



Civil Resolution Tribunal

Date Issued: August 22, 2022

File: SC-2021-009735

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boyko dba Benjamin Landscaping and Projects v. Nguyen*,
2022 BCCRT 937

B E T W E E N :

BEN BOYKO (Doing Business As BENJAMIN LANDSAPING AND
PROJECTS)

APPLICANT

A N D :

DUC NGUYEN

RESPONDENT

A N D :

BEN BOYKO (Doing Business As BENJAMIN LANDSAPING AND
PROJECTS)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant and respondent by counterclaim, Ben Boyko (Doing Business As Benjamin Landscaping and Projects), provided landscaping design services under contract with the respondent and applicant by counterclaim, Duc Nguyen.
2. Mr. Boyko says he met his contractual obligations. He seeks payment of the \$895 balance of the \$1,785 contract. Mr. Boyko also seeks \$1,000 for extra work.
3. Mr. Nguyen says Mr. Boyko did not deliver the design he wanted. Mr. Nguyen also denies requesting any extra work. In the counterclaim, Mr. Nguyen claims a refund of his \$890 deposit, arguing that Mr. Boyko provided little value and gave Mr. Nguyen “stress and headache”.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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.
8. 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

9. The issues in this dispute are:
 - a. Did Mr. Boyko fulfill his contractual obligations, entitling him to full payment?
 - b. If not, is Mr. Nguyen entitled to a refund?
 - c. Did Mr. Boyko complete extra work, and if so, what must Mr. Nguyen pay for that extra work?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Boyko must prove his claims on a balance of probabilities, meaning more likely than not. Mr. Nguyen must prove his counterclaims to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. It is undisputed that an April 21, 2021 quote formed the basis of the parties' contract. The quote described the work as:
 - a. Redesign garden area in front and back yards,

- b. Design garden area in field,
 - c. Consult with experienced landscape designer,
 - d. 2-D and 3-D rendering,
 - e. Digital design pictures
 - f. Plant planning schedule,
 - g. Plant list, and
 - h. Includes all revisions as required.
12. Mr. Nguyen signed the quote and paid the \$890 deposit required to begin the work. The total price indicated on the quote, with GST, was \$1,785.
13. The parties disagree about their mutual intention when forming the contract. Mr. Boyko says the intention was to simply modify Mr. Nguyen's existing gardens with some different plants, and create an elevated retaining wall around the garden to raise the plants out of a swampy area. In contrast, Mr. Nguyen says he wanted a total landscaping redesign.
14. Early on, Mr. Boyko undisputedly requested, and Mr. Nguyen provided, a copy of his previous landscape design plans. Mr. Nguyen says Mr. Boyko simply copied that design but added some different plants and a retaining wall, which is consistent with Mr. Boyko's stated understanding of his contractual obligations.
15. Mr. Nguyen articulated these concerns in July 2021 emails with Mr. Boyko and Mr. Boyko's subcontracted designer, Outdoor Décor and Design (ODD). In a July 24, 2021 email, Mr. Nguyen said that despite their discussions and revisions, the design was still too similar to the existing design.
16. The parties met and discussed further design revisions. According to an August 2, 2021 email from Mr. Boyko to ODD, Mr. Nguyen "very much" liked Mr. Boyko's new proposal to provide a Japanese-style garden with a wooden bridge and a dry river

bed, and no retaining walls. Mr. Nguyen apparently also abandoned his plans to design the large field after Mr. Boyko supplied an initial design, which Mr. Nguyen does not dispute. Mr. Boyko instructed ODD to prepare a second design for the front yard, including the Japanese-style garden, which ODD provided to Mr. Nguyen at some point between August and October 2021.

17. Mr. Nguyen says he never wanted a Japanese-style garden. However, the parties' emails indicate Mr. Nguyen was happy with the second design. In October 2021 emails, Mr. Nguyen suggested minor revisions and did not say he was unhappy with the design overall. The emails indicate Mr. Nguyen intended to proceed with implementing the design.
18. The details of the breakdown in the parties' working relationship are unclear. In September 2021, Mr. Boyko demanded payment in full, and Mr. Nguyen requested a refund. I infer that this happened because Mr. Boyko assumed Mr. Nguyen received the second design in August, but Mr. Nguyen says he did not receive it until ODD sent it again in October. In any event, the parties proceeded to revise the design in late October, and I find that by doing so they affirmed their intention to be bound by the contract. The reconciliation was short lived, as Mr. Boyko says that on November 15, 2021 Mr. Nguyen said the designs were unsatisfactory and unusable. Mr. Nguyen does not dispute this. I find on balance that it was Mr. Nguyen's decision not to proceed with further revisions, and to end the contract.
19. On review of the parties' correspondence and the design files emailed to Mr. Nguyen, I find that Mr. Boyko substantially completed his obligations under the contract. I find he completed contract items (a) through (e). Although there is no evidence that he supplied a plant list or planting schedule, items (f) and (g), I find that a reasonable person would understand that those items would be supplied after confirmation of the design. Mr. Nguyen does not argue otherwise. As for the last item, which was revisions as required, Mr. Boyko undisputedly revised the design when Mr. Nguyen was unhappy with the first attempt. I find Mr. Boyko was willing to continue to revise

the design to Mr. Nguyen's liking. It follows that I allow Mr. Boyko's claim for the \$895 balance of the quote.

20. Mr. Nguyen has not shown that the design plans Mr. Boyko provided were substantially deficient or not what Mr. Nguyen bargained for. While I accept that he was unhappy with the first and second drafts, Mr. Nguyen has not shown that Mr. Boyko was incapable of completing the design to Mr. Nguyen's liking. I find there was no fundamental breach and so I find Mr. Nguyen was not entitled to treat the contract as being at an end and claim a refund of his deposit. It follows that I dismiss Mr. Nguyen's counterclaim.
21. I turn to Mr. Boyko's claim for extra work. Mr. Boyko says he "went above and beyond" in attempting to make Mr. Nguyen happy with a completely new concept design, presumably referring to the Japanese-style garden. He said this included extra on-site consultation, designs, plant plans and rendering. Mr. Boyko claims \$1,000 without providing a breakdown. Mr. Nguyen says Mr. Boyko did not provide any extra services.
22. The law requires a contractor seeking compensation for extra work to prove each of 4 elements (see *Kei-Ron Holdings Ltd. v. Coquihalla Motor Inn Ltd.*, 1996 CanLII 3443 (BC SC) at paragraph 41). The first element is that the work fell outside the scope of work originally contemplated by the contract. I find the work here, including the Japanese-style design, was not outside the contract's scope given that the contract included "all revisions as required." Further, Mr. Boyko's emails to ODD indicated that he voluntarily did the second design as he wanted to retain Mr. Nguyen's business in implementing the designs.
23. Another element Mr. Boyko has not proved is that Mr. Nguyen was informed or necessarily aware that the work would increase the cost. Mr. Boyko admits that additional cost for the extra work was "not discussed" and the topic was "not brought up at all." For these reasons, I find Mr. Boyko has not proven his claim for compensation for extra work, and I dismiss it.

24. The *Court Order Interest Act* applies to the CRT. Mr. Boyko is entitled to pre-judgment interest on the \$890 from November 15, 2021, when I find the balance became payable, to the date of this decision. This equals \$4.70.
25. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Mr. Boyko was partially successful, so I find he is entitled to reimbursement of \$62.50 for half his \$125 in CRT fees. I dismiss Mr. Nguyen's claim for CRT fees because his counterclaim was unsuccessful. Neither party claimed any dispute-related expenses.

ORDERS

26. Within 14 days of the date of this order, I order Mr. Nguyen to pay Mr. Boyko a total of \$957.20, broken down as follows:
- a. \$890.00 in debt,
 - b. \$4.70 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
27. Mr. Boyko is entitled to post-judgment interest, as applicable. I dismiss Mr. Boyko's remaining claim.
28. I dismiss Mr. Nguyen's counterclaim.
29. 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. 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