



Civil Resolution Tribunal

Date Issued: March 9, 2021

File: SC-2020-008105

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *435315 B.C. Ltd. v. Martan dba Bold Tree Service*, 2021 BCCRT 265

B E T W E E N :

435315 B.C. LTD.

APPLICANT

A N D :

BRENT MARTAN (Doing Business As BOLD TREE SERVICE)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about fees for tree trimming and yard maintenance. The applicant, 435315 B.C. Ltd. (435), hired the respondent, Brent Martan doing business as Bold Tree Service, to trim trees and perform other maintenance at its residential property. 435 says Mr. Martan charged it for more labour than he actually worked, and failed

to trim 2 trees in the yard as agreed. 435 claims \$393.75, which is half of the \$787.50 it paid to Mr. Martan for the agreed work's full invoiced price.

2. Mr. Martan says he completed the work for the quoted price, which he says was based on a fixed price rather than an hourly rate. He says he owes 435 no refund.
3. 435 is represented by its owner in this dispute. Mr. Martan 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). 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find 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.

ISSUE

8. The issue in this dispute is whether Mr. Martan failed to complete the agreed work, and if so, does he owe 435 \$393.75 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant 435 must prove its claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision. I note that Mr. Martan chose not to provide any evidence or submissions following his Dispute Response, despite having an opportunity to do so.
10. The undisputed evidence is that on January 26, 2020, Mr. Martan met with 435 at its property to discuss proposed tree trimming and yard maintenance. Mr. Martan quoted \$750 plus tax for the work, including clean up and removal of waste. 435 says it agreed to let Mr. Martan do the work. Mr. Martan worked on the trees and yard on February 10, 2020, and 435 issued him a February 10, 2020 cheque for \$787.50.
11. The parties do not deny that 435's representative was not at the property for the whole time Mr. Martan worked there on February 10, 2020, and the parties do not say whether 435 paid Mr. Martan before or after it noticed the allegedly incomplete tree trimming. I find the evidence does not show that the parties agreed to any specific payment terms. On the evidence before me, I find it likely that 435 gave the February 10, 2020 cheque to Mr. Martan before 435's representative finished inspecting Mr. Martan's work at 435's property. In the circumstances, I find that issuing the cheque was not 435's acceptance that Mr. Martan's work was complete.

12. 435 says that Mr. Martan's quote was for 6 hours of work at \$125 per hour, plus tax. 435 says that Mr. Martan only worked about 3 hours and failed to trim 2 trees as agreed, so he should refund 435 for 3 hours of unworked labour plus taxes.
13. In contrast, Mr. Martan says that while he told 435 the work would probably take about 6 hours, his quote was \$750 plus tax for the whole job, not an hourly rate. Mr. Martan says he completed the work as agreed, and that 435 paid him afterward. However, I find Mr. Martan does not directly explain whether he partially or fully trimmed the 2 trees at issue.
14. There is no quote, estimate, or other document before me showing that the parties agreed to an hourly rate for the work. 435 submitted its notes on the parties' quote discussions, dated January 26, 2020. The notes described the desired work, said the total price would be \$787.50, and that the job would take 6 hours, from 8:00 a.m. to 2:00 p.m. The notes record no hourly rate, and do not say that the total price was calculated on an hourly basis. Further, Mr. Martan's February 13, 2020 invoice to 435 totalled \$750 plus tax for "Tree Trimming and Yard Maintenance", with no hourly rate shown.
15. 435 says it followed up with Mr. Martan by telephone several times in the weeks and months after February 10, 2020, seeking to have him finish trimming 2 trees. Significantly, I note that 435 does not say that it asked Mr. Martan to complete the remainder of the allegedly promised 6 hours of work, but rather says it asked that the tree trimming be completed.
16. On balance, I find that the evidence fails to show that the parties agreed to an hourly rate or a number of hours for the work. I find that the parties agreed Mr. Martan would complete specific tree trimming and yard maintenance tasks for a fixed price of \$787.50. 435 says that most of the work was completed, except that 2 trees were not trimmed as discussed.
17. So, did the parties agree that Mr. Martan would trim the 2 trees that 435 says were not fully trimmed? Mr. Martan does not deny agreeing to trim the 2 trees, which were

next to and overhanging a low fence adjoining an alley. On balance, I find that Mr. Martan agreed to trim those 2 trees.

18. Did Mr. Martan fail to adequately trim the 2 trees? 435 says Mr. Martan only trimmed some branches overhanging the fence that were outside the yard in the alley, and a small area around a clothesline. 435 says it asked Mr. Martan on February 10, 2020 to perform further trimming around the clothesline, but Mr. Martan did not do so, and did not trim the trees' upper branches, tops, and sides inside the property. I find that 435's submitted photos show some tree branches intruding into a clothesline area, as well as two trees with a ragged, non-uniform appearance, including uncut shoots. Further, I find that a January 4, 2021 written statement from GF, 435's tenant at the property, says that the 2 trees were not trimmed inside the property. 435 also says that in several phone calls in the weeks following February 10, 2020, Mr. Martan promised to complete the tree trimming, but never did. The only evidence of these alleged calls' contents is 435's statements about them, as Mr. Martan did not address the calls.
19. As noted, Mr. Martan chose not to provide response submissions or evidence. He says he completed all the agreed work as directed by 435. But I found above that Mr. Martan does not directly explain whether or why he did not fully trim the 2 trees at issue. Having weighed the evidence, I find Mr. Martan failed to fully trim the 2 trees as agreed. I find this was a breach of the parties' agreement.
20. The usual remedy for breaking an agreement is to restore the innocent party to the same position it would have been in if the offending party had fulfilled its obligations under the agreement. In this case, I find that means 435 is entitled to the cost of completing the tree trimming.
21. 435 submitted a December 11, 2020 quote from BC Plant Health Care Inc. (BCPH) for \$603.75 to prune the cedar hedge located along the north fence in the back yard. 435 says the quote is for the 2 incompletely trimmed trees, which I accept, in part because Mr. Martan does not disagree.

22. However, 435 commented on the quote, and said it was a small job for BCPH, so the price was on the high side. 435 also admitted that BCPH uses a truck with a boom and bucket to reach high tree areas, and that Mr. Martan was unable to trim the trees in the same way BCPH would. On balance, I find that the BCPH quote likely involves extra equipment and additional work beyond what the parties agreed Mr. Martan would do. I find Mr. Martan does not have to compensate 435 for such extra work and equipment. I also note that the BCPH quote was issued 10 months after Mr. Martan performed the work for 435. I find it likely that the trees at issue grew during that period, and that Mr. Martan was not responsible for trimming such later growth.
23. Although Mr. Martan agreed to trim or remove several trees and plants for 435, I find the 2 trees he failed to fully trim were of significant size, and represented a large portion of the agreed work. On a judgment basis, I find that 435 is entitled to compensation of half the \$787.50 paid to Mr. Martan for all the tree trimming and yard maintenance work, which equals \$393.75. I allow 435's claim.

CRT FEES, EXPENSES, AND INTEREST

24. Under the *Court Order Interest Act*, 435 is entitled to pre-judgment interest on the \$393.75 owing. I find pre-judgment interest is calculated from the February 10, 2020 date of 435's payment until the date of this decision. This equals \$4.21.
25. 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. 435 was successful here, so I order reimbursement of the \$125 it paid in CRT fees. 435 also claims \$11.36 for registered mail fees, but I find these were for an August 21, 2020 demand letter that pre-dated this CRT dispute. So, I find that the registered mail fee was not a CRT dispute-related expense. I order no expense reimbursement.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Martan to pay 435 a total of \$522.96, broken down as follows:
 - a. \$393.75 in damages for incomplete tree trimming,
 - b. \$4.21 in pre-judgment interest under the Court Order Interest Act, and
 - c. \$125 in CRT fees.
27. 435 is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

Chad McCarthy, Tribunal Member