



Civil Resolution Tribunal

Date Issued: May 26, 2022

File: SC-2021-006925

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tri-City Cedar Inc. v. Esmaili*, 2022 BCCRT 621

B E T W E E N :

TRI-CITY CEDAR INC.

APPLICANT

A N D :

MASOUD ESMAILI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about residential fence installation.
2. The respondent, Masoud Esmaili, hired the applicant, Tri-City Cedar Inc. (Tri-City), to install a fence on Mr. Esmaili's residential property. Tri-City says Mr. Esmaili refused

to pay the \$2,194.50 balance. Mr. Esmaili says Tri-City did not do a professional job and overcharged for the project.

3. Tri-City is represented by an employee or principal. Mr. Esmaili represents himself. For the reasons set out below, I allow Tri-City's claim in full.

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. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to 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.

ISSUE

8. The issue is whether Tri-City is entitled to some or all of the \$2,194.50 it claims Mr. Esmaili owes under the parties' contract.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Tri-City must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Esmaili chose not to provide any evidence.
10. Although there is no written contract or quote in the evidence, the parties' June 2021 emails refer to a quote. On July 13, 2021, Mr. Esmaili gave approval to complete the fence project and paid a \$1,795.50 deposit, representing half the initial contract price, so I find the initial contract price was \$3,591.
11. Based on the parties' emails I find that Tri-City workers attended to construct the fence on July 22, 2021. They discovered bushes and trees obstructing the fence's path. Tri-City said the parties agreed Mr. Esmaili would clear the obstructions before the work started. Tri-City said it would apply an additional charge of \$380 plus GST "to send [the workers] home" that day and asked Mr. Esmaili to confirm when the obstructions were cleared.
12. Mr. Esmaili's initial position, reflected in his emails, was that Tri-City was aware of the obstructions and was prepared to do the work with them in place, or alternatively that it should have removed the obstructions itself. Tri-City disagreed and said it was not equipped to remove trees or tree branches. Ultimately nothing turns on this because on August 8, Mr. Esmaili agreed to the \$380 plus tax charge so that Tri-City would

proceed with the work. Mr. Esmaili does not allege duress, unconscionability, or some other legal reason not to enforce this agreement. I find no evidence of duress in the sense of significant pressure with an illegitimate element (see *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442). Accordingly, I find Mr. Esmaili is responsible for the \$380 plus GST, which equals \$399.

13. Tri-City completed the fence by August 10, 2021. In response to Tri-City's request for payment, Mr. Esmaili refused to pay and said Tri-City "broke the contract," without explaining how.
14. In this dispute, Mr. Esmaili says Tri-City did not complete the job by the date agreed. However, he does not say what the agreed date was. There is no evidence of a contractual deadline and the fence was undisputedly completed in less than a month, so I find no breach of contract based on timing.
15. Mr. Esmaili also says Tri-City did not use all the bags of concrete mix it brought to the job. However, he does not say the contract price was based on a given number of bags of concrete mix, so I find no contract breach based on concrete use.
16. I turn to Mr. Esmaili's claim that the work was generally unprofessional or deficient. As a general principle, a contractor is entitled to payment upon substantial completion of the work (see *Belfor (Canada) Inc. v Drescher*, 2021 BCSC 2403). An owner alleging unprofessional or deficient work must establish a contractual breach with evidence. Mr. Esmaili provided no specifics and no supporting evidence. In the circumstances, I find Tri-City constructed the fence to a reasonable professional standard and fulfilled its end of the bargain.

17. In summary, I find Mr. Esmaili has not established any valid reason why he is not responsible for the \$1,795.50 balance of the original contract plus \$399 for failing to clear the obstruction as agreed. I find Mr. Esmaili must pay Tri-City \$2,194.50 for the fence project.
18. The *Court Order Interest Act* applies to the CRT. Tri-City is entitled to pre-judgment interest on the \$2,194.50 from August 10, 2021, the date I find payment was due, to the date of this decision. This equals \$7.87.
19. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Tri-City was successful, so I find it is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

20. Within 14 days of the date of this order, I order Mr. Esmaili to pay Tri-City a total of \$2,327.37, broken down as follows:
 - a. \$2,194.50 in debt,
 - b. \$7.87 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in CRT fees.
21. Tri-City is entitled to post-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 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.

Micah Carmody, Tribunal Member