Civil Resolution Tribunal

Date Issued: January 2, 2020

File: SC-2019-005731

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Macher Equipment Ltd. v. Becelaere*, 2020 BCCRT 2

BETWEEN:

MACHER EQUIPMENT LTD.

APPLICANT

AND:

SYLVIA BECELAERE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about payment for a driveway upgrade.

2. The applicant, Macher Equipment Ltd., says it performed a driveway upgrade for the respondent, Sylvia Becelaere, and that it was not paid in full. The applicant seeks $3,317.97, the amount it says remains outstanding. The respondent says the

work was not done to a satisfactory standard, and denies owing the applicant any more money.

3. The applicant is represented by Mark Lee, whom I infer is its principal or owner. The respondent is self-represented.

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* (CRTA). 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an 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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the CRTA:

   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 respondent owes $3,317.97 for an unpaid driveway upgrade, or whether the applicant's work was substandard, such that the respondent does not need to pay the outstanding amount.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

10. It is undisputed that in November 2017, the applicant provided the respondent with a quote for a driveway upgrade at her home. The quote was for "$3,580 +/- 5%" plus applicable taxes. The scope of work included removal of the current driveway, front lawn area and existing pavers, installation of 3 loads of road base aggregate, compaction of the road base, return of removed pavers, and installation of "border strip" from the street to storm drain.

11. For reasons unknown to me, the respondent did not proceed with the work at that time. In approximately June 2019, the respondent contacted the applicant to have the work done. The respondent says that on the morning of July 8, 2019, the first

day of the project, the applicant provided her with a printed copy of the November 2017 quote saying that would be the price. It is undisputed that the November 2017 quote was still used as the basis for the parties' agreement.

12. The applicant says the respondent added to the scope of the project once it started, and says these extras were added to her final bill. On July 15, 2019, upon completion of the project, the applicant provided a bill for $5,097.47, which included $3,759 for the original quote ($3,580 plus 5%), $325 for a load of screenings (fine aggregate material), $336 for 64 feet of lumber, $275 for delivery, installation and prep of lumber, $85 for the lumber's hardware and fastenings, and $317.47 in taxes.

13. On July 16, 2019, the respondent e-transferred the applicant $2,000. In an email the same day, the respondent advised the applicant she would only pay a total of $4,467.47, and would have the $2,467.47 balance paid by September 15. Specifically, the respondent refused to pay the $325 for screenings (because she says the applicant knew about the screenings she wanted before the start of the project, and therefore they were considered included in the initial $3,759 amount) and $275 for delivery, installation and prep of lumber (because she says the cost was not discussed before install). There is no indication the respondent made any payments other than the initial $2,000 on July 16, 2019.

14. The applicant continued to demand payment in full, and refused to allow a payment plan. Subsequently, on July 20, 2019, the respondent advised the applicant she was withholding payment until she got a second opinion on whether the job was done correctly.

15. In this dispute, the respondent says the wrong final surface aggregate was used, the lumber was installed sloppily, and that excavated materials were not cleaned up from her and her neighbour's yard. She also says the applicant pressured her into completing the job when she did not have the money to pay for it. The respondent did not file a counterclaim. However, I find that her claim that the applicant's work was substandard, if proven, may entitle her to a set off against the applicant's claims.

16. In support of her position, the respondent provided a few pictures of what she says show the applicant's sloppy work. Apart from the photos showing remaining excavated material and gravel that was not removed from the site, I do not agree the photos indicate the applicant's work was substandard. As for the excavated materials that were not cleaned up, the applicant acknowledged it did not do so because it was waiting for final payment of its invoice.

17. The respondent also provided a July 29, 2019 quote from a third party, DC. The respondent says DC's quote is to correct the work improperly done by the applicant. I note that DC's quote includes excavation of the driveway and disposal of driveway material, 3 truckloads of material out and then in, clean up, and rental of an excavator and/or bobcat. DC's quote totals $1,900 plus tax. While the respondent sought this quote from DC, it is not clear what the respondent asked DC for and, in any event, the quote is not critical of the applicant's work. I find DC's quote does not support the respondent's claim that the applicant's work was substandard.

18. I also note that although the respondent alleges she complained to the applicant about various deficiencies while the project was underway, she has not provided any contemporaneous evidence to support her claim that she was unhappy with the work before it was completed. Additionally, the applicant denies the respondent made any complaints, and in fact said the respondent was very complimentary about its work. On balance, I find the applicant's work was completed to a satisfactory standard and it is entitled to payment for the work done. I also find the applicant acted reasonably when it refused to remove the excavated material until the remainder of its invoice was paid, either by September 15 as said by the respondent, or some other date. Given the above, I find the respondent is not entitled to a set off for substandard work.

19. I turn then to the amount of the invoice. As noted above, the applicant seeks $3,317.47 that it says remains outstanding. However, the July 15, 2019 invoice is for $5,097.47, minus the $2,000 already paid, for a total outstanding of $3,097.47. No specific explanation was provided for the difference between the invoice and the

claimed amount, but I infer from the parties' submissions it was for supply and delivery of wood chips, which is discussed below.

20. The respondent says that she should not have to pay extra for the screenings ($325) because the parties agreed the screenings would be included in the quote. Text messages in evidence show that on July 7, 2019, the day before the project started, the respondent requested the same specific screenings as her neighbour had. The November 2017 quote did not include the screenings as requested by the respondent, and therefore I find the extra cost for the screenings on the July 15, 2019 invoice was reasonable and not initially contemplated in the parties' agreement.

21. Additionally, it is undisputed that during the project the respondent asked the applicant to frame in various areas of the driveway and yard with 6 x 6 timbers. In her July 16, 2019 email, the respondent acknowledged she would pay for the timbers, but refused to pay the $275 for the delivery, installation and preparation of said lumber. In the circumstances, I find the $275 was a direct cost related to the respondent's request for additional work, and I find the applicant is entitled to payment for it. Although the respondent says she was not informed of the cost before the lumber was supplied and installed, I find the she asked for the work to be done and the amount was reasonably charged to her.

22. As for the wood chips, the respondent says the applicant offered them to her for free and that she would not have accepted them if she was going to be charged for them. The applicant did not provide any evidence about the wood chips, other than stating the total amount claimed included "dumping/delivery of wood chips & sale of 3 cubic yards of wood chips" and that the amount ($220.50) was not included in the original quote.

23. Generally speaking, under the law of gifts, the burden of proof is on the person alleging the item is a gift (see: *Pecore v. Pecore*, 2017 SCC 17). The respondent provided a statement from her neighbour, LH, who stated they also hired the applicant to upgrade their driveway, and was also given free wood chips. LH said

the applicant told them they would not have to pay for the wood chips because the wood chips were also given to the respondent for free. The applicant did not respond to the respondent's express evidence about the wood chips being a gift, including the evidence of LH. Based on the above, I find the weight of the evidence favours that the wood chips were a gift. This is consistent with the fact that although the wood chips were not included on the original November 2017 quote, the applicant also did not add them to its final July 16, 2019 invoice for payment.

24. On balance, I find the applicant has proven it is entitled to the entirety of the outstanding balance of its July 15, 2019 invoice, $3,097.47. The *Court Order Interest Act* applies to the tribunal. I find the applicant is entitlement to pre-judgment interest under the *Court Order Interest Act* from July 15, 2019. This totals $28.46.

25. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was successful, I find that it is entitled to reimbursement of the $175 it paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

26. Within 30 days of the date of this decision, I order the respondent, Sylvia Becelaere, to pay the applicant, Macher Equipment Ltd., a total of $3,300.93, broken down as follows:

    a. $3,097.47 in debt,

    b. $28.46 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

27. The applicant is also entitled to post-judgment interest, as applicable.

28. Under section 48 of the CRTA, 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.

29. Under section 58.1 of the CRTA, 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.

Andrea Ritchie, Vice Chair