



# Civil Resolution Tribunal

Date Issued: May 27, 2020

File: SC-2020-001202

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MMC McGregor Mechanical Contracting Ltd. v. Alma Mater Society of the University of British Columbia Vancouver*, 2020 BCCRT 576

BETWEEN:

MMC MCGREGOR MECHANICAL CONTRACTING LTD.

**APPLICANT**

AND:

ALMA MATER SOCIETY OF THE UNIVERSITY OF BRITISH  
COLUMBIA VANCOUVER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about plumbing services.

2. The applicant, MMC McGregor Mechanical Contracting Ltd. (MMC), says the respondent, Alma Mater Society of the University of British Columbia Vancouver (AMS), failed to pay in full for plumbing services it provided. MMC seeks \$4,368, the amount it says remains outstanding.
3. AMS says it was overcharged and that it could have had the work done elsewhere for cheaper. It denies owing MMC any additional money.
4. MMC is represented by SB, whom I infer is a principal or employee. AMS is represented by its Building Operations Manager, VM.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal 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. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
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. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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 whether AMS must pay MMC \$4,368 for plumbing services or whether MMC overcharged for its services, such that AMS does not owe MMC any more money.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant MMC bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed that on January 24, 2019, VM emailed SB and asked for a quote to test 64 back flow preventers (BFPs) throughout an AMS building. To test the 64 BFPs, SB provided an overall estimate of \$2,720 plus GST, based on \$85 per hour and approximately 30 minutes per BFP. SB also noted that if any BFP failed the test, MMC could repair it for \$85 per hour, plus materials cost. I find these emails formed the basis of the parties' agreement.
12. MMC tested the BFPs on February 19, 2019. On March 4, 2019, SB informed VM that 32 units failed. SB again told VM that MMC would charge \$85 per hour plus materials to repair and re-test each failed BFP. Later that day, VM emailed MMC to proceed with repairs.

13. It is undisputed that the work was completed by April 23, 2019, and SB provided MMC's invoice on April 30, 2019, which included \$2,720 for the original testing, \$6,719.42 for 79 hours of repair labour, and \$5,369.78 for materials, all plus GST, for a total invoice of \$15,549.66. The parties agree AMS paid \$11,181.66 towards the April 30, 2019 invoice. The difference is \$4,368, the amount claimed in this dispute.
14. AMS says they should not have to pay the amount outstanding because MMC overcharged it for repair labour, which included travel time for sourcing parts. MMC says they had to source parts from various sources due to the high number of parts needed. AMC argues that MMC should not have gone to several suppliers to get parts, therefore charging AMS travel time for multiple trips, as it was not a "rush job".
15. On balance, I find MMC is entitled to payment of the balance of its invoice. The evidence shows the work was completed at AMS's instruction, and there is no indication there were any issues with MMC's work. Although AMS argues MMC should have charged less for its services, I do not find the amounts charged were unreasonable. AMS submitted a quote from another contractor for repairing the 32 BFPs, for \$1,567.50 plus GST, however, I find an alternative company's rates irrelevant to the parties' agreement. AMS did not submit any expert evidence that MMC's labour or time charges were unreasonable or fell below the applicable standard of care. I find AMS must pay MMC the outstanding \$4,368.
16. MMC says it is entitled to interest on the \$4,368. Although the emails which make up the parties' agreement do not refer to interest, MMC's April 30, 2019 invoice states that if an invoice is not paid within 14 days, interest is charged at 2% per month. However, in order to successfully claim for contractual interest, the interest rate must be set out in the parties' agreement. A right to charge interest cannot be based simply on a unilateral claim to it in an invoice (see: *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775). Therefore, I find MMC is not entitled to contractual interest, but is entitled to pre-judgment interest under the

*Court Order Interest Act*. From May 14, 2019, 14 days after the date of the invoice, to the date of this decision, this totals \$88.44.

17. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As MMC was successful, I find that it is entitled to reimbursement of the \$175 it paid in tribunal fees. No dispute-related expenses were claimed.

## **ORDERS**

18. Within 30 days of the date of this decision, I order the respondent, Alma Mater Society of the University of British Columbia Vancouver, to pay the applicant, MMG McGregor Mechanical Contracting Ltd. (MMG), a total of \$4,631.44, broken down as follows:

- a. \$4,368 in debt for unpaid plumbing services,
- b. \$88.44 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in tribunal fees.

19. MMG is also entitled to post-judgment interest, as applicable.

20. 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. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask

the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

21. 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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Andrea Ritchie, Vice Chair