



Civil Resolution Tribunal

Date Issued: May 31, 2024

File: SC-2023-005025

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Islam v. Sotto*, 2024 BCCRT 500

B E T W E E N :

SHAHZAD ISLAM and GURSHARAN KAUR SANDHU

APPLICANTS

A N D :

DANILO SOTTO and ELEANOR SOTTO

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about paving work.
2. The parties are next-door neighbours. Shahzad Islam and Gursharan Kaur Sandhu say Danilo Sotto and Eleanor Sotto asked them to replace the pavement outside the Sottos' garage when Mr. Islam and Ms. Sandhu were paving their own garage's

entrance while building a new home. Mr. Islam says the parties agreed to pay for their respective portions of the paving work and the paving work was completed, but the Sottos have refused to pay their share. Mr. Islam and Ms. Sandhu collectively claim reimbursement of \$4,981.71 for the Sottos' portion of the paving work and legal fees.

3. The Sottos do not dispute they agreed to the paving work, but say they were overcharged. They say Mr. Islam estimated only \$1,000 for the paving work and say the \$4,337.71 charged for the paving work is exorbitant.
4. Mr. Islam represents himself and Ms. Sandhu. Mrs. Sotto represents herself and Mr. Sotto.

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.
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 court.
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.

ISSUE

9. The issue in this dispute is to what extent, if any, the Sottos owe Mr. Islam and Ms. Sandhu the claimed \$4,981.71 for paving costs and legal fees.

EVIDENCE AND ANALYSIS

10. As the applicants in this civil proceeding, Mr. Islam and Ms. Sandhu must prove their 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.

Paving costs

11. Mr. Islam and Ms. Sandhu claim reimbursement of \$4,337.71 for paving costs. It is undisputed that the parties agreed to the paving work, and it was completed. The Sottos say the \$4,337.71 invoice amount for their paved area is exorbitant, and included charges they did not agree to.
12. Mr. Islam says he informed the Sottos that their share of the paving work would cost between \$4,000 and \$5,000 because there was substantial preparation work required, including cutting existing concrete. Mr. Islam says the Sottos agreed to pay for their share of the paving work and instructed Mr. Islam to proceed when ready. Mr. Islam submitted a text message between himself and his general contractor in November 2022 that said the Sottos had agreed to pay and knew it would be "a few thousand dollars".
13. For their part, the Sottos say Mr. Islam's verbal estimate was "about \$1,000" plus the cost of renting a "saw cut machine". The Sottos said they thought \$1,000 was fair to cover the full cost of excavating and disposing old asphalt, preparing the surface and applying new asphalt. The Sottos do not dispute Mr. Islam's November 28, 2022 text message where he said the Sottos agreed to pay for the paving work and knew it would be "a few thousand dollars", but say a few thousand dollars is different than \$4,000 to \$5,000.

14. Based on the parties' submissions and Mr. Islam's undisputed November 28, 2022 text message to his general contractor, I find Mr. Islam likely estimated the paving work would cost a few thousand dollars. The evidence does not support a finding that the parties agreed to any fixed price quote or any specified hourly rates for the paving work. As the Sottos undisputedly agreed to reimburse Mr. Islam and Ms. Sandhu for their share of the paving work, I find they are responsible to pay for their share of the proven paving costs.
15. Mr. Islam submitted a January 25, 2023 invoice from his general contractor to Mr. Sotto, totaling \$4,337.71. The invoice directed Mr. Sotto to pay Mr. Islam and Ms. Sandhu for the paving costs. The invoice included charges for paving, trucking, a saw cutter rental, planning and supervision, concrete removal and surface prep, and a 10% management cost. Although the Sottos initially issued a cheque for the invoice's full amount, it is undisputed that they later put a stop payment on the cheque and have not reimbursed Mr. Islam and Ms. Sandhu for any of the paving costs.
16. Mr. Islam submitted a statement from his general contractor, KO. In his statement, KO explained the Sottos' invoice, and said he split the paving work costs between Mr. Islam and the Sottos based on the cubic footage of asphalt that was placed on their respective properties. He says he charged the Sottos for one-third of the paving costs, and charged Mr. Islam and Ms. Sandhu for two-thirds. KO also said the demolition and prep work for the Sottos existing garage entrance was substantial and took a few days, with further excavating and structural backfill required below the bottom of the asphalt. Finally, he said the supervision charges were required because the construction insurance did not cover work at the Sottos' property.
17. Although the Sottos allege being overcharged, they did not dispute KO's statement. They also did not argue that one-third of the paving costs was more than their share of the paving work, or provide a different cost allocation. Mr. Islam also submitted calculations that show the Sottos share of the paving costs was based on cubic feet of asphalt poured, which the Sottos also did not dispute. So, on balance, I find the Sottos' share of the paving work is likely one-third of the total paving costs.

18. Mr. Islam submitted a Pioneer Paving invoice totaling \$6,392 for the paving work. Mr. Islam's general contractor's invoice shows the Sottos were only charged \$2,029.20, which is one-third of the invoice, consistent with their share of the paving work. So, I find the Sottos are responsible to pay for their one-third share of the Pioneer Paving invoice.
19. The Sottos submitted quotes from 3 other paving companies that range from \$2,116 to \$2,490 plus GST. The Sottos say these quotes are for a complete asphalt repave including excavating and disposing of the old asphalt, touching up grade, compacting existing base, and supplying and installing new pavement. Mr. Islam says these quotes are irrelevant because the contractors did not see the disintegrated and dilapidated condition of the Sottos' garage entrance before the paving work and cannot provide an accurate estimate without seeing the actual condition of the Sottos' garage entrance prior to demolition, preparation and paving work. I agree that the quotes do not account for unanticipated or complicated preparation and removal work. However, I find the quotes are still of some assistance because they show other companies' quoted cost to pave the Sottos' driveway, which is similar to the Sottos' one-third share of the Pioneer Paving invoice. However, the quotes only account for compacting the existing base, and do not include further base preparation, which was undisputedly required for the Sottos' garage entrance.
20. I turn then to the remaining charges on Mr. Islam's general contractor's invoice.
21. The Sottos say the \$740 labour charge for 20 hours of work to remove the old asphalt and prepare the site for paving is exaggerated for the size of their paved area. KO's statement above explained that the removal and preparation work was significant and took several days, which the Sottos did not dispute. So, I find this labour charge is not obviously unreasonable, and I find the Sottos are responsible to pay the \$740 labour charge in full.
22. The Sottos say there was no discussion of a 10% management fee, planning and supervision wages, or an hourly rate to excavate old asphalt. The Sottos also say Mr. Islam did not provide the invoices for two subcontractors' charges listed on the

invoice, from Marno Trucking and Cooper Equipment Rentals, and so the Sottos should not have to pay for those charges.

23. The Sottos also say Mr. Islam charged them for part of an invoice that was issued before they agreed to the paving work. Mr. Islam provided a trucking and gravel sales invoice dated November 25, 2022 for mulch, river sand and crush rock. This was undisputedly before the parties agreed to the paving work on November 28, 2022. Mr. Islam says some of this material was used for the Sottos' paving. Although listed under another name, I find this invoice is likely the same as the Marno Trucking charge, because one-third of this invoice total is the same as the \$368.15 Marno Trucking charge. I acknowledge that the invoice was issued before the parties agreed to the paving work. However, it is undisputed that additional structural base fill was used prior to paving the Sottos' garage entrance. So, I find Mr. Islam's general contractor reasonably charged the Sottos for one-third of the structural base fill material.
24. The Sottos also say Mr. Islam did not submit the Cooper Equipment Rental invoice for the saw cutting rental charge. However, they do not dispute that a saw cutter was required, and explicitly acknowledged they agreed to pay for the saw cutter rental when they agreed to the paving work. Finally, the Sottos do not argue or provide evidence to show the saw cutter rental charge was unreasonable. I find Mr. Islam reasonably charged the Sottos for the saw cutter rental.
25. Lastly, the Sottos dispute the management fee and supervision fees. Mr. Islam did not address the Sottos' allegation that his general contractor's 10% management fee and the supervision fees were not discussed. So, I accept that the parties likely did not discuss these additional charges when they agreed to the paving work. I also find these additional charges are not clearly related to the paving work the parties agreed to. I find the Sottos were not advised that additional management fee or supervision charges would be incurred when the paving work was completed, and therefore did not agree to either of these charges. I find Mr. Islam has not shown the parties agreed to these charges, and therefore I find he not entitled to reimbursement for his general

contractor's 10% management fee or the planning and supervision fees listed on the invoice. Collectively, these two charges total \$861.50 including GST.

26. After reducing the invoice to account for the \$861.50 in charges not agreed to, I find the Sottos are responsible to pay Mr. Islam and Ms. Sandhu \$3,476.21 for their share of the proven paving costs.

Legal fees

27. Part of Mr. Islam and Ms. Sandhu's primary claim is for \$644 in legal fees. Mr. Islam and Ms. Sandhu say the Sottos are responsible to provide full reimbursement for the legal fees incurred because the Sottos refused to cover their share of the paving costs. The evidence shows the legal fees were incurred to draft a demand letter and review emails between the parties before Mr. Islam and Ms. Sandhu started this dispute. So, it is not clear that they are dispute-related expenses. In any event, CRT rule 9.5(3) says the CRT will not order reimbursement of a lawyer's fees for small claims disputes unless there are extraordinary circumstances, which I find are not present here. So, I dismiss Mr. Islam and Ms. Sandhu's claim for reimbursement of legal fees.

Interest, CRT fees and expenses

28. The *Court Order Interest Act* applies to the CRT. Mr. Islam and Ms. Sandhu are entitled to pre-judgment interest on the \$3,476.21 from January 25, 2023, the date of the invoice, to the date of this decision. This equals \$228.56.
29. 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. Islam and Ms. Sandhu were successful, I find they are entitled to reimbursement of \$175 in paid CRT fees. I have addressed Mr. Islam and Ms. Sandhu's claim for legal fees above. None of the parties claimed any further dispute-related expenses, and I award none.

ORDERS

30. Within 30 days of the date of this order, I order the Sottos to pay Mr. Islam and Ms. Sandhu a total of \$3,879.77, broken down as follows:
- a. \$3,476.21 in debt,
 - b. \$228.56 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
31. Mr. Islam and Ms. Sandhu are entitled to post-judgment interest, as applicable.
32. 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.

Leah Volkers, Tribunal Member