



# Civil Resolution Tribunal

Date Issued: December 7, 2018

File: SC-2018-001260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GEOSCAN SUBSURFACE SURVEYS INC v. LEVEL VENTURES INC.*  
*et. al.*, 2018 BCCRT 818

**B E T W E E N :**

**GEOSCAN SUBSURFACE SURVEYS INC**

**APPLICANT**

**A N D :**

**LEVEL VENTURES INC., KOVEWEST PROPERTY SERVICES LTD.,  
RYAN SEMENOWYCS and CLINTON ORAAS**

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Michael F. Welsh, Q.C.

## **INTRODUCTION**

1. The applicant, GeoScan Subsurface Surveys Inc, claims that the respondents all owe it \$3,097.50 for concrete scanning, cutting and coring work, plus interest under its contract totalling \$929.25. The respondents either point fingers at each other as to which one is liable, or else claim they are immune from a legal suit. There is no issue raised that the applicant is owed the sum it claims for its services. The issue for resolution is who owes it, and if the party or parties who do owe it are indeed immune from a legal proceeding. There is also an issue of the amount of interest the applicant can lawfully claim.
2. The applicant is represented by an employee. The respondents, Level Ventures Inc. (Level Ventures) and Kovewest Property Services Ltd. (Kovewest,) are represented by Ryan Semenowycs, who also represents himself. The respondent, Clinton Oraas, represents himself.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have decided this dispute based on written submissions, as I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether the information would be admissible in a court

of law or not. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues in this dispute are:
  - a. Which if any of the respondents owes the applicant the undisputed sum of \$3,097.50, (the Admitted Amount?)
  - b. Are either or both of the respondents, Level Ventures and Kovewest, immune from liability as no longer existing due to being struck as a corporation from the corporate register under the BC *Business Corporations Act*?
  - c. Is the respondent, Ryan Semenowycs, in bankruptcy so that any legal proceedings against him must be stayed as a matter of law?
  - d. Are either or both of the respondents, Kovewest and Clinton Oraas, party to any contract or guarantee for which one or both is legally liable to pay the Admitted Amount?
  - e. What interest can the applicant lawfully claim on the Admitted Amount?

## **EVIDENCE AND ANALYSIS**

8. The facts underlying the claim can be stated briefly.

9. In 2016 the applicant completed concrete scanning, cutting and coring work on a property on East 4<sup>th</sup> Avenue, Vancouver, for which it has not been paid.
10. The original proposal, job order and work order state that the customer was the respondent, Kovewest. The applicant's initial invoicing in September 2016 was to Kovewest. Then in October 2016 the applicant issued its invoicing for the work to the respondent, Level Ventures.
11. The applicant states that it was called and had work booked on 2 separate occasions. It says that it was initially told that Kovewest would pay the invoices. It says it was then asked by Kovewest and Level Ventures to change its invoicing to Level Ventures and did so.
12. The applicant has provided a corporate register search from Dye and Durham, a registry agent service, dated January 18, 2018 for Level Ventures and Kovewest. It shows that neither was struck from the corporate register at that time. Both were active companies. There is no more current corporate search in the record to show their current status.
13. The corporate register search of Level Ventures shows that its sole director is Clinton Oraas. The directors for Kovewest are Ryan Semenowycs and Shanna Semenowycs.
14. The tribunal received a letter dated April 5, 2018, from MNP Ltd., as trustee in bankruptcy of Ryan Semenowycs, stating that he made an assignment in bankruptcy on January 8, 2018, and that under Section 69.3(1) of the *Bankruptcy and Insolvency Act (Canada)* (BIA), the filing of a bankruptcy assignment "initiates a stay of proceedings against all garnishments, lawsuits and court proceedings initiated or that may be initiated."
15. Based on this evidence, I find as follows.
16. Both Kovewest and Level Ventures are jointly and severally liable to pay the applicant \$3,097.50 as invoiced. I find that the applicant's customer was Kovewest.

Its initial invoicing was to Kovewest. It was instructed to invoice Level Ventures, which it did. In the circumstances where it agreed to reissue billings to suit its customer, I find the customer, Kovewest, cannot avoid liability and that Level Ventures also accepted liability.

17. If either or both of those corporations have been struck from the corporate register, then it will be for the applicant to determine how to address that situation. The only evidence before me is that both remain active.
18. With respect to the interest it seeks to the date it submitted this claim, totalling \$929.25, the applicant is not legally able to charge this amount. The work order of October 5, 2016, on which it relies as a contract for interest, states at the bottom that payments are due within 30 days of invoicing and that “(a)ll late payments (beyond 30 days) will be subject to an interest charge of 5% per month.” Under Section 4 of the *Interest Act*, (Canada), if a contract specifies a certain interest rate “per day, week, month, or at any rate or percentage for any period less than a year”, no interest rate exceeding 5% per year is recoverable unless the contract contains an express statement of the annual equivalent of that daily, weekly or monthly rate. In this case there was no annual equivalent rate specified in the work order and so interest is limited to the amounts set out in the *BC Court Order Interest Act*.
19. Pre-judgment interest under the *Court Order Interest Act* from November 5, 2016 (30 days from the last invoicing date of October 6 ,2016) to December 7, 2018 is \$63.18.
20. I make no orders respecting Ryan Semenowycs as I have no jurisdiction to do so, based on his assignment in bankruptcy. Section 69.3(1) of the BIA states that “on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.” The trustee in bankruptcy correctly states the law and I am bound by that law.

21. I dismiss the claims against Clinton Oraas. The applicant must prove its claims against him on the balance of probabilities. The only evidence submitted involving him is the corporate search of Level Ventures that shows he is its director. That is not enough to establish any personal liability. A corporation and its directors are separate legal persons.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule with the two corporate respondents. I find the applicant is entitled to reimbursement of \$125 in tribunal fees by the respondents, Kovewest and Level Ventures.

## **ORDERS**

23. Within 30 days of the date of this order, I order the respondents, Kovewest Property Services Ltd. and Level Ventures Inc., to pay the applicant, GeoScan Subsurface Surveys Inc, a total of \$3,285.68, broken down as follows:
  - a. \$3,097.50 in payment of its invoicing,
  - b. \$63.18 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. I dismiss the claims as against Clinton Oraas.
26. I refuse to resolve the applicant's claims as against Ryan Semenowycs.
27. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

28. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Michael F. Welsh, Q.C., Tribunal Member