Civil Resolution Tribunal

Date Issued: July 27, 2018

File: SC-2017-006102

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Advanced Backhoe LTD. v. The Owners, Strata Plan KAS 1079*, 2018 BCCRT 385

B E T W E E N :

Advanced Backhoe LTD.

APPLICANT

A N D :

The Owners, Strata Plan KAS 1079

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a small claims dispute about payment for landscaping services the applicant, Advanced Backhoe LTD., provided to the respondent, The Owners,

Strata Plan KAS 1079. The applicant is represented by Tara Holt. The respondent is represented by Irene Hirschmiller, 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 while there are inconsistencies in the evidence about the respondent's instructions given to the applicant, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282. I find an oral hearing is not required.

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 charges.

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. The parties signed a 2-year contract that concluded at the end of October 2017. In late August 2017, the respondent terminated the contract, effective September 30, 2017, under the contract's "30-day notice" clause. It is undisputed that the monthly contract fee was $3,412.50 per month, inclusive of GST.

9. The other relevant terms of the parties' contract follow (my bold emphasis added):

   a. "Maintain all trees and shrubs as needed **with one major pruning per year** with the exception of the cedars …". All deciduous trees (including Maples) "will be maintained to a height of approximately 15 feet".

   b. Under a heading "Other", "**Large danger trees or previously unmaintained trees that require removal or trimming would be charged extra for labour and equipment**". Beside this, there is a handwritten notation "**per council approval**", with the parties' representatives' initials.

   c. The applicant agreed to take direction from the strata council only, and in particular the strata council member designated as "landscape/snow removal director".

Monthly contract fee for September 2017

10. The first issue is whether the applicant reasonably completed his monthly contract for September 2017.

11. For this “contract fee” claim, the applicant claims $1,706.25, half of the $3,412.50 September 2017 contract fee, because on September 30, 2017 the respondent only paid $1,706.25 as a purported “final payment”.

12. The applicant says in September 2017 it continued to do his landscaping duties: mowing lawns, lawn edging and trimming, blowing grass and debris from patios and walkways, trimming bushes and trees as well as spraying spider mites. The respondent says it did not.

13. In particular, on September 21, 2017, the respondent emailed the applicant that it would only pay the applicant half the September 2017 contract price, unless the applicant completed by September 30, 2017 the respondent’s list of issues it felt were inadequately done and required attention. That list was: fixing an irrigation leak, a broken sprinkler, trimming of all trees away from vents in certain buildings, and re-doing the lawn mowing that was allegedly “messy” and unprofessional. The applicant says it did its best to complete that list, but it could not complete the tree trimming around vents in the 9-day period given. The applicant says at the time there was a drought and it needed to wait for rains and cooler weather, before it could use a power saw safely.

14. On October 10, 2017 the respondent sent the applicant a letter making general allegations of poor work that was an “eyesore” and that no pruning was done in September. The applicant in turn provided statements, undated and no indication of who wrote them, from strata residents who supported his efforts. On balance, I prefer the September 21, 2017 letter as the best evidence of all outstanding or unsatisfactory work, over the respondent’s October 10, 2017 letter that was sent after the respondent received the applicant’s final invoice.

15. I find that the applicant has proved he substantially completed all of his monthly contract duties for September 2017 and is entitled to full payment for that month. I accept the applicant’s evidence about the tree trimming around vents and that due to weather he was unable to do that job in the 9 days available. In any event, the respondent says there were only 5 trees at issue around vents, which does not

suggest it comprised a substantial portion of the monthly contract fee. Taking into account the respondent's payment of half the fee, I find the respondent must pay the applicant the remaining half, namely $1,706.25.

"Extras" – Maple tree pruning and spider mite spraying

16. The second issue is whether the applicant is entitled to payment for "extras" he says he did, Maple tree pruning and spider mite spraying, that were in addition to his monthly contract fee.

17. In particular, the applicant claims $1,653.75 as the "extras" that the respondent refused to pay under the October 1, 2017 invoice. Those "extras" were $1,500 for 60 hours of "arborist cutting" on 27 unmaintained over-height Maples and $75 for spraying for spider mites, plus GST.

18. The applicant submits that it had to "catch up" and do all maintenance duties for the 2 prior years as the previous landscaper had failed to keep up. The applicant says in 2016 he trimmed the Maple trees down to 15 feet in height, based on what Ms. Hirschmiller and the council members wanted. The applicant says Maples cannot be pruned in summer. The applicant says Ms. Hirschmiller asked him to do the "extras" work, but there is no supporting evidence of that approval before me.

19. The applicant details 60 hours of its arborist work to prune the over-height Maple trees, which he says Ms. Hirschmiller and another council member told him to do. I accept the applicant did the Maple tree pruning and spider mite spraying at some point in 2017.

20. The applicant says he had planned to spread out the "extra" charges for trimming Maples across several months, as he had done in the past, but when the respondent terminated his contract he had no choice but to invoice it all in his final invoice. I accept this evidence. However, that is not the end of the matter.

21. The respondent submits that Ms. Hirschmiller and another council member agreed with the applicant "that the work must be done but they did not say that the strata

would pay for the work". In particular, the respondent says the work should have been done as part of the applicant's regular duties in 2015, 2016, and 2017 – before the Maples grew to the point of being unmanageable.

22. The fundamental point is that under the parties' contract, the applicant needed the strata council's consent before billing for 'extras', and I find that there is insufficient evidence that the council's consent was given. The contract placed some emphasis on having the correct approval before the applicant proceeded with any 'extra' work, and I would have expected that such approval would have been documented. Yet, there is no such documentation before me. On balance, I find the applicant is not entitled to the claimed $1,653.75 for the "extras". I dismiss this claim.

23. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was partially successful, I find it is entitled to reimbursement of half its $175 in tribunal fees, namely $87.50. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $1,706.25, from October 1, 2017. The applicant is also entitled to reimbursement of $11.75, as a reasonable dispute-related expense.

ORDERS

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of $1,820.18, broken down as follows:

    a. $1,706.25 as final payment of the applicant's October 1, 2017 invoice #3120,

    b. $14.68 in pre-judgment interest under the COIA, and

    c. $87.50 in tribunal fees and $11.75 in dispute-related expenses.

25. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest under the COIA, as applicable.

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