



# Civil Resolution Tribunal

Date Issued: August 2, 2024

File: SC-2023-008064

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *David Stalker Excavating Ltd. v. 1110458 B.C. Ltd.*, 2024 BCCRT 742

B E T W E E N :

DAVID STALKER EXCAVATING LTD.

**APPLICANT**

A N D :

1110458 B.C. LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Deanna Rivers

## INTRODUCTION

1. This is a dispute about payment for trees under a contractual warranty.

2. The applicant, David Stalker Excavating Ltd. (DSEL) says it contracted with Rogers Trucking and Landscaping (Rogers, a division of the respondent, 1110458 B.C. Ltd.) to provide project landscaping. It says 5 trees did not survive the warranty period. DSEL claims \$2,060.80, the cost of the replacement trees.
3. Rogers says there was no landscaping contract, that DSEL did not agree to the maintenance option in its quote, and Rogers did not agree to the warranty in the landscaping contract. Rogers asks me to dismiss the claim.
4. DSEL's general manager represents it. Roger's owner represents it.

## **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 *Civil Resolution Tribunal Act* (CRTA) section 118. 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. 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.
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 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 whether Rogers owes DSEL \$2,060.80 for tree replacement.

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, DSEL must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.
11. DSEL was the general contractor for a project which included landscaping. On January 19, 2021, it sent Rogers an invitation to tender for the landscaping aspect of the project. The email included the head contract and amendments. The landscaping aspect of the head contract included 10 areas and irrigation.

### ***The Contract***

12. Rogers says it did not sign a contract with DSEL. While a signature is persuasive evidence that a party agreed to a contract, contracts may be formed without signatures. In *Crosse Estate (Re)*, 2012 BCSC 26 at paragraph 31, the British Columbia Supreme Court said unsigned agreements can be binding, and acceptance can be implied by the parties' conduct. I note that the parties' subjective intentions or beliefs about what they agreed to are not relevant. The existence and terms of a contract are determined by asking whether an objective bystander, knowing the material facts, would understand that the parties had entered into a contract based on their correspondence and conduct.
13. For a valid contract to exist both parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other, plus valuable "consideration." "Consideration" means payment of money or something else of value. See *Redfern*

*Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 BC Ltd.*, 2020 BCCA 123).

14. DSEL sent an email and letter to Rogers inviting it to bid on the landscaping aspect of the head contract. The letter included access to the plans, specifications, and documents including the head contract. The letter does not reference warranties.
15. DSEL provided some pages of the head contract. I infer these are the pages DSEL considers applicable to this dispute. Rogers had the opportunity to respond to this evidence and did not. I accept that the pages provided include the landscaping parts of the head contract, and were included in DSEL's invitation letter to Rogers.
16. Rogers sent a quote to DSEL which itemized each landscaping area and irrigation with a separate price, totalling \$121,231 plus GST. Under that total, Rogers offered additional optional 1-year maintenance for \$19,200.00 + GST.
17. On February 5, 2021, DSEL emailed Rogers awarding it the landscape aspect of the project. Rogers began and completed the landscaping work between June and July 2021.
18. I find that the parties had a contract for Rogers to provide landscaping services. I find the landscaping contract consisted of the landscaping portions of the head contract (as DSEL provided to Rogers with the invitation) and Rogers' quote as accepted by DSEL. This was an enforceable contract, as the required elements of an offer, acceptance, and consideration were met, and the terms were sufficiently certain.
19. I also find that Rogers' offer for 1 year of optional maintenance was not accepted by DSEL and did not form part of the landscaping contract.

### ***Warranty***

20. I find the warranty for plants is at Part 329300 section 1.10 of the head contract. As noted above, this forms part of the landscaping contract. This section includes that:
  - a. For a period of 1 year all unsatisfactory plant material will be replaced.

- b. The owner will be responsible for maintenance after the initial 55 days following completion.
  - c. The warranty is based on adequate maintenance by the owner.
  - d. Plant loss due to extreme climatic conditions such as abnormal freezing temperatures or hail is excluded from the warranty.
21. Rogers says that it provided no warranty for the landscaping services. It says that DSEL did not include the maintenance in accepting the quote.
22. DSEL says that the 1-page January 20, 2021, quote by Rogers did not contain any qualifications regarding the warranty terms required by the tender. It says this is separate from maintenance and was included in the quote for the itemized list accepted.
23. I agree. I find maintenance of the landscaping areas and warranty of the plants are separate issues. Rogers did not exclude the warranty as set out in the head contract landscaping portions when it provided the quote. I find that Rogers is responsible under the landscaping contract for a 1-year warranty for all unsatisfactory plant material. I also find that the dead trees were unsatisfactory.
24. Rogers also says to be responsible for the warranty for the plants, it must also be responsible for plant maintenance. I infer Rogers is saying the owner, or someone else on the owner's behalf, provided inadequate maintenance for the plants, causing the death of the trees, and voiding the warranty. Rogers also said that the trees died due to extreme heat because the owner turned the irrigation off during water restrictions. As the climate was not in its control, it should not be responsible.
25. Warranty exclusions are items, conditions, or situations that limit a person's liability for breach of a contract's warranty. As the party relying on the warranty exclusion, Rogers must prove extreme climactic conditions occurred or that the owner did not provide adequate maintenance. See *Dumas v. Nissan Canada Inc.*, 2021 BCPC 132, at paragraphs 58 and 108.

26. There is no evidence of the owner's maintenance of the landscaping or climactic conditions. Rogers says that it was a very hot summer but provides no supporting evidence that the heat was extreme. I find Rogers has not proved the warranty exclusion applies.
27. On August 27, 2021, the parties attended a project completion inspection. The inspection report noted under landscape items there were two paper-bark maple trees that may need replacing if they do not recover during the warranty period. DSEL says that when the 1-year final inspection was held with the owner on August 23, 2022, 5 trees required replacement. While Rogers was not present at the August 23 meeting, it does not dispute that the trees died and needed replacing.
28. I find that Rogers provided a contractual warranty of the plants in the landscaping contract for 1 year. I find Rogers was responsible to replace the unsatisfactory trees because it did not prove an applicable warranty exclusion. So, I find Rogers breached its contract with DSEL by failing to replace the unsatisfactory trees.

### ***Damages***

29. The intention of damages for breach of contract is to place DSEL in the position it would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319.
30. DSEL provided an invoice for 5 trees purchased from Green Thumb Nursery on November 2, 2022, for \$1,968.80 plus tax totalling \$2,060.80. On November 9, 2022, it invoiced Rogers \$2,060.80 for the trees' cost. I find the appropriate damages are \$2,060.80.
31. I find Rogers owes DSEL \$2,060.80 for its breach of contract as set out above.

### ***Interest***

32. The *Court Order Interest Act* applies to the CRT. DSEL is entitled to pre-judgment interest on the \$2,060.80 from November 9, 2022, the date of the invoice, to the date of this decision. This equals \$164.64.

### ***Fees and Dispute-related Expenses***

33. Under CRTA section 49 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 see no reason in this case not to follow that general rule. I find DSEL is entitled to reimbursement of \$125 in CRT fees. DSEL did not claim any dispute-related expenses.

### **ORDERS**

34. Within 30 days of the date of this decision, I order Rogers to pay DSEL a total of \$2,350.44, broken down as follows:

- a. \$2,060.80 as damages,
- b. \$164.64 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

35. DSEL is entitled to post-judgment interest, as applicable.

36. This is a validated decision and order. Under CRTA section 58.1, 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.

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Deanna Rivers, Tribunal Member