Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Larix Landscape Ltd. v. Paterson et al.,* 2018 BCCRT 173

B E T W E E N :

Larix Landscape Ltd.

APPLICANT

A N D :

Douglas Paterson and Meghan Paterson

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrew D. Gay, Q.C.

INTRODUCTION

1. The applicant Larix Landscape Ltd. provided landscaping services to the respondents Douglas and Meghan Paterson. The applicant alleges that the respondents failed to pay the amount owing. The respondents refuse to pay the applicant's invoice, alleging numerous deficiencies with the applicant's work. The

respondents say that they were forced to hire other landscapers to correct the deficiencies. The respondents also claim that the applicant's employees damaged their property for which the respondents seek compensation.

JURISDICTION AND PROCEDURE

2. 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.

3. 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 because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

4. 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.

5. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

    a. order a party to do or stop doing something;

    b. order a party to pay money;

    c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:

   a. Did the respondents fail to pay the applicant for landscaping services rendered?

   b. If so, do the respondents have a valid excuse for not paying, on the basis that the applicant's work was deficient?

   c. Are the respondents entitled to compensation for damage to their property caused by the applicant?

EVIDENCE AND ANALYSIS

Background

7. The respondents sought to have their property landscaped. In April of 2017, the applicant provided the respondents with a proposal for landscaping services (the "Proposal"). The respondent Douglas Paterson signed the Proposal and thus I find he agreed to its terms. The Proposal estimated that the work would cost $6,866.32 including taxes. Mr. Paterson paid a deposit of $2,060.

8. The respondent Meghan Paterson did not sign the Proposal. There is no evidence before me to indicate that Meghan Paterson entered into a contract with the applicant and accordingly I find she is not obligated to pay money to the applicant. I dismiss the applicant's dispute as against Meghan Paterson.

9. The applicant provided landscaping services at the respondents' property in May and June, 2017. There was correspondence back and forth between the parties about alleged deficiencies and the applicant delivered several different invoices containing revisions.

10. On July 9, 2017, the applicant issued what appears to be the final invoice in the amount of $6,751.01 including taxes. The amount owing, net of the deposit, was $4,691.01. The respondents refused to pay this sum. On August 21, 2017, the

applicant sent the respondents a letter demanding payment of $4,691.01 but the respondents have refused, citing numerous deficiencies in addition to damage which they allege the applicant caused to their driveway and other property.

The Terms of the Contract

11. The Proposal identifies various kinds of work the applicant agreed to provide, including work relating to lawn improvement, excavation and disposal, preparation for the installation of a concrete pathway and patio, removal of various items including a shrub and some pea gravel, and the planting of some hazel nut trees.

12. The Proposal states that “all work is warranted for one (1) year after date of completion”. It further provides that “all work is to be executed in a workman like manner in accordance with the contract, plans, and specifications” and that “the Contractor agrees to exercise reasonable care during progress but cannot assume responsibility for… shrubs, flowers, driveways and walks”.

The Alleged Deficiencies

13. The respondents allege that there were many deficiencies with the applicant’s work. Indeed, the respondents have prepared elaborate lists, charts and tables, with accompanying photographs, to document the alleged deficiencies. In a number of instances, the respondents state that the deficiencies were either sufficiently resolved or too minor to pursue and are therefore regarded as “closed”. I will not comment on any issues said to be “closed”.

14. The applicant says that all work was completed and “exceeds expectations”. The applicant says that when the respondents raised alleged deficiencies, the applicant was willing to do repair work but was barred from the jobsite by the respondents who stated they would do the repair work themselves.

15. Once the Applicant has proved the contract, and that money owing under the contract has not been paid, it is the respondents’ burden to prove the deficiencies

which they allege. The table below sets out the alleged deficiencies and my conclusions relating to each.

Alleged Deficiency	**Analysis and Conclusions**
The applicant failed to remove a juniper stump.	The Proposal includes the phrase “remove front juniper”. There is correspondence which shows the applicant agreed to remove the stump. There appears to have been sufficient time to complete this task but it was not completed. The respondent had this work done by another contractor. I find that the applicant’s claim should be reduced by $75 as a result.
The applicant failed to move back some wooden racks that had to be relocated to give access to a Bobcat machine.	The respondents say it was the applicant’s duty to move the wooden racks back to their original position, and they incurred approximately $64 to move them back. However, the Proposal states that the owner (respondents) shall grant “free access to the work areas”. If moving the racks was necessary to perform the work, the Proposal contemplated that this was the respondents’ responsibility. So too is moving them back.
The respondents had to dig several post holes which the applicant failed to dig.	The Proposal includes the digging of two post holes at a cost of $97.20. The respondents say they had to dig three post holes and that the applicant agreed to credit them the cost. The applicant has not provided any evidence specific to this point. I find that the applicant’s claim should be reduced by $97.20.
The respondents allege that the back yard was not properly graded.	The respondents say that deficient grading of the back yard meant excess concrete had to be poured for the back patio, creating $664.06 of additional expense. The respondents raised this issue with the applicant. The applicant’s workers did some additional grading, but according to the respondents the area was still not flat, resulting in the need for excess concrete. The respondents have provided a photograph showing the ground was clearly marked with orange paint that the area in question was to be flat and photographs indicating it was not fully flattened. Preparation of the road base was part of the Proposal. The applicant did not provide submissions on this issue. In these circumstances, I find that this is a proven deficiency. I find $664.06 should be deducted from the applicant’s claim.
The respondents allege that the applicant failed to properly clean the	The respondents say that the applicant should have to pay for the cost of power-washing the driveway. The Proposal merely says “assist with clean up” and allocates one hour to this task. The Proposal does not include power-washing. I find that the applicant

driveway.	did not have a contractual obligation to power-wash the driveway.
The respondents allege that rather than removing and dumping fill, the applicant pushed the fill into the garden beds.	The respondents say that when they raised this matter with the applicant the problem was partially fixed. However, the respondents allege that the problem was not remedied in relation to the "south planter". The Proposal contains references to fill removal. The respondents have provided the invoice of a new contractor which indicates they "removed and disposed of load of debris". What this is a reference to is unclear. The applicant did not specifically respond to this issue. While the evidence is somewhat unclear, on a balance of probabilities I find that there was deficient work and the applicant's claim should be reduced by $145 on account of this issue.
The respondents allege that the front lawn was ruined because Larix stored machinery on it and scraped it.	The respondents allege that the applicant "decimated" the front lawn by storing machinery on it and by scraping the lawn with an excavator. The original plan was for the lawn to be top dressed and over-seeded but the respondents say that in the end they had to retain another contractor to lay down sod. The respondents' photographs do not prove this allegation. There is no evidence of these concerns being raised with the applicant in correspondence. The Proposal does not contemplate laying down sod. In these circumstances, I do not find that the applicant breached the contract.
Insufficient soil depth for back lawn	The respondents allege that the applicant placed an insufficient depth of soil in the back yard to facilitate healthy lawn growth. The respondents acknowledge that the applicant used the amount of soil specified in the Proposal, but says that the Proposal called for too little in the circumstances. If the matter had been raised, the applicant would have been entitled to propose a change order including charges for additional soil and labour. The respondents obtained an opinion letter from another contractor in the industry who says that there is room for a soil "top-up" and that additional soil would go a long way to addressing the deficiency. I find that had the applicant been asked or required to do this, it would have been free to charge for the additional cost. Accordingly, the respondents have suffered no loss.
Lack of scarification of the sub-soil.	The respondents allege that the sub-soil was not scarified before the new soil was placed. The Proposal does not say that the applicant will scarify the soil. The expert retained by the respondents says that it is speculative whether lack of scarification will lead to drainage problems in the future but that this is possible. I do not find that this is a proven deficiency.
Soil contaminated with gravel.	The respondents' expert, Bricklok, attended the site and found a large quantity of gravel in the soil that was laid down for the new lawn. I accept that this is a deficiency. The problem is that there is no evidence as to the cost for addressing this particular issue. The

	invoice from the respondents' subsequent contractor, Garden City, does not break out the cost of addressing this issue in particular. At Garden City's rate of $60 per hour, I find that the cost of remedying the issue of gravel contamination would be $180.
Smaller trees than were planned for.	The respondents allege that hazelnut trees of the size they hoped for were not available. They instructed the applicant to acquire smaller trees and the applicant did so. This was accounted for in the applicant's final invoice. The Proposal indicated the total cost of labour and materials would be $1,080.54, while the final invoice showed the cost reduced to $323.83. An earlier invoice had the amount as $313.48. The change was not explained. I find accordingly that the sum owing to the applicant should be reduced by an additional amount of $10.35.
Total Adjustments to Claimant's Invoice	As a result of the above findings, I find that the respondents are entitled to a reduction in the fees claimed by the claimant in the amount of $1,171.61.

The Respondents' Allegation that the Applicant Damaged their Property

16. The respondents did not file a counterclaim. To the extent the respondents allege that the applicant's employees damaged their property, such as by damaging the driveway, a hose bib, a planter base, and contaminating the respondents' gravel drainage wells, I find that these issues are not before me in this dispute. I will therefore not further address the respondents' allegations in this respect.

Conclusion

17. As a result of the deficiencies I have accepted above, I find that the applicant's claim for unpaid fees must be reduced by the sum of $1,171.61. As a result, I find that the respondent Douglas Paterson owes the applicant $3,519.40. For the reasons given above I do not award the respondents money for the alleged damage to their property.

18. The applicant claims a 5% "surcharge" and "late fees" for late payment. There is no evidence before me that the parties agreed to a surcharge or fees in the event

of late payment. Instead, the applicant is entitled to pre-judgment interest in the amount of $26.55 pursuant to the *Court Order Interest Act* (the "COIA").

19. The applicant further claims $350 for "reimbursement of expenses". There is no evidence before me of these expenses. I dismiss this claim.

20. Under section 49 of the Act, and section 129 of the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As there was mixed success in this case, I decline to make an order that the respondents reimburse the applicant $175 for tribunal fees.

ORDERS

21. I order that Douglas Paterson pay to Larix Landscape Ltd. the sum of $3,545.95 within 14 days of the date of this order, broken down as follows:

    a. $3,519.40 owing under the contract; and

    b. $26.55 in pre-judgment interest under the COIA.

22. The applicant is entitled to post-judgment interest under the COIA.

23. I dismiss the applicant's dispute as against the respondent Meghan Paterson.

24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a

tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrew D. Gay, Q.C., Tribunal Member