



# Civil Resolution Tribunal

Date Issued: August 24, 2021

File: SC-2021-002568

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dixon (dba 2 Mikes Tree Service) v. Hanelt, 2021 BCCRT 933*

**B E T W E E N :**

MICHEAL DIXON (Doing Business As 2 MIKES TREE SERVICE)

**APPLICANT**

**A N D :**

SHAWNA HANELT

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. The applicant, Micheal Dixon (dba 2 Mikes Tree Service), performed tree services for the respondent, Shawna Hanelt on March 1, 2021. Mr. Dixon seeks payment of his outstanding \$1,312.50 invoice.

2. Miss Hanelt says she owes nothing because Mr. Dixon damaged her property. She says his crew mistakenly cut down her 20-year-old Virginia Creeper that was growing up a Grand Fir and was the centerpiece of her garden. She says the Fir is now an eyesore and she will have to remove it. Miss Hanelt also says Mr. Dixon contaminated her soil and killed her grass with chemicals.
3. Mr. Dixon agrees his crew mistakenly cut down a part of a dormant Virginia Creeper vine but otherwise denies the claim. He says the Virginia Creeper will regrow and it is not a basis to refuse paying his invoice.
4. The parties are self-represented.
5. For the reasons that follow, I find Miss Hanelt must pay the full invoice balance.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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. Miss Hanelt disputed the credibility of some of Mr. Dixon's statements. However, I find this dispute turns on the documentary evidence and the parties did not request an oral hearing. I find I am properly able to assess and weigh the evidence and submissions before me. I note the court in *Yas v. Pope*, 2018 BCSC 282, recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

8. 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.
9. 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**

10. The issue in this dispute is:
  - a. To what extent, if any, does Miss Hanelt owe Mr. Dixon the claimed \$1,312.50 invoice balance?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Mr. Dixon must prove his claim on a balance of probabilities (which means “more likely than not”).
12. However, as the party alleging breach of contract for substandard work, it is Miss Hanelt who must prove the deficiencies on a balance of probabilities: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124. Miss Hanelt carries the same burden to prove she is entitled to withhold payment to compensate her for the alleged property damage: *Wilson v. Fotsch*, 2010 BCCA 226.
13. 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.

### ***The Contract***

14. As set out in the parties’ February 2021 emails Miss Hanelt hired Mr. Dixon to perform the following services:

- a. Prune limbs of Fir and Alders, chip and brush removal (except chips kept for garden), trucking, disposal: \$800 plus GST.
  - b. Remove Empress tree, treat stump to prevent regrowth, chip and remove brush, trucking and disposal, buck wood 14-16”: \$400 plus GST.
  - c. Disentangle Kiwi from Fir tree, bring down to “manageable level”, chip and remove all debris: \$400 plus GST.
15. I find it was also an implied term of the parties’ contract that Mr. Dixon perform the services with reasonable professional skill and diligence consistent to the industry standard.

***To what extent, if any, does Miss Hanelt owe Mr. Dixon the claimed \$1,312.50 invoice balance?***

16. The parties agree Mr. Dixon performed all the above services on March 1, 2021. This comes to \$1,312.50 including GST. Miss Hanelt has not paid any part of this amount.
17. Subject to any set off, I find Miss Hanelt must pay Mr. Dixon the \$1,312.50 as required by their contract.

**Virginia Creeper and Fir Tree**

18. The parties agree that while cutting the dormant Kiwi vine out of the Fir tree, Mr. Dixon’s crew accidentally trimmed down a 65-foot dormant Virginia Creeper vine that was growing in the same tree. He says his crew mistook the Virginia Creeper for another Kiwi vine. Miss Hanelt says she did not notice Mr. Dixon’s crew had cut the Virginia Creeper vine until they had trimmed it down to about 15 feet.
19. Miss Hanelt says the Fir was the centerpiece of her garden when it was covered by the Virginia Creeper. The Virginia Creeper turned red in the fall and she found it looked like a Christmas Tree. Miss Hanelt says the Fir is now only a “scraggly eyesore”. She alleges Mr. Dixon’s crew damaged the Fir when pruning the vine and she has no option but to cut it down.

20. Mr. Dixon says Miss Hanelt had not told him or his crew there was another dormant vine in the same tree as the dormant Kiwi. He says she told him nothing about the Virginia Creeper prior to its crew starting work, which I accept as it is not specifically disputed.
21. Miss Hanelt says Mr. Dixon's crew should have known the difference between 2 distinct vines and asked her before cutting down what they thought was another Kiwi. Again, Miss Hanelt argues that she should not have to pay any part of the outstanding invoice balance because of this mistake that allegedly damaged her property.
22. Considering there were 2 dormant vines in the 1 Fir tree, I find Miss Hanelt should have been very specific if she only wanted Mr. Dixon to cut 1 of the 2 vines. As mentioned, Miss Hanelt did not inform Mr. Dixon or his crew about the Virginia Creeper vine. I find the parties had no explicit agreement that Mr. Dixon would protect the Virginia Creeper vine when pruning.
23. I also find it is not plainly obvious from the photographs that the bare vines in their dormant state are different species. I find the matter of identifying dormant species and the standard for pruning is technical, and beyond common understanding. So, I find it needs expert evidence, such as from a qualified arborist: see *Bergen v. Guliker*, 2015 BCCA 238. There is no such evidence here.
24. Without expert evidence, I find Miss Hanelt has not proven that Mr. Dixon's crew should have known the dormant vines were different species without her bringing it to their attention. Similarly, I find she has not proven that their work fell below a professional standard because of the mistake in pruning back the separate vine.
25. Further, I find Miss Hanelt has not proven that Mr. Dixon actually damaged either the Virginia Creeper or the Fir tree by its crew's pruning. The Virginia Creeper is still about 15 feet tall and the evidence does not establish that it was killed off by pruning. Miss Hanelt stated herself in the submitted texts that despite her love for this vine, it is probably better for the Fir that it was cut out of it.

26. As for the Fir, there is no opinion from an expert, such as an arborist, stating that it was damaged from the pruning or that it is dying and has to be removed. By its many green branches, the Fir appears alive in the photograph. I am not persuaded on the submitted evidence that Mr. Dixon's crew damaged the Fir or that Miss Hanelt will have to cut it down because of the vine pruning. I find Miss Hanelt's own assertion is not enough to prove it is so.
27. For these reasons, I find Miss Hanelt has not proven that Mr. Dixon breached the contract or caused damage to either the Virginia Creeper or the Fir tree. I find Miss Hanelt is not entitled to any set off because of the pruning.

### ***Stump Treatment***

28. As mentioned, Miss Hanelt also hired Mr. Dixon to treat the Empress tree stump to prevent regrowth. However, Miss Hanelt argues that she did not know Mr. Dixon would use "toxic chemicals" to prevent the regrowth and she would never have agreed to it had she known. She says the chemicals contaminated her soil and killed the grass around the stump.
29. If Miss Hanelt wanted Mr. Dixon to avoid certain chemicals, I find she should have specified this when asking him to do the work and she did not. I find Mr. Dixon complied with the contract by treating the stump to stop regrowth as required.
30. There is also no supporting evidence to confirm Miss Hanelt's assertion that the stump treatment contaminated the surrounding soil or killed her grass. I find Miss Hanelt is not entitled to any set off because of the chemical use.

### ***Must Miss Hanelt pay Mr. Dixon the claimed \$1,312.50 invoice balance?***

31. I find Mr. Dixon reasonably performed all the agreed work and Miss Hanelt has not proven any basis for a set off. So, I find Mr. Dixon is entitled to be paid in full for his work based on the agreed fees in the February 2021 email above. Again, this equals \$1,312.50, including GST.
32. I find Miss Hanelt must pay Mr. Dixon the claimed \$1,312.50.

33. As the parties' contract included no interest terms, I find the *Court Order Interest Act* applies. I find Mr. Dixon is entitled to pre-judgment interest on the \$1,312.50 debt from the March 1, 2021 invoice date to the date of this decision. The interest equals \$2.86.
34. 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. However, Mr. Dixon waived his claim for expenses and so, I have not awarded any.

## **ORDERS**

35. Within 30 days of the date of this order, I order Miss Hanelt to pay Mr. Dixon a total of \$1,315.36, broken down as follows:
- a. \$1,312.50 in debt, and
  - b. \$2.86 in pre-judgment interest under the *Court Order Interest Act*.
36. Mr. Dixon is entitled to post-judgment interest, as applicable.
37. 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.

38. 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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Trisha Apland, Tribunal Member