

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Pearce v Campbell* [2023] QCAT 427

PARTIES: **BRIAN WINDSOR PEARCE**
(applicant)

v

ROBERT ANDREW CAMPBELL
(respondent)

APPLICATION NO/S: NDR053-20

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 6 November 2023

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Richard Oliver

- ORDERS:
1. **The respondent must carry out the following tree works:**
 - (a) **removal of dead branches from the smooth bark eucalyptus species adjacent to the neighbours swimming pool;**
 - (b) **removal of any dead branches caught up in the canopy of the hoop pine;**
 - (c) **removal of hanging branch of eucalyptus racemorse located opposite the neighbours compost bin;**
 - (d) **remove low hanging branches overhanging the dividing fence between the applicant's property and the respondent's property to be pruned to above 2.5 metres to 5 metres from ground height to allow the applicant access to undertake property maintenance;**
 - (e) **remove any overhanging branches that overhang the common boundary by more than .5 of a metre.**
 - (f) **undertake annual hazard reduction pruning including removal of dead trees, branches and palm fronds along the common boundary;**
 - (g) **maintain palm trees on the common boundary by the removal of dead and caught up palm fronds, including flower and seed**

heads to undertaken at least four times annually.

- 2. The respondent is to pay for the tree work referred to in paragraph 1(a) above.**
- 3. The works referred to in 1(a) of must be carried out by 30 January 2024.**
- 4. The tree works and pruning must be carried out by an appropriately qualified and insured arborist.**

CATCHWORDS:

ENVIRONMENT AND PLANNING – TREES, VEGETATION AND HABITAT PROTECTION – DISPUTES BETWEEN NEIGHBOURS – tree disputes – where respondent’s vegetation along the common boundary intrudes on the applicant’s land – where respondent has failed or neglected to keep the vegetation cut back – whether respondent should be required to remove the vegetation interfering with the applicants’ use of their land.

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld) ss 48 and 52

APPEARANCES & REPRESENTATION:

This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*

REASONS FOR DECISION

- [1] The applicant and respondent share a common boundary. Each live on a acreage blocks of land. There is a fence on the common boundary. The applicant’s land is generally clear of vegetation, but the respondent’s land is densely populated with a variety of trees, including large gum threes. This is evident from the aerial photos included in the material filed by the parties and photographs.
- [2] There has been a long running dispute between them about vegetation on the respondent’s land overhanging the applicant’s property, dropping leaves and other tree matter onto the applicant’s land and into his swimming pool. The respondent has been asked to trim back the overhanging tree branches and palms fronds and to maintain the vegetation so that the applicant’s land is generally free from this nuisance.
- [3] The respondent has resisted any request to manage the vegetation along the common boundary. As a result the applicant filed an application for order from the Tribunal requiring the respondent to maintain the vegetation on his land along the common boundary.
- [4] The application is brought under Chapter 3 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)* (“the NDA”). The NDA imposes certain obligations on tree keepers being the owners of the freehold land where the trees are located.¹ Here there is no dispute that the trees the subject of the application

¹ NDA s 48.

are located on the respondent's land and he is the tree-keeper. Therefore, he is responsible for the trees.

- [5] The NDA also imposes an obligation on both parties to take all reasonable steps to resolve the issue under any relevant local law, local government scheme or local government administrative process.² The material filed by both parties demonstrates that over the years there has been some attempt to resolve the dispute but unfortunately the respondent has been resistant to doing anything about vegetation debris being deposited on the applicant's land, and also trimming back overhanging branches.
- [6] The respondent, in multiple statements to the Tribunal maintained that applicant should just cut up and remove dead palm fronds, does not accept the overhanging branches cause a danger, the land is in a conservation and vegetation protection area and the tree canopy provides shade and cooling. He has produced numerous photographs of the treed area. These photos just demonstrate the density of growth. He claims the applicant has purposely killed off a palm tree he planted many years ago. Whether that is the case or not is irrelevant to what I have to decide under the NDA.
- [7] Because of this impasse, the Tribunal ordered that an independent Tree Assessor be appointed to provide a report about the trees on the common boundary. A report has dated 25 March 2021 has been prepared by Mr Benjamin Inman which addresses the complaints by the applicant. He identified a number of trees with branches overhanging the boundary in excess of the minimum distance and the extent of deadwood and leaf litter from the vegetation. In particular he found:
- (a) The property is heavily vegetated with numerous trees, particularly Melaleuca species trees. One Mature Eucalyptus species required dead wooding that overhangs the neighbours property.
 - (b) The entire fence line of the adjoining properties have trees overhanging by up to 7.5m.
 - (c) There is a smooth bark Eucalyptus adjacent to the pool area on the applicant's property that has dead branches in need of pruning and other dead branches hung up in the trees;
 - (d) Palm fronds die and fall over the fence into the applicants property, he has appended photos of these to his report;
 - (e) All overhanging branches need to be pruned back to 2.5m;
 - (f) He opines that the dead tree branches are likely to cause damage to property in the next 12 months.;
 - (g) The existence of root balls at the base of the fence is impacting its structural integrity and this will continue.
 - (h) There will be ongoing interference and damage from leaf litter into the future if not pruned back and maintained.

² Supra s.

- (i) The presence of the large trees on the boundary impact light to the applicant's house.
 - (j) He found the palm trees are growing directly against the fence and palm fronds are being trapped, this is impacting the applicant's ability to conduct property maintenance beside these areas.
- [8] As a consequence of all these issues, Mr Inman recommended that the respondent institute a maintenance programme to remove dead branches, and dead wood stuck in the trees and prune back all branches overhanging the applicant's land.
- [9] Despite those recommendations, and having regard to the tree-keepers responsibilities under the NDA, the respondent has held his ground and refused to take any steps to abate the nuisance caused by his trees to the neighbouring property.
- [10] It is evident from Mr Inman's report and the photographs attached, and also from the applicant's statement which is consistent with Mr Inman's findings, that the vegetation on the boundary of the adjoining property is not being maintained by the respondent. I accept without reservation the evidence of both Mr Inman and the applicant.
- [11] As for the respondent's evidence, he has not addressed the issues in dispute nor challenged in any meaningful way the objective evidence of Mr Inman as contained in his report.
- [12] This proceeding has been going on for far too long as a result of deep and entrenched disputation between these parties and there needs to be finality to this proceeding. There have been a number of directions hearings to advance the proceeding which takes time and results in inconvenience to parties. A draft proposed agreement had been prepared subsequent to the receipt of Mr Inman's report. What is proposed in the draft agreement makes perfectly good sense and addresses the respondent's responsibility as a tree keeper under the NDA.
- [13] I make these observations because the parties are neighbours and will continue to live side by side. If they want to continue with the disputation it is up to them but the orders I propose to make may require some cooperation and perhaps access to the applicant's property. The last thing either party needs after this is to have to come back to the Tribunal.
- [14] As the parties have not been able to agree I therefore propose to make orders in terms of the draft agreement.
- [15] The proposed orders are:
- (1) The respondent must carry out the following tree works:
 - (a) removal of dead branches from the smooth bark eucalyptus species adjacent to the neighbours swimming pool;
 - (b) removal of any dead branches caught up in the canopy of the hoop pine;
 - (c) removal of hanging branch of eucalyptus racemose located opposite the neighbours compost bin;
 - (d) remove low hanging branches overhanging the dividing fence between the applicant's property and the respondent's property to be pruned to above 2.5

metres to 5 metres from ground height to allow the applicant access to undertake property maintenance;

- (e) remove any overhanging branches that overhang the common boundary by more than .5 of a metre.
 - (f) undertake annual hazard reduction pruning including removal of dead trees, branches and palm fronds along the common boundary;
 - (g) maintain palm trees on the common boundary by the removal of dead and caught up palm fronds, including flower and seed heads to undertaken at least four times annually.
- (2) The respondent is to pay for the tree work referred to in paragraph 1(a) above.
- (3) The works referred to in 1(a) of must be carried out by 30 January 2024.
- (4) The works tree works and pruning must be carried out by an appropriately qualified and insured arborist.