Civil Resolution Tribunal

Date Issued: May 15, 2020

File: SC-2019-010878

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wineberg v. Davis*, 2020 BCCRT 539

B E T W E E N :

CARI WINEBERG and CARI WINEBERG (Doing Business As Serafina Garden Services)

APPLICANTS

A N D :

LEE DAVIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about an unpaid invoice for gardening work. The applicant, Cari Wineberg, says the respondent, Lee Davis, did not pay her full invoice for work done. The applicant seeks an order for $1,372.94. The respondent disagrees and

says this amount is unreasonable. He says $430 is fair and sent the applicant a cheque for this amount, which the applicant did not deposit.

2. The applicant also named Cari Wineberg (doing business as Serafina Garden Services) as co-applicant, which I find to be her sole proprietorship name. I find they are the same legal entity and will simply refer to the applicant in this decision.

3. The parties are 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. 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.

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.

ISSUE

8. The issue in this dispute is how much the respondent must pay the applicant for gardening work.

EVIDENCE AND ANALYSIS

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

10. The parties agree that the applicant and CBI, a contractor the applicant hired, performed work on the respondent's garden in early July 2019. This work included purchasing, painting and installing 8 rebar posts to provide a support structure for the respondent's raspberry plants.

11. That same month, the respondent decided to finish the job himself before the applicant completed her work. The respondent says this was because the applicant was taking too long to finish, and she failed to communicate with him. He does not say the work was otherwise deficient.

12. The parties did not write down their agreement or discuss the price in advance. On the evidence before me I do not find the applicant was obligated to provide an estimate or hourly rate beforehand. The parties' disagreement is over what the applicant should be paid.

13. At common law, where the parties do not agree to a price, the applicant will still be entitled to a reasonable price for work done. The legal term for this is *quantum meruit*, or value for work done. In determining a reasonable price, a court must do the best it can to arrive at a figure which seems fair and reasonable to both parties, on all facts of the case. See *Hugh's Contracting Ltd. v. Stevens,* 2015 BCCA 491 at paragraphs 26 and 33.

14. The respondent says the applicant's November 13, 2019 invoice for $1,372.94 is too high. I will therefore use it as a starting point for determining what would be a reasonable price for the applicant's work.

15. The largest disputed item relates to CBI's charges. The applicant invoiced the respondent $800 for CBI to work 10 hours at an hourly rate of $80, plus an additional $75 for CBI to deliver materials to the respondent's garden.

16. The parties agree that before work began, the applicant told the respondent she would hire someone to assist her, but they did not discuss what this would cost. The respondent says he expected CBI would charge an hourly rate of $35 at most because the applicant charged the same rate for her garden cleanup work in the fall of 2018.

17. As noted in *Hardwoods Specialty Products LP Inc. v. Rite Style Manufacturing Ltd. et al.,* 2005 BCSC 1100 at paragraphs 38 to 41, evidence of extensive previous dealings may be used to determine the terms of the contract between parties. In this dispute, I was not provided enough evidence to conclude the 2018 work could be considered extensive previous dealings. The applicant also says that before work started, she advised she was hiring CBI because she lacked CBI's expertise to work with rebar. The respondent disagrees and says the applicant advised she was hiring CBI because she was busy. I find the applicant's version of events more likely as the November 2019 invoice shows the applicant hired CBI to do all the rebar preparation work, as claimed. Given these circumstances, I do not find it appropriate to conclude the parties agreed that the applicant's hourly rate applied to CBI's work. I have decided to consider whether CBI's charges were reasonable instead.

18. The applicant says CBI spent 7 hours to prepare 10 pieces of rebar by cleaning, priming, and painting each piece twice. She says CBI spent 3 more hours climbing a ladder to sledgehammer 8 of the 10 pieces of rebar into the ground. She says each piece measured 10 feet and had to be hammered 3 feet deep. The respondent

provided a photo of the rebar that is consistent with the applicant's description of CBI's work.

19. I do not find it within ordinary knowledge that CBI worked an unreasonable number of hours or charged an unreasonable rate. The respondent did not provide any evidence, such as a quote or estimate, that shows the hourly rate or time spent was unreasonable. He says CBI's work could have been done by a minimum-wage worker, but I find this unlikely, in part because the applicant chose not to do more of the rebar work herself. The best evidence of the value of the work is the applicant's December 10, 2019 cheque showing she paid CBI $875 for both its work and the delivery fee. There is no indication the applicant would gain financially if CBI overcharged for its services. Considering all the evidence, I find CBI's charges, including its hourly rate and hours works, to be reasonable.

20. Next on the invoice, the applicant charged $105 for 3 hours of her own labour at $35 per hour. The applicant says she had to hold the rebar while CBI sledgehammered it. I find this amount reasonable as the applicant previously charged the same hourly rate in the fall of 2018 without any complaints from the respondent. The respondent says 3 hours appears excessive but provided no supporting evidence. I am satisfied by the applicant's submission that the time was necessary because the garden ground was rocky.

21. The applicant also charged $262.18 for materials (rebar, metal cleaner, primer and paint) which included a markup of slightly less than 15%. I find these amounts are supported by the applicant's receipts and the amount, including markup, is reasonable.

22. The applicant also charged $75 to deliver materials from the store to CBI's workshop and GST of $65.86 on the total invoice amount. I find the delivery fee is reasonable and the GST calculation accurate. I find the applicant has proven her debt claim on a balance of probabilities for ($875 + $105 + $262.18 + $75 + 65.86 =) $1,383.04. This is slightly more than the claimed amount of $1,372.94, which I find is due to an arithmetic error in the invoice. I find it appropriate to award the

applicant $1,372.94 as it is the amount claimed in the application for dispute resolution.

23. As noted above, the parties agree the respondent provided the applicant a cheque for $430. The respondent says $430 is fair because it would pay the applicant for 10 hours of her time at the hourly rate of $35, with the remaining amount to account for materials. I find this speculative as it is unsupported by any evidence. The evidence also shows the applicant needed assistance to complete the work and she advised she would be hiring another person.

24. I have not reduced the applicant's award by the cheque amount as the submissions before me indicate the applicant never deposited the cheque.

25. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgement interest on the $1,372.94 debt from November 13, 2019, the date of the invoice, to the date of this decision. This equals $13.57.

26. 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 is entitled to reimbursement of $125 in tribunal fees. The applicant did not claim dispute-related expenses, so I do not order any.

ORDERS

27. As stated earlier, named applicants in this dispute are the same legal entity. For simplicity I make the following orders in favour of Ms. Wineberg as applicant.

28. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $1,511.51, broken down as follows:

    a. $1,372.94 in debt,

    b. $13.57 in pre-judgment interest under the COIA, and

c. $125.00 in tribunal fees.

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

30. 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 a Ministerial Order 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.

31. 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.

David Jiang, Tribunal Member