



Civil Resolution Tribunal

Date Issued: September 18, 2020

File: SC-2020-004622

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *9305076 Canada Ltd. dba SPROUT LANDSCAPES*

v. Katz, 2020 BCCRT 1054

B E T W E E N :

9305076 CANADA LTD. doing business as SPROUT LANDSCAPES

APPLICANT

A N D :

JEREMIAH KATZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shannon Salter, Chair

INTRODUCTION

1. This dispute is about payment for lawn maintenance services the applicant, 9305076 Canada Ltd. dba Sprout Landscapes (Sprout), says it provided to the respondent, Jeremiah Katz.

2. Sprout claims \$177.45 plus \$101.40 in contractual interest. Mr. Katz says the services provided were not what he ordered, and so he says he owes nothing.
3. Sprout is represented by Lukas Gawlik, a principal or employee. Mr. Katz is 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, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate, which includes proportionality and the speedy resolution of disputes, I decided to 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.

ISSUE

8. The issue in this dispute is whether Mr. Katz owes Sprout for lawn maintenance services, which he says were not provided as ordered.

EVIDENCE AND ANALYSIS

9. As the applicant in a civil proceeding, Sprout must prove its claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The parties agree that in early April 2020, Mr. Katz contacted Sprout to provide a "spring package" of lawn care services, which includes deep core aeration, lime application, moss spray, slow release fertilization, and liquid fertilization. The parties do not agree on the exact date of this request, with Mr. Katz stating that it was in the first few days of April, and Sprout submitting it was April 8, 2020, supported by its business records. I find that Mr. Katz contracted with Sprout around April 8, 2020, though nothing turns on the exact date.
11. I also find, and it is undisputed, that Sprout provided the agreed contracted services, aside from the deep core aeration. However, the parties disagree about whether Mr. Katz owes Sprout for this portion of the lawn care services.
12. Sprout submits, and Mr. Katz does not appear to dispute, that it provided the moss and liquid fertilization services on April 11, 2020. On April 14, 2020, Mr. Katz emailed Mr. Gawlik asking why the aeration had not been done, with Mr. Gawlik explaining that the spring package services are completed in two appointments. In a series of subsequent emails, Mr. Katz and his spouse responded that they had

been hoping to have the aeration done the previous week, and asked for it to be completed as soon as possible, as their dog was currently away.

13. Sprout submits that it completed the remaining services, namely liming, aeration and granular slow release fertilization, on April 18, 2020. Mr. Katz does not dispute that the lime and granular fertilization work was done as agreed, and I find that it was. I also find on the balance of probabilities that Sprout attended the Katz residence on April 18, 2020, though Mr. Katz disputes this. I make this finding based on the employee scheduling and GPS business records Sprout provided, as well as Mr. Katz' email acknowledgement to Mr. Gawlik that he found some aeration cores in a small area of his lawn after this date.
14. In a series of emails beginning on April 24, 2020, both Mr. Katz and his spouse expressed concern that most of aeration work had not been done, given there were no aeration holes in the backyard, or in the lawn between the sidewalk and the street in front of their home, and only a few elsewhere on the property. Mr. Gawlik offered various explanations, but eventually acknowledged that his staff "must have missed it" this time around and offered to re-service the area. On Monday, May 4, 2020, Mr. Katz inquired about the status of the job, with Mr. Gawlik responding two days later that they would complete it that week. Mr. Katz declined, stating, "we wanted this done in april. We ordered this a month ago. Please cancel." (reproduced as written.)
15. Mr. Katz provided two photographs of his lawn, which do not show any aeration holes, cores, or other soil disruption. It is undisputed that these photographs were taken on April 24, 2020, about 6 days after Sprout states it completed the aeration work. I accept Mr. Katz's evidence that most of the aeration was not completed, which is supported by Mr. Gawlik's acknowledgement that his staff "missed" aerating significant portions of Mr. Katz's lawn. For this reason, on balance I find that Sprout did not provide the claimed aeration services requested by Mr. Katz.
16. I also accept Mr. Katz' submission that re-servicing his lawn in May was not a reasonable alternative, given that the Katzes had repeatedly emphasized the time-

sensitivity of the aeration services in emails to Sprout in mid-April 2020, and given Sprout's delay in arranging to remediate the aeration services.

17. As noted above, I find that Sprout provided the non-aeration services in the spring package, as agreed. While Sprout did not provide a breakdown of the value of each of these services, I find on a judgment basis that Sprout is entitled to 50% of the amount charged for the spring package, as there is no suggestion Mr. Katz did not receive the benefit of these other services. Sprout did not provide an invoice or service agreement supporting the \$177.45 it claimed for services. However, Sprout did provide a screenshot of an "order summary," indicating that Mr. Katz requested a "spring package" for \$169.00, which Mr. Katz does not dispute. I therefore order Mr. Katz to pay Sprout \$84.50 for the non-aeration lawn services he received, being 50% of \$169.00.
18. Sprout also claimed contractual interest. As stated in *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775, "a right to charge interest cannot be based simply on a unilateral assertion in an invoice". As there is no evidence of an agreement between the parties about contractual interest, I decline to order it.
19. Sprout is entitled to pre-judgment interest under the *Court Order Interest Act*, on the award of \$84.50 from May 14, 2020, the date on which Mr. Gawlik communicated by email that the invoice (which again, is not in evidence) was due, to the date of this decision. This pre-judgement interest equals \$0.30.
20. In his Dispute Response, Mr. Katz stated that he would like to counterclaim for \$200 for additional fertilizer he purchased for his lawn. Mr. Katz did not file a counterclaim as required by the tribunal rules. While Mr. Katz' claim for fertilizer could be considered an equitable set-off to the amount owing (*Dhothar v. Atwal*, 2009 BCSC 1203), I find that Mr. Katz has not established that the fertilizer was necessitated by Sprout's failure to aerate the lawn, nor did Mr. Katz provide receipts or other evidence in support of this claim. For this reason, I decline to order reimbursement for the cost of Mr. Katz' fertilizer.

21. Under section 49 of the CRTA and CRT rules, the CRT 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.
22. Sprout has successfully proved less than half the claimed amount. I find that success is divided. Sprout paid \$125.00 in tribunal fees and Mr. Katz paid none. I find Sprout is entitled to reimbursement of \$62.50 in tribunal fees. The parties did not claim any dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Mr. Katz to pay Sprout a total of \$147.30, broken down as follows:
 - a. \$84.50 in debt as reimbursement for lawn maintenance services received,
 - b. \$0.30 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
24. Sprout is entitled to post-judgment interest, as applicable.
25. 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.

26. 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.

Shannon Salter, Chair