



Civil Resolution Tribunal

Date Issued: December 24, 2019

File: SC-2019-005023

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Hydro Vac Inc. v. Wilson Newland Construction Ltd.*,

2019 BCCRT 1434

B E T W E E N :

SUPER SAVE HYDRO VAC INC.

APPLICANT

A N D :

WILSON NEWLAND CONSTRUCTION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about hydro vac services. In September 2018 the applicant, Super Save Hydro Vac Inc., entered into a verbal agreement with the respondent, Wilson Newland Construction Ltd., to provide hydro vac services. The applicant claims \$2,562.01 for alleged unpaid hydro vac services.

2. The respondent says the applicant failed to provide the services the parties agreed to, and it does not owe the applicant anything.
3. Both parties are represented by an employee or principal.

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, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.
7. 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

8. The issue in this dispute is whether, under the terms of the parties' verbal agreement, the applicant is entitled to payment of \$2,562.01 for hydro vac services.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove its claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. The parties agree that on September 5, 2018 the respondent called the applicant to ask about its hydro vac services for removing sand from a crawl space on its job site. On September 10, 2018, the applicant inspected the respondent's job site. The applicant says the purpose of the inspection was to assess the equipment and labour required to complete the job, and it determined the job required 2 trucks and approximately 8 hours of hydro vac services. The respondent says during the inspection the applicant measured the amount of sand the respondent needed it to remove.
12. The applicant says the parties entered into a verbal agreement on September 12, 2018 for 2 trucks to provide hydro vac services at the respondent's job site on September 13, 2018. The applicant says it notified the respondent of its \$275 hourly rate and that it would bill the respondent for all services on an hourly basis. The respondent does not specifically dispute any of this. Therefore, I find the respondent agreed to the applicant's \$275 hourly rate.
13. The parties agree that on September 13, 2018, the applicant's first truck arrived at the respondent's job site at 8:00 a.m. as scheduled, and started pumping at 8:30 a.m. The parties agree that once the applicant started pumping it became clear that it could not remove all the sand with the equipment it had available. Neither of the

parties elaborated on the nature of the problem or the reason the applicant was unable to remove the sand.

14. The respondent says that at 8:45 a.m. the applicant's representative cancelled the second truck with the respondent's agreement. The respondent says the applicant tried to continue removing the sand but made very little progress. It says the applicant removed less than 1% of the sand. The applicant does not dispute any of this. My findings about the amount of sand removed are set out below.
15. The respondent says the applicant stopped the work at 10:30 a.m. and left the respondent's job site with the truck by 11:00 a.m. The applicant says it stopped the work at 11:00 a.m. Given the respondent's evidence that it took the applicant 30 minutes between arriving on site and starting pumping, I infer that the applicant spent some time setting up its equipment. This would mean the applicant was also required to spend time packing up its equipment when it was finished pumping. For this reason, I find the applicant was working at the respondent's job site, whether pumping sand or packing up its equipment, until 11:00 a.m. on September 13, 2018.
16. Over the following months the applicant sent the respondent various invoices and credit memos for its services on September 13, 2018, some of which were incorrect or sent in error. I find the evidence and submissions establish that the applicant's \$2,562.01 claim is broken down as follows:
 - a. \$866.25 for 3 hours of hydro vac services at \$275 per hour plus GST provided between 8:00 a.m. and 11:00 a.m. on September 13, 2018,
 - b. \$577.50 for 2 hours of travel time at \$275 per hour plus GST,
 - c. \$288.75 for 1 hour of dump time at \$275 per hour plus GST,
 - d. \$420 for \$400 dump fee plus GST,
 - e. \$288.75 for 110 feet of remote hose services at \$2.50 per foot plus GST, and
 - f. \$120.76 in service charges for late payment of the invoice.

17. The respondent says the applicant failed to deliver the services it promised to provide in breach of the contract, and therefore it does not owe the applicant anything. The respondent says it “logically assumed” that the purpose of the September 10, 2018 inspection was to confirm whether the applicant could complete the job with respect to equipment, accessibility, soil composition, labour risks and hazardous waste risks. It says the applicant agreed to complete the job by the end of the day on September 13, 2018. The respondent says the applicant’s undelivered services caused it to incur substantial additional costs and time delays on its project, but it did not bring a counterclaim or quantify its alleged losses, so I decline to address this allegation further.
18. The applicant says it did not guarantee that it would complete the job by a certain date, or at all. There is no documentary evidence to establish that the applicant provided such a guarantee to the respondent. While I find there is insufficient evidence that the applicant guaranteed it would complete the work, I find the parties agreed that the applicant would remove the sand from the respondent’s job site. The uncontested evidence is that it removed only 1% of the sand, and neither of the parties provided evidence or made submissions explaining why the applicant was unable to remove the rest of the sand. There is also no evidence of the estimated cost of removing all of the sand, so I am unable to determine how the applicant’s \$2,562.01 claim in this dispute compares with the estimated total price of the project.
19. The evidence before me establishes that although the applicant removed only 1% of the sand, it removed enough to require a stop at the dump. Therefore, I find the applicant provided some value to the respondent. In the circumstances I find the applicant is entitled to compensation based on the principle of *quantum meruit*, which means a reasonable sum of money paid for work completed. On a judgment basis, I find the respondent must pay the applicant \$1,000 for its services. I find this amount covers the applicant’s time spent at the dump, its dump fees, and a small portion of its travel and hydro vac fees.

20. I note the applicant's invoices state that they were due immediately, and that there would be a 24% per annum interest charge for late payments. However, I find there is no evidence the respondent verbally agreed to this interest rate, and the applicant cannot unilaterally impose such a term into the parties' agreement by stating it on an invoice. Therefore, I find the respondent's required \$1,000 payment to the applicant is not subject to contractual interest. However, the *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$1,000 owing calculated from September 13, 2018, which is the date it provided the hydro vac services and issued its first invoice, to the date of this decision. This equals \$23.50.
21. 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. I see no reason in this case not to follow that general rule. Since the applicant was partially successful, I find it is entitled to reimbursement of half its tribunal fees in the amount of \$62.50. It did not claim any dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,086, broken down as follows:
- a. \$1,000 as payment for hydro vac services,
 - b. \$23.50 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.

25. 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.

Sarah Orr, Tribunal Member