



# Civil Resolution Tribunal

Date Issued: February 13, 2019

File: SC-2018-002310

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Janet Bolton dba Bolton's Landscape Maintenance v. Christiansen*,  
2019 BCCRT 176

B E T W E E N :

JANET BOLTON doing business as Bolton's Landscape Maintenance

**APPLICANT**

A N D :

Troy Christiansen

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about payment for landscaping services. The applicant, JANET BOLTON doing business as Bolton's Landscape Maintenance, wants the

respondent, Troy Christiansen, to pay for the landscape installation she did at his residence in June 2017. The applicant claims \$4,832.72, plus GST. It is undisputed that the respondent has paid nothing.

2. The respondent says the applicant has disregarded their contract for a fixed price of \$1,075 plus the cost of plants. Instead, the respondent says the applicant has charged an “absurd hourly” rate and added a large markup on the plants she agreed to provide at cost. The respondent submits that given the time he has spent dealing with this matter he owes the applicant nothing.
3. The parties are each self-represented. For the reasons that follow, I allow the applicant’s claims in part.

## **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 118 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. In some respects, this dispute amounts to a “she said, he said” scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v.*

*Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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: 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.
8. I note the tribunal's small claims monetary jurisdiction is \$5,000. The applicant claims \$4,832.72 plus GST, which totals \$5,074.36. Apart from tribunal fees, *Court Order Interest Act* (COIA) interest, and dispute-related expenses, I treat the excess over \$5,000 as abandoned.

## **ISSUE**

9. The issue in this dispute is to what extent is the applicant entitled to payment of her \$4,832.72 invoice for landscaping services.

## **EVIDENCE AND ANALYSIS**

10. 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.
11. The applicant's final August 16, 2017 invoice is for a total of \$4,832.72, with the tax removed. This is the amount claimed in this dispute.

12. I turn to the relevant chronology. On June 19, 2017, the applicant emailed the respondent and gave an estimate of “approximately \$1,075 plus taxes”. That email described the job as follows:
  - a. zone 1 (garden with bark mulch at front of house),
  - b. zone 4 (right side of driveway where plants will be installed),
  - c. zone 7 (kidney shaped garden at back of house), and
  - d. zone 8 (triangular repair of turf/install of turf in that area).
13. The June 19 estimate expressly included installation of landscape fabric and bark mulch in zones 1,4, and 7, and turf in zone 8, plus removal and disposal of all debris. I find the June 19, 2017 email formed the parties’ original contract.
14. Subject to any agreed amendments, as discussed below, I further find the parties’ contract price of “approximately \$1,075 plus taxes” meant that the applicant’s invoice needed to be reasonably close to that figure, unless otherwise agreed. More on this below.
15. On June 21, 2017, the respondent agreed that he wanted “some new plants” in the front bed. The respondent wrote that he thought he needed something tall “between the Karl foresters” and that he would like to use the yuccas if possible.
16. The applicant’s submission is essentially that the respondent expressly told her verbally that there was no budget and “no limit” to this added planting work, which also expanded into irrigation, because he wanted to sell his house. I find the applicant has not proved this is what occurred, in part because the applicant’s only documentation of this is her own notes, rather than emails with the respondent as they had earlier communicated. In particular, I find that the applicant’s notes to herself are not reliable evidence of what the parties agreed, and also find that the notes’ wording suggest they were written at least in part for this dispute, rather than contemporaneously.

17. In short, given the value of the \$1,075 estimate that was documented and given the applicant's phrasing of "some new plants", I find it unlikely the respondent would have given the applicant such a free hand with spending.
18. The applicant submitted an invoice from Art Knapp that, after the applicant's correction to lower the quantity of landscape rolls from 2 to 1, has a total of \$1,715.47. Some of this relates to soil, fertilizer, bone meal, irrigation line and parts, and bark mulch. All of those things I find were included in the original contract, namely the \$1,075 plus tax estimate. The portion for the purchase of the plants only totals \$884.53, with 2 plants being the most expensive at \$149.99 each.
19. The respondent challenges the validity of this Art Knapp invoice, suggesting it is a forgery. I do not accept that allegation, noting the high burden on the person alleging misrepresentation which in this instance is the respondent. I find spending \$884.53 on plants was excessive in the circumstances, noting also the respondent says his own on-site estimate after looking at price tags was around \$500. However, the respondent has the benefit of the plants.
20. On balance, on a judgment basis I allow an additional \$650 for the cost of the plants plus \$200 in labour for their installation. I say this in part because the square footage is not particularly large and based on the photos the installation did not appear to be particularly complicated.
21. Having addressed the value of the 'added plants', I turn then back to the parties' original contract, which I find was for about \$1,075 plus tax.
22. The applicant's time sheets, which she says are for herself and 3 crew, total 49.5 hours, on June 10, 18 and 25. Yet, the applicant's original invoice stated that there were a total of 41 "man hours" plus 3 truck hauls. There is no explanation before me as to the discrepancy. I find the applicant's time records are not particularly relevant. I say this because I find the contract was for about \$1,075 plus tax and because most of the items billed for were expressly included as part of that original estimate.

23. In particular, the applicant's original handwritten invoice, which the applicant dates as June 28 or 29, 2017, totals \$5,074.71. For the most part, this details the same tasks as the June 19 estimate. There is no price breakdown. However, the applicant also wrote on it that the original estimate did not include installation of irrigation lines or any plant installation. There is no explanation before me as to why the \$1,075 estimate would expand so significantly to over \$5,000 for roughly the same job. In the applicant's "final adjusted" invoice dated August 16, 2017, the applicant says she would not charge for the irrigation lines as these had been missed in the first invoice.
24. The applicant then provided a July 9, 2017 invoice for a total of \$6,268.25, reduced to \$5,074.71 because the first invoice neglected to include the irrigation materials and labour. The applicant wrote that the reduction reflected a difference of \$1,193.54. This invoice had a breakdown: \$3,485 for labour (41 hours), \$1,237.10 for "plants/materials/irrigation", \$422.60 for "landscape fabric/pins", \$126.25 for bark mulch, and \$150 for hauling debris. Ye, bark mulch, landscape fabric, and hauling were all included in the \$1,075 estimate for the entire job, save for the 'added plants'. Further, the difference between \$1,237.10 and \$1,193.54 is \$43.56. However, as noted above the plants portion of the Art Knapp invoice was on its face much more than this. I have no explanation before me as to the discrepancy. As noted above, the applicant's final August 16, 2017 invoice is for the amount claimed in this dispute, \$4,832.72. All of this suggests to me the applicant's records are not reliable. I find this is further support for my conclusion that there was no agreement about all of the extra charges, and that the original contract and the 'added plants', as I have described it above, apply.
25. On a judgment basis, I find the applicant is entitled to \$1,250 for the original contract, inclusive of GST. In addition, for the added plants and their installation, I have allowed \$850, inclusive of tax. This brings the applicant's total award to \$2,100.

26. While I acknowledge the respondent's frustration with the time spent dealing with this matter, I find that is not a legitimate basis to conclude he owes the applicant nothing. The respondent received significant landscaping services that were of value. He should pay for them, according to the parties' agreement. Further, I see no reason to deviate from the tribunal's usual practice of not awarding anything for "time spent", given the tribunal's rules state legal fees are not recoverable except in extraordinary cases. This is not an extraordinary case.
27. The applicant is entitled to pre-judgment interest on the \$2,100 under the *Court Order Interest Act* (COIA), from August 31, 2017. The applicant was partially successful in this dispute. In accordance with the Act and the tribunal's rules I find she is entitled to reimbursement of half the \$175 she paid in tribunal fees, which equals \$87.50.

## **ORDERS**

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,225.24, broken down as follows:
- a. \$2,100 in debt,
  - b. \$37.74 in pre-judgment interest under the COIA, and
  - c. \$87.50 in tribunal fees.
29. The applicant is entitled to post-judgment interest as applicable.
30. 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.

31. 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 it is an approved consent resolution order, or, 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.

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Shelley Lopez, Vice Chair