



# Civil Resolution Tribunal

Date Issued: September 25, 2019

File: SC-2019-000333

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DNR Contracting Ltd. v. 6505589 Canada Inc. dba Winmar Vancouver Restoration*, 2019 BCCRT 1128

B E T W E E N :

DNR CONTRACTING LTD.

**APPLICANT**

A N D :

6505589 CANADA INC. Doing Business As WINMAR VANCOUVER  
RESTORATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, DNR Contracting Ltd., says the respondent, 6505589 Canada Inc. doing business as Winmar Vancouver Restoration, hired him to do restoration work and failed to pay. The applicant claims \$4,147.50 for performing the work.

2. The respondent denies that it owes the applicant the claimed amount. The respondent says the applicant failed to perform the work in full. The respondent says the applicant only performed a portion of the work related to a tree stump removal, valued at \$1,000.
3. The applicant is represented by its employee, Ranj Phull. The respondent is represented by legal counsel, Cyrille Panadero.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided to hear this dispute through written submissions.
6. The applicant objects to the respondent's submission of audio recorded statement on the basis that he had given no consent to be recorded. It is legal in Canada to record a conversation so long as one party to it is aware of it and consents. However, I have not relied on the audio recording in coming to my decision as I have found no need. I find I am able to make my decision on the parties' other evidence and submissions.

7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - 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.

## **ISSUE**

9. The issue in this dispute is to what extent, if any, the respondent must pay the applicant \$4,147.50 for its work.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The following facts are not in dispute. The respondent company was hired by an insurer to perform restoration work. The respondent subcontracted with the applicant to complete 13 jobs at various residential and commercial properties. The job that is subject to this dispute was for fence and cement work at a residential property.
12. On May 31, 2018 the applicant invoiced the respondent a lump sum amount of \$4,725.00 for the following work, “grinding” a tree stump, fence post and planks,

and prepping, removing, and re-installing a cement block. It is undisputed that the respondent did not pay this invoice.

13. The respondent says that soon after the applicant started work, issues arose with workmanship and job completion. After sending the invoice, the respondent says the homeowner contacted it to say the applicant had not performed the invoiced work in full and that it had only removed a tree stump. The applicant admits that it did not perform all the invoiced work. The applicant says it submitted it on the respondent's request because most the work was complete
14. The parties met with the homeowner about the invoice but did not resolve their dispute over the extent of work performed by the applicant.
15. After the meeting, the applicant sent a revised invoice of \$4,147.50 for "grinding down" a tree stump, removing a cement block and prepping the ground. This is the amount claimed in this dispute. The respondent offered to pay \$1,000 of the invoice for the stump removal, the only work it says the applicant performed.
16. As mentioned, the applicant bears the burden of proving its claim on a balance of probabilities. The invoice only describes the work and the lump sum amount. It provides no breakdown of the labour and materials. The applicant does not explain its specific material or labour costs for the job. The applicant provided no time sheets, receipts, photographs, witness statements or any other evidence to support its claim that it completed more than the tree stump removal. I find the applicant has not established on a balance of probabilities that it completed all the invoiced work.
17. The respondent agrees that the applicant removed the tree stump. I find the applicant is entitled to reasonable payment for this work. This is known in law as '*quantum meruit*', or value for work done. The respondent says the value for this work was \$1,000, which the applicant does not specifically dispute. I accept on a judgment basis that \$1,000 is reasonable compensation for the tree stump. The respondent does not say it paid the applicant for this work. I find therefore, that the respondent owes the applicant \$1,000 for removing the tree stump.

18. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$1,000 from the date of the invoice, May 31, 2018 to the date of this decision. This equals \$22.65.
19. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In this case, the evidence shows that prior to filing the application to the tribunal, the respondent had offered to pay the applicant \$1,000 for the tree stump, the amount awarded in this decision. Since the applicant was not successful beyond this offer, I decline to award the applicant any fees or dispute-related expenses. The respondent claims its tribunal fees. However, I find that only the applicant paid the filing fees. The respondent submitted no specifics or receipts for other expenses. Therefore, I decline to award the respondent anything in fees or dispute-related expenses.

## **ORDERS**

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,022.65, broken down as follows:
  - a. \$1,000 for removing the tree stump, and
  - b. \$22.65 in pre-judgment interest under the COIA.
21. The applicant is entitled to post-judgment interest under the COIA, as applicable.
22. Under section 48 of the CRTA, 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.

23. Under section 58.1 of the CRTA, 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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Trisha Apland, Tribunal Member