



Civil Resolution Tribunal

Date Issued: March 6, 2020

File: SC-2019-008410

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hayes v. Starnes*, 2020 BCCRT 265

B E T W E E N :

CALLUM HAYES

APPLICANT

A N D :

JOHNATHAN AKA JONATHAN STARNES

RESPONDENT

A N D :

CALLUM HAYES

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about payment for residential construction work.

2. The applicant Callum Hayes says he completed construction work for the respondent Johnathan aka Jonathan Starnes but was not paid.
3. Mr. Hayes says he widened the existing driveway, removed vegetation, extended the existing storm drain, installed a drainage culvert, provided gravel and trucking services, back filled a pit and finished the driveway grade with a 3/4-inch driveway chip. Mr. Hayes says the work was not deficient.
4. Mr. Hayes claims \$2,052 in for the unpaid work.
5. Mr. Starnes counterclaims, saying Mr. Hayes did not complete the work satisfactorily. Among other things, Mr. Starnes says Mr. Hayes used the wrong size of culvert, dumped fill over the home's drain pipe and added too much material to the site. Mr. Starnes says that Mr. Hayes quoted him \$1,000 for the work but charged much more. Mr. Starnes claims that Mr. Hayes should pay him \$2,250.00 for repair work to fix defects in the job.
6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. whether Mr. Hayes completed the site work satisfactorily, so that Mr. Starnes is required to pay the \$2,052 claimed, and
 - b. on the counterclaim, whether Mr. Starnes has proven defects in Mr. Hayes' work that require Mr. Hayes to pay Mr. Starnes \$2,250 to fund repairs.

EVIDENCE AND ANALYSIS

12. In this civil claim, Mr. Hayes bears the burden of proof on a balance of probabilities. Mr. Starnes bears this same burden in the counterclaim. Mr. Starnes also bears the burden of proving any deficiencies that he alleges in Mr. Hayes' construction work: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at para 124.
13. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
14. In March 2019, Mr. Hayes completed storm damage clean up and site preparation in the backyard of Mr. Starnes' property.
15. On August 8, 2019, Mr. Starnes contacted Mr. Hayes to ask about options for landscape material in the backyard. Mr. Hayes attended at the property.

16. On August 8, 2019, Mr. Starnes hired Mr. Hayes to complete a driveway widening and culvert extension in the front yard.
17. Mr. Starnes says Mr. Hayes provided a fixed price quote of \$1,000 for the whole driveway widening and culvert extension job. Mr. Hayes says he and Mr. Starnes first discussed a shorter 10-foot longer culver extension. Mr. Hayes says that, for that scope of work, he estimated \$1,000 for materials costs. Mr. Hayes says the agreement was that labour and machine time would be charged separately.
18. Based on the text messages filed in evidence by Mr. Hayes, I find that the estimate was for about \$1,000 of materials with labour and machine time charged separately. I say this because the texts include an inquiry from Mr. Starnes to itemize the machine time component of the invoice.
19. Text messages exchanged between the parties at the time prove that they ultimately agreed to have Mr. Hayes extend the existing culvert with a 20-foot long 16-inch diameter corrugated steel pipe spiral culvert.
20. I prefer Mr. Hayes' evidence about the scope of work, because it is more consistent with the parties' text messages exchanged at the time the work was discussed than is Mr. Starnes' evidence.
21. I find that the parties verbally agreed to have Mr. Hayes complete the following:
 - a. widening existing driveway,
 - b. remove vegetation,
 - c. extend existing storm drain,
 - d. deliver and install a 20-foot-long drainage culvert,
 - e. provide gravel and trucking services,
 - f. back fill with pit run, and
 - g. finish grade with 3/4 inch driveway chip.

22. Mr. Hayes completed the work in late August 2019. By text, he requested payment of \$2,055, broken down as \$243 for $\frac{3}{4}$ crush road base, \$600 for 6 hours of excavator time, \$405 for 4.25 hours of trucking time, and \$35 for 1 hour of hand labour, \$552 for 6 meters of 16-inch culvert, \$100 for move in, \$70 for a 12 yard pit run and \$50 for culvert delivery. Mr. Hayes did not send a formal invoice. I find that his text request for payment is the subject of the claim for \$2,052. No one explained the \$3 discrepancy and I have determined the claim based on the \$2,052 that appears in the Dispute Notice and in his arguments. It is undisputed, and I find, that Mr. Starnes did not pay Mr. Hayes.
23. Based on the site 'before and after' photographs and the time sheet filed in evidence by Mr. Hayes, I find that he completed the scope of work agreed to by the parties.
24. The next question is whether Mr. Starnes has proven, on a balance of probabilities, that the work was deficient. For the reasons given below I find he has not proven his counterclaim, except on one minor point.
25. Mr. Starnes' texts to Mr. Hayes initially said that he would hold back "a few hundred dollars" from payment, due to excess material brought into the front yard, and for having covered the snow with fill instead of waiting for it to melt. However, as the text conversation between the parties escalated, Mr. Starnes decided not to pay the \$2,052.00 at all. I find that these text messages prove that Mr. Starnes did not have extensive concerns about deficiencies, but later claimed to have larger concerns to reduce payment owing to Mr. Hayes further.
26. In the counterclaim, Mr. Starnes lists the following alleged deficiencies in Mr. Hayes' work:
 - a. supplied a 16-inch culvert when an 18-inch culvert was needed, and installed the culvert improperly,
 - b. inappropriate choice of fill material,

- c. dumped fill on house's drain pipe, causing a slump at "the 45" in the line that holds about 5 gallons of water before it starts to come out an open end,
- d. added too much material and went past 8 feet wide on the driveway, despite being instructed to stop,
- e. placing fill on top of snow, creating sink areas,
- f. material will not grow grass or compact down, so needs to be removed and re-filled,
- g. dump truck left oil stains on Mr. Starnes' driveway, and
- h. used inappropriate tools to saw down a Douglas fir, resulting in loss of "hundreds of dollars in milled lumber".

27. I will now consider the evidence for each alleged deficiency.

Culvert

28. Mr. Starnes says Mr. Hayes used the wrong diameter of culvert. Specifically, Mr. Starnes says Mr. Hayes brought a 16-inch culvert with a collar for an 18-inch culvert. Mr. Starnes says Mr. Hayes then proceeded to use his excavator to "jam it into the 18 inch as it was bent." Mr. Starnes says this has left a 2-inch space.
29. On August 25, 2019, Mr. Hayes texted Mr. Starnes asking him to confirm that the culvert should be 16 inches in diameter and 20 inches long. Mr. Starnes confirmed that these were the dimensions of the culvert he wanted to have installed.
30. Based on the photographs filed in evidence, I find that Mr. Hayes installed a 16-inch diameter culvert. Mr. Hayes agrees that this was installed inside the existing culvert, which was damaged. I find the photographs and text messages consistent with Mr. Hayes' version of events, and therefore find the culvert was installed as agreed between the parties.

31. Mr. Starnes also says that the culvert was incorrectly installed, leaving at “least 5 or 6 inches of water.” Mr. Starnes says this caused the home’s drain pipe to be “completely submerged in water.”
32. I do not agree with Mr. Starnes’ submission. I find he has not proven that Mr. Hayes installed the culvert incorrectly.
33. First, Mr. Starnes did not provide a photograph showing 5 or 6 inches of water submerging his home’s drain pipe.
34. Second, because culvert installation is technical and beyond common understanding, I would need an expert opinion to find that Mr. Hayes failed to meet a reasonable standard in installing it: *Bergen v. Guliker*, 2015 BCCA 283 at paragraphs 124-131. Mr. Starnes did not provide an expert opinion that Mr. Hayes installed the culvert below the reasonable standard for such an installation.
35. Mr. Starnes filed in evidence a 51-page Installation Manual for Corrugated Steel Pipe, Pipe Arches and Structural Plate, prepared by an organization called the National Corrugated Steel Pipe Association (installation manual). Mr. Starnes submits that I ought to find that Mr. Hayes failed to meet a reasonable standard for culvert installation, by applying the information in the installation manual.
36. In the absence of expert opinion explaining how the installation manual applies to the culvert installation in this dispute, I find I am unable to rely upon the manual itself as admissible expert evidence. Mr. Starnes also did not explain who authored the manual, nor when it was produced. For these reasons, the manual does not meet the tribunal requirements for expert evidence.
37. I find that Mr. Starnes has not proven, on a balance of probabilities, that there was any deficiency in Mr. Hayes’ culvert installation.
38. My finding is also consistent with the ‘after’ photographs of the culvert installation showing a tidy, new culvert.

Fill Material and Placement

39. Mr. Starnes says Mr. Hayes chose inappropriate fill material, because the fill would not pack down, and does not grow grass.
40. I find that the fill material provided was approved by Mr. Starnes. The fact that Mr. Starnes may have to add additional material does not mean that the underlying fill was defective. Mr. Hayes only charged Mr. Starnes for fill that was added to the site.
41. Mr. Starnes also says Mr. Hayes improperly placed fill on top of snow, creating sink areas on the site. Based on the text message evidence, I find that Mr. Hayes waited until the snow melted before adding the fill.
42. While there may have been some settling of fill material due to frost, as Mr. Hayes admits in a text, the photographs do not show any significant sink areas or defects. As well, Mr. Starnes did not prove how much the fill material was expected to compact nor that it failed to compact to that degree.
43. Mr. Starnes also says Mr. Hayes caused a “slump in the line at the 45” by improper placement of the fill. Neither party precisely explained what this meant, but the text messages reveal that Mr. Starnes told Mr. Hayes that the 45 was “perfect”, which I find disproves Mr. Starnes’ allegation of a deficiency about the driveway slope. I find that the fill material and its placement was appropriate for the scope of work agreed between the parties.
44. Mr. Starnes filed a photograph that he says proves that after one year, no grass will grow on the fill. I find that the photograph shows grass growing over the site, except where items are sitting on the ground or there is evidence of traffic. Contrary to Mr. Starnes’ submission, grass appears to be growing on the fill.
45. As well, there was no evidence that Mr. Hayes could or did guarantee that grass would grow on the site within a certain period. Given that vegetation growth is influenced by many factors outside the parties’ control, I make no finding against

Mr. Hayes based on the allegation that grass is not growing as well or quickly as Mr. Starnes wishes.

46. Mr. Starnes also says that Mr. Hayes improperly dumped fill on the house's drain pipe. However, Mr. Starnes did not prove this, through photographic evidence or otherwise.
47. On August 26, 2019, Mr. Starnes texted Mr. Hayes and asked him to pull some fill back from around the water meter and not to fill so far on one side. I find that Mr. Hayes returned the next day to make these adjustments. Based on these texts, on a judgement basis I deduct \$100, which represents one hour of machine time, for Mr. Hayes' work to revise the fill area, which I find should not have been charged because the parties agreed the water meter area should have remained clear.
48. However, I find that Mr. Starnes has not proven that Mr. Hayes otherwise incorrectly placed the fill or was instructed to stop and did not do so.

Other

49. Mr. Starnes also says Mr. Hayes split logs during removal, causing a loss of value in the remaining lumber. Mr. Starnes took a photograph of some split logs but did not prove these splits were caused by any error on Mr. Hayes' part. Rather, the text messages show that Mr. Hayes said he would bring a chain saw to the site and Mr. Starnes did not object. I dismiss this aspect of Mr. Starnes' counterclaim.
50. Similarly, I dismiss Mr. Starnes' allegation that Mr. Hayes left oil stains on his driveway, as I find this is not proven by the evidence.
51. Mr. Starnes' counterclaim is for \$2,250 which he says is the cost of repairing the deficient work by Mr. Hayes. However, Mr. Starnes did not provide a quote or invoice from anyone hired to conduct repair work. I have also found that there were no deficiencies to repair, aside from the fill area revision that Mr. Hayes attended to himself. As a result, I find Mr. Starnes has not proven that he suffered \$2,250 in damages.

52. In summary, I allow Mr. Hayes' claim for payment of his \$2,052 in unpaid work, less a \$100 deduction for the minor fill area revision. I dismiss all other aspects of the counterclaim.
53. The *Court Order Interest Act* applies to the tribunal. Mr. Hayes is entitled to pre-judgment interest on the \$1,952 from August 30, 2019, which I find is the date the charges were due, to the date of this decision. This equals \$19.81.
54. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Mr. Hayes largely succeeded in his claim. I find Mr. Hayes is entitled to reimbursement of \$125 in tribunal fees. Mr. Hayes did not claim dispute-related expenses. As Mr. Starnes was unsuccessful, I dismiss his claim for reimbursement of tribunal fees.

ORDERS

55. Within 30 days of the date of this order, I order Mr. Starnes to pay Mr. Hayes a total of \$2,096.82, broken down as follows:
 - a. \$1,952 in debt for work completed,
 - b. \$19.82 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
56. Mr. Hayes is entitled to post-judgment interest, as applicable.
57. I dismiss any remaining claims and counterclaims.
58. 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.

59. 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.

Julie K. Gibson, Tribunal Member