



# Civil Resolution Tribunal

Date Issued: December 7, 2020

File: SC-2020-005127

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Phillion (dba Victoria's Natures Helper) v. Proctor*, 2020 BCCRT 1383

BETWEEN:

DERRICK PHILLION (Doing Business As VICTORIA'S NATURES  
HELPER)

**APPLICANT**

AND:

SAUL PROCTOR

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Derrick Phillion (dba Victoria's Natures Helper), performed landscaping and retaining wall services for the respondent, Saul Proctor. Mr. Phillion says that Mr. Proctor failed to pay for his services. Mr. Phillion claims \$1,503.94 for his landscaping and retaining wall services.

2. Mr. Proctor says that Mr. Phillion did not complete the job or adequately perform the work he was hired to do. Mr. Proctor denies that he owes Mr. Phillion any money.
3. The parties are each 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT 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. Section 42 of the CRTA says 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. Did Mr. Phillion properly complete the landscaping and retaining wall related services?
  - b. To what extent, if any, is Mr. Phillion entitled to the claimed \$1,503.94 for his services?

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Phillion must prove his claims on a balance of probabilities. I have read the parties' submissions, but only comment on the argument and evidence that I find relevant to provide context for my decision.

### ***The Landscaping and Retaining Wall Services***

10. The parties agree that Mr. Phillion had been providing landscape services for Mr. Proctor for about a year on a task by task basis. The parties had no written agreement. Mr. Phillion billed Mr. Proctor monthly on a time plus materials basis. I understand that Mr. Phillion's labour rate was between \$30 and \$40 per hour depending on the task.
11. In February 2020, Mr. Phillion says that he performed general landscape maintenance, built a small river rock display, and created a parking space at Mr. Proctor's request. Mr. Proctor does not dispute that these tasks were properly completed in February.
12. In addition, Mr. Phillion agreed to build a retaining wall in the front of Mr. Proctor's property. Mr. Phillion commenced the retaining wall work in early February. At some point, Mr. Phillion walked off the job, which undisputedly ended the parties' business relationship.
13. The parties give a somewhat different account of the retaining wall work.

14. Mr. Phillion says the retaining wall was in the final stages of forming when Mr. Proctor complained about how it looked. Mr. Phillion says that Mr. Proctor told him he used the “wrong” building materials from Lumberworld and wanted him to take down the whole wall and return the supplies. Mr. Phillion says, “I felt like I had enough fighting with Saul and I refused further service”.
15. Mr. Proctor says Mr. Phillion started to install the blocks incorrectly and that they spoke about it. Mr. Proctor says that Mr. Phillion then restructured part of the wall but it was still incorrectly built. He says the blocks were put together at the existing grade and were not level. He also says Mr. Phillion had used different materials than he had asked for. Mr. Proctor says when he told Mr. Phillion the work was unacceptable, Mr. Phillion told him he was “dropping” him as a customer.
16. Mr. Proctor says he asked Mr. Phillion to remove the materials from the site and he would pay for some of Mr. Phillion’s labour. Mr. Proctor also says he offered Mr. Phillion to return to “fix” the retaining wall and he would pay him in full. Mr. Phillion undisputedly refused. There is no dispute that Mr. Phillion did not return to collect the materials or finish the retaining wall job.
17. On about April 2, 2020, Mr. Phillion sent Mr. Proctor an invoice dated March 1, 2020 for \$1,503.94 for all the work allegedly performed in February 2020, including the retaining wall. Mr. Proctor did not pay the March invoice, which is the subject of this dispute. There is no dispute that Mr. Proctor paid the prior months’ invoices.

### ***The Law and Analysis***

18. Unless the parties’ agreement is terminated, they must fulfil their express and implied obligations under it (see, for example, *Kuo v. Kuo*, 2017 BCCA 245). I find important terms of the parties’ agreement were that Mr. Phillion would complete the retaining wall job and perform it in a reasonably professional manner consistent with trade standards (*Morgan and Gaiga v. Pacific Coast Floor Covering Inc.*, 2018 BCPC 23).
19. Where the standard of a competent member of a trade or profession is at issue, evidence of those carrying on that occupation is usually necessary unless the matter

is non-technical or of which an ordinary person may be expected to have knowledge (*Burbank v. R.T.B.*, 2007 BCCA 215).

20. Mr. Proctor provided a September 2, 2020 statement from Daniel Quinton who undisputedly has 37 years of experience as a landscaper and builder. Mr. Quinton is Mr. Phillion's acquaintance, built houses for Mr. Proctor, and observed Mr. Phillion's work. Mr. Quinton wrote that the wall was "not right" and he was "disappointed in the workmanship". I accept Mr. Quinton has experience as a landscaper and builder to give an opinion about the retaining wall. However, I find Mr. Quinton's statement is too vague to rely on it alone. Mr. Quinton did not explain exactly what was wrong with the retaining wall. So, I put little weight on Mr. Quinton's opinion.
21. However, sometimes the standard is obvious and does not require expert evidence. For example, in the non-binding but persuasive decision in *Bettles v. G G Blacktop Ltd.*, 2020 BCCRT 1195, the CRT member did not require an expert opinion to find a sport court was uneven and the work was deficient.
22. Similarly, I find that whether the retaining wall here should have been built straight and upright does not require an expert opinion. The photographs show the retaining wall is incomplete and the blocks are not aligned or consistently level with respect to the grade. Further, the wall appears to 'snake' along its length, when it should be straight. I am satisfied on the photographs that the retaining wall was not properly built.
23. To be paid for his work, I find Mr. Phillion was required to correct the deficiencies and finish the job. I find Mr. Phillion breached the contract by failing to properly complete the retaining wall and by unilaterally ending the contract when he walked off the job. I find Mr. Phillion has not proven that he is entitled to any payment for his labour in building a partial and deficient retaining wall.
24. I dismiss Mr. Phillion's claim for reimbursement of his retaining wall related labour.
25. As mentioned, Mr. Proctor said he asked for different materials. Because the parties did not communicate in writing, I have insufficient evidence to determine what they

agreed to. I find Mr. Phillion has not proven that he purchased the agreed upon retaining wall materials for the job.

26. I note, as well, that the Lumberworld receipt states that the materials were refundable within 60 days of purchase if in “resaleable condition”. Mr. Phillion did not collect the materials or attempt to return them, though I find he had the opportunity to do so. Instead, I find Mr. Phillion abandoned the retaining wall materials at the job site. For these reasons, I find Mr. Phillion is not entitled to their reimbursement.
27. As Mr. Phillion has not asked for the materials back, I have made no order that Mr. Proctor return the retaining wall materials.
28. However, this is not the end to the matter. As discussed above, Mr. Phillion undisputedly completed other landscaping tasks that appear on the March 1, 2020 invoice. I find the landscape maintenance, parking spot, and “rock display” tasks (other tasks) are sufficiently distinct from the retaining wall work.
29. I find Mr. Phillion is entitled to payment for these other tasks’ labour and materials. However, I find the March 1, 2020 invoice is not sufficiently itemized to determine the exact value of Mr. Phillion’s labour for these other tasks. Apart from his lawn maintenance and delivery labour, Mr. Phillion “block billed” 20.25 hours at \$30 per hour (\$607.50) for the rest of his labour. Mr. Phillion did not break down the invoice and submitted no timesheets showing the hours he worked per task. So, I cannot determine with any specificity how many hours Mr. Phillion spent on the retaining wall as compared to the other tasks.
30. On a judgment basis, I have reduced the “block billed” labour by 10 hours to account for the retaining wall labour. In reaching this number, I considered the size of the partially built wall and the fact that it would have taken some time to source materials, prepare, set, and tamper the blocks. After applying the reduction, I find Mr. Phillion is entitled to \$307.50 (10.25 hours at \$30 per hour) for the other “block billed” tasks. In addition, I find Mr. Phillion is entitled to \$43.75 for lawn maintenance and \$35 for

delivery labour related to the other tasks' materials. This is a total of \$386.25 in labour, plus \$19.31 GST.

31. Finally, I find Mr. Phillion is entitled to \$71.09 inclusive of tax for the parking and rock display materials, based on his receipts.
32. I find Mr. Proctor must pay Mr. Phillion a total of \$476.65 for labour and materials, inclusive of tax.
33. I acknowledge that Mr. Proctor says that he will have to pay someone to remove the incomplete retaining wall work. However, I have applied no reduction to set off any potential extra costs because Mr. Proctor says he is not claiming anything for this extra work.

### ***Interest, Dispute-Related Expenses and Fees***

34. The *Court Order Interest Act* applies to the CRT. As, I find the parties had no agreement on interest rate, Mr. Phillion is entitled to pre-judgment interest on the \$476.65 debt. I have calculated interest from April 2, 2020, about the date Mr. Phillion sent the invoice, to the date of this decision. This equals \$3.23.
35. 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. As Mr. Phillion was partially successful, I will allow \$62.50 which is ½ his paid CRT fees.
36. Mr. Phillion also claims \$94.50 for his own "time spent" in pursuing this dispute, \$10 in cell phone data charges, and \$15.75 for accounting.
37. The CRT does not generally award compensation for time spent on a dispute, which is consistent with its rules against awarding reimbursement of legal fees except in extraordinary cases. I see no reason to deviate from that rule because I find that this is not an extraordinary case. I dismiss Mr. Phillion's claim for compensation for time spent.

38. Apart from his own invoices, Mr. Phillion provided no accounting related records or receipts. I find Mr. Phillion is not entitled to reimbursement for creating his own invoices. I dismiss Mr. Phillion's claim for the accounting expense.
39. Mr. Phillion's cell phone invoices show he paid for cell phone data in July, August, and September 2020. However, Mr. Phillion had unlimited Canada-wide calling and does not explain why his cell phone's data use was required in the CRT dispute process rather than using an internet connection. I find Mr. Phillion has not proven that the data expense was reasonably incurred and so, I dismiss it.
40. Mr. Proctor did not pay fees or claim any dispute-related expenses.

## **ORDERS**

41. Within 30 days of the date of this order, I order Mr. Proctor to pay Mr. Phillion a total of \$542.38, broken down as follows:
  - a. \$476.65 in debt,
  - b. \$3.23 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 for CRT fees.
42. Mr. Phillion is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
43. I dismiss Mr. Phillion's remaining claims.
44. 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.

45. 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.

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Trisha Apland, Tribunal Member