



# Civil Resolution Tribunal

Date Issued: August 2, 2024

File: SC-2023-007819

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larix Landscape Ltd. v. James*, 2024 BCCRT 744

B E T W E E N :

LARIX LANDSCAPE LTD.

**APPLICANT**

A N D :

MILWARD COLIN JAMES and MARY SHELAGH MCCORMICK

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Larix Landscape Ltd. (Larix), says the respondents, Milward Colin James and Mary Shelagh McCormick, hired Larix to install a drainage system and related work. Larix says the respondents owe \$2,324.40. Larix is represented by its principal, Joel Cuttiford.

2. The respondents say Larix caused damage and failed to complete some work. They ask me to dismiss the claim. The respondents are represented by Mary Shelagh McCormick.
3. As I explain below, I dismiss Larix's claim because of the damage it caused.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The CRT conducts most hearings by written submissions, but it has discretion to decide the format of the hearing, including by telephone or videoconference. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
6. 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.
7. The Dispute Notice incorrectly shows the respondents' names as "Colin James" and "Shelagh McCormick". However, Larix now agrees that their correct legal names are "Milward Colin James" and "Mary Shelagh McCormick" as written in the Dispute Responses. So, I have amended the style of cause above.

## **ISSUE**

8. The issue in this dispute is whether one or both respondents owes Larix the claimed \$2,324.40.

## EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Larix must prove its 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. Larix is in the business of installing perimeter drainage systems, among other things. The respondents own a log home. Larix says the respondents hired it to install a perimeter drainage system around their home. On December 10, 2022, Milward Colin James signed Larix's written estimate with terms and conditions. I find this document formed the contract. I note that Mary Shelagh McCormick's name is not on the contract. However, given my ultimate conclusion that Larix is not entitled to any further payment, nothing turns on Mary Shelagh McCormick's individual liability for the claimed debt.
11. The contract said that Larix would excavate to below the home's footings, waterproof the foundation, install drain pipe, and fill all trenches with 3/4-inch clear crush gravel. It also said Larix would install filter cloth to minimize fine particulate contamination of the clear crush. The price, including GST, was \$13,513.19.
12. On December 19, 2022, the respondents paid a 50% deposit of \$6,756.59.
13. The parties' submissions are brief, but it is undisputed that at some point, Milward Colin James asked Larix to help "insulate the foundation". This work was beyond the scope of the parties' original contract. It ended up taking significant time, as shown in Larix's January 19, 2023 invoice. In that invoice, Larix charged the balance of the original contract, plus hourly rates for the additional work insulating the foundation. The total, with GST, was \$13,912.40. The invoice indicates that the respondents paid \$12,586.26, leaving a balance of \$1,316.14.
14. Larix's additional work was not quite finished. It issued one more invoice for work done on January 19 and 20, for \$1,577.63, less a \$409.38 deduction for "Damage (Log Ends, Hardie Board) & Gravel moving", and a \$208 credit for filter cloth, which

Larix undisputedly did not use. The total for this invoice, with GST, was \$1,008.26. These two invoices make up the \$2,324.40 claimed in this dispute.

15. In submissions, the parties did not address the clause in the contract that said any change in scope over \$1,000 required a "Contract Change Notice." I find there was a change in scope over \$1,000 when Larix agreed to help insulate the foundation. The parties did not provide a copy of any Contract Change Notice, so I find they likely did not complete one. However, given that I dismiss the claim, I find it is not necessary to seek the parties' submissions on this issue.
16. The respondents say Larix caused damage in excess of the claimed balance. The respondents have not filed a counterclaim, but they say the damage should be set-off from any proven debt.
17. Photos show several logs that made up the respondents' home with severely damaged ends. Larix does not dispute that it damaged these logs. Larix acknowledged as much in its final invoice, where it deducted for log damage. Larix does not explain how it arrived at the deduction of \$409.38. There is no evidence that the respondents agreed to this amount. The respondents received a repair estimate of \$5,770.01. It is not clear whether Larix caused all of the damage included in the estimate, which includes drywall repair and painting, but the log damage alone was estimated at \$3,600.
18. It appears the respondents will only have to pay their \$500 insurance deductible to repair the damage. However, the law says that the respondents' insurance coverage has no impact on Larix's liability or the damages it is required to pay. The reason for this rule is that the benefits of insurance should flow to the person who bought the insurance, not the person who caused damage (see *Cunningham v. Wheeler*, 1994 CanLII 120 (SCC), and *Kaur v Tse*, 2020 BCSC 1072, at paragraph 147).
19. I find it appropriate to set off at least \$3,600 for the log damage against Larix's claimed contractual debt. Even disregarding any deductions and credits, Larix's maximum claimed debt is \$2,893.77 (\$1,316.14 and \$1,577.63). Given that the damage Larix

caused exceeds the maximum claimed debt, I find the respondents do not owe Larix anything. I therefore dismiss Larix's claim.

20. This means it is not necessary to address the respondents' alternative arguments that Larix breached the contract by not installing filter cloth and not using 3/4-inch clear crush to fill the trenches.

21. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The respondents were successful but did not pay CRT fees. I dismiss Larix's claim for CRT fees. Neither party claims dispute-related expenses.

## **ORDER**

22. I dismiss Larix's claims and this dispute.

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Micah Carmody, Tribunal Member