Civil Resolution Tribunal

Date Issued: August 26, 2024

File: SC-2023-005850

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seaton v. Samra*, 2024 BCCRT 825

B E T W E E N :

ANDREW SEATON

**APPLICANT**

A N D :

KARTOAR S SAMRA and RAJWINDER K SAMRA

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member: Mark Henderson

## INTRODUCTION

1. This is a dispute about hedge replacement. The applicant, Andrew Seaton and the respondents, Kartoar S Samra and Rajwinder K Samra, are neighbours. Mr. Seaton says the Samras agreed to replace a hedge that the Samras removed during their home construction. Mr. Seaton seeks $5,000 for replanting the hedge including the cost of the hedges, labour, hoses for irrigation, and the cost to remove part of his

driveway to make space for replanting the hedge. Mr. Seaton also says he has an increased water bill and paid to repair his fence, and seeks reimbursement for these expenses. Mr. Seaton says these expenses exceed $5,000, but limits his claim to this amount to stay within the small claims monetary limit at the Civil Resolution Tribunal (CRT).

2. The Samras say they repaid Mr. Seaton half the cost of the hedge already and refuse to provide any more money.

3. Both parties are self-represented.

## JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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, and recognize any relationships between the parties that will likely continue after the CRT process has ended.

5. 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 I find that an oral hearing is not necessary in the interests of justice.

6. 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.

7. 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

8. The issue in this dispute is whether the Samras owe Mr. Seaton the remaining cost of the hedge replacement, including the cost of the hedges, labour, hoses for irrigation, and the cost to remove part of Mr. Seaton's driveway.

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Seaton must prove his 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.

10. The Samras began construction of their house in 2016. As part of their construction, they asked Mr. Seaton for permission to remove a hedge and trees that ran along the property line up to Mr. Seaton's garage. Mr. Seaton gave permission to remove the hedge and trees. Mr. Seaton drafted a letter of understanding, dated June 29, 2016, that confirmed the mutual understanding of the parties at the time. The Samras signed a copy of the letter.

11. In the letter the Samras agreed to replace the hedge and trees that were removed at their sole expense, subject to Mr. Seaton's approval of the type of shrubs and trees. The Samras also agreed to repair any other soft or hard landscaping including Mr. Seaton's driveway, services or structures that might be damaged because of the hedge removal, hedge replacement or other construction. The letter stated that all work would be completed within 18 months or December 29, 2017.

12. The Samras house construction was delayed for undisclosed reasons. On October 5, 2020, Mr. Seaton wrote to the Samras to ask when the hedges and trees would be replaced. Mr. Seaton sent another e-mail on October 6, 2021, informing the Samras that Mr. Seaton was replacing the hedges along the shared property line and completing the driveway repairs, and would be seeking recovery from the Samras based on the letter of understanding.

13. Mr. Seaton obtained a quote, dated October 24, 2021, from Simas Landscaping for $9,671.90 for the hedge replacement. This quote included the cost of 23 cedar hedge plants. This quote also included the cost to cut part of Mr. Seaton's driveway. The Samras had built a stone walkway to their property line. This walkway reduced the space for planting the hedges. So, Mr. Seaton had to remove part of his driveway to allow planting space. Mr. Seaton informed the Samras of his quote on November 29, 2021.

14. The Samras objected to the quote on various grounds. The Samras said they had already factored in the replacement of these hedges as part of their overall landscaping plan for their property. They also objected to the cost of the trees that were included in Mr. Seaton's quote. The Samras also objected to the time of year for planting. The Samras wrote to Mr. Seaton on December 8, 2021, saying they could obtain cedar hedges from a friend and save approximately $2,000. The Samras also provided a handwritten quote for labour and installation of 20 hedges for a total of $2,772. The quote was originally dated February 18, 2022, but the date was corrected to December 2021.

15. The Samras also provided a separate undated quote for hedge replacement from Showcase Landscaping Inc. totaling $5,245.50. This quote included cutting asphalt and removing soil as well as the cost of excavation equipment to conduct the necessary excavation, as well as sand, soil and organic material for drainage and finishing the hedge replacement. Since this quote is undated it is of limited assistance. But I infer from the Samras' submissions that they obtained this quote in 2019.

16. I find that the letter of understanding contained no agreement regarding the cost of the hedge replacement, or the number of hedges and trees being removed. I accept Mr. Seaton's submission that he took matters into his own hands by paying to replace the hedge himself in December 2021.

17. The original agreed date for hedge replacement was 18 months after the letter of understanding or December 29, 2017. While there is no evidence that the parties

formally amended the letter of understanding, I find that there was an implied term the hedges would be replaced in a reasonable time.

18. Mr. Seaton followed up with the Samras in October 2020, a full year before he sought quotes to have the hedges replaced. I find that Mr. Seaton afforded the Samras a reasonable opportunity to comply with the terms of the letter of understanding. Mr. Seaton waited four years from the agreed date of completion before replacing the hedges at his own cost. The question is whether he can claim damages from the Samras for a breach of the letter of understanding.

19. It is undisputed that the parties had reached an agreement in 2016 regarding the hedge replacement. The Samras also say that they intended to fulfill that agreement.

20. The Samras obtained landscaping quotes in 2019, but they say the COVID-19 pandemic prevented them from getting landscapers to do the work. They also disputed the price that Mr. Seaton quoted in 2021 and wanted the opportunity to get their own quote. They say Mr. Seaton proceeded without giving them the opportunity to complete the work. When Mr. Seaton had paid for the work and sought reimbursement, the Samras paid half of the cost. In an e-mail of April 6, 2022, the Samras said they assumed they were paying their half of the invoice rather than the full amount.

21. I find that while the Samras made attempts to comply with the letter of understanding, they did not complete the hedge replacement in a reasonable time. I also find the Samras did not comply with their agreement to pay the full cost of the hedge replacement.

22. As noted in *Kuo v. Kuo*, 2017 BCCA 245, unless an agreement is terminated, parties must fulfill their obligations. A breach of a primary obligation may be a repudiation as it amounts to a refusal to perform. Such repudiation entitles the other party to damages.

23. I find that the Samras' continued delay in completing the hedge replacement and their refusal to pay the full amount of the hedge replacement is a refusal to perform the agreement. This refusal is a breach entitling Mr. Seaton to damages.

24. Damages for breach of contract are intended to put the successful party in the position they would have been in if the contract was performed. Since the Samras had agreed to pay the full cost of the hedge replacement I find that Mr. Seaton is entitled to $4,835.95 as reimbursement for the remaining cost of hedge replacement.

25. The letter of understanding did not specify any terms related to irrigation, including the cost of hoses or increased water usage to water the hedges. So, I find that these costs did not form part of the agreement, and I dismiss the claims for hoses for irrigation and excess water bills.

26. Mr. Seaton said that the driveway and the fence have never been repaired. Mr. Seaton did not provide any evidence of the driveway damage, the fence damage or the estimated cost of driveway repairs or fence repairs and so I also dismiss this part of his claim.

27. In their submissions, the Samras also requested Mr. Seaton to remove part of his fence that is allegedly on the Samras property. This is a claim for injunctive relief. Injunctive relief is an order to do something or stop doing something. Injunctive relief is outside the CRT's small claims jurisdiction.

28. The Samras also requested a refund of the money they had already paid to Mr. Seaton for the hedge replacement. Since I have found the Samras breached the agreement with Mr. Seaton and Mr. Seaton is entitled to payment for the hedge replacement, I find that the Samras are not entitled to any refund.

29. The *Court Order Interest Act* applies to the CRT. Mr. Seaton is entitled to pre-judgment interest on the debt from December 21, 2021, the date of the invoice to the date of this decision. This equals $443.05.

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 see no reason in this case not to follow that general rule. I find Mr. Seaton is entitled to reimbursement of $175 in CRT fees. Mr. Seaton did not claim any dispute-related expenses.

## ORDERS

31. Within 30 days of the date of this order, I order the Samras to pay Mr. Seaton a total of $5,454.00, broken down as follows:

    a. $4,835.95 in debt,

    b. $443.05 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

32. The applicant 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