



Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2023-008692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Costa Verde Contracting Inc. v. Bowker*, 2024 BCCRT 621

B E T W E E N :

COSTA VERDE CONTRACTING INC.

APPLICANT

A N D :

JOHN BOWKER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about payment for landscaping services.
2. The respondent, John Bowker, hired the applicant, Costa Verde Contracting Inc., to provide landscaping services. Costa Verde says John Bowker failed to pay the invoiced amount. Costa Verde claims \$660.33.

3. John Bowker says Costa Verde's landscaping was deficient. John Bowker also says that Costa Verde did not attend the residence on one of the dates listed in the invoice.
4. Costa Verde is represented by an employee. John Bowker is self-represented.

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. In resolving disputes, the CRT must apply principles of law and fairness.
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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
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.

Late Evidence

9. John Bowker provided late evidence with their final reply submissions. Costa Verde had an opportunity to review and provide submissions on the late evidence, so I find

there is no actual prejudice in allowing this late evidence. Consistent with the CRT's flexible mandate, I have allowed and considered this late evidence.

ISSUE

10. The issue in this dispute is whether John Bowker owes Costa Verde payment for the landscaping services.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Costa Verde must prove its claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. Costa Verde provided a copy of its Service Proposal dated March 30, 2023. The Service Proposal included 23 visits for Costa Verde's Bed Maintenance seasonal program. The visits were estimated at \$139.82 each. Each visit included weeding the garden beds, removing leaves and debris from the beds and property, maintaining the garden bed edges, perennials, small shrubs and bushes and final blow through of the property.
13. The Service Proposal said that each visit would be 2 work hours and the crew would do as much work as they could on each visit.
14. The Service Proposal noted that the front yard was John Bowker's priority. The Service Proposal stated the front yard should be kept weeded, with oak leaves removed from plants. The Service Proposal said it was acceptable to leave the back rocky area wilder.
15. The Service Proposal also included an extended initial visit to weed the front bed, remove leaf debris from inside shrubs, cut back perennials, weed river rock, cut back stumps in the back yard to grade and clean up and remove debris. The extended initial visit occurred after the first visit due to scheduling complications.

16. The Service Proposal showed the price and the number of work hours for each visit.
17. Costa Verde included a chain of e-mails. Costa Verde sent the Service Proposal to John Bowker by e-mail on March 30, 2023. John Bowker asked a follow up question to confirm the price of the visits. On April 3, 2023, John Bowker replied, agreeing to the Service Proposal and asking when the work could start. Costa Verde said the first visit would occur on April 12, 2023. The Service Proposal was not signed, but the parties agree it is the parties' contract.
18. Costa Verde included its Job History for John Bowker's residence. The Job History says that Costa Verde made three visits to John Bowker's residence:
 - a. April 12, 2023, Bed Maintenance Seasonal – 2 staff – 2.07 hours (\$139.82),
 - b. April 18, 2023, initial extra visit – Maintenance Clean up Spring Service - 2 staff – 4.33 hours (\$349.25), and
 - c. April 26, 2023, Bed Maintenance Seasonal – 2 staff – 1.97 hours (\$139.82).
19. These visits described the same work that was included in the Service Proposal.
20. Costa Verde sent an invoice to John Bowker on April 30, 2023, for \$660.33 for the three visits. Costa Verde did not return to John Bowker's residence after the three visits in April 2023.
21. John Bowker said that Costa Verde did not attend the property on April 18, 2023. John Bowker said that they were out of town on vacation on that day. Yet, they have a camera in the front yard that sends an alert when someone is there. John Bowker said that they never saw Costa Verde staff on camera. John Bowker did not provide any information about the camera, including whether it triggered movement on the other dates that Costa Verde came to do work. I find that John Bowker's evidence about the camera does not prove that Costa Verde did not attend on April 18, 2023.
22. For these reasons, I find that Costa Verde attended John Bowker's residence on April 18, 2023 and performed the work described above in the Job History.

23. John Bowker said that the Costa Verde crew did not complete the weeding at the first visit and that they did no weeding in the back yard.
24. The burden to prove a deficiency is on the party claiming it (see *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403). Here, that is John Bowker. In general, expert evidence is required to prove a professional's work was deficient or that it fell below a reasonably competent standard, unless the deficiency is obvious or relates to something non-technical (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 and *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).
25. John Bowker did not provide any expert evidence about the quality of Costa Verde's work. I find that the Service Proposal said that the crew would do as much work as they could on each visit. It did not say that it would work until all weeding was complete. The Service Proposal also said the front yard was the priority.
26. John Bowker submitted several photos of the yard. The photos show a rocky area with a tree and some weeds which I take to be John Bowker's back yard. There are also photos of a garden area and river rock next to a house which I take to be John Bowker's front yard. The photos are undated. John Bowker says the photos prove Costa Verde's work was deficient.
27. The photos of the front yard show tidy landscaping. The photos of the backyard show some weeds. I find that John Bowker's photos showing the front yard and back yard do not prove that Costa Verde's work was obviously deficient. In other words, I find that the photos do not prove that Costa Verde did not do a reasonable amount of work in the allotted time for each visit.
28. For these reasons, I find that John Bowker owes Costa Verde \$660.33 for the landscaping services.
29. The Terms and Conditions in the Service Proposal said that overdue amounts would be charged at 2.0% per month or 24% per annum. So, I find the parties had an

agreement on interest. This is known as contractual interest. The invoice was issued on April 30, 2023. The payment has been outstanding for the last 13 months. So, I award Costa Verde \$171.66 in contractual interest.

30. 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. I find Costa Verde is entitled to reimbursement of \$125 in CRT fees. Costa Verde did not claim dispute-related expenses.

ORDERS

31. Within 30 days of the date of this order, I order John Bowker to pay Costa Verde a total of \$956.99, broken down as follows:
- a. \$660.33 as reimbursement for landscaping services,
 - b. \$171.66 in contractual interest, and
 - c. \$125 in CRT fees.
32. Costa Verde is entitled to post-judgment interest, as applicable.
33. 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.

Mark Henderson, Tribunal Member