Civil Resolution Tribunal

Date Issued: June 18, 2021

File: SC-2021-001387

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *9305076 Canada Ltd. v. Schuler,* 2021 BCCRT 669

B E T W E E N :

9305076 CANADA LTD.

APPLICANT

A N D :

JOSEPH SCHULER

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant 9305076 Canada Ltd., which does business as Sprout Landscapes, says the respondent, Joseph Schuler, still owes $169.57 from its $357 gardening services invoice.

2. The respondent says the applicant did not complete even half the job, and says this happened because the applicant sent only 1 worker not 2 as allegedly agreed. Given the applicant undisputedly only sent 1 worker, the respondent also says the applicant's effective $65 hourly rate is excessive, although the quote was for a fixed price of $340 plus GST.

3. The applicant is represented by Lukas Gawlik, a principal. The respondent 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). 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 parties to a dispute that will likely continue after the dispute resolution 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. The respondent submitted late evidence, namely a May 18, 2021 letter from a garden company he hired in April 2020. I find this evidence is potentially relevant to the issue of whether the applicant completed the job during the 5 hours it spent, and so I admit this evidence and address its weight below. I note the applicant was not prejudiced by this evidence as it was given an opportunity to respond to it.

ISSUES

9. The issues in this dispute are a) what were the terms of the parties' agreement, b) did the applicant complete the work it billed for, and c) what remedy, if any, is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant has the burden of proving its claim, on a balance of probabilities. I have only referenced below what I find is necessary to give context to my decision.

11. On September 10, 2019, the applicant gave the respondent a quote for $514.50, broken down to $340 for "initial garden tidy up" and $150 for "ongoing maintenance bi-weekly", plus GST. The quote does not mention any hourly rate. It is undisputed the ongoing maintenance portion did not happen and is not part of this dispute.

12. I find the quote became the parties' fixed price contract, since the applicant's submitted copy of the quote says on its face that it was "approved" on September 12, 2019, and the respondent's approval is undisputed.

13. On September 23, 2019, the applicant undisputedly sent only 1 worker who spent 5 hours gardening at the respondent's property. This dispute is essentially over whether the applicant completed the "initial" garden tidy up services as quoted. The respondent says it did not do so because only 1 worker showed up, not 2.

14. It is undisputed that on November 22, 2019 the respondent paid only $169.58, which was their calculation of 50% of the $340 portion for the "initial garden tidy up"

less a 5% discount they say had been offered. The applicant does not expressly dispute the 5% discount, but claims the entire balance of its invoice.

15. I find the issue here is whether the applicant fulfilled the parties' contract and completed the "initial" work. There is nothing in the quote that says how many workers would do the job. The respondent argues that the applicant's employee verbally assured them that there would be 2 workers, and so when only 1 worker ML showed up, he could complete less than half the job in the 5 hours ML spent.

16. The respondent essentially argues the applicant's verbal assertions about the number of workers should be included in the parties' agreement. This in part turns on the respondent's argument that an effective hourly rate of $65 is unreasonable if the $340 charge was based on only 1 worker.

17. I find that the parol evidence rule applies here. This rule says that outside evidence, including alleged oral agreements, cannot be admitted to vary, add to, or contradict a written agreement's terms, unless the term is unclear or ambiguous (see *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107 at paragraphs 42 to 44 and *Frolick v. Frolick*, 2007 BCSC 84 at paragraphs 38-39). The parol evidence rule creates a presumption in favour of the written agreement (see *Frolick* at paragraph 40).

18. Given the case law discussed above, and the lack of any supporting evidence on the point, I find the parties did not agree that the applicant would send 2 workers, as the respondent alleges.

19. However, I have found this was a fixed price contract for $340 plus GST, totalling $357. So, I find what matters is whether the applicant completed the "initial" work as described in the quote. That work was described as a "first visit" involving:

    a. Weeding of beds

    b. Removal of weeds in pavers/walkways/driveway

    c. Immediate and necessary pruning of shrubs and hedges which require (reproduced as written)

d. Removal of any dead or fallen debris

e. Bringing the garden to a level achievable with ongoing maintenance.

20. The respondent submitted a 10 minute video showing their extensive garden areas. I find this video unhelpful since it was taken in May 2021, almost 1.5 years after the applicant did its work, and because the garden's size is not disputed. I place no weight on the video. Similarly, while I have admitted the respondent's late evidence from another gardener, and similar evidence from yet another gardener, I find that evidence also unhelpful. I say that because while I accept those other gardeners' evidence that they did similar tasks with 3 workers in about 4 hours, their statements were dated April and May 2021. I find their much later garden work is not necessarily determinative of whether the applicant completed the same tasks in September 2019 with 1 worker in 5 hours. So, I place no weight on these other gardeners' letters.

21. The respondent submitted no evidence from September 2019, such as photos showing his garden after the applicant allegedly failed to complete the agreed work.

22. However, I agree with the respondent that ML's statement only mentioned northwest side beds and back beds. I accept the respondent's undisputed submission that these beds were only 581 square feet out of the garden's 1419 total square feet. In particular, ML said he spent 3 of the 5 hours weeding the northwest side beds, and in the other 2 hours pruned and weeded the back beds. So, I find the applicant has not established it completed the quoted job, because I find ML did not weed about 2/3 of the beds. Next, based on ML's statement about how he spent his time, he did not remove weeds from "pavers/walkways/driveway", as required under the quote.

23. On balance, I find the applicant completed less than half the quoted job, and so I find the applicant is not entitled to any further payment. I dismiss its claim.

24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related

expenses. The applicant was unsuccessful and so I dismiss its claim for reimbursement of CRT fees. The respondent was successful and did not pay CRT fees. The respondent claims $52.50 for a May 13, 2021 invoice for “media transfer format change”, which he paid to convert the format of his submitted video file from .mov to an .mp4 format. As noted above, I did not find that video helpful and so I dismiss this reimbursement claim.

ORDER

25. I dismiss the applicant’s claim, the respondent’s expense claim, and this dispute.

Shelley Lopez, Vice Chair