

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chan v. Liang*,  
2024 BCSC 389

Date: 20240305  
Docket: S2210114  
Registry: Vancouver

Between:

**Timothy Rudolph Kam Bong Chan and Carmine Yuk Kam Lee**

Plaintiffs

And

**Shih Ju Liang and Shan Zhou**

Defendants

Before: The Honourable Justice E. McDonald

## Oral Reasons for Judgment

Counsel for the Plaintiffs:

S. Hannigan  
K. Coady

The Defendants, appearing in person:

S. Liang  
S. Zhou

Place and Date- of -Trial/Hearing:

Vancouver, B.C.  
March 1, 2024

Place and Date of Judgment:

Vancouver, B.C.  
March 5, 2024

**Introduction**

[1] The parties are neighbours and more specifically, their respective properties share part of a backyard property line. There was a fence along their backyards but it deteriorated and was partially removed. The plaintiffs wished to replace their backyard fence but they encountered difficulties with the defendants about the location of the property line. The difficulties stemmed from the fact that the location of the old fence made it appear to the defendants that their backyard was larger than it actually was.

[2] Despite presenting the defendants with two surveys confirming the location of the correct property line, the defendants refused to permit the plaintiffs and their contractors to construct the new fence in the correction location. To date, there is no fence between the parties' backyard property lines. The plaintiffs now seek injunctive relief against the defendants and damages for nuisance and trespass.

[3] To determine this application, I must decide whether the plaintiffs have established a basis for granting a permanent injunction restraining and enjoining the defendants and for awarding general, special and punitive damage to the plaintiffs.

**Background**

[4] Part of the plaintiffs' backyard borders on the backyard of the defendants' property. In the past, there was a fence between their backyards until it deteriorated and had to be partially removed. The plaintiffs' evidence is that the original fence was placed approximately two feet onto their property and not in accordance with the actual property line.

[5] On June 26, 2022, the plaintiff, Mr. Chan, and the defendant, Mr. Liang, participated in a meeting, along with other neighbours, to discuss constructing new fences between their respective properties. On June 26, Mr. Chan gave Mr. Liang a copy of the original survey for the plaintiffs' property showing the location of the property line between their backyards.

[6] The plaintiffs wished to construct the new fence on their side of their property line. That meant the new fence would not be installed in the same place as the old fence which had been installed well inside of the plaintiffs' property line.

[7] Mr. Liang stated to Mr. Chan that he would only agree to the new fence being constructed if Mr. Chan proved that the old fence was in the wrong location. Therefore, on June 26, 2022, the plaintiffs, Mr. Liang and Ms. Zhou's father, who is Mr. Liang's father-in-law, met in their backyards to confirm the location of the property line.

[8] During this meeting, Mr. Chan took laser measurements of the location of the backyard property line using the measurements in the original survey. Mr. Chan works as an architectural technologist and he is familiar with surveys and how to measure property using information from a property survey.

[9] After measuring the property line, Mr. Liang thanked Mr. Chan for taking the measurements. However, Mr. Liang's father-in-law grabbed Mr. Chan by the arm and told him that if Mr. Chan built a fence he did not like, he would tear the fence down. Despite the statement by Mr. Liang's father-in-law, the plaintiffs believed that they reached an agreement over the location of the property line. They also believed that the defendants agreed that they could proceed to build the new fence on the plaintiffs' side of the property line.

[10] On July 9, 2022, the plaintiffs and their next-door neighbour, Jojo, were standing in their backyards talking about the new fencing. Jojo was in a similar position to the plaintiffs because his backyard property line also bordered the defendants' backyard property line.

[11] Mr. Liang came up to the plaintiff and Jojo and told them that he did not want to participate in the fence replacement project and he would not share any of the costs. In his submissions, Mr. Liang confirmed that while the defendants wanted a fence between their property and the property of the plaintiffs, they declined to share the cost of the new fencing.

[12] On numerous dates in July and August 2022, the defendants or Ms. Zhou's parents, interfered with contractors who were working on replacing the old fence. For example, on July 15, 2022, contractors told Mr. Chan they could not work as Ms. Zhou's father was standing in their way and insisted they place the fence in a different location. Mr. Chan saw Ms. Zhou's father tell a contractor to install a fence post in the wrong location.

[13] On August 30, 2022, Mr. Chan met the fence contractor and they marked the new fence line adjoining the defendants' backyard with yellow spray paint. They marked the property line after consulting the original survey plan. While they were creating the markings, a woman who identified herself as "Shannon" came out and told them to stop. Mr. Chan believes this woman was the defendant Ms. Zhou.

[14] Ms. Zhou told Mr. Chan and the contractor that the area between the old fence and the new fence location was the defendants' property. Ms. Zhou told Mr. Chan that he had to get a new survey to confirm the location of the property line and she told Mr. Chan he had to pay for the new survey. After this conversation with Ms. Zhou, Mr. Chan sent a text message to Mr. Liang confirming that he was arranging for a new survey.

[15] On September 1, 2022, a surveyor attended the plaintiffs' property. On September 15, 2022, the surveyor supplied the plaintiffs with a survey report (the "New Survey"). The New Survey confirmed the same location for the property line that was shown in the original survey. The surveyor billed the plaintiffs \$1,050 for the New Survey. Mr. Chan promptly paid the surveyor's account.

[16] On November 3, 2022, Mr. Chan noticed that wooden material and debris had been deposited onto his property between where the old fence was located and where the new fence was to be installed. Mr. Chan provided photographs of the material that he says the defendants placed on his property. Mr. Chan believes the defendants did this to prevent the new fence from being installed.

[17] On November 7, 2022, counsel for the plaintiffs wrote to the defendants enclosing a copy of the New Survey. The counsel's letter advised the defendants that the plaintiffs would be hiring a land surveyor to mark the property line with survey monuments. It also warned the defendants that if they continued to interfere with the survey and fence construction, the plaintiffs would seek injunctive relief and damages.

[18] During their submissions, Ms. Zhou and Mr. Liang submitted to the court they did not open this letter when they came home from work on the evening of November 7, 2022, so they were unaware that the work would be taking place.

[19] On November 8, 2022, Mr. Chan arranged for the land surveyor and the fencing contractor to attend the plaintiffs' property to mark the property line and construct the new fence.

[20] Mr. Poitras, the survey technologist working for the survey company, confirms in his affidavit that he attended the plaintiffs' property on November 8, 2022 to mark the property line according to the New Survey plan. Mr. Poitras also states that Mr. Chan asked him to supervise and ensure the fence was placed on the plaintiffs' side of the property line.

[21] Mr. Poitras states that while he was supervising in the plaintiffs' backyard, an elderly couple approached them from the defendants' property. The couple started shouting at them, grabbing the fence posts and interfering with the workers. Mr. Poitras overheard one of the workers warn the couple not to touch him.

[22] Mr. Chan's evidence is that while he was standing in his backyard, Ms. Zhou's mother and father approached the property line and began yelling at them and physically blocking the workers from installing the fence posts. He asked Mr. Poitras to show Ms. Zhou's father the property line markers, but they continued shouting and pushing the fence post toward the plaintiff's property.

[23] Then, Ms. Zhou's mother pushed Mr. Chan causing him to fall to the ground. At that point, Mr. Chan called the police. He said the officer who attended attempted

to mediate the situation. The police officer suggested that Mr. Chan show Ms. Zhou's parents the old and New Survey and Mr. Chan did that. However, Ms. Zhou's parents continued to insist that the old fence was the correct location of the property line.

[24] The police officer recommended to Ms. Zhou's parents that they get their own survey. The police officer also recommended that Mr. Chan stop the work to avoid escalating the conflict. Mr. Chan followed the police officer's recommendation and he told the workers to stop working.

[25] Due to the ongoing conflicts between the defendants and Ms. Zhou's parents, the plaintiffs' have not constructed their new backyard fence. The plaintiffs' evidence is that they are not able to use their backyard due to their concerns about confrontations with the defendants and lack of privacy.

[26] At some point after August 30, 2022, the defendants mounted a surveillance camera on the exterior wall of the back of their house. The camera points towards the backyards of the parties.

[27] The camera is equipped with a motion sensor and when the defendants enter their backyard, the camera emits a loud recorded message that says, "Hi, you are currently being recorded." During submissions, Mr. Liang stated that he had the camera installed after his wallet was stolen from his vehicle in the front driveway of his home.

[28] Ms. Lee's evidence is that when the motion sensor goes off, she can hear the warning inside her home and even when the windows and doors are closed. Ms. Lee also states when she is in her backyard and the sensor and warning go off, the defendants will come and watch her through their window. Ms. Lee states that she avoids going into her backyard as a result of the camera and the many confrontations with the defendants.

[29] On December 21, 2022, the plaintiffs filed a notice of civil claim against the defendants. The defendants filed a response to the notice of the civil claim denying the claims and alleging that the plaintiffs continue to trespass on their property.

[30] On February 8, 2022, counsel for the plaintiffs wrote to counsel for the defendants providing, among other things, notice of the plaintiffs' intention to seek an injunction if the defendants do not provide written confirmation that they will not interfere with the construction of the fence and not trespass, place material on the plaintiffs' property, or remove the fence or legal survey monuments.

[31] On February 10, 2022, the defendants' counsel responded denying the incidents of trespass and harassment. Most of the lawyer's letter is redacted for settlement privilege and I infer that the defendants did not provide the written confirmation that was sought by the plaintiffs.

[32] On February 24, 2022, the defendants' lawyer advised the plaintiffs' counsel that the defendants would appear at the hearing without counsel as they had decided against retaining litigation counsel.

[33] On March 1, 2022, the plaintiffs' application came on for hearing before me. The defendants filed no material in response to the plaintiffs' application but they appeared at the hearing. The plaintiffs did not oppose the defendants' request to make submissions at the hearing.

[34] The defendants submitted that they agreed to the construction of the new fence and they deny having obstructed or interfered with the project. They submitted that Ms. Zhou's parents do not live at the property. They also submitted they were not given notice of the date and time when the new fence would be constructed so Ms. Zhou's parents were taken by surprise.

[35] The defendants submitted that the plaintiffs and their workers have been trespassing on the defendants' property during their attempts to measure and place the fence. The defendants disagree that they should be subject to an injunction or

that damages should be awarded to the plaintiffs. I have considered the defendants' submissions in reaching my conclusions on this application.

### **Analysis**

[36] The plaintiffs seek judgment pursuant to Rule 9-7(2)(a) of the *Supreme Court Civil Rules*. Therefore, I must be satisfied that I am able to find the facts necessary to decide the matter on the evidence before me and, further, that it would not be unjust to do so: *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-35.

[37] As mentioned, there is no evidence to contradict the evidence that was presented by the plaintiffs. While I heard the defendants' submissions, nothing in their submissions convinces me that I am unable to find the facts necessary to resolve the matter or that it would be unjust to do so.

[38] I reach that conclusion because the issues raised are not complex and they can be decided on the basis of affidavit evidence. Further, the amount of damages sought are modest and easily ascertainable. In my view, the costs of a trial would greatly outweigh the amount involved and the plaintiffs would be prejudiced by the delay and additional expense of having to go to trial.

### **Injunction**

[39] The plaintiffs seek an injunction because of the alleged trespass of the defendants. Where *prima facie* trespass is made out, an injunction is a natural remedy: *Foster v. British Columbia (Ministry of Forests, Lands, Natural Resource Operations and Rural Development)*, 2023 BCSC 1898 at paras. 25-26.

[40] In *Gibson v. Sun*, 2018 BCSC 1277 [*Gibson*] at para. 109, Justice Abrioux (as he then was) summarized the tort of trespass in the following way:

[109] The tort of trespass to land was discussed in *Watson v. Charlton*, 2016 BCSC 664 (B.C. S.C.) at para. 224, where the court endorsed the following summary from *Glashutter v. Bell*, 2001 BCSC 1581 (B.C. S.C.) at para. 26, "Trespass to land occurs when one enters onto land in the possession of another without lawful justification. Trespass is actionable *per se*; there is no requirement to prove actual damage to the property".



[41] The question is therefore whether the defendants and their relatives entered onto the plaintiffs' land without lawful justification. I have already described the numerous incidents in which the defendants and their relatives have come onto the plaintiffs' property to interfere with the work to construct the new fence on the plaintiffs' side of the property. I am mindful that there is no evidence of the defendants agreeing to stop interfering with the plaintiffs' attempt to install the new fence.

[42] During submissions, Mr. Liang and Ms. Zhou stated that their parents were concerned because workers were trespassing on the defendants' property. They pointed to a photograph that Mr. Chan took on November 8, 2022, showing a contractor standing next to a section of newly constructed fence while Ms. Zhou's father and mother stood close by. They point out that the worker can be seen standing on their side of the partially constructed new fence.

[43] To the extent a worker stood or kneeled on the defendants' property while measuring or installing a fence post on the plaintiffs' property, that action must be considered in the overall context. In my view, when the context is considered, the workers' presence is clearly a temporary and incidental step to install the fencing on the plaintiffs' side of the property line. Such actions do not constitute an unreasonable invasion of an interest in land and these actions are not acts of nuisance or trespass by the plaintiffs or their agents.

[44] On the other hand, regarding the plaintiffs' evidence, which includes photographic evidence, I find it demonstrates the defendants and their servants and agents repeatedly moved fence markings, placed objects on the plaintiffs' property, and physically interfered with Mr. Chan and the plaintiffs' contractors to prevent the construction of the new fence on the plaintiffs' side of the property line. The plaintiffs provided the original survey and the New Survey to the defendants and despite doing so, the defendants continued unreasonably interfering with the new fence project.

[45] The defendants are required to control the actions of invitees on their property and it is no defence that some of these incidents of trespass and harassment of contractors and Mr. Chan involved Ms. Zhou's parents: *Moyer v. Mortensen*, 2010 BCSC 1528 [*Moyer*] at para. 111.

[46] The defendants' installation of a surveillance camera that points towards the plaintiffs' backyard and which emits a loud warning triggered by a motion sensor amounts to actionable nuisance: *Suzuki v. Munroe*, 2009 BCSC 1403 at paras. 102-103. I find that this, coupled with the defendants' obstruction of workers who are installing the new fencing, constitutes a non-trivial interference with the plaintiffs' use and enjoyment of their property. Without injunctive relief, it is possible the plaintiffs will continue to be prevented by the defendants, their agents and guests, from installing a fence on the plaintiff's property.

[47] I find that the plaintiffs have established an entitlement to a permanent injunction as sought in the notice of application filed January 30, 2024.

### **Damages**

[48] The plaintiffs seek general damages for trespass and nuisance in the amount of \$10,000 based on awards in similar cases: *Gibson; Wasserman v. Hall*, 2009 BCSC 1318; *Moyer; Watson v. Charlton*, 2016 BCSC 664; and, *Wallace v. Joughin*, 2014 BCPC 73.

[49] I accept the evidence of the plaintiffs regarding the foreseeable mental distress and aggravation that they have experienced because of the defendants' conduct. For nearly a year and a half, the plaintiffs have been forced to repeatedly stop and postpone the new fence project.

[50] The plaintiffs have endured loss of privacy, loss of use and enjoyment of their backyard. They and their contractors have endured repeated verbal and physical harassment by the defendants and/or their guests. In my view, the evidence amply supports an award of general damages in the amount of \$10,000.

[51] The plaintiffs also seek special damages of \$1,050, being the cost of the second survey that Ms. Zhou insisted was required. The New Survey confirmed the same property line as indicated in the original survey. In my view, there is no evidence to support any reasonable basis for insisting on a second survey. Even after the New Survey was provided to them, the defendants continued obstructing the construction of the new fence inside of the plaintiffs' property line. The plaintiffs have not sought special damages for the obvious costs thrown away during previous attempts to have contractors install the new fence.

[52] A specific damages award of \$1,050 would compensate the plaintiffs for the cost of the New Survey. I find it reasonable to make an award of \$1,050 for special damages.

[53] Finally, the plaintiffs' seek punitive damages in the amount of \$15,000. Punitive damages are available in cases of trespass to land: *Horseshoe Bay Retirement Society v. S.I.F. Development Corp.*, [1990] B.C.J No. 201 (BCSC) at paras. 52-57. Punitive damages are also available in nuisance cases: *Vigh v. Coles*, 2022 BCSC 767 at paras. 87-88.

[54] To award punitive damages the conduct of the defendants must be high-handed or malicious. Deciding to award punitive damages involves consideration of the defendants' culpability, as well as general and specific deterrence.

[55] I find an award of punitive damages is warranted in all of the circumstances to sanction the behaviour of the defendants, which the evidence establishes is not just inappropriate, but also malicious and escalating. For example, even after the New Survey was obtained at the plaintiffs' expense and delivered to the defendants, and even when the surveyor was there in person on November 8 to point out the correct location of the property line, the defendants' guests continued to obstruct the fence installation work, even resorting to pushing material and people to cause the work to stop.

[56] In my view, an award of \$10,000 for punitive damages is appropriate considering all of the evidence and the overall context of the events giving rise to the events supporting this claim. Therefore, the plaintiffs shall receive a total damage award of \$21,050.

[57] The plaintiffs are also entitled to interest pursuant to the *Court Order Interest Act*. Finally, as the successful parties, the plaintiffs are entitled to costs.

[58] I dispense with the need for the defendants to sign the form of order but they shall be provided with an entered copy of the order when it is available.

“E. McDonald J.”