



Civil Resolution Tribunal

Date Issued: May 24, 2022

File: SC-2021-007200

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Nicastro*, 2022 BCCRT 604

BETWEEN:

WESLY WALTER LEE

APPLICANT

AND:

JOE NICASTRO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for gardening services. The respondent Joe Nicastro hired the applicant Wesly Walter Lee (who does business as Sun Valley Tree and

Lawn) to spray his fruit trees and provide lawn care. Mr. Lee says he provided the agreed services in April and May 2021 but Mr. Nicastro never paid for them. While Mr. Lee initially claimed \$615.50, in his later submissions he claims \$489.50 for the work.

2. Mr. Nicastro says after Mr. Lee took over the spraying work his trees “seemed troubled by bugs, and the fruit was coming out with spots.” He says he never had this problem in the 18 years he had owned the fruit trees. Mr. Nicastro alleges that on the last visit Mr. Lee was only there 3 minutes and could not have sprayed all his trees. Mr. Nicastro says he believes Mr. Lee had been incompletely spraying his trees. Mr. Nicastro says he owes nothing further.
3. The parties are each 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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

6. CRTA section 42 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.
8. I note I was initially unable to open Mr. Lee's submitted evidence. At my request, CRT staff asked Mr. Lee to resubmit it in a format I could open, which he did. Mr. Nicastro was given an opportunity to comment, but he chose not to do so.

ISSUE

9. The issue in this dispute is whether Mr. Nicastro owes Mr. Lee the claimed \$489.50 for tree spraying work.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Lee must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Nicastro chose not to submit any documentary evidence, despite having the opportunity to do so.
11. The parties had no formal written agreement. It is unclear when Mr. Lee began the tree and lawn care program for Mr. Nicastro but it appears it was in April 2021. Mr. Nicastro undisputedly did not live at the property in question year-round. The only documentary evidence before me are copies of Mr. Lee's invoices and a Statement of Account.
12. Mr. Lee submitted copies of 5 invoices dated between April 3 and May 14, 2021. They total the claimed \$489.50. The invoices generally indicate the work was done

“today”. They describe various services, from moth control, fertilization/weed spot control, to deep root injections. In particular, the May 4 invoice said Mr. Lee sprayed “your peach and apricots for brown rot”. The May 6 invoice said Mr. Lee sprayed “all the fruit trees with pounce to kill all leaf rollers and aphids”. The May 14 invoice said Mr. Lee “applied a fertilizer with weed control” and that Mr. Nicastro should allow it to dry for 24 hours before watering.

13. Mr. Nicastro argues that soon after Mr. Lee took on the job of spraying his fruit trees, he began to find problems, bugs and spots on the fruit. I find here Mr. Nicastro essentially argues there were deficiencies in Mr. Lee’s work. The burden is on Mr. Nicastro to prove those deficiencies (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287). Yet, Mr. Nicastro submitted no supporting evidence, such as photos or an opinion from another gardener. I find the alleged deficiencies unproven.
14. Mr. Nicastro also argues that he was at the property in March 2021 and that Mr. Lee did not see that he was there. Mr. Nicastro says he saw Mr. Lee work for only a few minutes and then left saying he had sprayed all the trees. Mr. Nicastro says Mr. Lee could not have sprayed all the trees in that time frame.
15. Again, Mr. Nicastro submitted no supporting evidence of the number of trees he had. Further, the unpaid invoices at issue are all for work completed in April to May 2021, not March. Mr. Nicastro does not explain why he had Mr. Lee continue to work for him in April and May 2021 if he thought he was billing for work not completed in March. Apart from the alleged bugs and spots I have addressed above, Mr. Nicastro submitted no evidence or argument about the April and May 2021 work at issue in this dispute.
16. Mr. Lee also says Mr. Nicastro’s spouse told him in July 2021 that the invoices would be paid. Mr. Nicastro says his wife never agreed to payment because she knew Mr. Nicastro had expressed concerns in March about the job was “not being done”. However, Mr. Nicastro did not submit any witness statement from his wife and provided no explanation for its absence. Parties are told to submit all relevant

evidence. I draw an adverse inference against Mr. Nicastro and find it likely his wife told Mr. Lee the outstanding invoices would be paid. This does not support Mr. Nicastro's position that the work was deficient or incomplete.

17. So, given the evidence before me I find Mr. Lee is entitled to the claimed \$489.50.
18. The *Court Order Interest Act* applies to the CRT. I find Mr. Lee is entitled to pre-judgment interest on the \$489.50 under the COIA. Calculated from May 14, 2021 to the date of this decision, this interest equals \$2.26.
19. 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. As Mr. Lee was successful, I find he is entitled to reimbursement of \$150 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

20. Within 21 days of this decision, I order Mr. Nicastro to pay Mr. Lee a total of \$641.76, broken down as follows:
 - a. \$489.50 in debt,
 - b. \$2.26 in pre-judgment interest under the COIA, and
 - c. \$150 in CRT fees.
21. Mr. Lee is entitled to pre-judgment interest, as applicable.
22. 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.

23. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair