



Civil Resolution Tribunal

Date Issued: December 9, 2020

File: SC-2020-004543

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larix Landscape Ltd. v. Vukelich*, 2020 BCCRT 1393

BETWEEN:

LARIX LANDSCAPE LTD.

APPLICANT

AND:

TORE JOHAN MARCO VUKELICH and LESLEY VUKELICH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about payment for landscaping services. The applicant, Larix Landscape Ltd. (Larix), says the respondents, Tore Johan Marco Vukelich and Lesley Vukelich, did not pay its invoice for the hedge trimming services it provided. Larix claims \$1,574.36.

2. The respondents say that Larix's work was not completed as the parties discussed and was substandard.
3. Larix is represented by an employee. The respondents 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. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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.

ISSUE

8. The issue in this dispute is whether the respondents owe Larix \$1,574,36 for landscaping services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant, Larix must prove its case on a balance of probabilities. I have reviewed all the evidence and arguments but only refer to them to the extent necessary to explain and give context to my decision.
10. The respondents have a row of tall hedges on the side of their property. Utility wires hang near and above the hedges. The parties agree that the respondents hired Larix to trim the hedges for \$1,500. Mr. Vukelich says he met with Larix's employee, JC, before the work was done and told JC he wanted the hedges trimmed at least 2 feet below the lowest hanging utility wire.
11. The respondents say that on December 24, 2019, Larix's crew came to their house and trimmed the hedges between 3 feet to 4 feet above the lowest hanging wire, not below as the parties had discussed. The parties agree Mr. Vukelich was not home at the time and JC was not present. Mr. Vukelich says he was unaware Larix was coming that day. The respondents say that the crew did not trim the hedges in a straight line horizontally across the top but instead followed the "slope" of the hanging wires. Larix says since Mr. Vukelich was not home, the crew followed Mrs. Vukelich's directions about how to trim the hedges and she agreed with the height the hedges were trimmed to.
12. Mrs. Vukelich says she told the crew to trim the hedges to 2 feet below the lowest wire. She denies she told the crew to follow the wire's slope, which would create a "U" shape. She says when the crew left in the afternoon, the hedges were not finished, were very uneven, and not at the requested height.
13. On balance, I prefer Mrs. Vukelich's evidence about her instructions to Larix's crew because Larix did not provide any evidence, such as testimony from one of its crew

members who had spoken with Mrs. Vukelich, to prove otherwise. Given the evidence before me, I find that Mrs. Vukelich instructed the crew to trim the hedges 2 feet below the lowest wire.

14. The parties agree that the respondents complained about the hedges and Larix's crew returned twice to re-trim the bushes, once in February 2020 and again in April 2020. The respondents say despite the extra visits, the hedges were still trimmed crookedly and not at the requested height. Mrs. Vukelich says in April 2020, JC inspected the hedges and stated that the job done was good, but not great. She says he also stated that it was difficult to trim these types of hedges. After they received Larix's invoice for \$1,574.36, based on the quality of the work done by Larix, Mrs. Vukelich says she and Mr. Vukelich initially offered to pay \$750 but now are not prepared to pay anything.
15. Because the respondents allege the hedges were not trimmed properly, the burden of proof to establish the defect is on them (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). A contractor must perform its work to a reasonable professional standard, but it is not required to be perfect.
16. I find the parties had a verbal agreement and the respondents agreed to pay Larix \$1,500 plus taxes to trim the respondents' hedges to 2 feet below the lowest hanging nearby utility wire. I find Larix did not fulfill the parties' verbal agreement. Based on several photographs of the hedges submitted by the respondents, I find that while approximately one third appeared to be trimmed straight and even across the top, the rest of the hedges were uneven. I also find the photographs showed that the hedges were above the utility wires and so were not trimmed below the lowest wire.
17. Having weighed all the evidence, I find that although Larix did trim the hedges, it failed to prove the price or value of its services, and so it is not entitled to any payment for those services, whether under the parties' contract or based on an assessment of value for the work done. As a result, I dismiss Larix's claim.

CRT FEES

18. 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 Larix was unsuccessful, I dismiss its claim for reimbursement of CRT fees.

ORDER

19. I dismiss Larix's claims and this dispute.

Rama Sood, Tribunal Member