



Civil Resolution Tribunal

Date Issued: May 15, 2020

File: SC-2019-010726

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Competition Tree Service v. Jeliazkov*, 2020 BCCRT 534

BETWEEN:

COMPETITION TREE SERVICE

APPLICANT

AND:

JIVKO JELIAZKOV

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a claim over an unpaid invoice.
2. The applicant, Competition Tree Service, says the respondent, Jivko Jeliazkov, owes it \$2,100 for tree removal services. The respondent says he does not owe the applicant anything for the tree removal because he already paid the applicant's

quoted fee. The respondent says the applicant is seeking payment on additional work that was never agreed to or done.

3. The applicant is represented by its employee or owner. The respondent is self-represented.
4. I dismiss this dispute for the reasons that follow.

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, email, or a combination of these. Some of the evidence in this dispute amounts to a "it said, he said" scenario. 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. 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 BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. 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.
9. 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

10. The issue in this dispute is whether the applicant is entitled to the claimed \$2,100 for tree removal services.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. As shown on the applicant's July 19, 2019 invoice in evidence, it charged the respondent a total of \$4,200 to "remove large maples, chip up, cut into firewood". The invoice shows \$2,100 as outstanding, which is the claimed amount here.
13. On both parties' submissions, I find they initially agreed that the applicant would remove 8 trees from the job site and cut them into firewood for \$2,100. The parties had no written contract. However, there is a quote in evidence for \$2,100 for 8 trees that is written on the back of the applicant's business card. The parties agree that the applicant removed the 8 trees and the respondent paid the applicant the quoted \$2,100. The quality and payment of this initial work is not at issue. The issues are whether the parties agreed to any extra tree removal and if so, the additional cost and whether the work was done.

14. The applicant says the job was more difficult than it anticipated because the site was “riddled” with needles from drug use. The applicant says it hired an excavator to make the site safe at no extra charge to the respondent. The applicant says the respondent also asked it to remove 8 extra trees and they renegotiated \$4,200 for 16 total trees. The respondent says that the applicant viewed the site before taking the job, so it knew what was there. The respondent says the only agreement was to take down 8 trees for \$2,100 as quoted in writing.
15. The applicant relies in part, on its July 2019 invoice to support this renegotiated agreement. However, I find the invoice is not helpful. The invoice is dated a month prior to when the applicant says it was hired for the initial job, which is unexplained. The invoice also has no details about the number of trees removed or that some of the work was extra. What I find more convincing is the applicant’s undisputed assertion that the respondent wrote a second cheque for \$2,100, and then issued a stop payment. Without an explanation from the respondent, I infer he wrote the second cheque because at some point, he agree to pay for extra work.
16. However, I find the applicant has not proven that it removed the 8 additional trees. The respondent provided a photograph of the job site showing only 8 tree stumps and says this is all that was taken down.
17. The applicant says the respondent’s photograph shows only half the trees it took down. It says at the job site itself, there are 8 additional tree stumps on the “back lot”. For some unexplained reason, the applicant provided no photograph of the job site with 8 additional tree stumps. The applicant only provided some close-up photographs of trees that it was unable to cut into firewood because of metal lodged in the trunks. The applicant also provided no witness statement from the other 5 workers it hired for the job that might have supported its position on the extra work. On balance, I prefer the respondent’s photograph over the applicant’s unsupported assertion.

18. I find the applicant has not established on a balance of probabilities that it performed the extra work or is owed anything more for the tree service. I dismiss the applicant's claim.

19. 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. The applicant was unsuccessful and so I dismiss its claim for tribunal fees. The parties claimed no dispute-related expenses.

ORDER

20. I dismiss the applicant's claims and this dispute.

Trisha Apland, Tribunal Member