



Civil Resolution Tribunal

Date Issued: July 31, 2019

File: SC-2018-009277

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Good View Enterprises Ltd. v. Wang*, 2019 BCCRT 924

B E T W E E N :

Good View Enterprises Ltd.

APPLICANT

A N D :

Hua Wang

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an unpaid debt. The applicant, Good View Enterprises Ltd, says that in August 2018 it provided landscaping services and materials to the respondent, Hua Wang, for which it has not been paid. The applicant requests \$2,142.00 for the services and materials. It also seeks \$300.00 for time and

expenses in dealing with this dispute. The applicant is represented by Rickie Wang whose legal name is Ming Wen Wang.

2. The respondent says that the applicant did not provide the amount of landscaping materials promised. He disputes that he should pay the \$2,142.00 requested. The respondent also says that he is not the proper party to be sued as he is only the manager of the company. The respondent represents himself.
3. Originally the applicant filed this dispute naming itself as “Rickie Wang (Doing Business As Good View Enterprises Ltd.). On my inquiry, the applicant stated that it was applying as a company and not as an individual. A corporate records search showed that Good View Enterprises Ltd. is registered as a company with Ming Wen Wang as the Director. The respondent made submissions but they dealt with whether he should be sued as an individual or a company and did not dispute that the applicant could sue as a company. Therefore, I have amended the style of cause above to show the applicant as Good View Enterprises Ltd.

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*. 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 “it 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.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the Act: 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.

ISSUE

8. The issue in this dispute is whether the personal respondent owes the applicant for landscaping services and materials.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities.
10. I will not refer to all of 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.
11. The applicant provided a breakdown of the \$2,142.00 balance owing. It says it worked on two sites for the respondent. It says that for the first site the cost of material, delivery, and labour was \$1,200.00. As for the second site, the applicant says the cost of the materials, delivery, and labour was \$540.00. It notes that it also

had to lay anti-weed cloth and this cost \$300.00 for a subtotal of \$2,040.00 plus \$102.00 GST. This totals the claim amount of \$2,142.00.

12. There is no dispute that the parties had a verbal exchange that resulted in a contract. However, the respondent states that he is not the correct party to sue as he is only the manager of the “company.” All text messages in evidence indicate that the work to be performed was discussed between the applicant and the respondent on the respondent’s cell phone. The applicant did not have dealings with anyone other than the respondent. Based on the evidence before me, I find there was no indication that a larger company was involved. Also, in his submissions in this dispute, the respondent still has not identified the company by name. I find that the respondent contracted on his own behalf with the applicant.
13. Under the contract, the applicant was to provide lava rocks and landscaping to a residential property. In the Dispute Notice the applicant said that it was supposed to provide 5 to 6 yards of lava rocks. The applicant said it bought 5 yards of lava rock and then used another yard from another construction site. The applicant has provided a receipt for the 5 yards and a picture of its employee delivering the lava rock. It has also provided a witness statement from the employee saying that he delivered 6 yards of lava rock and spread it on the ground outside the terrace. The employee confirmed 5 yards were purchased and 1 yard picked up from another construction site.
14. The applicant also submitted translated text messages in which it says it told the respondent it delivered 6 yards of lava rock and provided pictures. The applicant says that the translated response was “thx, very good.” The respondent does not dispute that the applicant’s translation is accurate. The applicant says that after the project was completed the respondent did not pay but asked it to provide river rock and landscaping to a second property. The respondent said it would pay for both projects when the second one was completed.
15. The respondent provided a receipt dated August 31, 2018 for 3 yards of river stones costing \$94.50 purchased for the second project.

16. In December 2018, long after the landscaping was done for the first job, the respondent requested that the applicant go to the first site and measure the height of the lava rock. The applicant submitted a copy of the pictures that it forwarded to the respondent.
17. The respondent has presented very little evidence. He relies on the pictures from December 2018 to say that the applicant did not deliver the correct amount of lava stone in August 2018. The respondent also has sent information on how to calculate a yard, circle area, and cubic yard.
18. The applicant says that by December 2018 the rocks had been trampled and crushed by people walking on them and being exposed to the weather. It says the December 2018 pictures are not representative of what was delivered to the site four months earlier. I accept the applicant's submission that the pictures taken in December 2018 are not indicative of what the site looked like in August 2018. I prefer the evidence contained in the August text messages which showed the site when the landscaping was first completed.
19. I am persuaded by the receipts, witness statement, and pictures from August 2018 that the applicant provided the services of landscaping with 6 yards of lava rock. The fact that the respondent then hired the applicant to complete another job supports my finding, as I find the respondent would not likely have hired the applicant for another project if he was not satisfied by the applicant's work provided at the first site. I am also satisfied that the applicant provided 3 yards of river stone and labour to the respondent for the second site. Therefore, I find the respondent is responsible for the \$2,142.00 owing.
20. 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. Because the applicant was successful on this dispute it is entitled to have its \$125.00 tribunal fee reimbursed by the respondent. He is also entitled to \$11.31 for the cost of the registered mail to deliver the respondent the Dispute Notice.

21. The respondent requests time spent on this dispute be reimbursed. Since the respondent was not successful he is not entitled to have his time reimbursed. Also, just as the tribunal only permits parties to recover legal fees in small claims disputes when it is an extraordinary case, it does not usually award compensation for a party's time spent trying to resolve the dispute.
22. The applicant requests \$300.00 for its loss of working time, money spent on gas, and hiring someone to negotiate with the respondent. I first note that the applicant has not provided details supporting the time or amount claimed or any information regarding who was hired to help negotiate the dispute. And, as indicated above, the tribunal does not usually award compensation for time spent trying to resolve the dispute. I see no reason to deviate from that practice here as this is not an extraordinary case. The applicant's claim for time spent and expenses in trying to negotiate the dispute is dismissed.
23. The applicant is entitled to pre-judgement interest in the \$2,142.00 under the *Court Order Interest Act* (COIA) from the date of completion of the second project which the evidence indicates was on August 31, 2018.

ORDER

24. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$2,313.04, broken down as follows:
 - a. \$2,142.00 for the materials and labour provided,
 - b. \$34.73 in pre-judgement interest under the COIA,
 - c. \$136.31, comprised of \$125.00 for tribunal fees and \$11.31 for reasonable expenses.
25. The applicant is entitled to post-judgement interest under the COIA.
26. 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.

27. 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