Civil Resolution Tribunal

Date Issued: April 20, 2020

File: SC-2019-007026

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kolbus v. Kitts*, 2020 BCCRT 424

B E T W E E N :

RAYMOND MICHAEL KOLBUS (Doing Business As OAK BARREL FARMS AND SERVICES)

APPLICANT

A N D :

BRIAN KITTS

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for agricultural preparation work. The applicant Raymond Michael Kolbus (Doing Business As Oak Barrel Farms and Services),

says the respondent, Brian Kitts, has failed to pay in full for the tilling work the applicant did for the respondent's planned vineyard. The applicant claims $2,000.

2. The respondent says the applicant was hired to "till the raw land" and argues this meant the applicant should have used a tiller machine, rather than a disc machine. The respondent says the applicant's chosen machine left him with clumps of sod he had to pay someone else to remove. The applicant says the sod problem was due to the respondent's decision to use an excavator on the land before the applicant was hired.

3. The parties are each self-represented. I note there were two named applicants in the Dispute Notice: Raymond Michael Kolbus and Raymond Michael Kolbus (Doing Business As Oak Barrel Farms and Services). I find they are the same legal entity, meaning they refer to the same person, Raymond Michael Kolbus, who I find is a sole proprietor doing business as Oak Barrel Farms and Services. For this reason, I have amended the style of cause above to reflect only one applicant, Raymond Michael Kolbus (Doing Business As Oak Barrel Farms and Services).

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. Bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find I can fairly 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. 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.

8. I note the parties each made submissions about the applicant's attendance on the respondent's property in May 2019 to remove a number of sunken posts, together with other contractors who said the respondent had not paid them for their work. It is undisputed that the applicant did not have a vested interest in the posts, since he did not do any work related to their installation. The respondent did not file a counterclaim. I find the situation with the posts and their removal is not sufficiently connected to the applicant's claim for his tilling work, and so I find there is no basis for any set-off from any award to the applicant for his claims in this dispute. I also note the respondent says he plans to start a court action with respect to the posts. I will therefore not discuss the posts issue any further.

9. Next, the respondent says the applicant is defaming him and harassing him, making social media posts about the respondent's legal issues. Quite apart from the fact the respondent did not file a counterclaim and does not appear to argue the applicant posted untrue things, the tribunal does not have jurisdiction over defamation. So, I make no findings about these allegations.

ISSUE

10. The issue in this dispute is whether the applicant fulfilled the parties' agreement that he would till the respondent's land, and if so, is the applicant entitled to the claimed $2,000 payment for his work.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. In particular, I have not relied on the applicant's evidence about other contractors not being paid by the respondent for work on his property, as I do not find that relevant to the issue of whether the applicant should be paid for his work.

12. While there is no written agreement between the parties, the parties agree their verbal agreement was that the respondent would pay the applicant $100 per hour to "till" the respondent's raw land. The parties disagree about whether the applicant completed the work as agreed.

13. The meaning of the word "till" is at the heart of this dispute. The respondent says it meant to use a "tiller" machine, which the applicant did not use. The respondent says the applicant's decision to use a "disc" machine left him with clumps of sod that he had to pay someone to remove.

14. In contrast, the applicant says "till" simply means to prepare the land for cultivation. I agree with the applicant. There is nothing in the evidence before me that supports a conclusion the applicant expressly agreed to use a tiller machine. Common dictionary definitions of "till" are consistent with the applicant's interpretation, and do not refer to use of a tiller machine specifically (see Cambridge Dictionary, Merriam Webster, and Dictionary.com).

15. The question then is whether the applicant reasonably tilled the land as he agreed to do.

16. The applicant says his use of a disc machine was appropriate for the 2nd stage of preparation, given the respondent had already, improperly, used an excavator to "sub-rip" the soil in the fall of 2018 before the applicant was hired. The applicant says while sub-ripping the soil is a normal practice to prepare a vineyard, it should not be done with an excavator. The applicant says the excavator's use is what

brought the large clumps of sod to the surface. The applicant says the respondent should have used something like a "spring tooth ripper". The applicant says his use of a disc "harrow" was the next step, to "cut, slice, level, and distribute the pulverized soil through the field".

17. The applicant says because the respondent did the 1st step incorrectly with an excavator, it was impossible to bury all the sod that was left on the initial surface. The applicant says he discussed this with the respondent at the outset and again later on March 29, 2019, which the respondent does not expressly refute. The applicant says the respondent's suggestion the chosen disc machine would not go down deep enough into the soil misunderstands the problem, which was that the respondent's excavator had already left the sod on the top of the land. It is undisputed the rental of the rock rake was an effort to collect the raised sod clumps so it could be removed more easily. The applicant essentially says there was no way for any machine to bury the sod as the respondent suggests.

18. The respondent did not address the applicant's submissions, other than to say the applicant was hired to "till" the land and the applicant instead chose to "disc" the land. On balance, I accept the applicant's explanation and find that the "disc" process was one aspect of cultivating the land for crops. In other words, the "disc" process was tilling the land.

19. The burden is on the party alleging deficiencies to prove them, here that is the respondent (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91). I find the respondent has not met that burden. First, as noted above I do not agree with his interpretation of "till". Second, he has not submitted any evidence showing the applicant's work was substandard or incorrectly done. I note the respondent submitted a typed March 16, 2019 letter titled "Agrologist's Letter", but he covered over the author's name and their signature. In any event, there is nothing in this letter critical of the applicant's work and so I find it does not assist the respondent.

20. I find the applicant fulfilled the parties' agreement that he would till the land. The fact the respondent had to hire someone to clear the sod afterwards is not the applicant's responsibility.

21. I turn then to the amount of the applicant's claim, $2,000. The applicant's April 2, 2019 invoice in evidence was for $2,441.25, inclusive of tax. It covers work done between March 29 and April 2, 2019. As noted above, the respondent agrees the $100 per hour was the agreed hourly rate. I also accept the applicant worked the amount of time he claimed, which is undisputed and supported by the applicant's daytimer notes in evidence.

22. The parties agree the respondent paid the applicant $891.25, $450 of which was for a "rock rake" rental and $441.25 towards the applicant's invoice. This left the $2,000 balance claimed.

23. In summary, I have found the applicant worked the hours as claimed and in accordance with the parties' agreement. I have also found the respondent has not proved there were any deficiencies in the applicant's work. So, I find the respondent must pay the applicant $2,000.

24. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to pre-judgment COIA interest on the $2,000, from the April 2, 2019 invoice date. This equals $41.14.

25. Under section 49 of the CRTA and tribunal rules, the successful party is usually entitled to reimbursement of tribunal fees and reasonable dispute-related expenses. I see no reason to deviate from that here. I find the respondent must reimburse the applicant $125 in paid tribunal fees and $10.05 for registered mail expenses, which I find reasonable. I note the applicant's receipt for the mail expense was $11.31, but since he only claims $10.50 that is all I order.

ORDERS

26. Within 14 days of this decision, I order the respondent to pay the applicant a total of $2,176.64, broken down as follows:

    a. $2,000 in debt,

    b. $41.14 in pre-judgment interest under the COIA, and

    c. $135.50, for $125 in tribunal fees and $10.50 in dispute-related expenses.

27. The applicant is 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. 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.

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.

Shelley Lopez, Vice Chair