



Civil Resolution Tribunal

Date Issued: June 7, 2022

File: SC-2021-009681

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bye v. Gombas*, 2022 BCCRT 668

BETWEEN:

NICHOLAS BYE

APPLICANT

AND:

RITA GOMBAS

RESPONDENT

AND:

NICHOLAS BYE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about landscaping work. The respondent and applicant by counterclaim, Rita Gombas, hired the applicant and respondent by counterclaim, Nicholas Bye, to do landscaping work. Mr. Bye claims \$4,800 for work he says he completed but Ms. Gombas did not pay for. Ms. Gombas says Mr. Bye stopped working and did not complete additional work of that value, so she owes nothing.
2. Ms. Gombas counterclaims for \$800 for repairing an allegedly deficient retaining wall, and \$1,500 for the alleged costs of delays and of finishing the project, which equals \$2,300. She also counterclaims \$1,150 for damage Mr. Bye caused to her neighbour's property and \$1,550 for the cost of repairing and redoing Mr. Bye's work on the neighbour's walkway, which equals \$2,700. The counterclaims total \$5,000, which is the maximum Civil Resolution Tribunal (CRT) small claims amount allowed. Ms. Gombas has abandoned her claim to any amounts exceeding \$5,000.
3. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. 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

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 issues in this dispute are:
 - a. To what extent is Ms. Gombas responsible to pay Mr. Bye \$4,800 for properly completed but unpaid work?
 - b. To what extent is Mr. Bye responsible to pay Ms. Gombas \$2,300 in damages?
 - c. Is Mr. Bye responsible to Ms. Gombas for \$2,700 in damage and repairs to her neighbour's property?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Bye must prove his claim on a balance of probabilities, meaning "more likely than not." Ms. Gombas must prove her counterclaims to the same standard. I have read all the parties' submissions and evidence, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
10. The parties' written landscaping contract (landscaping agreement), dated September 30, 2021, was for a fixed price of \$13,500: \$6,500 that Ms. Gombas paid up front, and the remaining \$7,000 due when the work was completed. In the contract, Mr. Bye

agreed to use reasonable efforts to substantially complete the back yard by October 24, 2021, and the entire project by November 28, 2021. The scope of work included:

- a. Trenching and filling a gas line and grading an equipment slab,
 - b. Building retaining walls with stairs in the front and back yards,
 - c. Installing artificial turf in the back yard and pavers in the front yard, including ground grading and preparation,
 - d. Planting and replanting trees and turf, and
 - e. Clean up and waste removal.
11. The parties say they also had a verbal agreement to install “paver” stones on the shared walkway that straddled the boundary between Ms. Gombas’ property and her neighbour’s property for a fixed price of \$3,400 (walkway agreement), which Ms. Gombas undisputedly paid \$1,700 toward. The parties say they made various other verbal changes and additions to the written landscaping contract, but they disagree about what those changes were and provided little evidence about them. I find there is insufficient evidence before me to prove any other verbal changes or additions to the work the parties agreed to, or any related price modifications.
12. I find the total proven project budget for both the landscaping and walkway was \$16,900, and that Ms. Gombas paid Mr. Bye a total of \$8,200, leaving \$8,700 unpaid.

Does Ms. Gombas owe Mr. Bye \$4,800?

13. Mr. Bye undisputedly did not complete the agreed work by the landscaping contract’s deadlines. Although Mr. Bye originally said in the Dispute Notice that Ms. Gombas told him to leave the project in early December 2021 so he was unable to finish it, he says in his later submissions that the parties verbally agreed he would stop working on the project and that others who had been helping him would finish it instead.
14. I find an audio recording of the parties’ conversation confirms that the parties agreed that Mr. Bye would stop working on the project. Under this termination agreement, I

find the parties agreed that other workers would complete the project and would be paid directly and on an hourly basis by Ms. Gombas. I also find the parties agreed that if the project was completed for less than the budgeted \$16,900, Ms. Gombas would pay Mr. Bye the difference between the total budgeted cost and the total actual cost. In the recorded conversation, the parties did not discuss what would happen if the total cost of the project to Ms. Gombas exceeded \$16,900. The parties agree that the labour credits were calculated at \$25 per hour.

15. I find the evidence shows that the parties mutually agreed to end the landscaping agreement and walkway agreement on the above terms. I find photos in evidence show that when Mr. Bye stopped working, much of the landscaping work was obviously incomplete, including unfinished paver, turf, and retaining wall work.
16. The parties agree that Ms. Gombas directly paid other workers for their hourly labour completing the project. Ms. Gombas' accounting records show she paid an additional \$1,320 in labour after Mr. Bye stopped working on the project in mid-December 2021, which I accept because Mr. Bye does not directly dispute it and there is no evidence to the contrary. It is unclear how much, if anything, she directly paid the other workers before Mr. Bye left the project. I find receipts in evidence show that in 2022, Pro-Tech Landscape Co. charged Ms. Gombas \$2,100 for front yard retaining wall steps and pavers. Pro-Tech also provided an estimate of \$5,575 for installing front yard pavers and installing turf, and charged \$800 for gluing and re-adjusting a retaining wall. Mr. Bye admits that the gluing was incomplete and that wall blocks needed adjusting.
17. I find the submitted receipts, estimates, and records show it cost Ms. Gombas more than the remaining \$8,700 budget amount to complete the project. Under the parties' project termination agreement, I find Ms. Gombas owed Mr. Bye nothing further.
18. Mr. Bye says that the hourly workers who completed the project did not work fast enough and that he was not kept informed of their progress. I find the evidence before me does not show exactly how much and what types of work the workers completed, or whether their work was unreasonably slow. Further, I find the evidence does not prove that the amounts Pro-Tech charged and estimated were excessive. I also find

that the termination agreement did not require Ms. Gombas to keep Mr. Bye informed about the work while it continued without his further involvement.

19. Mr. Bye also says that he lost money on the project, and alleges that as of mid-December 2021 he had paid \$9,400 in costs and expenses. I find it is not necessary to determine how much Mr. Bye spent on project costs, because as noted he agreed to do the landscaping and walkway projects for fixed prices plus any agreed-upon amendments. Further, I found above that he agreed to accept the unspent balance of the original project budget, if any, as payment for his completed work. I find there was no other agreement about covering Mr. Bye's costs and expenses. I also find that, contrary to Mr. Bye's suggestion, the parties did not agree Mr. Bye would be paid for the value of the work he provided up to the date he stopped working on the project, except as noted under the termination agreement. I note that Mr. Bye also provided insufficient evidence to prove the value of the work he completed by the termination date.

20. I find Mr. Bye's has not proven he is entitled to \$4,800 for unpaid work.

Does Mr. Bye owe Ms. Gombas \$2,300 for alleged deficiencies?

21. Ms. Gombas counterclaims \$800 for repairing an allegedly deficient retaining wall, which as noted is the amount Pro-Tech charged for gluing and adjusting a retaining wall. Mr. Bye says that some retaining wall adjustment was needed due to expected settling, and that the gluing remained unfinished because it was the final step after adjustment. I find that the \$800 in Pro-Tech retaining wall charges was for work that Mr. Bye left incomplete, and not for work he completed that was deficient and needed repairs. So, I find the parties' termination agreement applied to the \$800 of retaining wall work, which as noted above was deducted from the unused budget amounts owing to Mr. Bye. I find that awarding Ms. Gombas a further \$800 under this counterclaim for the same work would amount to double recovery.

22. Further, as the party alleging deficient work, Ms. Gombas bears the burden of proving that Mr. Bye failed to construct the retaining wall in a reasonably professional manner

(see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Expert evidence is normally required to assess the quality of a professional's work (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124), unless a deficiency is non-technical and within an ordinary person's knowledge and experience, or if the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

23. I find expert evidence is required here, because I find the issue of whether the retaining wall was built properly involves technical subject matter that is beyond common knowledge and understanding, and the evidence does not show that the work was obviously substandard. I find none of the evidence before me qualifies as expert evidence under the CRT's rules. So, I find the alleged retaining wall deficiencies are unproven, and the \$800 cost of finishing the wall has already been accounted for. I dismiss Ms. Gombas' counterclaim for \$800 in damages.
24. I note that Ms. Gombas suggests there were other deficiencies in the work completed by Mr. Bye. However, I find that those alleged deficiencies require expert evidence to prove, and as noted there is no expert evidence before me. Further, other than the work on her neighbour's property, addressed below, Ms. Gombas did not specifically request a remedy in her counterclaim Dispute Notice for other alleged deficiencies.
25. Ms. Gombas also claims \$1,500 for the alleged costs of delays and costs of finishing the project. Regarding alleged delays, I find none of the evidence before me shows that Ms. Gombas incurred any extra costs or expenses because of any delays. I also find that the termination agreement ended the original landscaping and walkway agreements, and released Mr. Bye from his obligation to use reasonable efforts to meet the schedule in those agreements.
26. Turning to completion costs, as noted above Ms. Gombas' costs of finishing the project without Mr. Bye exceeded the parties' originally-agreed project price. However, also as noted, I find the termination agreement ended the landscaping and walkway agreements, including Mr. Bye's obligation to complete the project for a fixed price. Although the verbal termination agreement required Ms. Gombas to pay Mr.

Bye the leftover budget amount if she completed the project for less, I find there was no obligation for Mr. Bye to pay Ms. Gombas if the actual project costs exceeded the original budget amounts. I find the audio recording of the parties' conversation and other evidence do not show that Mr. Bye agreed to compensate Ms. Gombas for any project completion cost overruns paid to others. On the submitted evidence, I find that Ms. Gombas paid others to complete the project on a time and materials basis, and that she likely accepted the risk and responsibility that the replacement contractors might not complete the project within Mr. Bye's original budget. Further, I find that allowing this counterclaim for completion costs would result in double recovery because as noted, those amounts have already been deducted from the unused budget amounts owing to Mr. Bye under the termination agreement.

27. Having weighed the evidence and submissions, I dismiss Ms. Gombas' counterclaim for \$1,500 for the alleged costs of delays and of finishing the project.

Is Mr. Bye responsible to Ms. Gombas for damage and repairs to her neighbour's property?

28. Ms. Gombas counterclaims \$1,150 for damage Mr. Bye admittedly caused to her neighbour's house while working on the project, although Mr. Bye disagrees with the alleged cost of repairs. Mr. Bye admits that he agreed to repair the house damage, but says he was unable to because Ms. Gombas told him not to return to her property, although I find nothing turns on that.
29. The written landscaping agreement said Mr. Bye "will be responsible to repair any damage caused by [Mr. Bye] during the Project." Ms. Gombas says this makes Mr. Bye responsible to her for the cost of repairing neighbour's house damage.
30. Even without considering my finding that the termination agreement ended the parties' obligations under the landscaping agreement, I find that Ms. Gombas lacks standing to bring a claim about damage to her neighbour's house, for the following reasons. I note that the neighbour was not a party to any of the parties' agreements, or to this CRT dispute. I find the above landscaping agreement term effectively means

that Mr. Bye is responsible to Ms. Gombas for any damage she suffered that was caused by Mr. Bye. However, I find there is no evidence before me showing that Ms. Gombas suffered a loss or damage because of the neighbour's house damage. I find there is no evidence that the neighbour has requested payment from Ms. Gombas for Mr. Bye's damage. So, I find Mr. Bye is not responsible to Ms. Gombas for the cost of repairing the neighbour's house damage, either under a contract or otherwise. I dismiss Ms. Gombas' counterclaim for \$1,150 for her neighbour's house damage.

31. Ms. Gombas also claims \$1,550 for the cost of repairing and redoing Mr. Bye's work on the neighbour's walkway, which she says was substandard. I find the evidence does not show that the neighbour agreed to pay anything for the walkway, which was used for construction access during the landscaping project. I find submitted photos of the walkway show no obvious defects, and that expert evidence is required to prove any deficiencies. As noted, there is no expert evidence before me. So, I find the evidence does not prove that Mr. Bye's work on the neighbour's walkway was deficient and needed repairs. I dismiss Ms. Gombas' counterclaim for \$1,550 for the alleged cost of repairing the neighbour's walkway.

CRT Fees and Expenses

32. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. In this case, I see no reason not to follow that general rule. I find Mr. Bye was unsuccessful in his claim, but Ms. Gombas paid no CRT fees for that claim. Similarly, Ms. Gombas was unsuccessful in her counterclaims, but Mr. Bye paid no CRT fees for the counterclaims. Neither party claims CRT dispute-related expenses. So, I order no reimbursements.

ORDER

33. I dismiss Mr. Bye's claim, Ms. Gombas' counterclaims, and this dispute.

Chad McCarthy, Tribunal Member