Civil Resolution Tribunal

Date Issued: May 23, 2023

File: SC-2022-005512

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Great Lawns & Beyond Ltd. v. Forbes*, 2023 BCCRT 430

B E T W E E N :

GREAT LAWNS & BEYOND LTD.

APPLICANT

A N D :

BETTY FORBES

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin, Vice Chair

INTRODUCTION

1. This dispute is about payment for landscaping services.

2. The respondent, Betty Forbes, hired the applicant, Great Lawns & Beyond Ltd., to provide landscaping and lawn maintenance services. The applicant says the

respondent failed to pay the full invoiced amount. So, the applicant claims $601.48 as the outstanding balance.

3. The respondent says the applicant's landscaping and mowing was deficient. So, the respondent says they should not have to pay the outstanding amount.

4. The applicant is represented by an owner or employee. The respondent is 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. 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.

9. I note the respondent initially indicated they would make counterclaims against the applicant but did not pursue those counterclaims in this dispute.

ISSUE

10. The issue in this dispute is whether the respondent owes the applicant any further payment and, if so, how much.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one the applicant must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that which is relevant to explain my decision.

Parties' Agreement

12. The applicant submitted a May 6, 2021 proposal to install a 9" wide and 3" deep river rock border around the inside perimeter of the respondent's back yard fence, for $1,014.20 including tax. The proposal included landscape fabric to prevent weed growth, bender board between the rocks and the yard, and post-installation clean up.

13. The respondent's version of the same proposal also includes an additional spring lawn care package for an additional $505.74, plus tax. The package included delivery and installation of topsoil over backyard lawn, over-seeding, lime, and fertilizer application. As both parties submitted arguments about the sufficiency of the lawn care service, I find the respondent's version of the parties' agreement is applicable here.

14. The respondent also submitted a May 6, 2021 biweekly contract for mowing and edging of all lawn areas, grass trimming collection and disposal, and clean-up and blowdown of all patios, walkways and driveways. The package ran April to October, with 6 payments of $136.50 each, which totals $819.

15. None of the submitted agreements are signed.

16. Based on the applicant's submitted emails, I find the parties agreed to start the mowing services in May 2021 instead of April 2021.

17. The respondent says they never agreed to the written contract terms. They say the applicant's salesperson initially agreed to certain further services that were not included in the written contract, so the respondent kept asking for a revised contract.

18. The parties' emails show the respondent asked the salesperson for clarification about certain matters, such as whether driveway crack grass would be included in the mowing contract, and where the rock border would be placed. However, there is no indication whether the applicant directly answered those questions, including in later emails. Neither do the emails show the respondent asking for any contract revisions, or disputing the contract terms until after they terminated the applicant's services.

19. Based on the evidence provided, I find the respondent did not dispute the proposed contract terms. It is undisputed that the respondent accepted the applicant's mowing and landscaping services. So, I find that by their conduct, the parties agreed to the written terms of the landscaping and mowing contract, despite not signing them.

20. Based on the submitted invoices and accounting records, I find the applicant charged the respondent a total of $1,066.70 for landscaping services on August 4, 2021, and $425.25 for mowing services between May and August 2021, for a total of $1,491.95. I also find the respondent paid $778.31 around December 2021, leaving an unpaid balance of $713.64. The applicant has not explained why they now claim $601.48, rather than the allegedly outstanding $713.64.

21. Contrary to the applicant's argument, I do not find the respondent later agreed to pay the outstanding amount. This is because the provided emails show only that the respondent continued to ask for an updated invoice, before paying any outstanding balance, which I find is different than an agreement to pay a specific amount.

Landscaping Services

22. The applicant installed river rock along the inside of the respondent's back yard fence, but it was much wider than agreed upon and the bender board divider between the rock and the grass was missed. The respondent agreed to remove the deposited rock, install the agreed upon divider, and replace dirt and grass it erroneously removed from the respondent's back yard. None of this is disputed.

23. The applicant's August 4, 2021 invoice shows it charged the respondent $965.90 for the landscaping work, plus $50 in interest and GST, for a total of $1,066.70. There is no indication the applicant issued a landscaping invoice earlier, and the parties' emails show the landscaping work was repaired sometime in July 2021. So, I find the August 4, 2021 invoice is the initial, and total, landscaping charge. This means I find the applicant was not entitled to include a $50 interest charge on the invoice. Rather, I find the applicant was entitled to charge $1,014.20 for the landscaping services, less any deduction for deficiencies. I will address any applicable interest below.

24. The burden to prove a deficiency is on the party claiming it (see *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403). Here, that is the respondent. In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard, unless the deficiency is obvious or relates to something non-technical (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).

25. The respondent says the repair work was deficient because the ground was not levelled, too many rocks were removed in the repair work, and the landscaping fabric under the rocks was ripped, not extended to the edges, and not pegged down. They also say the respondent failed to use enough dirt and seed to replace the removed lawn, so the lawn did not regrow.

26. Based on the respondent's photos, I agree the fabric did not cover the entire area of dirt under the rocks. I find it obvious that landscaping fabric, intended to prohibit weed growth, must cover the entire area to work properly. However, I find the respondent's

photos do not show any other obvious landscaping deficiencies. I find the remaining alleged deficiencies about levelling, rock ratio, and pinned down fabric all relate to the expected standard of a landscape professional. The respondent has not provided any expert evidence to support their allegation that the work should have been completed differently. So, I find those allegations unproven.

27. In short, I find the only deficiency proven by the respondent is the landscaping fabric not extending to the edges of the rock area.

28. The applicant's August 4, 2021 landscaping invoice is not broken down into items, so there is no way to know how much the respondent paid for the insufficient landscaping fabric installation. They also submitted no evidence of any estimated repair cost, as the respondent undisputedly remedied the situation themselves. So, it is difficult to estimate the value of the proven deficiency. However, I accept the respondent would have to remove at least a portion of the rocks to apply landscaping fabric, then replace the rocks.

29. On a judgment basis, I find the respondent is entitled to a $200 deduction for the deficiency. So, I reduce the applicant's landscaping invoice amount to $814.20. I will address the total amount owing below.

Lawn Repair and Package

30. To the extent the respondent argues that the applicant's repair of the removed lawn area is insufficient, I find they have provided no supporting evidence. None of the applicant's photos show the lawn area. The applicant provided no expert evidence about how much dirt or seed should have been applied to regrow the lawn, or whether the applicant's efforts were the reason the lawn failed to regrow. So, I find the respondent has not proven the applicant's lawn repair efforts were deficient.

31. To the extent the respondent argues that the applicant failed to provide the agreed upon spring lawn package, by not applying fertilizer, weed killer or enough topsoil or grass seed to the existing lawn, I also find such alleged deficiencies unproven. Again, this is because the applicant provided no supporting evidence. In any event, I find the

allegations irrelevant to the outstanding balance, as the applicant did not charge the respondent for the proposed spring lawn package.

Mowing Services

32. The respondent says the applicant often did not mow the back lawn, did not remove weeds in driveway cracks and edge around the planters, and left grass clippings on the lawn. Based on the respondent's photo, I accept the applicant left a small amount of dried grass clippings on the lawn. I find this is an obvious deficiency, as the parties' agreement says the applicant will collect and remove all grass cuttings.

33. I find the other alleged deficiencies are unproven. This is because the parties' agreement includes lawn edging, but not weeding or edging of other areas. Although the respondent asked about weeding driveway cracks in their emails, I find the applicant did not agree to provide that service, and specifically denied providing that service in a later email.

34. Although the applicant admits not always mowing the respondent's back lawn, it says this is because the respondent's gate was often locked, which the respondent acknowledges. The parties' agreement specifically says that the client will be charged the full amount if the team cannot access the area to be serviced, and suggests clients provide keys or codes to locked gates. So, I find the respondent is not entitled to any deductions for the back lawn not being mowed when the gate was locked.

35. The applicant invoiced the respondent $136.50 for May mowing services, $84 ($130-$50 discount plus tax) for June, $68.25 (half $136.50) for July, and $136.50 for August. This totals $425.25.

36. The respondent also says they cancelled the mowing services. This is supported by the respondent's note that the client "cancelled at the beginning of July" on the July mowing invoice. So, I find the applicant reasonably charged the respondent for only half the service in July. I also find it reasonable to give the respondent a $50 discount on the June invoice and find that adequately compensates the respondent for the grass clippings left on the lawn.

37. However, I find the applicant is not entitled to charge for August mowing, as the respondent had clearly cancelled the service by then. So, I find the applicant is entitled to charge a total of $288.75 for mowing services, after deductions for the remaining grass clippings and removing the August mowing invoice.

Remedy

38. As noted above, I find the applicant is entitled to $288.75 for mowing services, plus $814.20 for landscaping services, after adjusting for deficiencies and cancelled services. Considering the $778.31 already paid by the respondent, I find the respondent still owes the applicant $324.64.

39. The *Court Order Interest Act* (COIA) applies to the CRT. It says that unless the parties had an agreement about interest, pre-judgment interest must be applied to a monetary judgment from the date the cause of action arose. As noted above, the parties' contract stated that 26.82% annual interest was payable on overdue amounts. So, I find the parties had an agreement on interest and the COIA does not apply. However, the applicant did not make a claim for contractual interest in this dispute, and so I decline to order contractual interest.

40. 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 the applicant was only partially successful in this dispute, I find it is entitled to reimbursement of $62.50, which is half its paid CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

41. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $387.14, broken down as follows:

    a. $324.64 in debt, and

    b. $62.50 in CRT fees.

42. The applicant is entitled to post-judgment interest, as applicable.

43. 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.

Sherelle Goodwin, Vice Chair