



Civil Resolution Tribunal

Date Issued: December 31, 2020

File: SC-2020-006417

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stanlow dba ArborGreen Tree Care Specialists v. Thompson*, 2020 BCCRT
1472

B E T W E E N :

DYLAN STANLOW (Doing Business As ARBORGREEN TREE CARE
SPECIALISTS)

APPLICANT

A N D :

SHARON THOMPSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Dylan Stanlow (doing business as ArborGreen Tree Care Specialists), says the respondent, Sharon Thompson, has failed to pay the full amount owing to

Mr. Stanlow for providing tree removal services. Mr. Stanlow claims \$2,095, the outstanding balance.

2. Ms. Thompson says she owes Mr. Stanlow nothing. She says Mr. Stanlow did not complete the job in the agreed upon time frame, did poor work, and that she had to hire another arborist to finish the work and clean up the job site. Ms. Thompson says she paid Mr. Stanlow for the work he did. She asks that the claim be dismissed.
3. Both parties represent themselves.

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 Ms. Thompson must pay Mr. Stanlow anything further for the tree removal services provided and, if so, how much?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this one it is up to the applicant, Mr. Stanlow, to prove his claim on a balance of probabilities. I have reviewed all the submissions and evidence submitted by both parties but only refer to that necessary to explain and give context to my decision.
10. Around August 2019, Ms. Thompson telephoned Mr. Stanlow and asked about removing some trees located on Ms. Thompson's neighbour's property. In a September 4, 2019 email Mr. Stanlow told Ms. Thompson the work would very likely take more than 1 day, and that he would reserve 2 days for the work. The parties emailed about the scope of work, and scheduling work, and agreed that Mr. Stanlow would start removing 7 trees on October 24, 2019. By the end of October 25, 2019 Mr. Stanlow and his workers had removed 2 trees, leaving 5 trees still to be removed. The relationship between the parties dissolved and Mr. Stanlow did not return to remove the remaining 5 trees. None of this is disputed.
11. The parties acknowledge that they do not have a signed written agreement. However, a contract can be verbal or written and need not be signed to be enforceable. Based on the parties' submissions, I find they verbally agreed that Mr. Stanlow would remove 7 trees from Ms. Thompson's neighbour's property.
12. I find Mr. Stanlow's September 4, 2019 email to Ms. Thompson set out his daily rate of \$1,950 plus GST, as well as terms and conditions of the job. I also find the terms

and conditions attached to the email explained that Mr. Stanlow would clean up all tree debris, except for large pieces of wood described as “firewood”. I find Ms. Thompson agreed to that rate, and those terms, when she hired Mr. Stanlow to do the job.

13. I do not find Mr. Stanlow agreed to complete the job within 1.5 to 2 days at a total cost of \$2,000 to \$3,000, as argued by Ms. Thompson. I find Mr. Stanlow’s September 4, 2019 email contained his estimate that the work would take more than 1 day. I do not find he agreed to complete the job in that time frame, as it was not stated in his email. Further, I find Mr. Stanlow estimated a third day might be needed based on potential changes to the scope of work, based on his October 8, 2019 email. Further, even if Mr. Stanlow had agreed to complete the job in 1.5 to 2 days, that would cost \$3,000 to \$4,000, based on Mr. Stanlow’s daily rate of \$1,950, which I have found Ms. Thompson agreed to.
14. Ms. Thompson also says she expected the job to take 2.5 to 3 days, which is inconsistent with her argument that Mr. Stanlow should have completed the job within the 2 days he was on site. Given the communications between the parties, I find that they did not reach an agreement on how many days it would take Mr. Stanlow to remove the 7 trees.
15. Based on the parties’ October 25, 2019 text messages, I find the parties agreed that further time was needed to complete the tree removal. I further find the agreed upon scope of work was extended to include firewood removal, which I find reasonably extended the amount of time needed to complete the job.
16. I find Mr. Stanlow offered to return to finish the tree removal or to clean up the tree debris at a daily rate of \$1,950 or an hourly rate of \$150, after October 25, 2019. As Ms. Thompson did not agree to pay Mr. Stanlow for more time, Mr. Stanlow did not return to the job site. Based on Ms. Thompson’s October 28, 2019 text, I find she refused to pay Mr. Stanlow until he returned to the site and cleaned up the tree debris. By refusing to pay Mr. Stanlow for work done, or agreeing to pay him for continued

work, I find Ms. Thompson terminated the parties' agreement for tree removal services.

17. On October 30, 2019 Mr. Stanlow invoiced Ms. Thompson \$3,510 plus \$175.50 GST, for a total of \$3,685.50 for tree removal. The invoice does not identify the specific work done. Given Mr. Stanlow's submissions, I find the invoice is for 2 days of work on October 24 and 25, 2019. Based on Mr. Stanlow's emails to Ms. Thompson's neighbours, I find Mr. Stanlow intentionally discounted 10% off Ms. Thompson's final bill, compared to the \$1,950 daily rate agreed upon.
18. It is undisputed that Ms. Thompson paid Mr. Stanlow \$2,000 on November 19, 2019. Ms. Thompson says \$2,000 is fair payment after having reviewed Mr. Stanlow's work with a number of professionals. However, she did not provide any statement or expert evidence from another arborist explaining why Mr. Stanlow's work was worth only \$2,000 or whether it was deficient in any way.
19. It is undisputed that Ms. Thompson paid a third party \$500 to help her remove the remaining tree debris and firewood and that she hired another arborist to remove the remaining 5 trees. Based on that arborist's October 2020 email, I find the arborist completed the remaining work in 1 day with 6 people, at a cost of \$2,000 to Ms. Thompson. I do not, however, find the second arborists' work is equal to Mr. Stanlow's work such that Mr. Stanlow should only be paid \$2,000 because there is no evidence from the other arborist about the nature of the work completed, other than the number of trees removed. In contrast, Mr. Stanlow says he removed the 2 largest trees, which is undisputed by Ms. Thompson.
20. Ms. Thompson says Mr. Stanlow is not entitled to full payment because he took too long to do the work, did not complete the job, and failed to clean up the site as agreed. In other words, Ms. Thompson claims that Mr. Stanlow's work was deficient. The burden is on Ms. Thompson to prove the alleged deficiencies (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91). Where the subject matter is technical, or beyond common understanding, expert evidence is often needed to help the decision maker determine the appropriate standard of care (see *Bergen v. Guliker*,

2015 BCCA 238). I find tree removal is beyond common understanding and thus requires expert evidence. As Ms. Thompson has not provided any expert evidence to show that Mr. Stanlow's work was below the industry standard of care, I find she has failed to prove his work was deficient, or worth less than the invoiced amount. Further, as I have found Ms. Thompson terminated the contract, I find Mr. Stanlow was not required to complete the job agreed to, including cleaning up the debris.

21. Ms. Thompson says Mr. Stanlow did not have 3 workers on site for the duration of October 24 and 25, 2019. I agree with Mr. Stanlow that the \$1,950 daily rate, or the parties' agreement, did not specify the number of workers Mr. Stanlow would provide. In any event, I do not accept Ms. Thompson's statement that there was only 1 worker on site with a second worker helping to chip the debris part-time, as she provided no supporting evidence. By contrast, Mr. Stanlow provided a written and signed statement from his employee who confirmed that 3 workers were on site for 8 hours on both October 24 and 25, 2019.
22. Ms. Thompson also says Mr. Stanlow is not entitled to payment of any more money because he threatened her personal safety in his text messages. Having reviewed the submitted text messages, I find they contain no threats or abuse. Although it is clear that the relationship between the parties disintegrated and each blamed the other for the breakdown, I find the relationship between the parties has no bearing on whether Mr. Stanlow is entitled to payment for the tree removal services provided.
23. Mr. Stanlow claims \$2,095, which I infer is the difference between the \$2,000 Ms. Thompson paid, and the total cost of 2 days of work at the agreed upon \$1,950 daily rate, plus GST (\$4,095 total). However, Mr. Stanlow only charged Ms. Thompson a total cost of \$3,685.50 in his October 30, 2019 invoice. As Ms. Thompson had already terminated the contract, I find the October 30, 2019 is Mr. Stanlow's final invoice. Further, there is no indication on the face of the invoice or any communications between the parties indicating that Mr. Stanlow intended the invoice as an offer to settle the amount owed by Ms. Thompson. On balance, I find Mr. Stanlow agreed to accept \$3,685.50 for full and final payment for the tree removal services completed.

So, I find he is only entitled to payment of \$1,685.50 as the outstanding balance on the invoice.

24. Mr. Stanlow claims a 10% contractual surcharge on the outstanding balance, for the time required to pursue payment. I find Mr. Stanlow's terms and conditions, which were emailed to Ms. Thompson on September 2, 2019, include a 10% surcharge for late payments. For residential jobs, such as this one, the contract says payment is due upon completion. So, I find Mr. Stanlow is entitled to an additional 10% surcharge on the \$1,685.50 outstanding balance. This equals \$168.55.
25. I find the 10% contractual surcharge is an administrative charge of dealing with overdue and delinquent payments, based on Mr. Stanlow's contractual wording and submissions. I find the surcharge is not in the nature of contractual interest, which would result from Mr. Stanlow extending credit to Ms. McGregor (see *DeWolf v. Bell ExpressVu Inc.*, 2009 ONCA 644). So, I find Mr. Stanlow is also entitled to pre-judgment interest on the outstanding balance, but not on the late fee surcharge.
26. The *Court Order Interest Act* applies to the CRT. I find Mr. Stanlow is entitled to pre-judgment interest on the \$1,685.50 outstanding balance from the October 30, 2019 invoice to the date of this decision. This equals \$25.89.
27. 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. I find Mr. Stanlow is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

28. Within 14 days of the date of this order, I order Ms. Thompson to pay Mr. Stanlow a total of \$2,004.94, broken down as follows:
 - a. \$1,685.50 in debt on the October 30, 2019 invoice,

- b. \$168.55 late fee,
- c. \$25.89 in pre-judgment interest under the *Court Order Interest Act*, and
- d. \$125 in CRT fees.

29. Mr. Stanlow is entitled to post-judgment interest, as applicable.
30. 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.
31. 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.

Sherelle Goodwin, Tribunal Member