



Civil Resolution Tribunal

Date Issued: March 28, 2018

File: SC-2017-003080

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leftshore Landscape Contracting Ltd v. Giles*, 2018 BCCRT 101

B E T W E E N :

Leftshore Landscape Contracting Ltd

APPLICANT

A N D :

George Giles

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Leftshore Landscape Contracting Ltd (Leftshore) claims \$2,297.79 as the outstanding balance of a landscaping invoice it provided to the respondent George Giles, plus \$240 in additional machine and trucking fees. Leftshore also claims \$300 for its time spent dealing with the dispute and filing a builder's lien claim.

2. Mr. Giles disputes the claims, and says Leftshore did not provide the amount of materials and labour and equipment time invoiced. Mr. Giles claims \$3,000 as a dispute-related expense based on his time spent dealing with Leftshore on this issue.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, and I note that neither party requested an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. I note that the respondent asks the tribunal to hold the applicant's principal Randy Jones in "contempt of court". The tribunal is not a court and is not empowered

under the Act to hold a party in contempt. I will not address this request any further.

ISSUES

9. The issues in this dispute are:
 - a. To what extent did the applicant provide the labour and materials it reflected in its invoice to the respondent?
 - b. To what extent, if any, is the applicant entitled to payment of the outstanding balance on its invoice to the respondent?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. The parties provided a significant amount of evidence and submissions. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. In October 2016, the respondent hired Leftshore to provide landscaping services to his property. The job was primarily to bring in soil and distribute and rake it. In addition, the respondent asked for a few minor jobs to be done, such as laying paving stones and removing old materials. It is undisputed that the parties' agreement was that Leftshore would do the work on a "time and materials" basis. Leftshore's October 14, 2016 estimate set out its hourly rates: equipment \$75, labour \$45, equipment transfer fee \$75, slinger truck \$125, and dump truck \$75. There was no daily rate mentioned for equipment time, or otherwise.
12. Due to bad weather, Leftshore did not begin work until late April 2017. It is undisputed that Leftshore did the work on four days: April 21, 24, 25, and 26, 2017.
13. As discussed below, this dispute is primarily about whether Leftshore delivered a second 16 yard "tandem" load of soil, whether the heavy equipment use is based

on its time on site, and whether Leftshore's labourers spent the amount of time working as claimed.

14. Leftshore's April 28, 2017 invoice 2030 had no detail and simply described "materials & labour" for \$9,852.62, plus \$492.63 GST, for a total of \$10,345.25. The invoice stated there was a 2% monthly finance charge for all balances not paid within 30 days. In its submissions, Leftshore refers to this finance charge as interest.
15. On April 28, 2017, with its invoice Leftshore emailed the respondent an undated handwritten daily breakdown of 42 total hours of heavy equipment time, along with a daily breakdown of 48 total hours in labour, plus \$150 in machine transfer fees:
 - a. April 21: 8 hours excavator, for \$600
 - b. April 24: 8 hours excavator, for \$600; 8 hours loader for \$600, and 8 hours labour for \$360
 - c. April 25: 8 hours excavator, for \$600; 8 hours loader for \$600, and 16 hours labour for \$720
 - d. April 26: 2 hours loader for \$150 and 24 hours labour for \$1,080.
16. With its invoice, Leftshore also emailed the respondent a separate April 28, 2017 "cost breakdown" of invoice 2030, which noted the original estimate was \$3,600 and "additional work added \$1,710", for the total amount of \$9,852.62 plus tax. This cost breakdown included delivery of 80 yards of soil and 2 tandem truck deliveries, which amounts are central to this dispute.
17. In an undated document titled "additional work", Leftshore summarized various jobs, including labour and equipment time to place "additional 32 yards of soil", which differs from the additional 29 yards claimed in this proceeding. In the "additional work" document, there was no allocation of hours to jobs.

18. The applicant submitted in evidence 3 invoices from the soil supplier that Leftshore says it paid: a) 1-55030 dated April 25, 2017, for 45 yards of “super soil”, for a total \$1,606.50, b) 1-55067 dated April 25, 2017 for 16 yards of super soil and one tandem truck charge, for a total of \$667.80, and c) 1-55345 dated April 29, 2017 for 16 yards of super soil and one tandem truck charge, for \$667.80. These invoices show a retail price of \$40 per yard, with a net price of \$34 after Leftshore’s discount.
19. In April 2017, the applicant summarized these 3 soil invoices in an email to the respondent, but referred only to the price of \$40 per yard. These 3 invoices do not indicate their delivery to the respondent, as they show Leftshore’s address as the “ship to”. These invoices also do not indicate a date of delivery.
20. The applicant also produced “delivery book records”, apparently from the soil supplier, to show “1st delivery” of 16 yards super soil to the respondent’s address on April 25, 2017 and “2nd delivery” of 16 yards super soil on April 26, 2017 to “same address as yesterday”.
21. What is significant is that on April 29, 2017 the applicant provided the respondent with an entirely different invoice from the soil supplier, for a single line item of 80 yards of soil, in an effort to prove he had legitimately charged the respondent as invoiced. This soil supplier’s invoice, invoice 1-55346 and dated April 29, 2017, also showed 2 tandem charges. In this invoice, only the retail price of \$40 per yard is shown, with no discount.
22. Despite the respondent having raised the discrepancies in his submissions, in its final reply the applicant did not explain the reason for the duplicate invoice for 80 yards of soil and Leftshore’s charging the respondent for 80 yards, when the supplier had earlier issued 3 separate invoices that totaled 77 yards of soil.
23. The respondent does not dispute that 45 yards of soil was delivered in 3 trips via a “slinger” truck. As noted, the respondent’s dispute is with Leftshore’s claim that it

had 2 separate 16-yard loads of soil delivered by the soil supplier via a “tandem” truck. The respondent says only one such load was delivered, on April 25, 2017.

24. On May 12, 2017, after unsuccessful negotiations, the respondent wrote the applicant and enclosed a cheque for \$7,631.18 along with a table as to how he came to this figure. The respondent said that he was convinced only one truckload of topsoil was delivered, because the soil supplier had told him it had only delivered 3 slinger loads and one tandem load to his address, and one load was later obtained and paid for directly by the respondent on May 6, 2017. The respondent also said he was holding back \$847.91, or 10%, under the *Builders Lien Act*, which he would release on June 21, 2017.
25. On June 27, 2017, the applicant refused the respondent’s request for the soil supplier’s 3 individual invoices for the 3 soil loads, even though the applicant noted he only had the 1 consolidated invoice for 80 yards of soil.
26. On November 1, 2017, the respondent paid the applicant \$847.91, which was the 10% he held back under the *Builders Lien Act*. The respondent says he had forgotten to release it in June 2017.
27. I turn now to the parties’ further submissions and my findings.
28. While the scope of work expanded, that fact does not change the fact that the applicant must prove he reasonably charged the respondent for labour time and materials under their “time and materials” agreement.
29. In particular, the respondent disputes: a) the amount of soil delivered, because he says only 61 yards of soil was delivered as the claimed second tandem load of 16 yards was never delivered, b) the \$42.80 per yard soil charge, as he says he should have been charged only \$40 a yard, or \$34 a yard which was Leftshore’s cost, rather than \$41.80, c) the amount of equipment time charged, because he says charges should only be for when the equipment was in use, and d) labour charges, because he says Leftshore’s workers only worked a total of 55 hours equalling \$2,475.

30. I will address the labour hours first. Leftshore's own daily breakdown, set out above, totaled 48 hours or \$2,160 for labour, separate from the equipment time. This amount is less than the respondent's submission of \$2,475. Based on these submissions and the evidence before me, I find Leftshore was entitled to bill \$2,160 for labour for the job, plus GST.
31. Next, I will address the heavy equipment time. I do not agree that Leftshore has proven that time charges for heavy equipment are reasonably billed based on when that equipment was required on site, rather than for "machine time" or when they were turned on and in active use. While the applicant submits that it is widely understood that heavy equipment is charged based on a daily rate, I find Leftshore has not proven this. Had Leftshore wanted to charge a daily rate, it should have said so in its estimate, rather than expressly quoting a \$75 hourly rate.
32. So, then what is an appropriate amount for heavy equipment time? The respondent submits that 24.5 hours or \$1,837.50 is warranted for the excavator and loader together, based on 7.5 hours per day on April 21, 24, and 25, and 2 hours on April 26. On balance, I find this sum to be reasonable, particularly given that the evidence suggests only one of those 2 machines was operating at once. On balance, I find Leftshore was entitled to bill \$1,837.50 for heavy equipment time.
33. Next, I will address the price per yard for the soil. The cost breakdown from Leftshore shows the soil was charged to the respondent at \$42.80 per yard. Leftshore submits that it fairly charged the respondent PST to cover the PST it pays for products on the client's behalf. I do not agree. The soil supplier did not charge Leftshore for PST on the soil, and so there is no basis for Leftshore to effectively charge the respondent PST.
34. However, I find the "time and materials" agreement does not require Leftshore to charge the respondent exactly what it paid for the materials. Unless expressly agreed otherwise (which is not the case here), I find it is implicit that a contractor may charge a nominal mark-up on materials purchased for a client, as otherwise

there would be little point for the contractor to be involved in the materials transaction. I do not agree with the respondent that he should only pay \$34 per yard, which is the discounted rate Leftshore paid the soil supplier. The retail price for the soil was \$40 per yard, which is what an individual like the respondent would pay had they bought from the soil supplier directly. I find Leftshore was entitled to charge the respondent \$41 per yard plus GST, which I note was the figure quoted in Leftshore's original October 2016 estimate.

35. Next, I will address the amount of soil delivered. The cost breakdown shows the applicant billed for 80 yards of soil, for a total of \$3,424. In this dispute, the applicant submits it delivered 77 loads of soil. As noted, the respondent says it was only 61 yards.
36. Again, the burden of proof is on the applicant. On balance, I find that Leftshore has not proven it delivered the final 16 yards load of soil and has not proven it incurred the second claimed tandem truck charge. I am not prepared to go so far as to conclude Leftshore actively attempted to mislead the respondent, as requested by the respondent. However, the inconsistencies in the soil supplier's invoices and evidence and Leftshore's own unexplained discrepancy between 77 loads claimed and 80 loads invoiced leads me to conclude Leftshore's and the soil supplier's records are not entirely reliable.
37. My conclusion is supported by Leftshore's email about the "last load" being delivered on April 28, 2017, and yet, Leftshore did no work on the respondent's property after April 26, 2017. The soil supplier's letter and delivery book records are not determinative, bearing in mind the soil supplier's own evidence to the respondent, which I accept was given, was inconsistent. Perhaps arrangements for a second tandem load were initially made and paperwork drafted, and in this respect I note the undisputed mechanical and production problems on site. Overall, I find Leftshore has not proven that more than 61 yards of soil were delivered.

38. Therefore, I find that Leftshore was only entitled to bill for 61 yards of soil at \$41 per yard for \$2,501, plus GST. For the soil and the one tandem load, Leftshore was entitled to charge \$2,596, plus GST.
39. Apart from the issues discussed above, I find Leftshore has proven its invoice 2030 charges that totaled \$928.62 plus GST¹, which I note were not particularly disputed by the respondent.
40. Given my conclusions above, for its invoice 2030, I find Leftshore was entitled to charge the respondent a total of \$7,522.12, plus \$376.11 GST, for a total of \$7,898.23. As noted above, to date the respondent has paid \$8,479.09. As the respondent did not file a counterclaim, I make no order for reimbursement of the difference.
41. As for Leftshore's claim for interest, I find it is not entitled to any, given my conclusion above that the respondent paid more than was owed under the contract.
42. In addition, I find Leftshore has not proven its claims for \$240 in additional machine and trucking fees, in that Leftshore did not provide any evidence or submissions to justify these claims. I dismiss those claims.
43. Given the applicant was unsuccessful in this dispute, consistent with the tribunal's practice I also dismiss its claim for \$300 for time spent dealing with this dispute and for tribunal fees and dispute-related expenses.
44. As for the respondent's claim for \$3,000 for his time spent in dealing with this dispute, I dismiss that claim. Generally, the tribunal does not make awards for time spent dealing with a dispute, which is consistent with the Act's general requirement for self-representation and the tribunal's practice not to reimburse legal fees. I see no reason to deviate from that general practice here.

¹ These charges are for: \$87.50 in sand, the initial \$150 machine transfer fee, \$66.12 for irrigation, and \$625 for 3 slinger deliveries.

ORDERS

45. I order that the applicant's dispute is dismissed.

46. I dismiss the respondent's claim for \$3,000 for time spent dealing with this dispute.

Shelley Lopez, Vice Chair