

AUSTRALIA / JUDGMENT

Letsios v Thind [2019] NSWLEC 1356

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Land and Environment Court New South Wales

Medium Neutral Citation: Letsios v Thind [2019] NSWLEC 1356 Hearing dates: 24 July 2019 Date of orders: 24 July 2019 Decision date: 24 July 2019 Jurisdiction: Class 2 Before: Galwey AC Decision: The application is refused. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) –hedge – obstruction of sunlight and views – hedge pruned prior to hearing – obstruction not severe – respondent offered to prune overhanging branches Legislation Cited: Trees (Disputes Between Neighbours Act) 2006 (NSW) Category: Principal judgment Parties: Peter Letsios (Applicant) Harpreet Kaur Thind (Respondent) Representation: L Letsios, agent (Applicant) H Thind, litigant in person (Respondent) File Number(s): 2019/114467 Publication restriction: No

Judgment

This decision was given as an extemporaneous decision. It has been revised and edited prior to publication.

The application

1. Peter Letsios ('the applicant') has applied to the Court pursuant to s 14B of the Trees (Disputes Between Neighbours) Act 2006 (NSW) ('the Trees Act') seeking orders to remedy the obstruction of sunlight and views caused by trees in a neighbouring hedge. The hedge has been the subject of a dispute between Mr Letsios and his neighbours, Harpreet Thind ('the respondent') and her husband, for some time.
2. Mr Letsios was granted leave for his son Louis Letsios to represent him at the onsite hearing. Mrs Thind represented herself.

Background

1. Mr Letsios has lived at his Gladesville property for 42 years. Mrs Thind and her husband purchased the neighbouring property eight years ago. At that time, cypress trees in a hedge in their front setback, along the common boundary shared with Mr Letsios, were dying. There were drill holes in the trees' stems. Hunter's Hill Council approved removal of the trees, noting on the permit that they were "...dying from apparent poisoning" (Hunter's Hill Council Tree Preservation Order, included in Exhibit 1).

2. The Thinds planted a hedge of juniper trees in 2014 to replace the removed hedge. In 2015, they replaced the junipers with a hedge of lilli pillies, planted by a professional landscaper (Landscapes Unearthed). Those trees are now over four years old.

Framework for this decision

1. As both parties refer to past conversations and disagreements about the trees, I accept that the applicant has made reasonable attempt to reach agreement with the respondent, a requirement at s 14E(1)(a) of the Trees Act.
2. The lilli pillies are planted close together at regular spacings in a straight line parallel with the boundary fence. The land slopes down from the front boundary. Near the front boundary the trees are just over 2.5 metres tall, reaching up to 3.5 metres in height at the other end of the hedge. The respondent planted the hedge for privacy. The trees fit the description at s 14A(1), so Part 2A of the Trees Act applies to these trees.
3. Before I can make orders, I must be satisfied that the trees are severely obstructing views from Mr Letsios' dwelling or sunlight to windows of the dwelling (s 14E(2)(a)).

The applicant's submissions

1. Mr Letsios took me to the windows in his dwelling where the hedge obstructs views and sunlight. The first is a window part way up the staircase to the upper floor, adjacent to a living area. Mr Letsios said the room is dark because of the hedge. The outlook would be into the respondent's front garden.
2. The second window is in Mr Letsios' kitchen, above the sink. He says the hedge makes the room darker. Mrs Letsios wants to be able to see to the street when standing at the sink. The trees obstruct this view.
3. Mr Letsios submitted that shade from the trees makes his sandstone dwelling damp. The trees are close to the fence and affect its stability. Their proximity to the fence will make it difficult to maintain or replace the fence when that becomes necessary.
4. There is disagreement between the parties about who should prune the trees and how they should be pruned. Mr Letsios said the respondent told him never to prune their trees. Mr Letsios' photos show branches from the lilli pillies growing across the small pathway along his side of the boundary fence, reaching his dwelling. He says the photos also show the tops of the trees were only pruned for the first time in May of this year, since he made this application, but I do not accept that. Certainly the photos show the trees to be a little taller than they were at the time of the hearing, but not significantly so.
5. Mr Letsios does not want the Thinds to come onto his property to prune the trees, but expects them to engage, and he would allow, a contractor to come onto his property for the purpose of pruning the trees.

The respondent's submissions

1. Mrs Thind says she and her husband prune the trees on their side, including the tops of the trees. They intend to maintain them at their current height. Mrs Thind has offered to prune the trees on Mr Letsios' side, but he does not want them on his property.

Findings

1. I accept Mrs Thind's sincerity in her intention to prune the trees. As Mr Letsios will not allow her onto his property to prune the trees, I cannot see how she can prevent branches growing across the boundary and toward his dwelling. My understanding is that Mr Letsios can prune these branches himself, as the trees are not prescribed vegetation in the Hunter's Hill Council planning controls.
2. The window in Mr Letsios' living room lets light into this living area. The window faces southeast. It gets some morning sun during winter and a greater amount of morning sun during summer. At their current height, the trees delay the time during summer when sunlight first hits the window. No shadow diagrams were provided so this is my own conclusion only. The view from here would be into the respondent's front garden. On my assessment of the situation, the trees do not cause a severe obstruction of views from, or sunlight to, this window.
3. The kitchen window, being above the sink, is one where some time might be spent. Sunlight obstruction is not severe with the trees at their current height. The expectation of seeing to the street might be reasonable, but even if the trees near this window were reduced in height, other trees along the respondent's front boundary would likely prevent a view of the street. Those trees are not a subject of this application. I find the trees currently do not cause a severe obstruction of sunlight to, or views from, the kitchen window.
4. It follows that the Court cannot make any orders.

Orders

1. As a result of the foregoing the Court orders:
 1. The application is refused.

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D Galwey

Acting Commissioner of the Court

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