Civil Resolution Tribunal

Date Issued: July 12, 2018

File: SC-2017-005131

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Meridian Landscaping and Maintenance Ltd. v. The Owners, Strata Plan VR 46*, 2018 BCCRT 321

B E T W E E N :

Meridian Landscaping and Maintenance Ltd.

APPLICANT

A N D :

The Owners, Strata Plan VR 46

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a small claims dispute about payment for landscaping and irrigation services the applicant, Meridian Landscaping and Maintenance Ltd., provided to the respondent, The Owners, Strata Plan VR 46. The applicant is represented by

Maddie Holm-Porter, the applicant's office administrator. The respondent is represented by Lisa Shannon, a strata council member.

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: 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.

ISSUE

6. The issue in this dispute is to what extent, if any, the respondent owes the applicant for the claimed outstanding landscaping and irrigation invoices.

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 referenced the evidence and submissions as necessary to give context to my decision.

8. It is undisputed that the respondent's property is large with mature landscaping. The applicant says the parties had an implied service agreement for landscaping maintenance based on unsigned contracts for the years 2015 and 2016, which the applicant says continued until January 23, 2017 when the respondent terminated the landscaping services. Here, I agree with the applicant, for the reasons that follow below.

9. The applicant says it also provided irrigation services to the respondent in April 2017 based on a prior verbal agreement that was not terminated by the respondent's January 23, 2017 letter. I do not agree with the applicant in this respect, for reasons also discussed below.

10. The respondent's January 23, 2017 letter was addressed to the applicant, "to whom it may concern" and "re: termination of services" at the respondent's strata location. In the letter, the respondent terminated "your services" effective immediately, "including any and all work orders and maintenance agreements".

11. In this dispute, the applicant claims payment of $2,855.67 for landscaping and irrigation services the applicant says it provided. There are 2 invoices at issue: 1) the "January Grounds Maintenance" invoice #72515 for $2,480.62, which the applicant sent on January 15, 2017, and 2) the "April Irrigation Startup" invoice #16902 for $375.05, which the applicant sent on April 19, 2017, through the applicant's affiliate called Parklawn Sprinklers Ltd. (Parklawn).

12. The landscaping invoice #72515 simply describes "January 2017 – Grounds Maintenance", with a line item of $3,150, less a pro-rated deduction to reflect services for January 1 to 23, 2017, leaving the net balance of $2,480.62.

13. It is undisputed that in around March 2014, the parties entered into a service agreement for landscaping services. This contract for was 1 year and the total cost was to be paid in equal monthly installments. After the 1-year contract expired, the respondent acknowledges the parties continued their business relationship on a month to month basis. This is the heart of the issue for the January Grounds Maintenance invoice: was the applicant entitled to bill the respondent a "flat fee" for January 2017, or, did it need to bill only for specific work performed?

14. The applicant relies on section 1 of the parties' maintenance contract as the basis for its continued work through April 2017. The applicant says it continued in January 2017 as it had in 2015-2016, based on their unsigned November 30, 2016 contract that mirrored the 2014 contract. That unsigned contract clearly shows remuneration based on 12 equal monthly invoices for a list of various works described in the contract. In particular, the contract states the price is based on equal monthly payments to balance the increased hours required during the growing season versus the decreased hours necessary for winter maintenance.

15. The respondent denies that there was any implied contract moving forward, as the respondent did not agree to the applicant's terms. The respondent says that in order for a contract to be in place, the respondent would have needed to communicate their agreement to the applicant (citing *Resource Realty Ltd. Swiftsure Developments Ltd.*, 2005 BCSC 229 at para. 48). Instead, the respondent says that at all material times the "usual course of business" involved the applicant completing certain works, issuing that month's invoice and then the respondent would review the invoice and submit payment. Yet the respondent does not show that it ever disputed any "equal payment" invoice submitted by the applicant.

16. The applicant says the respondent's acquiescence amounted to an implied contract on the same terms as previous (citing *Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd.*, [1964] S.C.R. 614, and *Timberwolf Log Trading Ltd. v. Columbia National Investments Ltd*., 2011 BCSC 864 at para. 69). I agree, and

note the principle that acceptance can be implied by conduct is set out in later court decisions also: *Crosse Estate (Re)*, 2012 BCSC 26 and *Wong v. Jang*, 2015 BCSC 1540.

17. I also accept that the applicant's workers attended 3 times in January 2017, which is not disputed. I do not accept the respondent's unsupported submission that those workers did no work. I accept that "winter maintenance" occurred as described in the applicant's scope of work in the earlier contract. Under the parties' implied agreement, I find it is irrelevant that the winter work may have involved less hours than the spring or summer work.

18. In particular, it is undisputed the parties had a contract in 2014 based on equal monthly payments for various landscaping services. It is also undisputed that each month the respondent paid the applicant's bill in 2015 and 2016. I find the respondent had agreed to the applicant's landscaping services under the same terms as previous, namely an equal monthly payment as billed in invoice #72515. I find the respondent must pay the applicant the claimed $2,480.62.

19. I turn then to the Parklawn irrigation invoice in April 2017. The applicant says Parklawn uses an automatic service list which means that Parklawn attends each client's site twice a year to maintain, start-up and shut down their sprinkler system. The applicant says that clients who no longer want Parklawn's services are required to contact Parklawn's office administrator, Ms. Holm-Porter, via email or telephone. The applicant says the respondent never said it wanted to be removed from Parklawn's automatic service list. The applicant says the respondent's January 23, 2017 letter was addressed to the applicant and contained no reference to Parklawn's services.

20. I do not accept the applicant's position that because the applicant and Parklawn are 2 legally separate entities the respondent was required to notify Parklawn separately to terminate its services. Based on the evidence before me, all of the parties' dealings since 2014 were between each other, and not with Parklawn separately. I note the applicant's August 17, 2017 'demand letter' seeking payment

of both invoices was sent from the applicant, not Parklawn. Further, invoice #16902 is on the applicant's letterhead, not Parklawn's. The applicant acknowledges that Parklawn operated on a verbal agreement basis. The applicant's suggestion that the respondent was required to notify Parklawn directly in writing is unsupported by the evidence before me. I find the applicant should have reasonably treated the respondent's January 23, 2017 letter as also terminating Parklawn's irrigation services, or at least made enquiries about it. I find the applicant did not have the respondent's agreement to provide irrigation services in April 2017. I dismiss the applicant's claim for payment of the $375.05 April 2017 irrigation invoice.

21. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was substantially successful, I find it is entitled to reimbursement of its $125 in tribunal fees. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $2,480.62, from February 14, 2017, the date the invoice was due.

22. The respondent claims reimbursement of $935.35 as a dispute-related expense for re-keying locks in May 2017. I find that is not a dispute-related expense but rather a substantive claim for which the respondent would need to file a counterclaim. As no counterclaim is before me, I refuse to resolve this $935.35 claim.

ORDERS

23. Within 14 days of this decision, I order the respondent to pay the applicant a total of $2,636.63, broken down as follows:

    a. $2,480.62 as payment of the applicant's invoice #72515,

    b. $31.01 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

24. The applicant's claim for payment of its April 2017 irrigation invoice is dismissed. The applicant is entitled to post-judgment interest, as applicable.

25. I refuse to resolve the respondent's claim for $935.35 for re-keying locks, as no counterclaim was filed.

26. 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.

27. 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 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.

Shelley Lopez, Vice Chair