



# Civil Resolution Tribunal

Date Issued: May 31, 2018

File: SC-2017-004851

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marcotte v. Linke et al*, 2018 BCCRT 221

**B E T W E E N :**

Carolyn Marcotte

**APPLICANT**

**A N D :**

Frank Linke and Matthew Linke

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. The applicant Carolyn Marcotte bought a property from the respondents Frank and Matthew Linke, with a completion date of July 28, 2017. The applicant wants \$5,000 for landscaping that the respondents failed to do by the completion date, as required by their contract. The parties are self-represented.

## **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. Neither party requested 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 the Act and tribunal rule 126, 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.

## **ISSUES**

6. The issues in this dispute are whether the respondent failed to complete the required landscaping by July 28, 2017, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

8. It is undisputed the parties' contract of sale included the following term, which is set out in the signed written contract before me:

The Seller agrees to complete the landscaping of the entire sloped area at the back of the property with shrubs and bark mulch by the completion date.

9. The respondents do not particularly dispute that they did not complete the landscaping as required by July 28, 2017, the completion date. I accept that it was not completed, given the evidence before me which includes the parties' dual agent realtor's statement and the respondents' landscaper Denbow's e-mail stating that it attended on August 1, 2017.
10. When Denbow arrived on August 1, 2017, the applicant was moving into the home and I accept her evidence that she could not accommodate access for the landscaper as her movers needed the parking space. Denbow then left. I note Denbow's quote to the respondents indicated it required sufficient parking for the bark mulch application, which I find is consistent with the applicant's explanation that she could not accommodate Denbow given she was moving that day. The applicant also says the respondent's landscaper did not intend to remove any weeds or deal with the landscaping as required under the sale contract. Based on all of the evidence before me, including Denbow's quote, I accept the applicant's evidence.
11. Given the above evidence which is essentially undisputed, I find the respondent did not complete the landscaping as required by the parties' contract. I note the respondents' suggestion the parties' dual agent realtor may somehow be responsible. That realtor is not a party to this dispute and the landscaping was a required term in the contract between the applicant and the respondents. I therefore find that the respondent is responsible to compensate the applicant for the contractually required landscaping.
12. The applicant submits she has received estimates of about \$7,000 to \$15,500 for proper completion of the landscaping work. She has reduced her claim to \$5,000,

the tribunal's monetary limit. In support, the applicant provided an estimate for \$6,990.00 for 300 4 centimetre pot shrubs and bark mulch. The applicant also provided another \$15,000 estimate that was a "rough calculation".

13. I note the respondents submit the cost of the "ECO blanket" was only \$1,316.20 plus tax. The ECO blanket was only one item to assist the application of the bark mulch. That cost is not representative of the entire landscaping required by the parties' contract. The respondents' own estimate totaled about \$2,000 for laying the bark mulch, and did not include any shrubs as required by the contract.
14. Based on the parties' contract, the photos in evidence, and the submissions, I find the applicant is entitled to an order for \$5,000 to complete the required landscaping. There is no evidence before me that the applicant has already had the landscaping done, and so I do not order any pre-judgment interest on that amount.
15. In accordance with the tribunal's rules, as the applicant was successful in this dispute I find she is entitled to reimbursement of the claimed \$175 in tribunal fees.

## **ORDERS**

16. Within 30 days of this decision, I order the respondents to pay the applicant a total of \$5,175, comprised of \$5,000 in compensation and \$175 in tribunal fees. The applicant is also entitled to post-judgment interest, as applicable.
17. 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.

18. 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.

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Shelley Lopez, Vice Chair