



Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2021-009585

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhao v. Lynx Creek Industrial & Hydrovac Ltd.*, 2022 BCCRT 884

BETWEEN:

WEI ZHAO

APPLICANT

AND:

LYNX CREEK INDUSTRIAL & HYDROVAC LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about alleged overbilling. The applicant, Wei Zhao, says the respondent contractor, Lynx Creek Industrial & Hydrovac Ltd. (Lynx), overcharged

him for hydrovac excavation services Lynx provided at Mr. Zhao's home following a flood. Mr. Zhao says Lynx claimed more hours than were actually worked. Mr. Zhao claims \$955.50, which is the excess amount he says was improperly charged to his credit card.

2. Lynx says its hours were justified and that it was entitled to charge travel time, not just hours on site. Lynx says Mr. Zhao is not entitled to any refund.
3. Mr. Zhao is self-represented. Lynx is represented by its director, Clayton Crawford.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. CRTA section 42 says the CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. Lynx made some arguments about Mr. Zhao disparaging it in an online review. I make no findings about this, because Lynx did not file a counterclaim and because defamation is expressly outside the CRT's jurisdiction.

ISSUES

9. The issues are whether Lynx overcharged Mr. Zhao, including by billing for travel time, and if so, whether Mr. Zhao is entitled to the claimed \$955.50 refund.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Zhao must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submitted evidence and arguments, but only refer to what is necessary to give context to my decision. I note Lynx did not provide separate written arguments despite having the opportunity to do so, and instead relies on its Dispute Response filed at the outset of this proceeding and on the submitted evidence.
11. In December 2021, Mr. Zhao's home was flooded and he hired Lynx to clean out his garage and crawl space, using hydrovac excavation. The parties had no formal written agreement and there are no texts or emails in evidence that pre-date the work. However, Mr. Zhao agrees he hired Lynx on an hourly basis at \$260 per hour rather than a fixed-price contract. Lynx attended on 2 days: December 10 and 13, 2021. None of this is disputed.
12. Lynx's December 14, 2021 invoice charged Mr. Zhao for 8 hours at \$260 per hour, plus \$200 for "special PPE". With tax, the invoice totalled \$2,394. In a December

15, 2021 email, Lynx offered to waive the \$200 PPE fee and discount 1 hour, bringing the invoice to \$1,820 plus tax. Lynx also agreed not to charge Mr. Zhao any dump fees. With tax, that revised total was \$1,911 based only on 7 hours of work at \$260 per hour, plus GST. Later that evening, Mr. Zhao responded and said he disagreed, and that Lynx was only entitled to \$910, not double that amount. Mr. Zhao's claimed \$955.50 in this dispute is half the \$1,911.

13. On December 16, 2021, Lynx charged \$1,911 to Mr. Zhao's credit card, which Mr. Zhao says was unauthorized. There is no evidence before me that Lynx saw Mr. Zhao's December 15 email before it charged the \$1,911. Mr. Zhao undisputedly had given Lynx his credit card number in order for Lynx to attend his home. On the evidence before me, I find it unproven that Lynx knowingly made an unauthorized charge. However, that does not mean Mr. Zhao's refund claim must fail. My further reasons follow.
14. As set out in its December 15, 2021 email to Mr. Zhao, Lynx said on the 1st day its crew was at Mr. Zhao's home for 3 hours and 24 minutes. Lynx said on the 2nd day, the crew were at his home for 2 hours and 12 minutes. Lynx said with travel time each way, the charge should have been around 12 hours not 8 hours as billed. However, Lynx said it had given Mr. Zhao an "incredibly good deal" due to the flood's circumstances.
15. In contrast, Mr. Zhao says Lynx spent only 2.5 hours at his home on the 1st day (arriving at 12:30pm and leaving at 3pm) and that he was happy with that work. As for the 2nd day, Mr. Zhao says Lynx's workers accomplished less than 5% of the required work so Mr. Zhao "generously estimates" 1 hour for that day.
16. In support of his position, Mr. Zhao relies on a May 9, 2022 witness statement from JW who says Lynx only spent 2.5 hours in the garage on the 1st day and that on the 2nd day they did not remove mud from the crawl space. JW's relationship to Mr. Zhao is not explained. Further, JW does not address the amount of time, if any, Lynx spent on the 2nd day or if they did anything else that day. Given this, I place little weight on JW's evidence.

17. For its part, Lynx submitted examples of its invoices to other customers. I place no weight on these invoices as they do not address what was required in Mr. Zhao's home.
18. Importantly, Lynx submitted no witness statements from its crew members and no time records. It did not explain how it arrived at the precise times it says it spent at Mr. Zhao's home. In the absence of any business records from Lynx and in the face of Mr. Zhao's evidence, I find the weight of the evidence supports a conclusion that Lynx spent 2.5 hours on the 1st day and 1 hour on the 2nd day. These 3.5 hours amount to \$955.50 (\$260 per hour, plus GST).
19. Otherwise, I find whether Lynx's time on site was reasonably spent is a technical matter outside ordinary knowledge. In other words, the amount of time it reasonably takes to complete hydroexcavation work is something that requires expert evidence in the circumstances here (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is no expert evidence. As Mr. Zhao is the party asserting Lynx overcharged him for the time actually spent on site, I find he has the burden of proving that point. In the absence of expert evidence, I find he has not done so.
20. This leaves travel time. It is undisputed that Mr. Zhao's residence was 1.5 hours away from Lynx. Mr. Zhao says travel is just a part of Lynx's business costs. I disagree. I do not agree with Mr. Zhao that Lynx was responsible to bear the time and expense of travel to and from Mr. Zhao's home, given the parties' agreement Mr. Zhao would pay Lynx for its time.
21. So, I find Lynx was reasonably entitled to charge Mr. Zhao for its travel time and as noted Mr. Zhao does not dispute the distance involved. As noted, Lynx discounted its invoice to a total of 7 hours plus tax. Above, I found 3.5 hours of on-site labour was allowed. I find the additional 3.5 hours billed is reasonable for travel time across the 2 days of work.
22. Next, I find nothing turns on the fact that on the 2nd day Lynx said it needed to cut holes in the floor to do further work. While Mr. Zhao argues he never agreed to

holes being cut, Lynx's invoice at issue is based on the time it had already spent. The parties did not have a fixed-price agreement. Further, to the extent Mr. Zhao argues the 2nd day was a wasted trip, I find he has not proven this point. Whether Lynx reasonably could have continued that day (without hole-cutting or otherwise) requires expert evidence and again here there is none.

23. Given my conclusions above, I find Mr. Zhao is not entitled to any refund. I dismiss his claim.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Zhao was unsuccessful, I find he is not entitled to reimbursement of CRT fees. Lynx did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

25. I dismiss Mr. Zhao's claim and this dispute.

Shelley Lopez, Acting Chair and Vice Chair