



Civil Resolution Tribunal

Date Issued: February 21, 2024

File: SC-2023-000333

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Christie v. Fuller Management Inc.*, 2024 BCCRT 164

BETWEEN:

GEORGE CHARLES CHRISTIE

APPLICANT

AND:

FULLER MANAGEMENT INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about landscaping services. George Charles Christie hired Fuller Management Inc. (Fuller) to landscape his property. Mr. Christie says that he noticed problems with the “bender board” that Fuller installed approximately six months after the installation. Mr. Christie claims \$2,415 for the cost of repairing the bender board.

2. Fuller does not dispute that the bender board “lifted”, but says this was due to weather conditions beyond its control. Fuller says it properly installed the bender board and is not responsible for Mr. Christie’s claimed expenses.
3. Mr. Christie is self-represented. Fuller is represented by its owner, Tony Fuller.
4. For the following reasons, I dismiss Mr. Christie’s claims.

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). CRTA section 2 says that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. 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.
7. 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.

ISSUES

8. The issues in this dispute are whether Fuller’s landscaping work was deficient, and if so whether it must pay Mr. Christie \$2,415 to repair the work.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Christie must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the

parties' evidence and submissions, I only refer to what is necessary to explain my decision.

10. In October 2021, Fuller provided landscaping services for Mr. Christie, including installing "bender board" along the front and side yard perimeters. Bender board is a product used to border gardens, pathways, and landscaping features.
11. Mr. Christie says that the following spring, he noticed that the bender board had lifted and separated in several places. He says this is because Fuller did not properly install the bender board. Fuller denies this, and says the bender board likely shifted because of frost heave over the winter.
12. Fuller provided a copy of the parties' contract. Although the contract does not include any express warranties about the quality of Fuller's work, in all contracts for professional or trade services there is an implied term that the professional will perform the work to a reasonably competent standard.¹ Mr. Christie, as the party alleging deficient work, bears the burden of proving that Fuller failed to perform the work in a reasonably competent manner.²
13. Typically, expert evidence is required to show the applicable professional standard of care. However, expert evidence is not required if the work is obviously substandard, or if the deficiencies are non-technical and within ordinary knowledge and experience.³
14. As noted, Mr. Christie argues that Fuller did not properly secure the bender board, which caused it to shift. He says that if the bender board had been properly anchored, it would have been able to withstand temperature changes without moving.
15. Fuller provided a letter from the manager of Island BenderBoard, which I infer is the bender board supplier. This letter says that the installation recommendations are to

¹ *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 at paragraph 18.

² *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61.

³ *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, affirmed 2020 BCCA 22, at paragraph 112.

use 4 to 5 stakes per 20-foot board, and that a stake at the apex of each curve is recommended where there are multiple smaller curves. However, it notes that even properly secured bender board will still be subject to movement from “erosion, frost heave, tree roots etc.” because it is secured by the surrounding soil and aggregates.

16. Mr. Christie says Fuller only used an average of 2 stakes per board to anchor the bender board. Fuller argues that Mr. Christie’s photographs do not properly show the areas where the stakes are secured. I agree. Some close-up photographs show some visible stakes, but in the photographs and video showing larger sections, most of the bender board is surrounded by gravel, rocks, and soil. I cannot accurately determine from the evidence before me whether Fuller installed the recommended number of stakes to anchor the bender board.
17. So, I find the alleged deficiencies in Fuller’s work are not obvious, and the question of whether the bender board was properly secured is a technical matter that is beyond ordinary knowledge. This means that expert evidence is required to determine whether Fuller installed the bender board to a reasonably competent standard.
18. Mr. Christie provided an estimate from another landscaping company, which he says is for the cost to repair Fuller’s work. The difficulty for Mr. Christie is that this estimate does not establish that Fuller’s work was substandard. It outlines the cost to “improve all existing bender board joints”, “extend or adjust all bender board to suit landscape”, and “re-stake all bender board”. The estimate does not say that this work is necessary because Fuller’s original work was inadequate or that the bender board shifted because of improper installation.
19. Mr. Christie did not provide any other expert evidence. In the absence of such evidence, I find Mr. Christie has not proved that Fuller breached its obligation to install the bender board to a reasonably competent standard.
20. I note that text messages in evidence show that Fuller originally agreed to send an employee to Mr. Christie’s property to fix the bender board. I considered whether these messages could constitute an acknowledgment by Fuller that the work was

substandard. However, Fuller's messages do not explicitly say that it did not use enough stakes, or that the shifting was caused by improper installation. Further, Fuller says that it sent its foreman to evaluate the damage after these messages, and its foreman reported that the bender board was properly installed but had shifted because of weather conditions. So, I find Fuller's promise to have an employee attend does not in itself establish that Fuller is responsible for the bender board movement.

21. In summary, I find Mr. Christie has not proved that Fuller is responsible for the shifting bender board. It follows that I must dismiss Mr. Christie's claim.

CRT FEES AND EXPENSES

22. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Christie was unsuccessful, so I dismiss his claim for reimbursement of CRT fees. Fuller did not pay CRT fees and neither party claimed dispute-related expenses, so I make no order for them.

ORDER

23. I dismiss Mr. Christie's claims and this dispute.

Alison Wake, Tribunal Member