courtready

Hittos v. Bhandar, 2024 BCCRT 1296

This decision forms part of Courtready.ca's Canadian Deepfake and Disputed Digital Evidence Database, which tracks Canadian court and tribunal decisions where the authenticity of a photo, video, audio recording or text message was disputed or decided. Inclusion in the database does not mean that any evidence in this decision was found to be fake. Courtready.ca obtained this decision from the Canadian Legal Information Institute (CanLII).

FULL DATABASE
https://courtready.ca/deepfake-evidence-in-canadian-courts/

Civil Resolution Tribunal

Date Issued: December 19, 2024

File: SC-2023-005624

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hittos v. Bhandar*, 2024 BCCRT 1296

B E T W E E N :

TRACY FLORENCE HITTOS

APPLICANT

A N D :

DEVIN BHANDAR

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about gardening services. The applicant, Tracy Florence Hittos, says the respondent, Devin Bhandar, failed to pay $651 for work done. She claims this amount.

2024 BCCRT 1296 (CanLII)

2. Mr. Bhandar denies liability. He says Mrs. Hittos quoted him an hourly rate of $40 for 2 workers, but instead charged double this amount. He also says Mrs. Hittos did very little work for the amount charged.

3. The parties represent themselves.

4. For the reasons that follow, I find Mrs. Hittos has proven most of her claims.

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 hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

2024 BCCRT 1296 (CanLII)

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.

9. I note that Mr. Bhandar objected to some of Mrs. Hittos' evidence. In particular, he said that 2 emails labelled 13 and 14 were sent on a "without prejudice" basis. CRT staff removed these emails from uploaded evidence before this dispute reached me. So, I have not viewed or factored these emails in my decision in any way.

2024 BCCRT 1296 (CanLII)

ISSUE

10. The issue in this dispute is whether Mr. Bhandar must pay Mrs. Hittos $651 for work done.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mrs. Hittos must prove her 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. The parties' agreement is partially documented in an April 25, 2023 invoice. I infer Mrs. Hittos completed the work on the same date. The invoice says that Mr. Bhandar hired Tracy Florence Gardening & Landscaping (Tracy) to provide general labour and garden refuse disposal services. I find it clear that Tracy is simply a name Mrs. Hittos conducts business under. It is not a separate legal entity.

13. The invoice shows Mrs. Hittos charged for 14 hours at an hourly rate of $40 each for 2 labourers. These were Mrs. Hittos and her family member. She also charged $60 for disposing of 3 loads of garden refuse. The total, including tax, equals the claim amount of $651.

14. As noted above, the parties disagree on the hourly rate. Mrs. Hittos says she verbally quoted the same rate on the invoice. Mr. Bhandar says Mrs. Hittos only quoted $20 hourly for each labourer. Neither party documented their discussions at the time.

15. Oral agreements are binding but more difficult to prove. That said, I find Mrs. Hittos' version of events is likely accurate. I say this partly because Mr. Bhandar provided 2 unsworn affidavits from landscapers employed by RLC Landscaping. They each said they charged $75 hourly plus GST. Given this evidence, I find it unlikely that Mrs. Hittos would only charge $20 hourly for labour. I find the amount is unreasonably low and not credible. Under Mrs. Hittos' version of events, she still charged the relatively modest amount of $40 hourly, which is approximately half the rate of RLC Landscaping.

16. Mrs. Hittos also says that Mr. Bhandar agreed to pay $20 per load of refuse to be taken to the dump. I find it likely that Mr. Bhandar agreed, at a minimum, to pay a reasonable amount for Mrs. Hittos to remove the refuse. I find this was likely not included in the hourly rate as it involved leaving Mr. Bhandar's property. I find that $20 per load is reasonable as nothing suggests otherwise.

17. Mrs. Hittos provided before and after photos of the work. They show that Mrs. Hittos removed leaves from some areas of Mr. Bhandar's property.

18. In late April and May 2023, the parties exchanged several emails. Mrs. Hittos sent Mr. Bhandar the invoice. Mr. Bhandar objected to both the hourly rate and the total amount. He complained the cost was excessive for the work done and that Mrs. Hittos and her family member had worked too slowly. He said they could meet somewhere to discuss payment but told Mrs. Hittos to stop coming to his house or office.

19. Despite this, Mrs. Hittos and her family member visited Mr. Bhandar's house on May 11, 2023. Mrs. Hittos provided a recording of the visit. Mrs. Hittos asked for payment and Mr. Bhandar provided a cheque for $651. He complained about the price and referred to his email asking her not to visit his house. Mrs. Hittos said she had not

2024 BCCRT 1296 (CanLII)

seen the email. I find this was likely the case as Mr. Bhandar's email was also dated May 11, 2023, which was the same date of the visit.

20. Mr. Bhandar says that Mrs. Hittos sneaked onto his property and secretly recorded him. Ultimately, I find the recording has limited evidentiary value and only provides background. I find nothing significant turns on it.

21. Mr. Bhandar also says Mrs. Hittos altered the recording to attack his credibility. He says that it lacks the telltale chime from his back door opening. I find it unproven that Mrs. Hittos altered the recording. I find the lack of a chime is not determinative. I find that expert evidence is likely required to prove any alteration by Mrs. Hittos. Further, Mr. Bhandar also did not point out what other information the recording lacked or had altered. I have placed little significance on the recording in any event.

22. Financial documents show that Mrs. Hittos subsequently tried unsuccessfully to deposit the cheque as it was drawn from a closed account. Mr. Bhandar says that at the time he wrote the cheque, he did not realize the account was closed. He says he intended to cancel it the next day.

23. I am mindful that Mr. Bhandar did not want Mrs. Hittos and her family member to visit him. However, I find the fact that Mr. Bhandar did not intend to honour the cheque negatively affects his credibility. I find this is another reason to prefer Mrs. Hittos' version of events about the hourly rate.

24. In summary, I am satisfied that the parties agreed to an hourly rate of $40 plus $20 per load of removed refuse. I am also satisfied that Mrs. Hittos and her family member worked 14 hours total. The photos show the work done is consistent with removing 3 loads of garden refuse.

25. Mr. Bhandar says that Mrs. Hittos and her family member worked inefficiently and overcharged him. As the party alleging substandard work, Mr. Bhandar bears the burden to prove the deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61,

2024 BCCRT 1296 (CanLII)

26. In the unsworn affidavits, the RLC landscapers showed pictures of work that they did over the course of 3 hours each, for a total of 6 hours. I find the work done was considerable. However, I find it unproven that Mrs. Hittos or her worker overcharged for their work or worked at an unreasonably slow rate. I say this in part because, as noted earlier, Mrs. Hittos charged roughly half the rate of RLC landscapers. The RLC landscapers also did not provide any opinion on whether Mrs. Hittos overcharged Mr. Bhandar for her work. I do not find it obvious from the pictures alone that Mrs. Hittos charged an unreasonable amount or should have done the work at a faster pace.

27. Given the above, I order Mr. Bhandar to pay Mrs. Hittos $651 for work done. The *Court Order Interest Act* applies to the CRT. Mrs. Hittos is entitled to pre-judgment interest on the debt of $651 from April 25, 2023, the date of the invoice, to the date of this decision. This equals $53.63.

28. 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 Mrs. Hittos is entitled to reimbursement of $125 in CRT fees.

29. Mrs. Hittos also claims $157.50 for reimbursement of bailiff services. An August 18, 2023 invoice shows the process server charged this amount to serve documents on Mr. Bhandar. Under CRT rule 2.2(3), the CRT normally serves dispute notices by regular mail on behalf of applicants.

30. The evidence before me does not explain why Mrs. Hittos felt it necessary to hire a process server. Mr. Bhandar provided no submissions on whether this expense was reasonable. I considered ordering no reimbursement. However, given the lack of objection, Mrs. Hittos' success, and proof of the expense, I find it appropriate to order Mr. Bhandar to reimburse Mrs. Hittos for half of the invoice, being $78.75.

2024 BCCRT 1296 (CanLII)

ORDERS

31. Within 30 days of the date of this order, I order Mr. Bhandar to pay Mrs. Hittos a total of $908.38, broken down as follows:

    a. $651 in debt,

    b. $53.63 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $203.75, for $125 in CRT fees and $78.75 in dispute-related expenses.

32. Mrs. Hittos 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.

David Jiang, Tribunal Member

2024 BCCRT 1296 (CanLII)