



# Civil Resolution Tribunal

Date Issued: May 27, 2020

File: SC-2019-009652

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Hydro Vac Inc. v. Pacifex Construction Ltd.*,  
2020 BCCRT 582

B E T W E E N :

SUPER SAVE HYDRO VAC INC.

**APPLICANT**

A N D :

PACIFEX CONSTRUCTION LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This claim is about payment for hydro vac services. The applicant, Super Save Hydro Vac Inc., claims the respondent, Pacifex Construction Ltd., owes \$3,704.40 for unpaid hydro vac services and unjust enrichment.

2. The respondent denies the applicant's claims. The respondent says they fully paid for the services they agreed to. The respondent argues that they are not responsible for the cost of additional work performed by the applicant. The respondent argues that this additional work exceeded the applicant's quote and was not authorized by the respondent.
3. Both parties are each represented by corporate representatives.

## **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 I can fairly hear this dispute through written submissions.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did the respondent authorize the applicant's hydro vac services?
  - b. Does the respondent owe the applicant a debt for the applicant's hydro vac services? If so, how much?
  - c. Is the respondent responsible for damages for unjust enrichment? If so, how much?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove their claim on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The applicant did not provide a signed contract. I note that a contract does not need to be signed, but when parties sign a written contract, it creates certainty about its terms and their intentions. When there is no signed contract, the party trying to prove that a contract exists must prove that the parties agreed on the essential terms of the agreement.
11. It is undisputed that the applicant emailed a quote to the respondent on January 11, 2019 for hydro vac services. The quote had these fees:
  - a. \$250 per hour for the hydro vac truck and operator
  - b. \$400 for dump fees

- c. \$2.50 per foot for hose, with approximately 150 feet needed
- 12. The email said that there would be a minimum 2-hour travel time charge and a minimum 1-hour dump time charge.
- 13. The applicant's email estimated that they could perform the job in one load with approximately 8 to 10 hours of work.
- 14. The respondent says they received the applicant's quote and they told the applicant to perform the work.
- 15. I find that, when the respondent engaged the applicant to perform hydro vac services, they entered into a verbal contract to pay the applicant the rates stated in the January 11, 2019.
- 16. It is undisputed that the applicant performed hydro vac services for the respondent on January 21, 2019 and January 22, 2019. The applicant says they were unable to complete the job on January 21, 2019 and they performed further hydro vac services on January 22, 2019.
- 17. The applicant sent an invoice dated January 21, 2019 for \$4,541.25. The invoice says the applicant spent 8.5 hours performing hydro vac services on January 21, 2019.
- 18. The applicant sent a second invoice dated January 22, 2019 for \$2,940.00. This invoice says the applicant spent 4 hours performing hydro vac services on January 22, 2019.
- 19. The parties agree that the respondent paid \$4,226.25 on March 29, 2019.

***Does the respondent owe a debt to the applicant for unpaid hydro vac services?***

20. As stated above, I find the parties made a verbal contract based on the terms of the January 11, 2019 quote. I find that applicant offered to perform the services for their quoted hourly rates and the respondent agreed.
21. The respondent argues that they are not responsible for any charges in excess of the applicant's quote emailed on January 11, 2019. Specifically, the respondent argues that they only agreed to pay for one day of hydro vac disposal services.
22. The respondent says they estimated that they needed the removal of 5.5 cubic meters of waste material from the job site. Further, the respondent says the applicant's hydro vac disposal vehicles have a capacity of 8 to 9 cubic meters. The respondent says that they hired the applicant based on these estimates and the applicant's statement that they could finish the project in one load.
23. I am satisfied that the applicant estimated that the work would take 8 to 10 hours and be completed in one load. While I do not find the applicant guaranteed this, I do find that the respondent relied on the applicant's estimate that the work would be performed in one day. Based on the applicant's estimate, I find that it would be unreasonable for the respondent to be responsible for the payment for further hydro vac services on January 22, 2019 without further authorization.
24. The applicant says an entity they called Chandos approved further work on January 22, 2019. Based on the respondent's submission, I find the applicant was referring to Chandos Construction. The respondent says Chandos Construction is a separate entity that did not have the authority to represent the respondent.
25. The applicant did not provide any evidence to prove that Chandos Construction had the authority to represent the respondent. As stated above, the applicant has the burden of proving their claim. In the absence of evidence, I am not satisfied that the respondent approved further hydro vac services on January 22, 2019. Accordingly, I find that the respondent does not have contractual obligation to pay for the applicant's January 22, 2019 hydro vac services.

26. I find that the applicant performed the hydro vac services stated on the applicant's January 21, 2019 invoice for a cost of \$4,541.25. Since the respondent has paid \$4,226.25, I find that the respondent owes a debt of \$315 for the January 21, 2019 invoice.
27. The applicant also requests \$449.40 for service charges. I find that services charges were not included in the verbal contract and the respondent does not have any obligation to the applicant other than under the contract. Accordingly, I find that the respondent is not responsible for paying the applicant's claimed service charges.

***Does the respondent owe compensation for unjust enrichment?***

28. The applicant also argues that the respondent has been enriched by the applicant's hydro vac services performed on January 22, 2019.
29. The law recognizes a concept called unjust enrichment. This is when an applicant can prove the respondent obtained a benefit from the applicant's services, the applicant suffered a loss and there is reason why the respondent should keep the benefit (*Pettkus v. Becker*, 1980 CanLII 22 (SCC)).
30. I find that the applicant did perform hydro vac services for the respondent on January 22, 2019.
31. I find that the best estimate of any benefit that the respondent received from the applicant's hydrovac services is the applicant's own estimate. I find that the applicant estimated that the entire project would cost less than the amount that the applicant invoiced on January 21, 2019. I am not satisfied that the respondent received a benefit in excess of the amount that the respondent is already responsible for under the contract. Accordingly, I dismiss the applicant's request for compensation for unjust enrichment.
32. For the forgoing reasons, I find that the respondent owes the applicant a debt of \$315.

33. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$315 outstanding from the January 21, 2019 invoice, from the date of that invoice to the date of this decision. This totals \$2.15.
34. 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. Since the applicant was partially successful, I find that the applicant is entitled to reimbursement of one-half the tribunal fees. This totals \$87.50.

## **ORDERS**

35. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$404.65, broken down as follows:
  - a. \$315 in debt for unpaid services,
  - b. \$2.15 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$87.50 in tribunal fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. 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.



38. 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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Richard McAndrew, Tribunal Member