



Civil Resolution Tribunal

Date Issued: July 13, 2018

File: SC-2017-006034

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bentley v. Ziman doing business as Eucalyptus Tree Service, Landscaping & Design, 2018 BCCRT 328*

B E T W E E N :

PETER BENTLEY

APPLICANT

A N D :

Ivan Ziman doing business as Eucalyptus Tree Service, Landscaping & Design

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. The applicant, Peter Bentley, paid \$2000 to the respondent, Ivan Ziman, doing business as Eucalyptus Tree Service, Landscaping and Design, for landscaping work. The applicant is now asking that the money be repaid to him, claiming that

the work was never done. He is also asking for the respondent to pay him \$400 for the cost of removing stones and painting a fence, as well as other expenses connected with the landscaping work. The respondent says the work was done as requested. Both 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. The recent decision in *Yas v. Pope*, 2018 BCSC 282, confirms that oral hearings are not always necessary to deal with issues of credibility.
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. Is the respondent entitled to keep the \$2000 paid to him by the applicant?
 - b. Is the applicant entitled to compensation for the costs of stone removal, fence painting and other repairs?

EVIDENCE AND ANALYSIS

7. The applicant lives with S, who asked the respondent for a quote to do some landscaping work in her garden. The respondent had provided landscaping services to S in the past. On October 23, 2016 the respondent sent S an email with a quote for landscaping design and installation. Among the list of tasks was “to repair natural stone retaining wall in between you and your neighbour under new fences \$2,000. This wall would be structurally solid with good appeal to your neighbour.” The quote for all the work added up to \$7,700 plus GST. The respondent said the earliest possible date to start would be Wednesday October 26, 2016. S replied saying that she would pay \$5,000 cash for the work and told the respondent to start on Wednesday. The respondent said he would not accept her counter offer. No work was done at that time.
8. In April 2017, S contacted the respondent again asking that he go ahead with work on the retaining wall repair. She asked him to deal with the applicant as she was unwell. The applicant agreed to this. On April 13, 2017, the respondent and his crew came to S’s home (where the applicant also lived) and worked on the retaining wall. The respondent says that he did the work for which he had previously quoted a price of \$2,000. The applicant says the respondent did work which was less extensive than what had been requested in 2016. He says that instead of a full repair of the retaining wall, the respondent’s crew did a less

thorough repair which amounted to little more than attaching some boards to the wooden fence above the stone retaining wall. The parties both say that S was not satisfied with the results. The respondent says that S's expectations were not reasonable and that the applicant insisted on interfering with the work. The applicant says the respondent did a poor job which had to be fixed with help from the applicant. The respondent returned on April 14, 2017 and did more work on the wall.

9. The applicant says that the respondent agreed that there would be no charge for the work on the retaining wall, but asked for a deposit of \$2,000 to cover future expenses for the rest of the work that had been discussed in October 2016.
10. On April 14, 2017, the applicant wrote a cheque for \$2,000, payable to the respondent. The respondent cashed the cheque. The applicant says he paid the \$2,000 as a deposit for future expenses, and in particular for materials, not for the work which had already been done. The respondent says the \$2,000 was a deposit for the entire project, including the work done on April 13 and 14, 2107.
11. On April 16, 2017, S called the respondent to postpone further work. She sent him an email apologising for altering his work schedule on short notice because one of her friends had just died and she did not feel like interacting with anyone.
12. On April 25, 2017, the applicant emailed the respondent requesting a receipt for the \$2,000 the applicant had given to the respondent on April 14. In the email he said, "Could you please email me a receipt for \$2,000 (the deposit you requested for future expenses on our job) I gave you on April the 14. Please advise me what your bill is to fix the problem of the gravel/fence and subtract that from the deposit for now. Thanks a lot, see you when S is better."
13. The respondent provided the applicant with a receipt for \$2,000 dated April 20, 2017. That receipt described the payment as "deposit on landscaping."
14. On September 14, 2017, the respondent returned to the property to meet with S and the applicant to discuss further work. In particular, they discussed having an

additional concrete retaining wall put in. The respondent does not do concrete work so he suggested S hire a concrete company. On September 22, 2017, the applicant sent an email to the respondent asking that the \$2,000 payment be returned so he could put it towards the cost of the concrete work.

15. The respondent sent the applicant an invoice for \$2,000 plus GST dated September 30, 2017. It was in S's name and described the work as "Repair of natural stone retaining wall." The invoice also said. "This amount is deducted from deposit received."
16. At this point the relationship between the parties broke down. On October 3, 2017, S filed a complaint with the Better Business Bureau, saying that the \$2,000 payment had been a deposit for future materials and for work which was never done. She asked that the respondent return the \$2,000 to the applicant.
17. On October 4, 2017 the applicant emailed the respondent to ask for an accounting of how the amount of \$2,100 was arrived at. The respondent replied to say that three days' work had been done and that he charged "accordingly to contract." The applicant questioned the time spent and the basis for the charge, and demanded repayment of the \$2,000.
18. On October 6, 2017, the applicant sent the respondent an email saying the work done in April 2017 had been no good and claimed that the money he paid to the respondent had been taken under false pretences.
19. The applicant provided the tribunal with a number of photographs of the wall in question. Unfortunately the photographs, which shows the wall as it is now, do not show what it was like before the work, nor what it was like in April 2017 when the respondent was working on it. They do not help me determine whether the work was done as agreed. The strongest evidence of whether the work was satisfactory is that the applicant paid the \$2,000 to the respondent after the work had been done, in contemplation of more work being done in future. I find the applicant's

complaints about the quality of the work inconsistent with the obvious intention of S and the applicant to have the respondent do more work on the property.

20. Although S and the respondent did not agree on a price for all the work described in the respondent's emailed quote of October 2016, when S asked him to work on the retaining wall both she and the respondent were aware that the respondent had quoted a price of \$2,000 for this work. The applicant says he was not involved in the discussions between S and the respondent about the cost and scope of the landscaping work.
21. The central disagreement between the parties is about whether or not the respondent agreed that he would not charge for the work done in April 2017. I find that it is not reasonable to expect that he would agree to charge nothing for this work, and I find that he did not agree to waive his fee. This is consistent with the email sent by the applicant on April 25, 2017, telling the respondent to deduct the cost of the work from the deposit. I find the applicant understood that the work had not been done for free. He also expected that the respondent's fee would come out of the money he had paid to the respondent.
22. Both parties understood that the respondent's original quote for repairing the stone retaining wall was \$2,000. The work was done, and it appears that despite S's original dissatisfaction it was eventually done in a way that she found acceptable. I find that there is no basis for returning the \$2,000 paid by the applicant.
23. The applicant has also asked for an order that the respondent pay the applicant \$200 for painting the fence and having boards fixed, and another order that the respondent pay the applicant \$200 for loading stones into a truck and cleaning up truck ruts on the front grass of the property. The applicant did not provide any evidence of this work being done nor its cost. Nor did he explain why the respondent should have to pay these amounts to the applicant. There is no evidence that the respondent agreed to pay these costs or caused them through negligence. I dismiss these claims.

24. In accordance with the Act and the tribunal's rules, as the applicant was not successful in his dispute, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

25. I dismiss the applicant's dispute.

Mary Childs, Tribunal Member