



Civil Resolution Tribunal

Date Issued: August 10, 2018

File: SC-2017-007346

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *9305076 Canada Ltd. v. Skerry*, 2018 BCCRT 442

B E T W E E N :

9305076 Canada Ltd.

APPLICANT

A N D :

Deborah Skerry

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for lawn maintenance and related services the applicant, 9305076 Canada Ltd., provided to the respondent, Deborah Skerry. The applicant, which was doing business as Sprout Landscapes, is represented by Lukas Gawlik, a principal or employee. The respondent is self-represented.

JURISDICTION AND PROCEDURE

2. These are the tribunal's formal written reasons. 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 what the respondent ordered, I find I can fairly resolve the dispute based on the documentary evidence before me. I am mindful of the tribunal's mandate, which includes proportionality. 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.
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.

ISSUE

6. The issue in this dispute is whether the respondent owes the applicant for lawn maintenance services, which the respondent says were not provided as ordered.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicants bear 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. The applicant says the respondent called them based on a flyer it mailed out, which is undisputed. The applicant says at the time it did no other marketing, and that the flyer advertised a “spring package”. The applicant says the respondent insisted upon “organic” treatment, and in its order records identified “Organic Spring Package” as being the “flyer sale” service the applicant bought on April 10, 2017. Based on the applicant’s business records, the “organic spring package” included: 1) deep-core aeration (organic), 2) moss spray (organic), and 3) organic fertilization.
9. While the applicant’s flyer is not in evidence before me, I accept the applicant’s evidence in this respect, bearing in mind that the tribunal’s mandate includes proportionality. While I acknowledge the respondent’s concern that Mr. Gawlik was not the employee she spoke to on the phone, I do not consider it appropriate to order witness statements from the applicant’s employees, given that I do not expect them to independently recall a telephone conversation with a customer from over a year ago. As noted above, the tribunal has flexibility in accepting evidence, and on the whole I find Mr. Gawlik’s submissions and evidence to be reliable.
10. The respondent says she ordered only power raking over the phone, and nothing else. She says when the applicant’s worker attended, she questioned the machine he brought and asked about the power raking when the worker started spraying. She says she questioned the worker again about the timing of the power raking, when he started aerating her lawn. The respondent says the applicant’s worker said the power raking was done in phases and then later said he did not know when it would be done.

11. The applicant says the respondent must be confused in her recollection of details. The applicant's business record shows a reminder email was sent on April 19, 2017, with the service starting on April 20th. Yet, the respondent says the worker just showed up, without notice. The applicant also sent an email reminder on April 24, 2017, for the aeration portion of the service. The applicant notes that it does not use a tractor trailer to deliver equipment, contrary to the respondent's submission. Further, the applicant says it does not spray and aerate on the same day, and here, as reference above the spray service part of the package was done on April 20, 2017 followed by aeration 4 days later. I find the applicant's evidence supports its position in this respect.
12. Most significantly, the applicant says that while it offers power raking, it was never asked to power rake. The applicant says it would have had no reason not to provide power raking if requested, given that service has a higher revenue. The applicant notes that its records would not note "organic" as the order, if only power raking had been ordered. I agree, in that the reference to "organic" likely refers to the spray and aeration services.
13. The respondent alleges that she called the applicant a couple of times on the day the worker was there, about when the power raking would occur, and was told "soon". The respondent also says the applicant called her "hundreds of times" about collecting its claimed \$217.93 invoice. I do not find this evidence credible, as I find it unlikely the applicant would call the respondent that many times over a relatively low invoice. This leads me to place more weight on the applicant's evidence overall, which is supported by its business records. The respondent did not provide any evidence, other than her submissions. On balance, I find the applicant has proved its claim that it provided the services that the respondent requested.
14. I turn then to the applicant's invoice #3537, dated April 27, 2017 and due on that date. The invoice is for \$217.93, including GST. The "organic spring package" was

\$179, plus GST, and the invoice adds \$28.55 as “late payment” interest charge. The invoice notes late payments attract interest at 24% per annum.

15. I find the applicant is entitled to the \$179 plus \$8.95 GST, for a total of \$187.95. There is no evidence before me that the applicant gave its invoice to the respondent before April 27, 2017, which was the first notice that 24% late payment interest would apply. I therefore do not allow the \$28.55 plus GST portion of that invoice.
16. In summary, I find the applicant is entitled to payment of \$187.95, plus \$58.09 as 24% annual interest from April 27, 2017. In accordance with the Act and the tribunal’s rules, as the applicant was successful I find it is entitled to reimbursement of the \$125 paid for tribunal fees.

ORDERS

17. Within 30 days, I order the respondent to pay the applicant a total of \$371.04, broken down as follows:
 - a. \$187.95 as payment of the applicant’s invoice #3537,
 - b. \$58.09 in pre-judgment interest at a 24% annual rate, and
 - c. \$125 in tribunal fees.
18. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
19. 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.

20. 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