



Civil Resolution Tribunal

Date Issued: June 10, 2024

Files: SC-2023-001483
and SC-CC-2023-005647

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *9305076 Canada Ltd. v. Brynelson*, 2024 BCCRT 525

B E T W E E N :

9305076 CANADA LTD.

APPLICANT

A N D :

CAROLYN BRYNELSON, Executor of the Estate of BEVERLY LAUER,
Deceased

RESPONDENT

A N D :

9305076 CANADA LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This decision is about two linked disputes about landscaping services. I find the linked disputes are a claim and counterclaim between the same parties. So, I have issued one decision for both disputes.
2. 9305076 Canada Ltd. is the applicant in dispute SC-2023-001483 and does business as Sprout Landscapes (Sprout). Sprout says it did landscaping work for Beverly Lauer in October 2022 for which it has not been paid. It claims \$205.43 for the October work. Mrs. Lauer is now deceased. So, the respondent in dispute SC-2023-001483 is Carolyn Brynelson, the executor of Mrs. Lauer's estate.
3. Mrs. Brynelson does not deny that Sprout did the landscaping work it claims for in dispute SC-2023-001483. However, she says that Mrs. Lauer did not pay Sprout because Sprout owed her a refund for prior unsatisfactory work that it did on April 7, 2022. In the Dispute Notice for dispute SC-CC-2023-005647, Mrs. Brynelson claims a \$663.60 refund as the executor of Mrs. Lauer's estate. In her later written submissions, Mrs. Brynelson confirms Sprout only charged \$527.04 for the April 7 work and claims this amount instead.
4. Sprout's owner, Lukas Gawlik, represents it. Mrs. Brynelson represents herself.

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 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.
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 and can decide these disputes without an oral hearing.

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 court.
8. Where permitted by CRTA section 118, in resolving these disputes 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.

ISSUES

9. The issues in these disputes are:
 - a. Is Sprout entitled to the claimed \$205.43, or some other amount, for its October landscaping work?
 - b. Is Mrs. Lauer's estate entitled to a refund for the April 7 work?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Sprout must prove its claims on a balance of probabilities, meaning more likely than not. Mrs. Brynson must prove her counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

Background

11. I turn first to the relevant background facts. Sprout provided regular lawn mowing services to Mrs. Lauer since at least June 2021. At all relevant times, Mrs. Brynson communicated with Sprout on Mrs. Lauer's behalf. In March 2022, Sprout provided Mrs. Lauer with a \$663.60 quote for power raking, fertilizing, overseeding, and top-dressing work for Mrs. Lauer's back lawn. Mrs. Lauer asked Sprout to proceed with the work, and it did so on April 7. The evidence shows Sprout charged Mrs. Lauer a discounted rate of \$527.04 for the April 7 work, which Mrs. Lauer undisputedly paid.

12. Mrs. Brynelson says that she contacted Sprout by phone in the weeks following the April 7 work to tell Sprout that the work was not done to Mrs. Lauer's satisfaction. She says that Sprout initially told her to wait longer, I infer to see better results from Sprout's work. After several phone calls, Mrs. Brynelson says she then emailed Sprout on July 5. In this email Mrs. Brynelson complained that the back lawn was in poor condition and full of moss, clover, and weeds. She said that Sprout had promised that Mrs. Lauer would be pleased with the results, but this was not the case. Mrs. Brynelson went on to say that she had been told numerous times that this would be handled, and the lawn would be over-seeded, but this had not happened. So, she asked Sprout to attend to the matter and "make it right". Mrs. Brynelson says that after this email, during a telephone conversation with Sprout's office manager, MJS, MJS offered that Sprout could either re-do the April 7th work or provide a refund. In a July 25 email to MJS, Mrs. Brynelson accepted Sprout's offer to re-do the April 7 work. Sprout continued to provide Mrs. Lauer with regular lawn mowing services during this time.
13. Then, on September 28, Mrs. Brynelson emailed MJS asking when the power raking and related work would be redone. MJS responded the next day saying that Sprout was "working with the schedule". MJS apologized for the delay, attributing it to Sprout not having an adequate workforce that week. On October 7, MJS emailed Mrs. Brynelson with various updates, including that MJS would look into scheduling the power raking re-do work by the of the following week.
14. On October 6, Sprout completed lawn mowing work for Mrs. Lauer, and on October 12, it completed pruning work. This is the unpaid work Sprout claims for in dispute SC-2023-001483.
15. On October 13, MJS emailed Mrs. Brynelson saying that the email was "to confirm that we do offer you a refund for the power rake service that was rendered on April 7th of this year or you would like for a redo" (reproduced as written). MJS went on to say that they understood that Mrs. Lauer wanted the work redone and said that Sprout could schedule it for October 20th. By email on October 17, Mrs. Brynelson confirmed

her earlier telephone conversation with MJS and asked Sprout to provide a refund instead of re-doing the April 7 work. In an October 26 email, Mrs. Brynelson again confirmed to MJS that Mrs. Lauer would accept a refund instead of a re-do. On November 4, Mrs. Brynelson wrote to MJS saying that she had not heard from Sprout about the refund and asked when Mrs. Lauer could expect to receive it. MJS responded the same day that they had not heard back from management about the refund request.

16. Mrs. Brynelson wrote back that she was confused as MJS had originally told her that Lukas Gawlik had authorized a refund or a redo. After further back and forth, including Mrs. Brynelson refusing on Mrs. Lauer's behalf to pay Sprout's October invoices due to the refund she claimed was owed, Sprout confirmed that it would not be providing any refund. Sprout's invoices for the October work totaling \$205.43 remain unpaid to date.

Sprout's claim

17. I turn now to Sprout's claim for the unpaid mowing and pruning work from October. In its October 31, 2022 invoice #1408460, Sprout charged Mrs. Lauer \$50 for the mowing work, a \$7 disposal fee, and \$18.86 in late payment charges. As noted, Mrs. Brynelson does not dispute that Sprout completed the mowing work. However, she argues Mrs. Lauer never agreed to the disposal fee or late payment charges and says Sprout is only entitled to \$52.50 (including GST) for the October 6 mowing services. Sprout says that its late payment fee is set out on its invoice. Sprout's invoices include fine print at the bottom referring to a 10% recovery fee for any balances outstanding after 30 days. However, a party cannot unilaterally impose contractual terms for late payment or recovery fees. Sprout provided no evidence that Mrs. Lauer agreed to pay any late payment charges or the disputed disposal fee. So, I find Sprout is only entitled to \$52.50 for the October 6 mowing work.
18. Next, in its October 12, 2022 invoice #1408358, Sprout charged Mrs. Lauer a \$99 fee for pruning, plus \$20.79 in late payment charges and GST. Again, Brynelson does not dispute that Sprout completed the pruning work, but she disputes the late

payment charges. I have already found above that Sprout has not proven that Mrs. Lauer ever agreed to pay any late payment fees. So, I find Sprout is entitled to only \$99 plus GST for the October 12 pruning work. This equals \$103.95. In total, I find Sprout is entitled to \$156.45 for the unpaid landscaping work.

Refund claim

19. This leaves Mrs. Brynelson's refund claim. As noted above, Mrs. Brynelson argues that after she initially accepted Sprout's offer to re-do the April 7 work on Mrs. Lauer's behalf, Sprout re-offered a refund on October 13, which she accepted. Sprout argues that it does not ever offer refunds and that it only offered to re-do the April 7 work for Mrs. Lauer as an act of good faith and because Mrs. Lauer had been a loyal customer. It denies that there were any deficiencies in its work and says that it completed the April 7 work properly.
20. While Sprout says that it never offers refunds, I find the email evidence between Mrs. Brynelson and MJS shows otherwise. Notably, Sprout also has not responded to Mrs. Brynelson's allegation that MJS told her in July that they had management approval to offer either a re-do or a refund. There is no witness statement from MJS in evidence denying that they made such an offer after receiving management approval, as Mrs. Brynelson asserts. Sprout also has not explained why MJS offered Mrs. Brynelson a refund in their October 13 email if it does not ever offer refunds as it says.
21. When a party fails to provide relevant evidence with no explanation, the CRT may draw an adverse inference. An adverse inference is when the CRT assumes the party did not provide the relevant evidence because it would have damaged their case. I find an adverse inference is appropriate here. I find that if MJS had not offered Mrs. Lauer the option of a refund or a re-do in July after having obtained management's approval, Sprout would have provided a witness statement from MJS saying so. In the absence of such evidence, and MJS's October 13 email in which I find they clearly re-offered Mrs. Lauer a refund instead of a re-do, I find it more likely than not that MJS had the authority to make the October 13 offer on Sprout's behalf. I find that Mrs. Brynelson also reasonably understood MJS had authority to offer the refund, and she

clearly accepted this offer on October 17. Once accepted, I find the parties had a binding agreement that Sprout would provide a full refund for the April 7 work in exchange for Mrs. Lauer abandoning her claim about the allegedly unsatisfactory work. By subsequently refusing to provide the refund, Sprout breached this agreement. So, I find Mrs. Lauer's estate is entitled to a refund of \$527.04 for the April 7 work.

22. After deducting the \$156.45 Sprout is entitled to for the October work from the \$527.04 refund, I order Sprout to pay Mrs. Brynelson \$370.59.
23. The *Court Order Interest Act* applies to the CRT. Mrs. Brynelson is entitled to pre-judgment interest on the \$370.59 from October 17, 2022, the date she accepted the refund, to the date of this decision. This equals \$27.29.
24. 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. As the more successful party, I find Mrs. Brynelson is entitled to reimbursement of \$75 for her paid CRT fees. I dismiss Sprout's claim for reimbursement of its paid fees. Neither party claims any dispute-related expenses, so I award none.

ORDERS

25. Within 14 days of the date of this decision, I order Sprout to pay Mrs. Brynelson a total of \$472.88, broken down as follows:
 - a. \$370.59 in debt,
 - b. \$27.29 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$75 in CRT fees.
26. Mrs. Brynelson is entitled to post-judgment interest, as applicable.

27. Having accounted for the amounts awarded for the October landscaping work in the above order, I dismiss Sprout's remaining claims in dispute SC-2023-001483.
28. 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.

Nav Shukla, Tribunal Member