

DECISION

Case numbers: NDR079-12

Applicant: Ms Guurtje Edmonds

Respondent: Mr & Mrs Robert Anthony and Helen Mary Yeates

Before: Ms Peta Stilgoe, Acting Deputy President

Date: 2 January 2013

Proceeding Type: On-Papers Hearing

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. The application in relation to the six leopard trees on 36 Hereford Crescent Carindale is dismissed.

Signed

Ms Peta Stilgoe
Acting Deputy President
Queensland Civil and Administrative Tribunal

Date: 2 January 2013

CITATION: Edmonds v Yeates

PARTIES: Ms Guurtje Edmonds
V
Mr Robert Anthony Yeates
Mrs Helen Mary Yeates

APPLICATION NUMBER: NDR079 -12

MATTER TYPE: Other civil dispute matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Peta Stilgoe, Acting Deputy President**

DELIVERED ON: 2 January 2013

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application in relation to the six leopard trees on 36 Hereford Crescent Carindale is dismissed.**

CATCHWORDS: TREE DISPUTE – where six leopard trees in boundary – where trees existed prior to construction of house - where land benched so that trees appear bigger – where leaf litter – whether substantial, ongoing and unreasonable interference – whether risk of serious injury

Neighbourhood Disputes Resolution Act 2011 ss, 66, 75, 78(1)

Graham & Ors v Welch [2012] QCA 282
Thomsen v White [2012] QCAT 381
Wallace v Keg [2012] QCAT 466

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

REASONS FOR DECISION

- [1] Mr and Mrs Yeates have a row of six leopard trees next to the western boundary of their land. Ms Edmonds lives next door. The trees overhang her boundary and she says that the leaves, pods and small braches from the trees cause a substantial, ongoing and unreasonable interference with her land. She wants Mr and Mrs Yeates to cut the trees back to the boundary and undertake regular pruning to minimise the mess that the trees cause.
- [2] I can only make an order if I am satisfied¹ that it is appropriate to remedy, restrain or prevent serious damage to Ms Edmonds' land or any property on her land or a substantial, ongoing and unreasonable interference with Ms Edmonds' use and enjoyment of her land.
- [3] Ms Edmonds has provided photographs that show leaf litter and twigs in her garden, roof and walkways. She says that the leaf litter blocks her gutters. She says that blocked gutters could cause water overflow in the wet season. That overflow could cause damage to her property and may impact on her use of her patio. She has had gutter guard installed to some of her gutters.
- [4] Ms Edmonds says that she has been advised that the trees would affect any solar panels that she might install on the roof.
- [5] Ms Edmonds says that, when she bought her house, the trees were not causing her any problem. She employed a handyman on a regular basis to prune the trees and clean the gutter. She says that, because of the *Neighbourhood Disputes Resolution Act 2011*, that obligation now falls to Mr and Mrs Yeates.
- [6] Mr and Mrs Yeates say that the trees existed before Ms Edmonds' house was built. They say that the trees were well-established when Ms Edmonds bought her house. They also say that the developers of Ms Edmonds' lot sought a relaxation of the boundary, bringing her house closer to the trees than is usual. They deny that the trees are causing serious damage or a substantial, ongoing and unreasonable interference to Ms Edmonds' land. Mr and Mrs Yeates say that large portions of Ms Edmonds' roof receive direct sunlight which would be suitable for solar panels.
- [7] Brisbane City Council has advised, by email of 12 November 2012, that the trees are not protected by any local law or development condition.
- [8] The tribunal engaged Mr Hobbs, an arborist, to complete an independent report about the trees. He says that Ms Edmonds' land was benched when the house was built, which means that her gardens are about 1200 mm lower than Mr and Mrs Yeates' land. Mr Hobbes observes that the height difference makes the trees look taller than they actually are. Mr Hobbes also observes that Ms Edmonds' home occupies most of her lot; again, according to Mr Hobbes, this makes the trees look larger than they are.
- [9] Mr Hobbs notes that the trees are exotic species but not invasive. He observes that leopard trees perform well in suburban locations and are not known to cause any significant problems. He is of the view that the trees, although close to Ms Edmonds' home, require only regular pruning.

¹ *Neighbourhood Disputes Resolution Act 2011* s66

- [10] This tribunal has determined² that the dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree. That approach is consistent with a recent decision of the Court of Appeal in *Graham & Ors v Welch*³. Atkinson J said⁴:

Trees and bushes are common place and desirable attributes of homes in residential areas. It is not possible to have the Australian gumtree without the possibility of gumnuts falling or a Casuarina without the possibility of seed pods, or many common native or exotic trees or shrubs which flower and then produce nuts, berries, seeds, or seed pods.

- [11] The leaf litter of which Ms Edmonds complains is a natural incidence of a suburban landscape that includes trees. It does not constitute a substantial, ongoing and unreasonable interference.
- [12] I am not persuaded that Ms Edmonds' home is at risk of serious damage. The connection between the leaf litter and possible damage to her home through water ingress is too remote.
- [13] I am not persuaded that the trees cause a severe obstruction of sunlight to Ms Edmonds' home. She does not have solar panels, so there is no actual interference. She has not produced any independent evidence to suggest that solar panels are impractical. Even if that evidence was available, it is relevant to the exercise of my discretion that the trees existed before Ms Edmonds acquired the house⁵. To some extent, Ms Edmonds must take the trees as she finds them.
- [14] Ms Edmonds has not demonstrated that there will be serious damage to her property or that the trees cause a substantial, ongoing and unreasonable interference with her land. There is no severe obstruction of sunlight. The application should be dismissed.

² *Thomsen v White* [2012] QCAT 381, *Wallace v Keg* [2012] QCAT 466

³ [2012] QCA 282

⁴ At [24]

⁵ *Neighbourhood Disputes Resolution Act 2011* s75(d)