



# Civil Resolution Tribunal

Date Issued: April 6, 2020

File: SC-2019-000151

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leo Flore (dba Gleneden Landscape Conifers) v. Lux*, 2020 BCCRT 374

BETWEEN:

LEO FLORE (Doing Business As GLENEDEN LANDSCAPE  
CONIFERS)

**APPLICANT**

AND:

DARCY LUX

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. This is a dispute over payment for landscape services.
2. The applicant, Leo Flore (dba Gleneden Landscape Conifers), says the respondent, Darcy Lux, did not pay his invoice in full for the landscaping services he performed

on the respondent's property. The applicant claims an outstanding balance of \$3,420.83.

3. The respondent does not dispute that a \$3,420.83 balance remains, but he says he is not required to pay it. The respondent says it is more than the original quote, the landscaping was "sub-par", unfinished and plants died. The respondent also says that the applicant damaged his new pavers, although the respondent did not file a counterclaim for the alleged paver damage.
4. The parties are each self-represented.

## **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* (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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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. 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.

## **ISSUE**

9. The issues in this dispute are:
  - a. To what extent, if any, must the respondent pay the applicant the claimed \$3,420.83 for landscaping services:
    - i. Did the parties verbally agree to increase the landscape work beyond the original quote in the written contract?
    - ii. Was the applicant's work professionally done?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proving his claims 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 they entered into a written contract on April 21, 2017 for landscaping services and materials for a total cost of \$13,500 plus GST. The written contract in evidence shows the total cost includes plant materials only up to \$1,000. The applicant performed the landscape services between April 24 and May 8, 2017.
12. The applicant says that after entering into the signed contract, the parties agreed to add extra plant material and work to the scope of the job. The applicant's total final invoice, inclusive of the additional work, materials and tax was \$15,420.83. There is no dispute that the respondent already paid \$12,000 of this invoice and the claimed

\$3,420.83 remains outstanding. The respondent's position is that the job was for a set price of \$13,500 plus GS, the work and plants were not additional, and he owes no more.

13. The applicant provided a statement detailing his version of events. In his statement, the applicant described the parties' communication after entering into the signed contract and the work he was asked to perform. The applicant said the respondent verbally asked him to remove a row of cedar trees and stumps and replace them with new cedar trees, which was in addition to the original quoted work. In the parties' statement of facts, the applicant said the respondent's spouse asked for additional plant material. The respondent disagrees that his spouse asked for extra plants but said nothing specific about the cedar trees and provided no statement from his spouse. The respondent provided very few submissions. On this issue, I prefer the applicant's version of events, which include a more detailed description of the parties' interactions and work performed. On balance, I find it is more likely than not that the respondent asked the applicant for additional work and materials that were not in the original \$13,500 quote. Subject to deficiencies or paver damage, I find the respondent must pay for the extra work and materials.
14. As mentioned, the respondent argues that he does not owe the applicant anything because he found the applicant's work was "sub-par". He also says plants died and the applicant damaged his pavers. The respondent says he had to pay someone "at least" \$3,500 to fix it. Because the respondent alleges the landscaping was defective or "sub-par", the burden of proof to establish the defects is on the respondent: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. I infer the respondent is also asking for an equitable set-off to fix the landscaping and pavers. This means that if the respondent can prove that the applicant owes him money that is reasonably connected to the debt, he can deduct it from the amount he owes the applicant.
15. A contractor must perform its work to a reasonable professional standard, but it is not required to be perfect. On the photographs in evidence, I find that the

landscaping looks beautiful and I see no obvious defects, but I am not a landscape expert. I find the applicable professional standard is not in an ordinary person's knowledge and requires expertise. The respondent provided no opinion evidence from a landscaper that was critical of the applicant's planting techniques, plant size, or the landscaping in general. He also provided no invoice or receipts showing he had to pay to fix the applicant's work. Overall, I find the respondent has not established that the applicant's landscaping fell below the applicable standard.

16. The respondent did not provide any photographs showing the alleged paver damage or receipts to repair it. The respondent's photographs show that the applicant had parked a small yard tractor on pavers. The same pavers are shown as part of an expansive driveway. Since the pavers are meant for driving a vehicle on, I find the mere presence of a small tractor parked on the pavers does not mean the applicant damaged them. I also find it was not unreasonable for the applicant to drive a small tractor on a driveway meant to carry the weight of vehicles. I dismiss the respondent's allegation of damaged pavers and find there is no basis for any set-off for pavers.
17. As for the dead plants, the respondent submitted photographs of 2 potted trees. He says, "the condition of the very expensive tree's almost dead and have since died". However, the photograph of the trees in pots with no leaves are clearly taken prior to planting, which was early spring. There is a photograph of one of the same trees after planting that shows it is full of leaves. The respondent provided no expert evidence about the condition of the trees to prove they were dead and not just dormant.
18. The respondent provided a close-up photograph of a few pieces of sod that show some yellowing. The applicant agreed that a "few pieces" of sod were unhealthy. The respondent says the "majority" of the sod died and he had to pay to replace it. However, the photograph of a few pieces of sod does not prove most of the sod died. If this was the case, I would have expected the respondent to provide a

photograph showing the entire dead lawn and he did not. He also provided no receipt proving he paid someone to replace the sod.

19. The applicant says he had agreed to return to perform some touch-ups, including to replace a few pieces of sod and a few plants that looked unhealthy and deliver 2 yards of additional fir bark. I do not know which specific plants the applicant was referring to or their costs. Apart from the few pieces of yellowing sod, there are no photographs of unhealthy plants and the respondent provided no evidence that he incurred costs to replace them. However, the applicant also does not say he returned to perform this work, so I infer that he did not. The written contract says the applicant would warranty the plants for one year. Even though it is now well over a year, I find the parties agreed the plants would be somewhat durable. Based on the applicant's admission, I will allow the respondent a nominal set off on a judgement basis of \$100 for the plants, sod, bark and delivery. I find the respondent has not proven that he is entitled to any more for a reduction or set-off.
20. I find the respondent must pay the applicant \$3,320.83 for his landscaping services.
21. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$3,320.83 debt from May 9, 2017, the date of the invoice to the date of this decision. This equals \$141.09.
22. 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. I see no reason in this case not to follow that general rule. I find the applicant was primarily successful in this dispute and is entitled to reimbursement of the \$200 he paid in tribunal fees. The applicant did not ask for additional dispute-related expenses.

## **ORDERS**

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,661.91, broken down as follows:

- a. \$3,320.82 as reimbursement for the debt,
- b. \$141.09 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$200.00 in tribunal fees.

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

25. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

26. 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.

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Trisha Apland, Tribunal Member