Civil Resolution Tribunal

Date Issued: September 2, 2020

File: SC-2020-002023

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fowle v. Reda*, 2020 BCCRT 982

B E T W E E N :

ADAM FOWLE

APPLICANT

A N D :

ANTONIO REDA

RESPONDENT

A N D :

ADAM FOWLE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about landscaping services. The applicant, Adam Fowle, performed landscaping services at the respondent, Antonio Reda's lakefront property. Mr. Fowle claims $5,000 in unpaid services.

2. Mr. Reda counterclaims against Mr. Fowle and argues that Mr. Fowle's services were deficient. Mr. Reda also says that Mr. Fowle damaged his property and requests damages of $5,000.

3. Both parties are self-represented.

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, 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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.

8. In Mr. Fowle's Dispute Notice, the respondent is identified as Anthony Reda. However, in his counterclaim, Mr. Reda identifies himself as Antonio Reda. On the basis of the parties' evidence, I am satisfied that Anthony Reda is the same person as Antonio Reda. So, I have exercised my discretion under section 61 to direct the use of the name of stated by the respondent, Antonio Reda, as the respondent in these proceedings.

ISSUES

9. The issues in this dispute are:

    a. Does Mr. Reda owe Mr. Fowle a $5,000 debt for unpaid landscaping services?

    b. Is Mr. Reda entitled to a reduction from any amounts owed?

    c. Did Mr. Fowle negligently damage Mr. Reda's property when he performed the landscaping service? If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Fowle must prove his claim on the balance of probabilities. Mr. Reda has the same burden of proving his counterclaim.

11. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

Mr. Fowle's claim for unpaid services

12. Mr. Fowle did not provide a signed contract. I note that a contract does not need to be signed, but when parties sign a written contract, it creates certainty about its terms and their intentions. When there is no written contract, the party trying to prove that a contract exists must prove that the parties agreed on the contract's essential terms.

13. It is undisputed that Mr. Fowle gave a March 19, 2018 estimate for landscaping services at Mr. Reda's lakefront property (estimate). The estimate said that Mr. Fowle would improve the rip rap (a loose rock barrier to prevent shoreline erosion), build a low rock wall, replace the lawn, install irrigation, install an outdoor shower, install a dog run, install garden lights, build a kids zone with a play fort, place plants, perform excavation, and haul debris.

14. It is undisputed that Mr. Reda received Mr. Fowle's $19,320 estimate and he told Mr. Fowle to perform the work.

15. It is undisputed that Mr. Reda requested additional services during the project. Specifically, Mr. Reda says he asked Mr. Fowle to add a zen garden and a fire pit. Mr. Fowle says that the additional services also included replacing the dog run fence, building a gate, changing the shape of the lawn, removal of trees, changing irrigation, removal of timbers on the beach, additional lights, planting a raspberry garden, changing lights and changing the type of landscape rocks.

16. Mr. Fowle says that he verbally estimated that this would increase the cost to $24,000, plus tax, which totals $25,200. Mr. Reda sent a May 23, 2018 email agreeing with this estimate.

17. Both parties say that the estimates were not a fixed price. Mr. Reda says that Mr. Fowle told him that he could complete the project for the estimated price and he would refund the difference if the final price was lower. In contrast, Mr. Fowle says the estimate was just an estimated cost of his services.

18. However, neither party explained how they expected to calculate the final contract price. From the parties' submissions, it appears they both expected that the final price would be based on Mr. Fowle's expenses. However, there is no evidence before me explaining how Mr. Fowle's labour costs would be calculated. For example, there is no evidence that Mr. Fowle would be paid hourly for services, and if so, what his hourly rates would be. Without an agreed formula to calculate the final contract price, I am not satisfied that the parties agreed to a price for Mr. Fowle's services.

19. Where the parties do not agree to a price, an applicant will still be entitled to a reasonable price for work done by agreement. The legal term for this is *quantum meruit*, or value for work done. In determining a reasonable price, a court or tribunal 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.

20. On a judgment basis, I find that a fair and reasonable price for Mr. Fowle's services is his $25,200 estimate which both parties agreed to.

21. It is undisputed that Mr. Reda made 3 payments totaling $18,500 between March 30, 2018 and May 1, 2018.

22. Since I have found that the reasonable value of Mr. Fowle's promised services is $25,200, and Mr. Reda has paid $18,500, this leaves an outstanding unpaid balance of $6,700.

Mr. Reda's claim for deficiencies

23. Mr. Reda says that Mr. Fowle's work was deficient. In a "defective work" case such as this, the ultimate burden of proof is on the party asserting that a breach has occurred. See, *Lund v. Appleford,* 2017 BCPC 91.

24. Mr. Reda complained of the following deficiencies:

- Incomplete fire pit,
- Large copper rain shower head was not installed,
- Pony wall missing in the zen garden,
- Irrigation line exposed and above ground,
- Lawn is poor quality, dying and not draining properly,
- Fence is incomplete,
- Block retaining wall was not rebuilt,
- Log beams were cracked and leaking sap,
- Shower not working, and
- Rip rap retaining wall was not fixed properly and rocks were left in the lake.

25. Mr. Reda has the burden of proving the amount of his loss from the alleged deficiencies. However, he has provided any estimates or receipts for the cost of completing this deficiencies. In the absence of evidence showing the amount he has lost, I find that Mr. Reda has failed to satisfy his burden of proving that he is entitled to a contract price reduction for deficient work. So, I dismiss Mr. Reda's request to reduce the contract price.

26. Mr. Reda also asks for compensation from Mr. Fowle for damage to his property. In addition to the deficiencies stated above, Mr. Reda says the lawn was not graded properly and the retaining wall is unstable and dangerous.

27. To prove a claim for negligence, Mr. Reda must show that Mr. Fowle owed him a duty of care, that Mr. Fowle fell below the required standard of care in fulfilling the duty, that the loss or damages were reasonably foreseeable, and that the Mr. Fowle's failure to meet the standard caused his loss. *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27, at par 33.

28. I find that it is not necessary to determine whether Mr. Fowle breached the standard of care because Mr. Reda has not provided any evidence of the amount of damages that he has incurred as a result of Mr. Fowle's conduct. As such, I find that Mr. Reda has failed to satisfy his burden of proving his claim for negligence. So, I dismiss Mr. Reda's claim for damage to his property.

29. As stated above, I find that the value of Mr. Fowle's unpaid contract services is $6,700. Since this exceeds Mr. Fowle's claim for $5,000, I find that Mr. Fowle is entitled to an order for $5,000 for unpaid services.

30. The *Court Order Interest Act* applies to the CRT. Mr. Fowle is entitled to pre-judgement interest on the unpaid services of $5,000 from July 26, 2018, the date of completion of services to the date of this decision. This equals $181.63.

31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since Mr. Fowle was successful in his claim, I find that he is entitled to reimbursement of his $175 filing fee. Since Mr. Reda was not successful in his counterclaim, I find that he is not entitled to a reimbursement of his counterclaim fees. Since neither party requested reimbursement of dispute-related expenses, none are ordered.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Reda to pay Mr. Fowle a total of $5,356.63, broken down as follows:

    a. $5,000 for unpaid landscaping services,

    b. $181.63 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175, for CRT fees.

33. Mr. Fowle is entitled to post-judgment interest, as applicable.

34. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

35. 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.

Richard McAndrew, Tribunal Member