



Civil Resolution Tribunal

Date Issued: November 18, 2022

File: SC-2022-001108

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Klose v. Showcase Landscaping Inc.*, 2022 BCCRT 1250

BETWEEN:

LUKAS KLOSE

APPLICANT

AND:

SHOWCASE LANDSCAPING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about landscaping work.
2. The applicant, Lukas Klose, hired the respondent, Showcase Landscaping Inc. (Showcase), to level his yard and install a new lawn and decorative river rock. Mr. Klose says that despite the parties having a fixed-price contract, Showcase

underestimated the amount of soil required and demanded more money to complete the project. Mr. Klose also says Showcase's work created drainage problems, rendering the yard partly unusable. Mr. Klose claims \$5,000, which includes a \$1,000 refund for amounts he paid Showcase over its estimate, \$1,500 for the cost to remediate the drainage issue, and \$2,500 in damages for loss of use and enjoyment of his yard.

3. Showcase denies the parties had a fixed-price contract and says they agreed that materials and labour not specifically included in Showcase's estimate would cost extra. Showcase also denies that its work was deficient or caused any drainage problems. I infer it is Showcase's position that this dispute should be dismissed.
4. Mr. Klose is self-represented. Showcase is represented by its owner, Ryan Chem.

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. 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.
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 the parties have a fixed-price contract, and if so, does Showcase owe Mr. Klose a refund for any amount paid above Showcase's estimate?
 - b. Was Showcase's work deficient, and if so, what is the appropriate remedy?
 - c. Is Mr. Klose entitled to the claimed \$3,500 in damages for loss of use and enjoyment of his yard?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Klose as the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

Did the parties have a fixed-price contract?

11. As noted, Mr. Klose hired Showcase to perform landscaping work. Showcase provided Mr. Klose with a June 13, 2019 estimate. It included 2 projects: installation of a new lawn for \$4,610 and installation of an "optional" mulch garden bed for \$450. The new lawn installation included: excavation and removal of existing lawn and sub-soils, new turf installation, 15 cubic yards of soil, rolling and compaction of soil, fertilizer, use of various equipment, delivery of materials, and labour. The estimate also noted that the new lawn grade was to be raised to "the top of 6x6 timbers".

12. It is undisputed that Mr. Klose accepted Showcase's estimate. It is also undisputed that after Showcase installed the 15 cubic yards of new soil, Mr. Klose was dissatisfied with the yard's grade level. Showcase says it offered to provide more soil at an extra cost, and Mr. Klose agreed to purchase 5 additional cubic yards. In contrast, Mr. Klose says he made it clear to Showcase that he did not agree he should have to pay more because making the lawn level with the 6x6 timbers was part of the estimate he agreed to. Mr. Klose says Showcase would not agree to complete the project unless he paid for the additional soil.
13. Showcase's July 17, 2019 invoice sets out the same new lawn installation project that was on its June 13 estimate, for \$4,610. The invoice shows the mulch garden bed project became a river rock installation project for \$450, and there was a new section called "project add-ons" totalling \$775. The add-ons included \$350 for the 5 cubic yards of soil, \$350 for the soil installation, installation of a 4x4 retaining wall for no charge, and one cubic yard of additional river rock for \$75. So, I find Showcase charged Mr. Klose \$700 for providing and installing the additional soil, which Mr. Klose undisputedly paid.
14. I note that Mr. Klose says the *Sale of Goods Act* (SGA) applies to this dispute. I do not agree. The SGA applies only to the sale of goods, not services. I find the parties' contract was primarily for services, and the provision of soil was incidental to their contract for landscaping services.
15. I find the main issue here, is whether the parties had a fixed-price contract.
16. Mr. Klose argues that when he agreed to Showcase's estimate, the estimate was converted into a fixed-price contract. As noted, Showcase maintains that it provided only an estimate, and it was entitled to charge extra for additional materials and labour that were not included in the estimate. For the following reasons, I accept Showcase's position.
17. Use of the word "estimate" rather than "quote" is not necessarily determinative, but I find it is a relevant factor. While the estimate did not set out specific amounts for

materials or labour, I find that is also insufficient to determine whether the parties intended it to become a fixed-price contract. Importantly, the parties provided no evidence about their discussions of Showcase's estimate, such as whether Mr. Klose requested a fixed-price quote or communicated a budget for the project.

18. While Mr. Klose says the parties agreed the cost would be fixed unless Mr. Klose specifically requested a change in the project's scope, I find he has not proven that agreement. In the absence of any documentary evidence, such as a signed contract between the parties, I find there is insufficient evidence that Showcase agreed to accept the risk that it might have underestimated the materials and labour required to complete the job. So, I find Showcase provided only an estimate of the cost, and it was entitled to charge extra for the additional soil and its installation.

19. In any event, I find Mr. Klose has not established that the estimated 15 cubic yards of soil was insufficient to raise the yard's grade to the top of the 6x6 timbers, as contemplated by Showcase's estimate. I note it is not entirely clear what was meant by "the top of the 6x6 timbers", as there is very limited photographic evidence of Mr. Klose's yard before me, and neither party explained that term. While Mr. Klose clearly wanted the grade to be higher than what the 15 cubic yards ultimately provided, there is no evidence to show the grade was clearly below the 6x6 timbers before Showcase installed the extra soil. Overall, I find I am unable to determine on the evidence before me that Showcase underestimated the amount of soil required to sufficiently raise the yard's grade.

20. For the above reasons, I dismiss the "extra soil" aspect of Mr. Klose's claim.

Was Showcase's work deficient?

21. Mr. Klose also alleges that Showcase's lawn installation was substandard, such that it resulted in drainage issues in his yard.

22. 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. Generally, expert evidence is required to prove an

allegation that a professional's work was below a reasonable standard. The 2 exceptions are when the deficiency is not technical in nature or where the work is obviously substandard: see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

23. On August 16, 2019, Mr. Klose emailed Showcase the following: "At this time need you urgently to have a look at my yard, as the drainage issue is significant. Haven't watered it in about 10 days, and is still soggy in that corner" (reproduced as written). It is undisputed that Showcase inspected Mr. Klose's yard and recommended installation of perforated pipe drains and "crush" to address what it submits was a small area of "minor pooling" water. Showcase's February 16, 2020 invoice shows it completed this work and charged Mr. Klose \$577.50. This invoice also shows that Showcase applied a top dressing on the lawn's lower areas and grass seed over the entire yard, at no charge, which Mr. Klose does not dispute.
24. The first question is whether the drainage issue was a deficiency with Showcase's lawn installation that Showcase should have fixed at no cost.
25. Mr. Klose provided a July 21, 2022 letter from Rob Colquhoun, principal of RC Lawn and Garden Care. Mr. Colquhoun stated that he has 24 years' experience operating a landscaping business and performing lawn installations and lawn care. He is also undisputedly Mr. Klose's neighbour. In his letter, Mr. Colquhoun set out his observations that before Showcase installed the new lawn, Mr. Klose had no drainage issues, and that after the installation, about ¼ of the lawn would become saturated with pooling water for several days after a rainfall. He stated the saturation was "substantially more" than what one would expect from a "healthy landscape installation".
26. I generally accept Mr. Colquhoun's observations that a portion of Mr. Klose's new lawn appeared susceptible to pooling water, as those observations are consistent with Mr. Klose's emails to Showcase, and with Showcase's attempt to address the issue in February 2020. The difficulty is that Mr. Colquhoun does not explain what

caused the drainage issue or specifically say that Showcase's work fell below a reasonable standard.

27. Essentially, Mr. Klose asks me to find Showcase's work was obviously substandard from the fact that there was undisputedly an area of the lawn where water was pooling. I am not prepared to do so. I find that the cause of drainage issues, under what circumstances such issues should be anticipated, or what should be done to prevent such issues when installing a new lawn are matters outside ordinary knowledge. Therefore, I find expert evidence is required to prove them, and I find the evidence, including Mr. Colquhoun's letter, does not address those issues.
28. Therefore, I find that Mr. Klose has not shown the drainage issue was a deficiency that Showcase should have fixed for free. So, I dismiss Mr. Klose's claim for a refund of the \$577.50 he paid Showcase to install the pipe drains and crush.
29. Mr. Klose also argues that Showcase's drainage work in February 2020 did not entirely fix the problem. The parties' email evidence shows that Mr. Klose emailed Showcase on August 28, 2020 that while his yard was "doing much better", there was still approximately 200 square feet that did not drain "at all". Mr. Klose attached a photo to the email that appears to show a small area of his yard where the grass is patchy, but I find there is no obvious pooling water in the photo. Showcase responded that installing any additional drainage systems would come at additional cost. There is no evidence that Mr. Klose responded further.
30. Mr. Klose did not provide any other evidence of the alleged ongoing drainage issue, other than Mr. Colquhoun's statement that he observed the pooling water conditions had continued "over the years" since the installation. On balance, I find the evidence is insufficient to prove an ongoing drainage issue. More importantly, even if there was an ongoing drainage issue, I find Mr. Klose has not shown Showcase is responsible. As noted, Mr. Klose has not proven the drainage issue was initially caused by Showcase's substandard work, and there is no evidence that Showcase's work in February 2020 caused or contributed to any ongoing issues.

31. Further, while Mr. Klose claims \$1,500 for the cost to fully remediate the drainage issue, he did not explain how he arrived at that amount. There are no estimates or invoices in evidence showing the work allegedly required to fix the drainage issue. So, I would have dismissed this aspect of Mr. Klose's claim in any event, for a failure to prove damages.

Damages for loss of use and enjoyment

32. Given that Mr. Klose has not proven Showcase is responsible for the drainage issues, I find I do not have to consider his damages claim for loss of use and enjoyment of his yard.

CRT fees and dispute-related expenses

33. 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. As Mr. Klose was unsuccessful, I find he is not entitled to reimbursement of CRT fees. Showcase did not pay any fees, and neither party claims dispute-related expenses, so I make no order.

ORDER

34. I dismiss Mr. Klose's claims, and this dispute.

Kristin Gardner, Tribunal Member