1. If they are higher, nominal damages are still a small figure and depend on the extent of the trespass (see *Manak v. Hanelt*, 2022 BCSC 1446 at paragraphs 50 to 55).
33. Mr. Hagen claims the building supplies were on the land from May 16, 2023 to June 1, 2023. I find these dates are not supported by the documentary evidence before me. Mr. Hagen claims his realtor and a neighbour told him that the building supplies had been on the land since May long weekend. However, Mr. Hagen did not provide a witness statement from either party to prove this. The only evidence before me shows the building supplies were on the land on May 29, 2023. Without more, I find Mr. Hagen has not proven the building supplies were on the land before that date.
34. Given Mr. Hagen has only proven that the infringement occurred for three days before Jarett Borsoi took possession of the land, I find it reasonable to award Mr. Hagen \$25 in nominal damages.

35. The *Court Order Interest Act* applies to the CRT. Mr. Hagen is entitled to pre-judgment interest on the \$25 damages award from May 29, 2023, the date the trespass occurred, to the date of this decision. This equals \$1.96.
36. 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 Mr. Hagen was only partially successful in his claims, I find he is entitled to reimbursement of \$62.50, which is half his paid CRT fees. Mr. Hagen did not claim dispute-related expenses, so I order none.

## ORDERS

37. Within 30 days of the date of this order, I order Jarett Borsoi to pay Mr. Hagen a total of \$89.46, broken down as follows:
- a. \$25 in damages,
  - b. \$1.96 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 for CRT fees.
38. Mr. Hagen is entitled to post-judgment interest, as applicable.
39. I dismiss Mr. Hagen's claims against 126.
40. 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.

---

Jeffrey Drozdiak, Tribunal Member