



Civil Resolution Tribunal

Date Issued: May 27, 2019

File: SC-2018-006364

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Silverback Treeworks Ltd. v. STRATUS TECHNOLOGY CAPITAL CORP.*,
2019 BCCRT 636

B E T W E E N :

Silverback Treeworks Ltd.

APPLICANT

A N D :

STRATUS TECHNOLOGY CAPITAL CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for arborist services.
2. The applicant, Silverback Treeworks Ltd., says the respondent, STRATUS TECHNOLOGY CAPITAL CORP., failed to pay for arborist work performed in

January and March 2018. The applicant says the work was performed at a West Vancouver property owned by Vikram Kumar, the respondent's principal, at Mr. Kumar's request. The applicant seeks payment of \$2,728.69.

3. The respondent denies the applicant's claim. Mr. Kumar says the respondent provided a quote for tree removal work for a fixed price of \$8,400 plus GST. Mr. Kumar says that a month later, without prior approval or authorization, the applicant sent a second invoice for \$2,728.
4. The applicant is represented by Andrew Hooper, a principal or employee. The respondent is represented by Mr. Kumar.

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 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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 9.3(2), 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

9. The issue in this dispute is whether the respondent must pay the applicant \$2,728.69 for arborist 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 addressed the evidence and arguments to the extent necessary to explain my decision.
11. The parties agree that the applicant did tree removal work on the respondent's property in January and March 2018.
12. The documents in evidence show that the applicant provided the respondent with a written estimate on December 4, 2017. The estimate indicated a cost of \$8,400 plus GST for the removal of 17 trees. The estimate set out a detailed scope of work, including the location, size, and type of each tree to be removed, as well as the nature of the removal (remove, retain low stump less than 1 meters high, dispose of branches, tops, and stems). The invoice says a permit from the District of West Vancouver (District) was required for the removal of 1 large cedar (permit tree), and that permit costs were not included in the estimate.
13. Mr. Kumar emailed the applicant on December 5, 2017. He agreed to the estimate and instructed that the work proceed.

14. The applicant's January 19, 2018 invoice (invoice 1) indicates that the majority of the tree removal work had been performed. Mr. Kumar does not dispute this. The applicant says, and the invoice confirms, that Mr. Kumar paid the invoiced total of \$7,900 plus GST on January 22, 2018.
15. Invoice 1 says that 17 trees plus "several smaller cedar trees" along the property line had been removed. At the bottom on the invoice, it says, "1 permit size cedar tree has been retained on the property." The invoice does not explain this further, but the applicant submits that the District had not yet issued the permit, so invoice 1 did not include the remaining portion of the \$8,400 estimate, which was \$500 plus GST. Mr. Kumar does not dispute this.
16. Mr. Hooper says that after the District issued the permit they were waiting for, he telephoned Mr. Kumar to schedule the removal of the permit tree. Mr. Hopper says that during this conversation, Mr. Kumar requested that the applicant do additional work. He says they discussed a land survey that had recently been completed. Mr. Hooper says the survey showed additional trees on Mr. Kumar's property that they had previously thought were on neighbouring properties, so these additional trees had not been included in the original estimate.
17. Mr. Hooper says that during the telephone conversation, Mr. Kumar asked the applicant to do the following, which was outside the original scope of work:
 - a. Remove 2 conifer trees along the western property line
 - b. Remove 3 smaller conifer trees along the southern property line, on the road side
18. Mr. Hooper admits the parties did not discuss the specific cost for this additional work, and there was no second estimate, change order, or written contract about the additional work.

19. Mr. Kumar denies that this conversation occurred. He says he never requested any additional work. He also denies that the applicant did any work beyond the scope of work set out in the original estimate.
20. The parties agree that the applicant came back to Mr. Kumar's property in March 2018 and removed the permit-requiring tree. Mr. Kumar agrees that he owes the applicant \$500 plus GST for this work, but says he did not pay because the applicant did not send him an accurate invoice.
21. I find, based on the evidence before me, that the applicant has not met the burden of proving its claim for \$2,728.69. Specifically, while Mr. Hooper says the applicant did additional work that was not in the original estimate, he provided no proof to corroborate this assertion. He provided no photos, time logs, dumping receipts, witness statements, or other evidence to confirm that more trees were removed than were listed in the written estimate. Also, the applicant has not provided any confirmation that the disputed telephone conversation occurred, such as a date, time, notes taken during the call, or confirming email.
22. I accept that some conversation must have occurred, since the applicant returned to Mr. Kumar's property to remove the permit tree. However, the applicant bears the burden of proving that Mr. Kumar asked for additional trees to be removed, and agreed to a price for this work. As noted earlier, the applicant must also prove that the work took place. I find the applicant has not proven these facts. For that reason, I dismiss the applicant's claim for payment beyond the original estimate.
23. Since Mr. Kumar admits to owing \$500 plus GST for removal of the permit tree, I order him to pay it. This equals \$560. I dismiss the applicant's remaining claim for \$2,168.69.
24. The applicant's invoice says that payment is due upon receipt, and interest of 1.5% per month accrues thereafter. However, since I have found the applicant was not entitled to the invoiced amount of \$2,728.69, and did not send Mr. Kumar an invoice for \$500 plus GST as he requested, I find the applicant is not entitled to contractual

interest. Rather, I find the applicant is entitled to pre-judgment interest on the \$560 at the rate available under the *Court Order Interest Act* (COIA), from April 1, 2018. This equals \$10.10.

25. As the applicant was largely unsuccessful in this dispute. However, since Mr. Kumar admitted owing \$560 and did not pay because he disagreed with the invoice, in accordance with the Act and the tribunal's rules I find the applicant is entitled to reimbursement of \$125 in tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

26. I order that within 30 days of this decision, the respondent pay the applicant a total of \$695.10, broken down as follows:

- a. \$560 in debt,
- b. \$10.10 in pre-judgment interest under the COIA, and
- c. \$125 as reimbursement of tribunal fees and dispute-related expenses.

27. The applicant is entitled to post-judgment interest under the COIA, as applicable.

28. I dismiss the applicant's remaining claims.

29. 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.

30. 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.

Kate Campbell, Tribunal Member