Civil Resolution Tribunal

Date Issued: August 4, 2021

File: SC-2021-002033

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Above the Cut Contracting Ltd. v. Slaughter*, 2021 BCCRT 853

B E T W E E N :

ABOVE THE CUT CONTRACTING LTD. and DANE STEWART

APPLICANTS

A N D :

DONALD SLAUGHTER

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment for tree removal services.

2. The applicant, Dane Stewart, co-owns the applicant corporation, Above the Cut Contracting Ltd. (ATC), along with Steve Lowery, who is not a party in this dispute. The applicants say the respondent, Donald Slaughter, hired them to remove a falling

tree on his property, but has failed to pay their January 8, 2021 invoice of $2,052.75. The applicants claim $2,052.75.

3. Mr. Slaughter says the applicants overcharged for the hours and service provided. He also says that Mr. Stewart agreed not to charge more than $1,470 for the tree removal. Mr. Slaughter says he attempted to pay ATC $1,470 but ATC refused to accept that amount.

4. Mr. Lowery represents both applicants. Mr. Slaughter represents himself.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. 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.

8. 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.

9. I note the applicants provided submissions after the time to do so had passed. I have not reviewed or considered those submissions in making this decision because I find that would be procedurally unfair to Mr. Slaughter. This is because Mr. Slaughter did not see, or have the opportunity to respond to, those submissions. I find the applicants had ample opportunity to provide submissions, and rebuttal submissions, during the submission process.

ISSUE

10. The issue in this dispute is whether Mr. Slaughter must pay the outstanding $2,052.75 invoice and, if so, to who?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. I have reviewed the parties' submissions and weighed the evidence provided. I only refer to that necessary to explain, and give context to, my decision.

12. ATC had previously removed a tree from Mr. Slaughter's vacant property in November 2020. On January 7, 2021, Mr. Slaughter telephoned Mr. Stewart and Mr. Lowery, to discuss removing another tree which was falling down on his vacant property. Both Mr. Stewart and Mr. Lowery went to the property and secured the tree. Mr. Slaughter texted and spoke to both Mr. Stewart and Mr. Lowery about the tree, and the anticipated cost of removing it. On January 8, 2021, ATC returned to the property with a crane and removed the tree. None of this is disputed.

13. Both parties provided copies of their text messages to each other. From those, I find Mr. Stewart texted Mr. Slaughter a written ATC estimate on January 7, 2021 at 5:15 pm for a total of $1,470. The document estimated 4 hours of work to remove the tree,

at a cost of $185 per hour, including 2 hours spent on site from 2:30 to 4:30 on January 7. The estimate also included $660 for crane costs based on 4 hours at $165 per hour. In his text message, Mr. Stewart explained that the price was an estimate and that the invoice billed would reflect the real time ATC spent removing the tree. Mr. Stewart specifically said the price could "swing either way", which I find means the final invoice could be less or more than the estimated $1,470.

14. Later that evening Mr. Stewart texted Mr. Slaughter again, asking him to respond by 7:30 pm or ATC would cancel the job and "cut their losses". Although Mr. Slaughter did not respond by 7:30 pm because of a family emergency, he did respond later that evening that he did not expect Mr. Stewart to cut his losses.

15. In his 7:14 am text to Mr. Slaughter on January 8, 2021, Mr. Stewart said ATC had already spent 3 hours securing the tree, even though they estimated 4 hours total to remove the tree. He said that, if all went well, the cost would not "climb much further", that the crane was needed for safety and the crane rate was set at $660.

16. Mr. Stewart's telephone records show that he spoke to Mr. Slaughter for several minutes following that text message. Mr. Slaughter says that Mr. Stewart agreed to charge no more than $1,470 for the tree removal, which the applicants deny. They say that Mr. Stewart explained the time ATC had spent securing the broken off tree the day before, the crane costs, and that the end cost would likely be higher than the $1,470 estimate.

17. While verbal agreements are enforceable like written agreements, they are harder to prove. In this case, I find the parties' text messages assist in determining their verbal agreement. I find it unlikely that ATC agreed to charge Mr. Slaughter a maximum of $1,470 to remove the broken tree because that is inconsistent with Mr. Stewart's texts leading up to the January 7, 2021 telephone conversation. From those texts, I find the parties agreed that Mr. Slaughter would pay ATC for the time spent to remove the tree, plus the $660 set crane cost. There are no further text messages after the January 7, 2021 telephone conversation indicating any change to the parties'

agreement which I would expect, given the parties had been discussing price by text up to that point in time.

18. Further, it is undisputed that ATC charged Mr. Slaughter a total of $2,052.75 in its January 8, 2021 invoice which is clearly more than the alleged $1,470 maximum. While it is undisputed that Mr. Slaughter verbally disagreed with the amount of the invoice while discussing it with Mr. Lowery on January 8, 2021 in person, Mr. Lowery says in submissions that Mr. Slaughter did not say anything about a $1,470 maximum. I find that is consistent with Mr. Slaughter's January 11, 2021 text messages to Mr. Lowery which were silent on the alleged $1,470 maximum price. Rather, Mr. Slaughter responded that he would pay the invoice that week, without disputing the amount. I find those text messages do not support that the parties agreed to a $1,470 maximum cost to remove the tree.

19. On balance, I find it more likely that the parties agreed that ATC would charge, and Mr. Slaughter would pay, for the time ATC spent securing the tree on January 7, 2021, setting up and removing the crane, and removing the tree. The parties agree that the tree was to be taken down, but not chopped up and removed entirely from the property.

20. I now turn to consider Mr. Slaughter's argument that ATC overcharged for the tree removal. Based on the January 8, 2021 invoice I find ATC charged $1,295 for 7 hours of work at $185 per hour over 2 days. I also find ATC also charged $660 for the crane use, noting 4 hours at $165 per hour.

21. First, I disagree with Mr. Slaughter that ATC should have only charged 2 hours of crane use rather than 4. This is because the parties' text messages show that ATC charges crane use at a set price of $660. As there are no further text messages and as the parties note no further agreements about the crane charge, I find Mr. Slaughter agreed to pay the set charge by accepting ATC's tree removal services. I find it irrelevant whether ATC used the same crane for a different job on the same day, as argued by Mr. Slaughter. So, I find Mr. Slaughter must pay the full $660 set crane charge.

22. Second, Mr. Slaughter argues that removing the tree could not have taken the 7 hours charged by ATC. Based on the notes on both the estimate and the invoice, I find ATC spent 2 hours on site securing the broken tree, between 2:30 to 4:30, on January 7, 2021. I also find 2 hours is consistent with Mr. Lowery's submissions, because he says he arrived on site approximately 20 minutes prior to texting Mr. Slaughter at 3:15 pm and was still on site for his 5:02 pm text.

23. Mr. Slaughter says he drove past his property approximately every half hour on January 8, 2021, to check on the progress. Based on his statements, I find the tree removal crew arrived sometime between 12:30 and 1 pm and were finished the job just before 4 pm. I find the end time is consistent with Mr. Lowery's phone records and his submission that he called Mr. Slaughter when the job was completed. Further, the applicants do not dispute Mr. Slaughter's statements or provide any contrary evidence, such as time records or employee statements about start and end times on January 8, 2021. Nor did the applicants provide any explanation how ATC calculated a total of 7 hours on the invoice, how much time they spent on site, or whether this included travel time to and from the site. In the absence of such evidence, I accept Mr. Slaughter's observations and find ATC likely provided a maximum of 3.5 hours of tree removal services on January 8, 2021. I find this totals 5.5 hours of services, rather than the 7 hours charged on the invoice.

24. Mr. Slaughter argues that the January tree was approximately the same size as the tree ATC removed in November 2020 and says the January tree removal was not urgent in nature. He says the January 2021 charge should be closer to the $400 ATC charged in November 2020. Given my findings that the parties agreed to a set crane charge and hourly rates for the January tree removal, I find ATC's November 2020 charge not relevant to this dispute.

25. Although Mr. Stewart and Mr. Lowery discussed tree removal pricing with Mr. Slaughter, I find they did so on behalf of ATC. This is because the estimate and invoice were provided in ATC's name and because Mr. Stewart is 1 of ATC's 2 owners. Further, the invoice asks for payment to be made by e-transfer to the

company's email, and not to Mr. Stewart personally. On balance, I find Mr. Stewart has failed to prove that he had an agreement with Mr. Slaughter in his personal capacity, rather than as ATC's agent. So, I dismiss Mr. Stewart's claim.

26. In summary, I find Mr. Slaughter must pay ATC for 5.5 hours at a rate of $185 per hour, plus $660 crane costs plus 5% tax included in the estimate and invoice. This equals $1,761.38.

27. The *Court Order Interest Act* applies to the CRT. I find ATC is entitled to interest from January 8, 2021, the date of the invoice, to the date of this decision. This equals $4.54.

28. 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 find ATC was substantially successful in this dispute and so is entitled to reimbursement of its CRT fees of $125. I considered reducing the CRT fee because Mr. Slaughter undisputedly attempted to pay $1,470 in settlement of the bill on March 26, 2021 but ATC refused the e-transfer. However, even if ATC accepted Mr. Slaughter's payment and filed a dispute for the outstanding balance on the invoice, its fees would have been the same.

29. ATC also claims $23.52 in dispute-related expenses for photos. Given that the CRT is an online tribunal, I find photo printing or photocopying is an unnecessary expense, without some sort of further explanation as to why it was required. So, I dismiss ATC's claim for dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Slaughter to pay ATC a total of $1,890.92, broken down as follows:

    a. $1,761.38 in debt,

    b. $4.54 in pre-judgment interest under the *Court Order Interest Act*, and

c. $125 in CRT fees.

31. ATC is entitled to post-judgment interest, as applicable.

32. I dismiss Mr. Stewart's claims and ATC's claim for dispute-related expenses.

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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

Sherelle Goodwin, Tribunal Member