



# Civil Resolution Tribunal

Date Issued: January 31, 2024

File: SC-2023-001965

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stares v. Core Geotechnical Inc.*, 2024 BCCRT 102

BETWEEN:

COLIN STARES

**APPLICANT**

AND:

CORE GEOTECHNICAL INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

### INTRODUCTION

1. Colin Stares hired Core Geotechnical Inc. (Core), to assess and design a septic system. Mr. Stares says Core charged him \$8,126.99 plus GST for the septic system design, contrary to the parties' signed contract that stated the maximum charge would be \$5,500 plus GST. He claims a refund of \$2,887.50 for the alleged overcharge.

2. Core disputes Mr. Stares's claims. Core says the parties' contract was not a fixed price contract. Core says it invoiced Mr. Stares for its work based on time and disbursements as permitted by the contract.
3. Mr. Stares is self-represented. Core is represented by one of its owners.

## **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.
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. 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. 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.
7. Where permitted by CRTA section 118, 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.

## **ISSUE**

8. The issue in this dispute is whether Core overcharged Mr. Stares, and if so, what is the appropriate remedy.

## EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Stares must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
10. The parties' March 16, 2022 contract confirms Mr. Stares hired Core to design a septic system. Both parties undisputedly e-signed the contract and agreed to its terms. Among other terms, the contract said:
  - a. Core's work would be carried out at hourly rates and disbursements at cost plus 10% as set out in a table included in the contract.
  - b. The estimated fees would be about \$5,500 + GST for the system design and construction review.
  - c. Core would not exceed the \$5,500 + GST estimate by more than 20% without Mr. Stares's prior approval.
11. Mr. Stares undisputedly paid a \$2,887.50 deposit. Core invoiced Mr. Stares for the septic system work in two invoices. The invoices totaled \$4,040.41 and \$752.12, respectively. I find there is a discrepancy in the second invoice, because a \$2,750 deposit was applied, instead of \$2,887.50. Including the \$2,887.50 deposit, I find Mr. Stares paid a total of \$8,480.03 for the septic system work.
12. Mr. Stares says the contract stated the maximum charge would be \$5,500 + GST. As noted above, the contract provided a \$5,500 + GST estimate, but also clearly stated that the work would be billed based on hourly rates and disbursements, which Mr. Stares undisputedly agreed to. So, contrary to Mr. Stares's submissions, I find the contract did not set out a \$5,500 + GST maximum charge.
13. Mr. Stares also says Core's technician told him Core made unnecessary visits. I infer Mr. Stares argues some of Core's charges were unreasonable or unnecessary. Core disputes this hearsay statement and denies completing any unnecessary work. Apart

from the hearsay statement, Mr. Stares did not provide further submissions or evidence to support this allegation. So, I decline to accept the unsupported hearsay statement here, and I find this allegation unproven.

14. However, the \$8,480.03 Core charged also undisputedly exceeded the estimate by more than 20%. Mr. Stares argues he did not approve Core exceeding the estimate by more than 20%. Mr. Stares says Core did not warn him about the overcharge at any time, and he did not agree to any other contract.
15. Core says it was unaware its costs had exceeded the estimate by more than 20% until its technician's hours were submitted. Core says its technician's time was greater than expected. So, I find the excess charges were a result of Core's technician's time being greater than anticipated. Core says once its technician submitted their hours, it sent an invoice to Mr. Stares notifying him of the costs, and Mr. Stares said to complete because he intended on filing a claim. I infer Core argues that Mr. Stares approved the excess charges that undisputedly resulted from its technician's extra time after those charges were already incurred.
16. Core provided little detail to support this allegation. Core did not identify which invoice shows the excess charges, and it did not provide any documentary evidence or otherwise explain how and when Mr. Stares approved the excess charges. Mr. Stares submitted an email from Core's technician after Core issued the second invoice in February 2023. In the email, Core's technician said Core's owner asked them to explain why the total amount charged was less than the estimate amount. They provided a breakdown of the charges and said the total charge was only \$5,376.69 + GST. Core acknowledges its technician's total charge was inaccurate and failed to include the paid deposit. However, I find the email shows that after the second invoice was issued, Core continued to take the position that its total charges did not exceed the estimate. Therefore, I also find the email is inconsistent with Core's submissions that it told Mr. Stares about the excess charges and Mr. Stares approved them.
17. As noted, Mr. Stares says Core did not warn him about any overcharge and he did not agree to any other contract. Given all the above, and in particular's Core's own

email after the second invoice was issued, I find the evidence as a whole does not support a finding that Core told Mr. Stares about the excess charges or that Mr. Stares approved them.

18. Further, even if Mr. Stares did approve the excess charges for the technician's time after they were incurred, the contract requires Mr. Stares's "prior approval" for charges more than 20% above the estimate. This means Mr. Stares had to approve the excess charges before they were incurred, which I find Mr. Stares did not have the opportunity to do. So, I find Mr. Stares did not approve Core exceeding the estimate by more than 20%, as required by the parties' contract. Had Core sought Mr. Stares's prior approval for the excess charges, it would have been entitled to payment of such amounts under the parties' contract. However, I find it unproven that it did so. I find Core breached the parties' contract by exceeding the estimate by more than 20% without Mr. Stares' prior approval.
19. Damages for breach of contract are generally intended to put the innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319. Here, I find the most appropriate measure of damages is Core's unapproved overcharge for the septic system work. As noted, Mr. Stares paid \$8,480.03 for the septic system work. 20% in excess of \$5,500 + GST equals \$6,930. This means Core's unapproved overcharge totaled \$1,550.03 (\$8,480.03 minus \$6,930). So, I order Core to pay Mr. Stares \$1,550.03 in damages.

### ***Interest, CRT fees and expenses***

20. The *Court Order Interest Act* applies to the CRT. Mr. Stares is reasonably entitled to pre-judgment interest on the \$1,550.03 from February 8, 2023, the date of the second invoice, to the date of this decision. This equals \$72.55.
21. 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. Mr. Stares was substantially successful in this dispute, so

I find he is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

22. Within 30 days of the date of this order, I order Core to pay Mr. Stares a total of \$1,747.58, broken down as follows:

- a. \$1,550.03 in damages,
- b. \$72.55 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

23. Mr. Stares is entitled to post-judgment interest, as applicable.

24. 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.

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Leah Volkers, Tribunal Member