



Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2019-010929

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *AA Bestpro Gardening Services Ltd v. Sanati* 2020 BCCRT 746

B E T W E E N :

AA BESTPRO GARDENING SERVICES LTD

APPLICANT

A N D :

SANATI KARIM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about payment for gardening services. The applicant, AA Bestpro Gardening Services Ltd (AA Bestpro), says that it provided services to the respondent, Karim Sanati, for which it has not been paid in full. AA Bestpro asks for

an order that Mr. Sanati pay it \$1,290.75. Mr. Sanati admits that he received services from AA Bestpro, but denies that he owes any money as he says AA Bestpro overcharged him and damaged his property.

2. AA Bestpro is represented by its principal. Mr. Sanati is self-represented.
3. Although AA Bestpro identified the respondent as Sanati Karim in the Dispute Notice, it is apparent from the materials before me that the respondent's surname is Sanati. Accordingly, I will refer to him as Mr. Sanati in my decision.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Whether Mr. Sanati is responsible for the \$1,290.75 invoiced by AA Bestpro, and
 - b. Whether AA Bestpro damaged Mr. Sanati's property such that he is entitled to a set-off from the amount owed.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. AA Bestpro says it started to provide gardening services to Mr. Sanati in October of 2018. AA Bestpro says that they had a verbal agreement for 3 visits per month at a charge of \$50 per visit. AA Bestpro says that, after the 3 October visits, it paused its services due to the winter season. Upon resuming service in March of 2019, AA Bestpro says that Mr. Sanati agreed to a single service in that month before returning to the usual 3 visits per month. It also says that Mr. Sanati subsequently agreed to additional charges for leaf clean-up, aerating, moss control, weeding, power raking, seeding, fertilizer and plantings.
11. According to AA Bestpro, Mr. Sanati called in August of 2019 and asked that service stop in September of 2019. AA Bestpro says that Mr. Sanati provided only partial payment of several invoices, and asks for payment of the outstanding \$1,290.75.
12. Mr. Sanati agrees that he hired AA Bestpro for lawn maintenance, but says that AA Bestpro overcharged him on its invoices. According to Mr. Sanati, AA Bestpro started to charge him \$300 per month in June of 2019 instead of \$150 "with no extra

work or agreement". Mr. Sanati says he did the weeding himself, and that his grass looked worse after AA Bestpro began to service it and AA Bestpro did not allow him to choose the plants that were planted in his yard. Mr. Sanati says that AA Bestpro damaged a car, a garden border, and a hose on the property, so he calculated the damages and sent AA Bestpro a \$300 cheque to cover the amount he felt was owing. He also says that he advised AA Bestpro not to come onto his property, although he did not say when this occurred. Mr. Sanati denies that he owes AA Bestpro any additional money.

13. AA Bestpro denies that it caused any damage to Mr. Sanati's property and says that the plantings and other services were done at his request.
14. There is no indication that there is any written documentation of the scope of the parties' agreement, and their contract appears to be verbal in nature. Verbal contracts can be binding, but they must be proven. In this case, the parties agree that AA Bestpro provided lawn maintenance for \$150 per month plus goods and services tax. I find that the evidence indicates that AA Bestpro provided additional services from time to time, but that it obtained Mr. Sanati's agreement for these services.
15. The parties agree that AA Bestpro continued to provide service through September of 2019. However, although AA Bestpro may have recommended additional services such as weeding or fertilizing, I find that Mr. Sanati did not agree to these additional services during the time frame in question. I also find that Mr. Sanati did not agree to a price increase for the agreed-upon lawn maintenance. Therefore, the parties' agreement for lawn maintenance at \$150 per month remained in force and Mr. Sanati remained responsible for these charges.
16. AA Bestpro inconsistently states that the May 2019 invoice was paid and was not paid. It did not explain the discrepancy. I note that the June invoice contains a credit of \$74.25. Although this is not explained, I find that it supports the conclusion that the May invoice was paid.

17. The invoices for June, July, August and September contain charges for additional services but, as noted above, I have determined that Mr. Sanati did not request or agree to pay for them. Accordingly, I find that Mr. Sanati is responsible for \$150 plus goods and services tax for each of these 4 months, for a total of \$630. After applying the \$300 partial payment made by Mr. Sanati, the outstanding balance is \$330.
18. In determining whether Mr. Sanati is responsible for this \$330, I must consider his submission that AA Bestpro made his grass look worse and damaged his property. Although not specifically stated, I find that Mr. Sanati seeks to set off his costs in addressing these issues against the amount owing to AA Bestpro (see *Wilson v. Fotsch*, 2010 BCCA 226 for the applicable criteria for an equitable set-off). In the case of defective work, the burden of proof is on the party alleging defective work (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at para 124.)
19. Mr. Sanati provided photographs of a scratched car, a cracked garden border and a damaged hose. However, he did not say that he saw AA Bestpro cause the damage, and AA Bestpro denies that it is responsible. I find that Mr. Sanati's submission that he lives in a quiet neighborhood and nobody else comes to his property does not, by itself, prove AA Bestpro's responsibility. In the absence of other evidence, I find that Mr. Sanati has not met his burden of proof to establish that AA Bestpro caused this damage.
20. While I acknowledge that Mr. Sanati was not happy with the appearance of his grass, he did not provide evidence that his dissatisfaction was the result of AA Bestpro's action or inaction as opposed to weather or another factor. Further, he did not provide evidence of any cost to remedy or repair his grass.
21. Based on the evidence before me, I find that Mr. Sanati has not established that he is entitled to set-off any costs associated with damages or deficient work. Therefore, he is responsible for the outstanding \$330.

22. AA Bestpro also claims interest under the *Court Order Interest Act*. I find that it is entitled to pre-judgment interest in the amount of \$4.86.
23. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As AA Bestpro was partially successful, I find that it is entitled to the reimbursement of half of the \$125 it paid in CRT fees it paid, or \$62.50. AA Bestpro did not make a claim for dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Mr. Sanati to pay AA Bestpro a total of \$397.36, broken down as follows:
- a. \$330 under the parties' agreement,
 - b. \$4.86 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in tribunal fees.
25. AA Bestpro is entitled to post-judgment interest, as applicable.
26. The remainder of AA Bestpro's claims are dismissed.
27. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to

consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Lynn Scrivener, Tribunal Member