



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marcus Taylor Farm and Services Ltd. v. White*, 2024 BCCRT 271

B E T W E E N :

MARCUS TAYLOR FARM AND SERVICES LTD.

APPLICANT

A N D :

PAUL WHITE also known as PAOLO BIANCHI

RESPONDENT

A N D :

MARCUS TAYLOR FARM AND SERVICES LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Paul White hired Marcus Taylor Farm and Services Ltd. (MTF) to trim hedges on his property. MTF trimmed the hedges, but Mr. White did not pay MTF's \$1,050 invoice. So, MTF claims \$1,050 in this dispute.
2. Mr. White says MTF damaged his hedges beyond recovery. In the counterclaim, Mr. White wants MTF to pay him \$5,000 to remove the damaged hedges and have new hedges planted. MTF says the hedges were damaged by a previous windstorm and years of neglect, and that it did a reasonable job in the circumstances.
3. MTF is represented by its owner, Marcus Taylor. Mr. White represents himself. As I explain below, I order Mr. White to pay MTF's invoice and I dismiss Mr. White's counterclaim.
4. The Dispute Notice identified Mr. White as "Paul-Paolo White-Bianchi", but Mr. White identified his name in the Dispute Response, and in the counterclaim Dispute Notice, as "Paul White". I have exercised my discretion to amend the style of cause above to reflect both names.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in

issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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 court.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Is Mr. White required to pay MTF's \$1,050 invoice?
 - b. Did MTF damage Mr. White's hedges, and if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, MTF must prove its claim on a balance of probabilities, meaning more likely than not. Mr. White must prove his counterclaim to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Mr. White contacted MTF on Facebook and asked it to trim his cedar hedges. Mr. White was having his property photographed the next week to be listed for sale. MTF offered to trim the hedges and take away the branches for \$1,000. It is undisputed that Mr. White accepted the offer and that the parties had a binding contract.

12. On May 29, 2022, Mr. Taylor trimmed the hedges. The next day, Mr. Taylor gave Mr. White MTF's invoice for \$1,050 with GST. Mr. White was mostly silent about paying. The parties' texts gradually devolved from there into threats and insults which I do not need to describe here.
13. The parties disagree about whether MTF did a poor job trimming the hedges, damaging them in the process, or whether the hedges were previously damaged. Mr. Taylor says before starting work he advised Mr. White that because the hedges had been neglected and damaged by a recent windstorm, the final outcome would not resemble properly maintained hedges. He says he recommended removing the hedges and offered to do that for the same price, but Mr. White wanted to keep the hedges. Mr. Taylor says he removed approximately 30% of the hedges.
14. In contrast, Mr. White says his hedges were full, healthy, tall, green and thriving. He says they just needed a trim. Mr. White says Mr. Taylor's work was substantially below standard. He says the hedges are still alive, but he says an unnamed "tree surgeon" advised him that it would be years until the hedges look acceptable again. Mr. White says he should not have to wait that long, and he wants to remove the hedges and plant new ones, which is the basis of his \$5,000 counterclaim.
15. In general, an allegation that a professional's work was deficient or fell below a reasonably competent standard must be proven with expert evidence. The exceptions are where the work is obviously substandard, or the deficiency relates to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112). Mr. White has not provided any expert evidence, so I infer he argues that MTF's work was obviously substandard.
16. Mr. White relies on "before" and "after" photos, some of which are taken from an online mapping service. The "before" photos generally show healthy, green, attractive hedges. The "after" photos show short, unattractive hedges, unevenly trimmed, with bare patches. It is not clear when the before photos were taken.

17. In contrast, MTF supplied a May 28, 2022 video that Mr. Taylor or an employee took immediately before doing any work on the hedges. Mr. White does not dispute the video's authenticity or say anything about it. In the 50-second video, someone walks around the hedges. The video shows that the hedges were in extremely poor condition before MTF began trimming. I am unable to determine whether the damage was caused by neglect or a windstorm or both, but it does not matter. What matters is that the hedges were in terrible shape immediately before MTF trimmed them. On that basis, I find Mr. White's "before" photos were taken at some point before May 28, 2022. Given the hedges' condition when MTF trimmed them, their condition in the "after photos" does not suggest professional incompetence. I find that MTF did a reasonable job trimming the hedges in the circumstances.
18. I also agree with MTF that if Mr. White believed MTF did poor work and damaged the hedges, he would likely have said something at the time. Instead, text messages show he asked Mr. Taylor about doing other landscaping work in the yard. He did not mention being unhappy with MTF's work until this CRT proceeding.
19. Mr. White says the invoice should have been \$100 lower. I acknowledge that 2 weeks after completing the work, MTF offered to reduce the invoice by \$100 to reflect that Mr. White allowed MTF to dump the trimmings in his yard. However, Mr. White did not accept the offer, so MTF is not bound by it.
20. Given the above, I order Mr. White to pay MTF \$1,050 for the hedge trimming. As I find the hedges were significantly damaged before MTF trimmed them, I dismiss Mr. White's counterclaim for damages.
21. The *Court Order Interest Act* applies to the CRT. MTF is entitled to pre-judgment interest on the \$1,050 from the May 29, 2022 invoice date to the date of this decision. This equals \$70.02.
22. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. MTF was successful, so I find it is entitled to reimbursement of \$175 in paid CRT fees. I

dismiss Mr. White's claim for reimbursement of CRT fees. Neither party claims dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order Mr. White to pay MTF a total of \$1,295.02, broken down as follows:

- a. \$1,050 in debt,
- b. \$70.02 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

24. MTF is entitled to post-judgment interest, as applicable.

25. I dismiss Mr. White's counterclaim.

26. This is a validated decision and order. 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.

Micah Carmody, Tribunal Member