



Civil Resolution Tribunal

Date Issued: September 24, 2018

File: SC-2017-005890 and SC-2017-006597

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marzstone Contracting Ltd. v. Sukvir (Suki) Thind*, 2018 BCCRT 551

B E T W E E N :

Marzstone Contracting Ltd.

APPLICANT

A N D :

Sukvir (Suki) Thind

RESPONDENT

A N D :

Marzstone Contracting Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payment for residential landscaping work.
2. The applicant, and respondent by counterclaim, Marzstone Contracting Ltd. (Marzstone) says the respondent failed to pay the full balance owed for work performed. Marzstone seeks an order for payment of \$4,650.15.
3. The respondent, Sukvir (Suki) Thind, says the applicant inflated its quoted prices, double-billed for some work, and also billed for unauthorized work. The respondent says that upon review of the applicant's invoices, he realized he actually overpaid for the work performed. He seeks a refund of \$4,999.99.
4. Marzstone is represented by its principal, Robert Marziale. Mr. Thind is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Is Marzstone entitled to payment of \$4,650.15 for work performed?
 - b. Is Mr. Thind entitled to a refund of \$4,999?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means that Marzstone bears the burden of proving its claim for \$4,650.15, and Mr. Thind bears the burden of proving he is entitled to a \$4,999.99 refund. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Marzstone performed driveway construction and landscape work at Mr. Thind's residential property. The work was extensive. The driveway work was conducted first, and was covered in a separate estimate from the landscaping.
12. Mr. Marziale says Mr. Thind failed to pay the full amount owed for the landscaping work, as set out in his invoice 2808. That invoice, dated July 25, 2017, was in the amount of \$60,958.23. Mr. Thind paid part of the invoice, but disputed other parts.

After a meeting between the parties to discuss the invoice, Mr. Marziale reduced the amount owed by \$5,750. He says that after applying this reduction and Mr. Thind's previous payments, Mr. Thind owes \$4,650.15, the amount Marzstone claims in this dispute.

13. Mr. Thind disagrees. He says he does not owe anything, and actually overpaid \$7,202.50 for the work performed. In his counterclaim, he sees a refund of \$4,999.99. He abandoned the remainder of the alleged overpayment, in order to fit within the tribunal's small claims limit of \$5,000.
14. As stated above, Marzstone must prove it is entitled to payment of the \$4,650.15 owed under its July 25, 2017 invoice. I find that Marzstone has not proven its claim for \$4,650.15, for the reasons that follow.
15. Mr. Marziale provided a copy of the invoice 2808. He also provided a copy of the October 3, 2016 estimate, which sets out the prices for each of the jobs performed. The total estimated price was \$54,347.78. The also estimate specifies that certain tasks were not part of the estimate, such as subgrading of site, garden beds, and lawn areas.
16. I find the agreement between the parties is set out in the estimate. The evidence also indicates that the parties made subsequent verbal agreements on some issues, such as to cancel the hot tub installation, that amounted to change orders.
17. The final invoiced price was \$79,031.65. As noted previously, Marzstone later subtracted \$5,750 from the amount owed, but did not provide any itemization showing how that discount corresponded to the invoiced tasks.
18. The final invoice does not closely resemble the estimate. There are a number of items on the final invoice that were not included in the estimate. These include:
 - Supply and installation of additional soil
 - Site preparation

- Fence panel install
 - Street cleanup
 - Supply and install flagstone pathway with landing with sand base and joints sanded
 - Supply and install 4 peaked pillar caps with removal of electrical wiring
 - Supply and install 18 x 18 natural slabs at AC pad
 - Prep and form for small concrete pour
 - Supply and install drain pipe for downspout behind wall at end of residence
19. It appears that some of this work was agreed to by the parties after the estimate date. However, there are no records such as updated estimates, email or text correspondence, or interim invoices to establish what was agreed to, and at what price. Mr. Thind says some of this work was overcharged, and that some of it was double-billed as it was part of other billed-for jobs.
20. In his response to Mr. Thind's counterclaim, Mr. Marziale admits that the level of communication could have been improved when additional items were requested, and the expense for those items could have been communicated in a more clear manner.
21. The evidence provided by Mr. Marziale, such as supply invoices and labour timesheets, shows that he did a great deal of work on the landscaping project. However, I find that the invoice he relies on to support his claim for \$4,650.15 is extremely unclear, in that it does not correspond to the written estimate, and does not set out which labour, machine time, or supplies are associated with each task.
22. I again note that the burden of proving the claim for \$4,650.15 lies with Mr. Marziale. I find that the evidence before me does not support that claim. Mr. Marziale admits that the parties did not agree in advance on the price of at least

some of the work, such as the flagstone path. Based on the evidence provided by Mr. Marziale, which is essentially the estimate, the invoice listing various jobs performed, and invoices for labour and supplies, I cannot conclude that Mr. Thind agreed to all of the work performed, the supplies ordered, and the prices charged. The invoice and supporting documentation are simply not sufficiently clear or specific to justify the total charges.

23. For these reasons, I find that Marzstone is not entitled to payment of \$4,650.15. I dismiss this claim.

Counterclaim

24. In his counterclaim, Mr. Thind seeks a refund of \$4,999.99, as he says he overpaid for work performed by Marzstone.
25. I find that Mr. Thind has not met the burden of proving this counterclaim. While Mr. Thind disputes many of the amounts set out in the invoices, he agrees that the Marzstone completed significant landscaping work. While he did not agree in writing to many of the tasks set out on the invoice, he was aware that they were being performed as he was on the jobsite at various times. Thus, it is not fair to pay nothing for that work because Marzstone's billing is unclear.
26. It is clear that the parties failed to reach an agreement about the specific list of tasks to be performed, and what would be charged for each task. While Marzstone probably should have created updated estimates and interim invoices throughout the project, Mr. Thind has an obligation to pay for work he knew was being performed.
27. I find that Mr. Thind has not established he paid \$4,999.99 for work that Marzstone did not perform. While Mr. Thind has identified various invoiced tasks that, in his view, justify a refund, I do not accept that the amount owed for each of those tasks is zero, as asserted by Mr. Thind. In making this finding, I note that the parties did not have a clear agreement about what would be paid for each task, and Mr. Thind

did not ask for price confirmations before agreeing to or requesting further work that was not in the original estimate. I also place some weight on the fact that Mr. Thind chose to pay a specific portion of the invoice upon receipt, and did not claim any overpayment until after Marzstone filed its dispute. I also note that some of the items disputed by Mr. Thind, such as \$1,200 labour for pisa step construction, and subgrading of the lawn, were specifically set out as extra charges in the October 3, 2016 estimate.

28. For these reasons, I find that Mr. Thind is not entitled to any refund. His counterclaim is dismissed.
29. In accordance with the Act and the tribunal's rules, as neither party was successful I do not order any reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

30. Marzstone's claim, and its dispute is dismissed. Mr. Thind's counterclaim dispute is dismissed.

Kate Campbell, Tribunal Member