



# Civil Resolution Tribunal

Date Issued: May 27, 2021

File: SC-2020-008243

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lavenders Blue Landscaping Limited v. Jones*, 2021 BCCRT 574

B E T W E E N :

LAVENDERS BLUE LANDSCAPING LIMITED

**APPLICANT**

A N D :

CELINA JONES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about gardening services. The applicant, Lavenders Blue Landscaping Limited (Lavenders), performed weeding, pruning and mulching services for the respondent, Celina Jones. Lavenders claims that Mrs. Jones owes \$1,922.82 for unpaid gardening services.

2. Mrs. Jones does not deny she owes something for gardening. However, she says Lavenders overbilled her, performed unwanted work and did not complete the agreed work.
3. Lavenders is represented by its owner, Linda Pritchard. Mrs. Jones 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. 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. How much does Mrs. Jones owe Lavenders for unpaid gardening services?
  - b. Should this debt be reduced because Lavenders performed unwanted or inefficient work?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Lavender must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed that Mrs. Jones hired Lavenders to weed, prune and mulch her garden at the rate of \$47.50 per hour, plus the cost of supplies. There was no estimate or written agreement. Miss Pritchard and 5 Lavenders employees worked on Mrs. Jones' property on August 26, 2020.
11. Mrs. Jones says, and Lavenders denies, that Lavenders agreed to only charge her for work that she was "happy with." I find that it is more likely that the parties agreed that Mrs. Jones would be charged for the labour hours actually performed, as Lavenders claims.
12. Lavenders sent Mrs. Jones an August 28, 2020 invoice for \$1,922.82. Mrs. Jones sent Lavenders an electronic transfer for \$1,000 on November 26, 2020 which Lavenders did not accept. Lavenders says it rejected the payment because the transfer said it was a "full and final payment." The electronic transfer expired without

Lavenders receiving any payment. So, I find that Lavenders' entire invoice remains unpaid.

13. Lavenders' invoice charges Mrs. Jones \$50 for 2.5 yards of fir mulch. Since this supply cost is not disputed, and the mulch costs are supported by a receipt, I find that Mrs. Jones owes \$50 for supplies.

### ***Amount of labour hours***

14. The parties provided conflicting records of Lavenders' labour. Lavenders' invoice says it performed 37.5 hours of labour and Lavender provided a journal documenting its hours. Lavenders says it entered the project's start and end times when the work was performed. I accept the journal entries as a business record prepared in the ordinary course and I find that these entries are consistent with Lavenders' invoice.
15. Mrs. Jones says she kept accurate records of Lavenders' hours and she provided a log saying that Lavenders performed 30.25 hours of labour. Mrs. Jones also says that 12 hours should be deducted from this amount because Lavenders allegedly performed unwanted and inefficient work. I will discuss these allegations below.
16. So, how many labour hours did Lavenders provide?
17. Mrs. Jones says Lavenders arrived at 9 am on August 26, 2020 and they started working at 9:25 am. She says the workers waited approximately 20 minutes for Miss Pritchard to make phone calls before assigning work. Lavenders says it started working at 8:53 am. Lavenders provided statements from its employees, RD and SL who say Miss Pritchard told the workers to start weeding, pruning and mulching around the patio when they arrived. Based on RD's and SL's detailed and consistent descriptions of their work, I find that these employee statements are likely to be accurate. So, I find that Miss Pritchard, and Lavender's employees MJ, KN, SL and RD began working at 8:53 am as recorded in Lavenders' journal.
18. Lavenders says its employee JV started working at 8:25 am when he picked up mulch from a supplier for the project. Mrs. Jones says that JV's labour did not start until he

arrived at her property at 9:30 am with the mulch. Since it is undisputed that Mrs. Jones requested the mulch, I find it is an implied contract term that materials delivery labour is part of the contract. So, I find that JV's hourly service started at 8:25 am as recorded in Lavenders' journal.

19. Lavenders says that Miss Pritchard left for lunch at 12:20 pm and then worked from 1:35 pm to 3 pm. Mrs. Jones says Miss Pritchard left for lunch at 12 pm and then worked from 1:45 pm to 3 pm. I find both Lavenders' and Mrs. Jones' records of Miss Pritchard's time equally likely to be accurate. Since Lavenders has the burden of proving its claim, I accept as accurate the hours acknowledged by Mrs. Jones. So, I find that Miss Pritchard stopped working at 12:00 pm and then resumed working from 1:45 to 3 pm.
20. Both parties agree that every worker took a 15 minute break, so I accept this as accurate. However, Mrs. Jones says the workers took 45 minute lunch breaks but Lavenders says their lunch breaks were only 30 minutes. Mrs. Jones recorded the start and end times for the lunches but Lavenders' records only say that 30 minute lunches were taken, without specifying the start and end times. I find that Mrs. Jones' more detailed records are more likely to be accurate. So, I find that Lavenders' workers each took 45 minute lunch breaks.
21. Mrs. Jones says 3 employees worked until 3:30 pm and 2 employees worked until 4 pm. Lavenders says all 5 employees finished working at 4:10 pm. Again, I find Mrs. Jones' time records to be equally likely as Lavenders'. So, since Lavenders has the burden of proof, I accept as accurate the finish times acknowledged by Mrs. Jones.
22. Based on the above, I find that Lavenders performed 34.17 hours of labour for Mrs. Jones. At the agreed hourly rate of \$47.50, this totals \$1,623.07 for Lavenders' labour.

### ***Allegations of unwanted and inefficient work***

23. Mrs. Jones says Lavenders' labour included wasted time for unwanted and inefficient work. Specifically, Mrs. Jones says that 3 Lavenders employees spent 2 hours each on unwanted compost work. Further, she says Lavenders wasted 2 hours waiting for instructions and 4 hours performing unauthorized and inefficient work. Mrs. Jones says 12 hours should be deducted from Lavenders' charges.
24. Lavenders has the burden of proving that Mrs. Jones agreed to the services performed. However, Mrs. Jones has the burden of proving that Lavenders' work was not performed properly (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).
25. Although Mrs. Jones says the workers were frequently standing around without instructions, the employee statements from MJ, KN, SL, RD and JV say that Mrs. Jones closely supervised them and they performed weeding, pruning, and mulching services at her instruction throughout the day. Based on the employee statements, and Mrs. Jones' submissions and her detailed time logs, I am satisfied that Mrs. Jones closely supervised Lavenders' work and provided instructions to the workers. Under this close supervision, I find it unlikely that the workers were idling as Mrs. Jones claims. Rather, I find it is more likely that Lavenders' employees followed her instructions and worked reasonably diligently as they describe in their statements.
26. Further, I find Mrs. Jones authorized Lavenders' work by supervising it and continuing to hire its services. Although Mrs. Jones says Lavenders did not follow her instructions, I find the statements from MJ, KN, SL, RD and JV that they did follow her instructions is more likely to be accurate. Further, Mrs. Jones does not explain why she did not stop Lavenders' services if she did not approve of it. I find that she did authorize its work.
27. Mrs. Jones also argues that Lavenders only performed 20 percent of the work she requested. However, Lavenders charged Mrs. Jones on an hourly basis and there is no evidence before me that Lavenders charged for work not performed. So, whether

the work was not completed does not change the amount of Mrs. Jones' debt for the work Lavenders performed.

28. For the above reasons, I find that Mrs. Jones authorized Lavenders' work and she is responsible for paying for all 34.17 hours of its labour. So, I find that Mrs. Jones owes Lavenders \$1,623.07 for unpaid labour and \$50 for supplies. I also find that Lavenders is entitled to GST of \$83.65, based on section 182(1) of the federal *Excise Tax Act* and the CRT's non-binding but helpful analysis in *Super Save Disposal Inc. v. New Generation Concrete Ltd.* 2019 BCCRT 319. Therefore, I award Lavenders \$1,756.72.
29. The *Court Order Interest Act* (COIA) applies to the CRT. Lavenders is entitled to pre-judgment interest on the \$1,756.72 debt from August 28, 2020, the date of the invoice, to the date of this decision. This equals \$5.90.
30. 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. Since Lavenders was generally successful in this dispute, I find that it entitled to reimbursement of \$125 in CRT fees. Lavenders did not claim reimbursement of dispute-related expenses.

## **ORDERS**

31. Within 30 days of the date of this order, I order Mrs. Jones to pay Lavenders a total of \$1,887.62, broken down as follows:
  - a. \$1,756.72 in debt for unpaid services,
  - b. \$5.90 in pre-judgment COIA interest, and
  - c. \$125 in CRT fees.
32. Lavenders is entitled to post-judgment interest, as applicable.

33. 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.
34. 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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Richard McAndrew, Tribunal Member