



Civil Resolution Tribunal

Date Issued: June 21, 2022

File: SC-2021-008649

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Outlaw Inspections Ltd. v. Pyle*, 2022 BCCRT 717

BETWEEN:

OUTLAW INSPECTIONS LTD.

APPLICANT

AND:

BARRY PYLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about payment for landscaping services, and in particular tree stump and soil removal. The applicant, Outlaw Inspections Ltd. (Outlaw), says it completed

its work in October 2021 but the respondent, Barry Pyle, only offered to pay \$1,500 which Outlaw declined to accept. Outlaw says the work took longer than expected because of unforeseeable access issues and buried tree roots. Outlaw, which also does business as Git 'Er Dun Bobcat Service, claims \$3,138.98 for its unpaid invoice.

2. Mr. Pyle says the parties agreed to a fixed price of \$2,500, not an hourly rate job as Outlaw claims. Mr. Pyle also says Outlaw was ill-equipped to do the job and did the work too slowly, leaving the job only about 20% completed. Mr. Pyle also says Outlaw damaged his drain tile and failed to adequately repair it. Mr. Pyle says he owes nothing.
3. Outlaw is represented by its owner, Jim Fry. Mr. Pyle is 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.

ISSUES

8. The issues in this dispute are
 - a. Whether Outlaw failed to reasonably complete the agreed landscaping job and repair damaged drain tile, and
 - b. To what extent, if any, Outlaw is entitled to payment of its \$3,138.98 invoice.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Outlaw must prove its 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.
10. It is undisputed Mr. Pyle sought Outlaw’s quote for removal of 2 old tree stumps and to widen the area next to his carport from 6 to 9 feet.
11. On October 27, 2021, Outlaw gave Mr. Pyle its hourly rate quote, which totalled \$2,886.98. The quote did not mention a start or completion date. In the parties’ text exchange following delivery of the quote, Outlaw said Mr. Pyle would only pay for “the time out”. I find the parties’ agreement was based on an hourly rate and it was not a fixed-price job.

12. Outlaw's quote had an itemized breakdown, including travel, pick up of rental equipment, excavation and removal of 2 small tree stumps "with excavator & bobcat" and "12 inches of material for disposal to allow for an 8' x 20' pad to be poured". It also included excavation of material "along fence to create a slope as client requested" and to remove "excess material". It further included installation of new weeping tile to be supplied by Mr. Pyle, which Outlaw would pack with drain rock and dirt cover. Next, it included packing of $\frac{3}{4}$ " "crush rock" to go underneath a concrete pad Mr. Pyle wanted installed in the cleared area. The quote described the time units were based on "bobcat / labour".
13. On October 28, 2021, Mr. Pyle agreed to the \$2,886.98 quote, saying "let's do it" even though Outlaw's quote was about \$500 higher than another he had received. In response, Outlaw confirmed it would try to do the job for less, and as noted above said it was an hourly rate job and that Mr. Pyle would only pay for the "time out". Mr. Pyle responded, "don't worry about it just don't make it more". Outlaw proceeded to start work on October 28, 2021 by delivering rented machinery that day. There is no evidence before me that Outlaw responded to Mr. Pyle's text about "don't make it more".
14. It is undisputed that on October 29, 2021 Outlaw spent 4 hours digging out the 2 tree stumps. Outlaw says it discovered the weeping tile buried in the dirt bank and under the 2 tree stumps, which had grown all around the tile. Photos in evidence show the tile, which appears to be a 1" to 2" pipe, all intertwined in the tree roots.
15. Outlaw says that on October 30 it picked up the required material to repair all the weeping tile so ground water would continue to flow for property drainage, along with drain rock for the repair. Outlaw says it completed the weeping tile repair in 2 hours.
16. Outlaw says Mr. Pyle then decided that he wanted to move his carport's wall 2 feet, because it was impossible to remove the material from the bank of dirt due to the weeping tile being in the way. Outlaw says it referred a carpenter to Mr. Pyle to complete the carport carpentry work. I accept this undisputed evidence.

17. Outlaw says on October 31, 2021 Mr. Pyle asked when the carpentry job could start, and Outlaw said first Mr. Pyle needed to pay for its completed work. Again, I accept this undisputed evidence.
18. On November 3, 2021, Outlaw emailed Mr. Pyle its invoice and requested payment. That same day Mr. Pyle responded that Outlaw only completed half the work quoted on but for more money. Mr. Pyle wrote it was not his fault Outlaw had not removed stumps before and was “slow on the excavator”. Mr. Pyle wrote he “brought in the original fellow that quoted me and he shook [his] head” and told Mr. Pyle the job could have been done in a “day easily”. However, Mr. Pyle submitted no witness statements. In his email, Mr. Pyle concluded by saying he would not pay the bill and would offer \$1,500. As noted, Outlaw refused.
19. In support of his position that Outlaw’s work was incomplete, poorly done, and caused damage, Mr. Pyle provided an annotated version of Outlaw’s quote, indicating what he says Outlaw failed to do. Mr. Pyle’s list of uncompleted work includes cutting down rebar, some excavation and removal of material, installation of crush rock and gravel.
20. The difficulty for Mr. Pyle is as follows. As noted, the parties’ agreement was based on an hourly rate, not as a fixed-price job. Outlaw did not bill Mr. Pyle for that uncompleted work.
21. Next, the burden on the party alleging defective work rests with the party asserting it, which here is Mr. Pyle (see: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61 and *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). Further, I find whether Outlaw used an inappropriate machine or failed to excavate properly is a technical matter, beyond ordinary experience. So, I find Mr. Pyle must prove the alleged deficiencies with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is no such expert evidence.
22. In particular, while Mr. Pyle says he hired another contractor to finish the job, he submitted no evidence from that contractor, such as a quote, invoice, or opinion

about Outlaw's work. Instead, Mr. Pyle submitted his own annotated photos of the job site, showing what he says is a poorly excavated slope and material left behind by Outlaw. I find I cannot conclude Outlaw's work was substandard based on this alone as I find nothing obviously deficient.

23. Mr. Pyle's submitted photos also show a broken underground pipe which the evidence shows was the weeping tile that Outlaw undisputedly damaged during excavation with a grapple hook. On this latter issue, the parties disagree about whether Outlaw repaired the damage properly. Again, I find the burden rests with Mr. Pyle to prove the repair was done improperly and he has not submitted any evidence to support his assertion. So, in summary, I find Mr. Pyle has failed to prove Outlaw's work was defective or that it worked too slowly.

24. I turn to Outlaw's November 1, 2021 invoice for the claimed \$3,138.98. It covers travel time and machine rental costs. It also covers \$126.50 in materials to repair the "broken weeping tile". I accept the tile was broken due to it being entangled in the tree roots that Mr. Pyle asked Outlaw to dig up. There is no evidence before me to support Mr. Pyle's assertion the stumps could have been excavated without disturbing the weeping tile, which I note the evidence shows Mr. Pyle never told Outlaw about. Outlaw also charged \$715 for 11 hours of machine and labour time, including sloping the bank and loading excess material for disposal, and including some unspecified portion for repair of the damaged weeping tile.

25. On balance, I find Outlaw is entitled to payment. I say this because as noted the evidence shows the job was based on "time out" and because I have found the excavation Outlaw did complete required it to do additional work (with Mr. Pyle's agreement) that was unforeseeable, such as the weeping tile damage and repair. In short, I find Outlaw is entitled to the claimed \$3,138.98.

26. The *Court Order Interest Act* applies to the CRT. In the absence of an agreement about interest, I find Outlaw is entitled to pre-judgment interest on the \$3,138.98 under the COIA. Calculated from November 1, 2021 to the date of this decision, this interest equals \$8.99.

27. 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 Outlaw was successful, I find it is entitled to reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

28. Within 21 days of this decision, I order Mr. Pyle to pay Outlaw a total of \$3,322.97, broken down as follows:

- a. \$3,138.98 in debt,
- b. \$8.99 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

29. Outlaw is entitled to pre-judgment interest, as applicable.

30. 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.

31. 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, Acting Chair and Vice Chair