



Civil Resolution Tribunal

Date Issued: September 21, 2022

File: SC-2022-001326

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kai Shang Garden & Landscaping Ltd. v. Bhugra*, 2022 BCCRT 1037

BETWEEN:

KAI SHANG GARDEN & LANDSCAPING LTD.

APPLICANT

AND:

HARDEEP SINGH BHUGRA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about payment for landscaping services. Kai Shang Garden & Landscaping Ltd. (KSGL) claims that Hardeep Singh Bhugra owes it \$4,737.50 for landscaping work. KSGL asks for an order that Dr. Bhugra pay this amount. KSGL is represented by its owner, Kai Shang.

2. Dr. Bhugra says that KSGl's work was deficient and incomplete. He says that he had to hire another contractor to complete it. He also says that he paid most of the overall contract price and should not have to pay anything more. Dr. Bhugra is self-represented.
3. For the reasons that follow, I dismiss KSGl's claims.

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. 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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

8. KSGl initially did not provide submissions, despite several reminders from CRT staff. After Dr. Bhugra provided his submissions, Mr. Shang emailed CRT staff submissions. The CRT provided these late submissions to Dr. Bhugra and invited him to respond, which he did not do. I have considered KSGl's late submissions because I find that Dr. Bhugra had a reasonable opportunity to object or respond to them and chose not to. Given my conclusion in Dr. Bhugra's favour, I find that he was not prejudiced by the late submissions in any event.

ISSUES

9. The issues in this dispute are:
 - a. Did KSGl substantially complete the contracted work?
 - b. Were there any deficiencies in KSGl's work?
 - c. How much, if anything, is KSGl entitled to be paid?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, KSGl as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Dr. Bhugra hired KSGl for a significant landscaping project that started on October 21, 2019. The overall value of the contract was nearly \$38,000. KSGl worked until May 12, 2020. This much is undisputed.
12. KSGl says that Dr. Bhugra owes \$4,737.50 for 2 outstanding invoices. KSGl did not provide these invoices as evidence. Dr. Bhugra says that he "held back" \$4,725 due to deficiencies, effectively admitting that he did not pay the full contract price. Neither party explained this \$12.50 discrepancy, but given my conclusion, nothing turns on it.

13. Like any other contractor, KSGl is entitled to be paid if it substantially completed the contracted work. The burden is on KSGl to prove that the work was substantially complete. If a customer, like Dr. Bhugra, believes that there were problems with the contractor's work, they may bring a claim for damages. However, they must still pay the invoices subject to any deduction for deficient work. See *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403. When a customer alleges that a contractor's work was below a reasonably competent standard, they must prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287, at paragraph 61.
14. The first question is whether KSGl substantially completed the contracted work. I find that this requires KSGl to prove 2 things: first, what specific work Dr. Bhugra hired KSGl to do and, second, that KSGl did that work. I find that KSGl has failed to prove either point. My reasons follow.
15. First, KSGl provided very little evidence about what work Dr. Bhugra hired it to do. In its reply submissions, KSGl refers to design drawings and estimates, but did not provide copies of them. The only evidence KSGl provided that gives any sense of the project's scope is its comments on a written estimate from another landscaping company, Groundtec Landscaping & Excavation. Presumably, this is the landscaping company Mr. Bhugra says he hired to fix and complete KSGl's work. KSGl says that none of the work outlined in Groundtec's estimate was part of the parties' original contract. However, KSGl's submission does nothing to explain what work Dr. Bhugra did hire KSGl to do.
16. Second, KSGl provided very little evidence about what work it completed. The only documentary evidence KSGl provided is a series of photos that show landscaping work in progress. However, according to KSGl, the photos are from December 2019, long before KSGl stopped working on the site. It is therefore impossible to determine from the photos the full scope of the work KSGl completed.
17. I therefore find that KSGl has not proven that it substantially completed the contracted work. So, KSGl has not proven that it is entitled to be paid the

outstanding amount owed under the contract. I dismiss KSGl's claim. I find it is therefore unnecessary for me to consider Dr. Bhugra's arguments about the alleged deficiencies in KSGl's work.

18. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. KSGl was unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses. Dr. Bhugra did not claim any dispute-related expenses or pay any CRT fees.

ORDER

19. I dismiss KSGl's claim, and this dispute.

Eric Regehr, Tribunal Member