



Civil Resolution Tribunal

Date Issued: December 4, 2018

File: SC-2018-000847

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dick v. Valley geotechnical engineering services LTD*, 2018 BCCRT 809

B E T W E E N :

Rodney Dick

APPLICANT

A N D :

Valley geotechnical engineering services LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Karen Mok

INTRODUCTION

1. The applicant, Rodney Dick, hired the respondent, Valley geotechnical engineering services LTD, to provide engineering services for the applicant's proposed residential development located in Coquitlam, BC.

2. The applicant claims that he retained the respondent to provide a report upgrading two previous geotechnical reports to meet the 2012 building code requirements. He says the respondent failed to perform the work he hired it to do and seeks the return of the \$4,000.00 he paid to it. The respondent argues that it performed the scope of work that the parties had agreed to.
3. The applicant is self-represented. The respondent is represented by Patrick Chiu, an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

- 8. The issues in this dispute are:
 - a. Did the respondent complete the work it was contracted to do?
 - b. If not, is the applicant entitled to the return of the \$4,000.00 he paid for the respondent's services?

EVIDENCE AND ANALYSIS

- 9. I have commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
- 10. In 2004, the applicant retained Jacques Whitford and Associates Limited (JW) to complete a geotechnical slope assessment and siltation control system for a proposed residential development located in Coquitlam, BC. The applicant had proposed to unload the existing slope by gravel extraction. In a report dated June 17, 2004, JW recommended that excavation slopes in dense sand and gravel soil be cut no steeper than 1.5H:1V (horizontal:vertical) (the JW report).
- 11. In a subsequent September 23, 2004 letter to the applicant, JW said that the proposed slope re-configuration, as shown in the JW report, and the gravel extraction should be done so as to result in final slope gradients of at least 1.5H:1V or flatter. The slope factors of safety would have to be re-evaluated based on subsequent subsurface investigation (the JW letter).
- 12. In a report dated March 29, 1985, to the Ministry of Lands, Parks and Housing, Land Development Branch, in the Westwood Plateau area, Thurber Consultants

Ltd. (TCL) recommended an overall final slope of 1.7H:1V as the steepest permissible slope pit operators should attempt to achieve in pit development where seepage and surface erosion are minor. In areas of unfavourable drainage, TCL observed that any part of the slope could be stabilized at 2H:1V (the TCL report).

13. It is undisputed that in late February or early March 2013, the applicant met with one of the respondent's geotechnical engineers, Patrick Chiu, at a site visit and again at the respondent's offices. In a March 8, 2013 email to the applicant, Mr. Chiu confirmed their discussions about the scope of the respondent's services, which was to review: the JW report, JW letter, TCL report, 2011 site grading plans prepared by Beesley Engineering and excavation procedures prepared by the applicant, and to "prepare a letter to comment on the grading design (by Beesley Engineering) and excavation procedures (by Rod Dick), based on the technical data and recommendations in [the JW report, JW letter and TCL report]".
14. The March 8, 2013 email also sets out that the parties agreed that the respondent would invoice on an hourly basis and a retainer of \$4,000 plus tax was required.
15. The respondent issued a report dated March 18, 2013. In the report, the respondent:
 - a. noted that the grading plans by Beesley Engineering proposed re-grading the site to 2.01H:1V;
 - b. stated that the JW report and TCL report both indicated permanent slopes no steeper than 2H:1V would be safe;
 - c. concurred with the previous recommendation in the JW report that unloading the slopes by re-grading would resulting higher factors of safety for the slopes;
 - d. observed that the grading plans followed the recommendations in the JW report and the TCL report in terms of safe slope angle; and

- e. noted that the JW report and TCL report were based on outdated building codes such that additional analysis should be carried out to confirm that current standards were being met.
16. The applicant says that he retained the respondent to upgrade the existing JW and TCL recommendations for a 1.5H:1V slope to conform to the 2012 building code requirements, and that the respondent failed to do this. As indicated in his March 15 and 16, 2014 emails to Mr. Chiu, the applicant argues that the respondent was not asked to comment on the 2H:1V slope or on the site grading plans.
 17. The respondent argues that the scope of its services did not include upgrading any existing reports to meet the 2012 building code requirements. It further argues that it would be unethical and unprofessional for it to prepare a report as dictated by a client, which is what the applicant was demanding the respondent do.
 18. I find that the respondent prepared its report in accordance with the scope of services as proposed in its March 8, 2013 email. The respondent's report summarizes the documents that were reviewed and commented on those documents, in keeping with the scope of services. There is nothing in the email proposal that contemplates updating the JW report or TCL report to meet the 2012 building code requirements.
 19. There is also no evidence before me to indicate that the applicant disputed the respondent's proposed scope of services prior to March 18, 2013, the date the report was prepared. I find this leads to the conclusion that the applicant did not take issue with the scope of services but rather, with the content and outcome of the respondent's report with which he did not agree.
 20. I find that the applicant has failed to prove his claim that the respondent failed to complete the work it was contracted to do and his claim is dismissed. As such, under section 49 of the Act, and tribunal rules, I find that the applicant is not entitled to reimbursement of tribunal fees.

ORDERS

21. I dismiss the applicant's claims and this dispute.

Karen Mok, Tribunal Member