



Civil Resolution Tribunal

Date Issued: July 10, 2019

File: SC-2018-009097

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hadikin v. JNP Contracting Ltd*, 2019 BCCRT 834

B E T W E E N :

JNP CONTRACTING LTD

APPLICANT

A N D :

Michael Hadikin

RESPONDENT

A N D :

JNP CONTRACTING LTD

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a contract for excavation, trucking, and septic services.
2. The applicant, JNP Contracting Ltd (JNP), says it performed services for the respondent, Michael Hadikin, and that Mr. Hadikin stopped paying the invoices. JNP requests \$3,080.02 for unpaid invoices for work it performed as well as \$778.00 for the engineering services of a third party for the septic design. JNP is represented by Mr. Boulin. Mr. Hadikin is representing himself.
3. Mr. Hadikin says he did not know about the invoice for the third party who worked on the septic system until December 8, 2018. Mr. Hadikin says the engineering invoice is not for his property as he never received a copy of the septic design and neither has the permit office.
4. Mr. Hadikin also says that JNP did not perform the work requested and therefore he is not responsible for the unpaid invoices. He says he is entitled to reimbursement in excess of \$5,000.00 for the amount he paid on two invoices (#114 and #115) for work performed in August and September 2017 when JNP made errors in clearing the road and building a pad. Mr. Hadikin says he paid all invoices but the last one because the amount owed exceeded the costs of the errors that JNP made.
5. Mr. Hadikin says JNP verbally promised that it would correct errors in its work and make up for it when the job was near completion by taking costs off the final amount owed on the “back end.”
6. Mr. Hadikin also counterclaims for \$5,000.00 as compensation for lost trees, loss of privacy, and compensation for loss of time being able to occupy the property.
7. In its response to the counterclaim, JNP says it kept Mr. Hadikin informed every step of the way as to how the work was proceeding and he never indicated that he was unhappy with the work. It denies ever promising to make up costs for errors at the completion of the project. It says Mr. Hadikin changed his mind partway through the project regarding what he wanted and this is why the road it was building had to

be realigned. It denies that it should be responsible for Mr. Hadkin's counterclaim and, in response to Mr. Hadikin's counterclaim for lost trees, it says there was no merchantable timber on Mr. Hadikin's property.

JURISDICTION AND PROCEDURE

8. 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*. 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.
9. 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 "he said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
10. 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.
11. Under tribunal rule 9.3(2), 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

12. The issues in this dispute are

- a. Is Mr. Hadikin responsible for the outstanding invoices and if so, what is the appropriate remedy?
- b. Did JNP fail to complete the work contracted for and make errors which amounted to Mr. Hadikin suffering a loss of trees, privacy, and time being able to occupy the property and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil dispute such as this, the applicant must prove its claim on a balance of probabilities. Similarly, Mr. Hadikin bears the burden of proof regarding his counterclaim.

14. I will not refer to all the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

15. Neither party disputes that there was a verbal contract between Mr. Hadikin and JNP.

16. Mr. Hadikin says that he requested a road be put in that would follow the north side of the property line with a 20' width of trees between the road and the property line. He says he asked for the road to run roughly 600 to 650 feet up the property, then have a 136' x 136' pad cleared at the end of it.

17. Mr. Hadikin says that JNP began excavation on August 25, 2017. Mr. Hadikin provided a recording of a telephone call dated August 26, 2017 in which he asks

JNP if he can add more work and change the original plan. In the call, he says that once JNP got up to the second area it was going to clear he wants them to continue on up to the far left corner. Mr. Hadikin says he only wants the road to go to the clearing and just wants JNP to rough in to the corner, not put in a road. Although he says he will probably change his mind later and end up telling JNP to do the road to the corner. Mr. Hadikin says that he saw the site as he had just been up there and was happy with the work that had been performed.

18. The parties exchanged emails on August 28 and 29, 2017 in which JNP asked Mr. Hadikin to draw the area he wanted levelled and anything else he required. Mr. Hadikin responded back and attached a revised drawing showing a circled area where he wanted a clearing with the road bordering the north and east sides and the dirt road on the west side.
19. Mr. Hadikin says that when he returned to view the property on September 12, 2017 he noticed the road was crossing the property diagonally and that the pad was in the wrong spot. He discussed this with JNP and it said it would correct the errors and make it up on the “back end” when the job was nearing completion. Mr. Hadikin says that the road was corrected and a new pad was cleared but it still was in the wrong place. He says that due to all the errors he lost multiple trees that did not need to be torn down.
20. Mr. Hadikin has provided a drawing which he says shows that the road did not travel in a straight line but veered upward and shows that the pad ended up being in the wrong place. Mr. Hadikin provided a video put up on YouTube on March 13, 2019 which shows an aerial view of the property.
21. JNP says that Mr. Hadikin asked him to cut a rough trail to the top left corner of the property on a diagonal so he could put in the pad at the top left corner. However, there were deep creek draws and no room to make a pad in the corner the way Mr. Hadikin wanted. JNP also says that Mr. Hadikin was told during the building of the road that the many large creek draws and spring water flows limited the placement of the road, culverts and pads. JNP says that Mr. Hadikin was updated every couple

of days by phone and email and had many opportunities to ask that changes be made every step of the way.

22. In His submissions, Mr. Hadikin repeatedly points to the drawing he sent to JNP on August 28, 2017 as the work he contracted for. He states that any deviation from this was an error. JNP says that as the job progressed Mr. Hadikin requested changes and some changes were required due to the property's features.
23. Mr. Hadikin says invoice # 115 shows a cost incurred for realigning the road, and that this proves that the error was made. The invoice states "realigning road, parallel to approximately 20 ft property line." JNP says that it installed a standard 14 foot wide road but, halfway through road construction, Mr. Hadikin changed his mind and wanted a 16 foot wide road and the top corner widened to accommodate his double wide trailer. It is unclear why Mr. Hadikin would pay this cost if, as he says, it was to fix an error JNP made.
24. Also, Mr. Hadikin continued to employ JNP through the completion of the job in July 2018. I find that this means the contract was still in place and does not suggest that Mr. Hadikin was unhappy with JNP's work. Again, Mr. Hadikin paid the invoices for August and September 2017 and did not request any discount for work improperly performed at that time.
25. Almost a year later Mr. Hadikin says he should get that money back and that there was a promise of some sort of reimbursement on the "back end." I find it unpersuasive that Mr. Hadikin would wait until almost a year later to be reimbursed for work he claims was done incorrectly. Mr. Hadikin has also not provided any evidence that he told JNP he was unhappy with the work completed. He has provided a recording of a phone call, and email exchanges, but none expressly states that he was unhappy with the work performed or that an agreement was made that he would get a discount or reimbursement when the work was completed. Therefore, I find, on the balance of probabilities, that Mr. Hadikin is not entitled to be reimbursed for money he paid for work done in August and September 2017.

26. The invoices that were not completely paid, and are at issue in this dispute, are for work that Mr. Hadikin did not have a problem with and which JNP performed from April 2018 until July 2018. Therefore, I find that Mr. Hadikin is obligated to pay these invoices.
27. JNP provided an invoice dated May 1, 2018 for \$4,019.27 (invoice #121) and July 23, 2018 for \$3,060.75 (invoice #129). JNP is only requesting \$19.27 for the May 1, 2018 invoice as Mr. Hadikin paid him \$4,000.00 in June 2018 towards this invoice. Mr. Hadikin says that he paid all JNP's invoices except the last one but did not provide any evidence establishing this. Because it is a nominal amount that JNP is requesting for the May 2018 invoice, and there is no proof that the entirety has been paid, I accept JNP's claim for \$19.27 on invoice #121. Therefore, I find that JNP is entitled to \$3,080.02 for the total amount outstanding on the invoices.
28. I find that JNP has not proved, on the balance of probabilities, that there was a contract in place regarding the services of an engineering third party to work on the septic system. There is no evidence of this contract and no invoice has been provided showing the cost of engineering work. I dismiss this amount on JNP's claim.
29. Mr. Hadikin says he did not agree to pay 4.5% interest. JNP has not provided any evidence that a 4.5% interest was agreed upon and none of the invoices show a contractual interest rate. Therefore, I find the evidence does not establish that a 4.5% contractual interest rate was agreed upon. JNP is entitled to interest according to the *Court Order Interest Act (COIA)* as set out in my order below.
30. I note that invoice #121 is dated May 1, 2018 but states it is not due until 4 weeks later. For this reason, I find that interest is payable starting on May 29, 2018. Invoice #129 is dated July 23, 2018 but is silent on when it is due. To be consistent, I have calculated the date when interest charges begin as 4 weeks later as well, which is August 20, 2018.

31. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As JNP was successful in its claim it is entitled to have its tribunal fees of \$175.00 reimbursed by Mr. Hadikin.
32. JNP also asked to be reimbursed for 3 days' lost wages for the telephone mediations involved in this dispute. I first note that JNP has not provided details supporting the time or amount claimed. Also, just as the tribunal does not usually allow parties to recover legal fees, it does not usually award compensation for a party's time spent trying to resolve the dispute. I see no reason to deviate from that practice here. JNP's claim for time spent is dismissed.

The Counterclaim

33. Mr. Hadikin claims that he lost trees due to JNP's error. He has not indicated how many trees, or of what value. And, as set out above, I also find that Mr. Hadikin has not established that JNP made an error. I therefore find Mr. Hadikin has not proved this claim, on the balance of probabilities, and I dismiss it.
34. Mr. Hadikin also claims that he suffered a loss of privacy due to the loss of extra trees, but the evidence does not support this. I have watched the aerial video and it does not reveal where trees were cut down which led to a loss of privacy. Also, Mr. Hadikin did not detail his claim for a loss of enjoyment. I find that Mr. Hadikin has not proved his counterclaim on a balance of probabilities.
35. As Mr. Hadikin was unsuccessful in his counterclaim he is not entitled to have his tribunal fees or expenses reimbursed.
36. I dismiss Mr. Hadikin's counterclaim.

ORDER

37. Within 30 days of this decision, I order Mr. Hadikin to pay JNP a total of \$3,304.26, broken down as follows:

- a. \$3,080.02 for work performed,
 - b. \$0.36 in pre-judgement interest under the COIA for the \$19.27 outstanding on invoice #121,
 - c. \$48.88 in pre-judgement interest under the COIA for the \$3,060.75 outstanding from invoice #129,
 - d. \$175.00 as reimbursement for tribunal fees.
38. JNP is also entitled to post-judgement interest under the COIA. JNP's remaining claims are dismissed.
39. 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.
40. 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 passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia

Kathleen Mell, Tribunal Member

