



Civil Resolution Tribunal

Date Issued: September 15, 2020

File: SC-2020-001137

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schapira v. 360 Land Surveying Ltd.*, 2020 BCCRT 1035

B E T W E E N :

ERIC SCHAPIRA

APPLICANT

A N D :

360 LAND SURVEYING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a dispute about land survey charges. The applicant, Eric Schapira, hired the respondent, 360 Land Surveying Ltd. (360), to provide land surveying services. Mr. Schapiro says 360 overcharged by exceeding its estimates. Mr. Schapira requests a refund of \$2,428.40.

2. 360 denies Mr. Schapira's claim. 360 says it charged higher fees because Mr. Schapiro requested additional services which were not included in the estimates. 360 also says its estimates are just approximations.
3. Mr. Schapira is self-represented. 360 is represented by a business representative.

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 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, 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.

ISSUE

8. The issue in this dispute is whether 360 overcharged Mr. Schapira. If so, how much must 360 refund Mr. Schapira?

BACKGROUND AND EVIDENCE

9. 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.
10. It is undisputed that 360 performed land surveying services for Mr. Schapira on multiple dates in November 2019.
11. The parties did not provide a signed contract. 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. That said, 360 did give Mr. Schapira written estimates on June 21, 2018 and November 12, 2019.
12. 360's June 21, 2018 estimate had the following itemizations:
 - A survey plan for the main house and laneway house was estimated to cost \$1,650.
 - A foundation layout for the house was estimated to cost \$425.
 - A non-encroachment certificate for the main house was estimated to cost \$425.
 - A foundation layout for the laneway house was estimated to cost \$350.
 - A non-encroachment certificate for the laneway house was estimated to cost \$350.
13. 360's November 12, 2019 had the following itemizations:
 - A foundation layout for the house was estimated to cost \$875.
 - A non-encroachment certificate for the main house was estimated to cost \$425.

- A foundation layout for the laneway house was estimated to cost \$350.
 - A non-encroachment certificate for the laneway house was estimated to cost \$350.
14. 360 issued Mr. Schapira a January 8, 2020 invoice for \$3,691.70, with the following expenses:
- 360 charged \$1,049.10 for an excavation layout.
 - 360 charged \$875 for a foundation layout.
 - 360 charged \$806.80 for a second foundation layout.
 - 360 charged \$785 for a non-encroachment certificate for the main house.
 - 360 invoiced \$175.80 for taxes.

REASONS AND ANALYSIS

15. In a civil claim such as this, Mr. Schapira must prove his claim on the balance of probabilities.
16. Mr. Schapira paid \$3,691.70, the full amount of the invoice, but he says 360 overcharged for the excavation layout, the second foundation layout, the non-encroachment certificate for the main house and the taxes. I will address each these charges separately.

\$1,049.10 for an excavation layout

17. It is undisputed that 360 prepared the excavation layout services for Mr. Schapira on November 6 and 7, 2019.
18. 360 says this service was not included in the estimates and it billed Mr. Schapira an hourly rate. Mr. Schapira says the estimates quoted \$625 for the excavation layout. I find that the June 21, 2018 estimate did not provide a quote for the excavation

layout services. Also, these services were performed before 360's November 12, 2019 estimate. So, I find that this service was not included 360's estimates.

19. In the absence of a written agreement or an estimate, 360 is be entitled to a reasonable fee for the 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. I note that 360's November 12, 2019 email says the excavation services cost \$625, plus tax. Since 360 previously agreed to charge \$625, I find that this a fair and reasonable price for these services. So, I find that 360 overcharged Mr. Schapira by charging \$1,049.10 for the excavation services. I find that Mr. Schapira is entitled to a refund of \$425.10.

\$806.80 for the second foundation layout

21. 360 says Mr. Schapira requested a second foundation layout service on November 18, 2019. 360 says the points from the previous layout were destroyed and the design was revised. Mr. Schapira says that only 1 or 2 points were affected by the excavation.
22. 360 says this was a new service request which was not included in the estimates. 360 says it charged this as an on-call survey service at an hourly rate. Based on my review of the estimates, I find that this service was not included in 360's estimates.
23. It is undisputed that 360 performed the second foundation layout service at Mr. Schapira's request. So, in the absence of a written agreement or an estimate, I find that 360 is entitled to a reasonable price for this service.
24. This item was originally invoiced at \$1,449.92 but 360 voluntarily reduced this charge to \$806.80. 360 says it reduced this charge as a goodwill gesture. The

invoice says 360 spent 10.58 hours performing the second foundation layout. Based on the invoice, I am satisfied that 360 performed 10.58 hours of service.

25. Mr. Schapira says 360's fees were unreasonably high because it started working just before sunset and they needed to return the next day which needlessly increased 360's fees. 360 says it was unable to complete the task in a single visit because Mr. Schapira did not disclose the full scope of the project. I find that Mr. Schapira has not provided sufficient evidence to prove that 360 spent excessive time completing the second layout service. I find that 360 is entitled to payment for its full 10.58 hours of service.
26. There is no evidence before me that the 360's charge of \$806.80 is unfair or unreasonable for 10.58 hours of professional land surveying services. Mr. Schapira has not provided evidence showing that this fee exceeds the market rate for these services. I find that Mr. Schapira has failed to satisfy his onus of proving that 360's fee for performing the second foundation layout service is unfair or unreasonable. So, I dismiss Mr. Schapira's request to reduce this charge.

\$785 for a non-encroachment certificate for the main house

27. It is undisputed that 360 estimated a cost of \$425 for non-encroachment certificate for the main house but charged \$785.
28. 360 says the fee was higher than the estimate because of the complexity of the foundation shape. 360 says the estimate is just an approximation of the cost, not an agreed price. 360 says it provides a rough estimate of its charges in advance.
29. I find that 360 has not provided a sufficient explanation of why its fees for the non-encroachment certificate exceeded its estimate. Although 360 says the foundation was complex, 360 does not say that it was unaware of this complexity when it provided the estimate. Further, 360 did not explain how much extra work was required because of the complexity of the foundation. Also, there is no evidence before me indicating that 360 told Mr. Schapira that its fees would exceed the estimate because of this complexity. As such, I find that it was reasonable for Mr.

Schapira to rely on the price stated in the estimates. I find that, when Mr. Schapira engaged 360 to prepare the non-encroachment certificate, he entered into a verbal contract to pay the \$425 fee stated in the estimate.

30. As such, I find that 360 overcharged Mr. Schapira \$360 for the preparation of the non-encroachment certificate for the house. I find that Mr. Schapira is entitled to a refund of \$360 for this service.

Taxes

31. I find that the \$424.10 overcharge for the excavation layout resulted in a tax overcharge of \$21.21. Also, I find that the \$360 overcharge for the non-encroachment certificate resulted in a tax overcharge of \$18. So, I find that Mr. Schapira is entitled to a refund of \$39.21 for tax overpayment.
32. The *Court Order Interest Act* applies to the CRT. Mr. Schapira is entitled to pre-judgment interest on his overpayment of \$823.31 from January 8, 2020, the date of the invoice, to the date of this decision. This equals \$8.46.
33. 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. Schapira is partially successful in this matter, I find that he is entitled to reimbursement of one-half of the CRT filing fees, being \$62.50. Since neither party requested reimbursement of dispute-related expenses, none are ordered.

ORDERS

34. Within 30 days of the date of this order, I order 360 to pay Mr. Schapira a total of \$894.27, broken down as follows:
- a. \$823.31 as reimbursement of overpayment,
 - b. \$8.46 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$62.50 in CRT fees.

35. Mr. Schapira is entitled to post-judgment interest, as applicable.
36. 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.
37. 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