

Citation: *Thompson v. Aqua Tech*, 2016 YKSM 6

Date: 20160729  
Docket: 13-S0093  
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**  
Before His Honour Judge Cozens

GERALD THOMPSON  
dba GJET CONSULTING

Plaintiff

v.

AQUA TECH SUPPLIES & SERVICES  
(BERT ALBISSER)

Defendant

Appearances:  
Gerald Thompson  
Bert Albisser

Appearing on own behalf  
Appearing on own behalf

**REASONS FOR JUDGMENT**

[1] Gerald Thompson, who conducts business as GJET Consulting, is claiming against Aqua Tech Supplies & Services, operated by Bert Albisser (“Aqua Tech”), for \$6,754.20 for invoices not paid for services rendered. The Claim is advanced on the basis that Mr. Thompson was hired pursuant to an oral contract to provide specified year-end accounting services to Aqua Tech. In addition to these agreed-upon services Mr. Thompson, at the request of, or as incidental to his work at Aqua Tech, provided additional services pursuant to further oral agreements or by necessity, which provided a benefit to Aqua Tech and for which he has not been paid.

[2] In its defence, while Aqua Tech does not dispute the hours for which Mr. Thompson stated that he provided services, and agrees that additional services beyond the scope of the original oral agreement were requested of Mr. Thompson in regard to the training of a new employee, Aqua Tech asserts that the services Mr. Thompson provided were unsatisfactory. In essence, Aqua Tech submits that Mr. Thompson did not perform the work that he was hired to do. The non-performance by Mr. Thompson of the duties he was contracted to perform has caused Aqua Tech to incur expenses that they would not otherwise have incurred. Aqua Tech has filed a Counterclaim in the amount of \$6,012.50 for these expenses.

[3] Mr. Thompson denies that he has caused Aqua Tech to incur any losses.

[4] The trial commenced on September 2 and 3, 2014. It was then adjourned to allow for further inquiries to be made into the possible existence of relevant information on a computer hard drive. No further information was located. The trial continued on June 9, 2015. The trial was then adjourned for a decision to be rendered. This is my decision.

[5] I wish to apologize to the parties for the length of time it has taken to render this decision.

[6] Mr. Thompson was the sole witness to testify in support of his Claim. He provided evidence by way of his own Affidavit and in-court testimony, as well as through the Affidavit of Ms. Ashley Schultz.

**Evidence of the Plaintiff (Defendant by Counterclaim)**

[7] Mr. Thompson's evidence, as set out in his Affidavit filed August 8, 2014 and through his testimony at trial was as follows:

[8] As of April 2013, Mr. Thompson had approximately 40 years' experience processing business records for small businesses, including 10 years' experience using BusinessVision Accounting Software ("BusinessVision"). This said, he had not worked with BusinessVision for a four-year period just prior to commencing his work at Aqua Tech.

[9] Mr. Thompson had previously provided some unrelated computer services to Aqua Tech.

[10] Mr. Thompson was initially contacted in mid-April 2013 by the Office Manager for Aqua Tech, Ms. Schultz, to assist with the monthly payroll preparation and to complete the financial records for the 2012-2013 fiscal year-end. Mr. Thompson met with Mr. Albisser when he arrived at Aqua Tech. They discussed the requirement for Mr. Thompson to bring the year-end up to date, process the backlog, conduct payroll training, and otherwise bring Ms. Schultz up to speed on every facet of BusinessVision. Mr. Thompson stated that he was not made aware that Ms. Schultz had just been recently hired by Aqua Tech. He also was not aware that she had very limited experience with the BusinessVision program.

[11] The duties he was to perform pursuant to the agreement are described in Mr. Thompson's Affidavit as follows:

- Complete the books for the 2012 fiscal year-end (I note that in cross-examination Mr. Thompson referred to this also as the 2012-2013 year-end, explaining that January 2013 was also included. References in this decision to the 2012 year-end mean the 2012-2013 year-end);
- Review, correct, and process monthly payroll for a staff of four consisting of a mid-month advance and end-of-month paycheques;
- Process, post and submit Government of Canada remittances and documentation; and
- Train the Office Manager in the proper process of payroll, using BusinessVision software.

[12] In addition, and once he had started on the initial work requested, Mr. Thompson was subsequently asked to provide assistance in other areas as follows:

- Train the Office Manager in general office procedures and day-to-day bookkeeping functions, including account reconciliations, using BusinessVision software;
- Process day-to-day general accounting transactions for current fiscal year 2013, with an emphasis on the Accounts Receivables account to facilitate incoming revenue for Aqua Tech;
- Function as a part-time Office Manager during a transition period between Office Managers;
- Oversee the replacement and reintegration of a new computer system for the front sales counter;
- Research, recommend and order equipment for the addition of a Point-of-Sale ("POS") system for the front sales counter computer integrated with the BusinessVision inventory

accounts on the accounting computer in the office and preparation of the system for “implantation” upon completion of a full inventory. Mr. Thompson stated that there was an issue with how the inventory was being done in that the old coding was left in place while a different coding was being utilized. Mr. Thompson stated that he provided directions that the inventory needed to be re-done.

- Represent Aqua Tech through a Yukon Worker’s Compensation Board (“WCB”) payroll audit, which included finding four years of payroll documents, filling out forms, responding to questions and attending on-site when WCB Auditor was at Aqua Tech. Mr. Thompson testified that he spent two and one-half days working on the WCB payroll audit, including a one-half day meeting with the auditor. He stated that he noticed the letter from WCB regarding the audit and brought it to Mr. Albisser’s attention, who indicated that he had no-one else capable of assisting to complete the audit. As such, Mr. Thompson completed it as, in his opinion, to not assist would have been irresponsible.

[13] At the time that he began working for Aqua Tech, Mr. Thompson had six other clients that he was providing accounting and technical work for. He indicated to Aqua Tech that he was therefore only able to provide limited time to their work.

[14] When Mr. Thompson initially arrived at Aqua Tech to review the status of the financial records and to process the first payroll, he noticed that there was approximately a five months’ backlog of bookkeeping work for the final two months of the 2012 fiscal year and the first three months of the 2013 fiscal year. In his opinion, it would require approximately 25 hours per week to maintain the day-to-day bookkeeping requirements for Aqua Tech.

[15] Mr. Thompson stated that there were hundreds pieces of paper that he had to go through in order to begin the process. He said that it made more

sense to work on the Aqua Tech books at their office rather than take the work to his own office.

[16] Mr. Thompson noticed that the Office Manager had incorrectly posted a considerable amount of the bookkeeping work in BusinessVision. As such, he was unable to complete the 2012 year-end work. He estimated that it would require approximately 300 hours of backlog clearing to be done before he could finish the 2013 fiscal year books (given the context, I am satisfied that Mr. Thompson was referring to the 2012-2013 fiscal year-end work and not the 2013-2014 fiscal year-end). Mr. Thompson stated that he directed Ms. Schultz to catch up on the backlog as his agreement with Aqua Tech allowed him a maximum of 10 hours per week to complete the 2012 fiscal year-end. He said this agreement was made on the assumption that the accounts were up-to-date, however.

[17] In Mr. Thompson's opinion, had the books been up-to-date, he expected that the work could have been completed by the end of May or early June 2013.

[18] Mr. Thompson stated that his agreement with Aqua Tech was expanded to include training Ms. Schultz in processing transactions and performing account reconciliations in BusinessVision as, being only a recent graduate of Yukon College, she had no experience using BusinessVision and no practical bookkeeping experience. He stated that this training was necessary in order to allow Ms. Schultz to maintain the day-to-day bookkeeping and to clear the

backlog in order to allow for the 2012 fiscal year-end to be completed, as well as to keep the 2013 bookkeeping and payroll on track.

[19] Mr. Thompson stated that he worked 43.5 hours from mid-April to the end of April, 2013. He invoiced Aqua Tech for payment for work done in April 2013 in the amount of \$2,175.00 (Invoice #20130430). Payment in full was made on this invoice on May 9, 2013.

[20] Mr. Thompson stated that he worked 22.5 hours out of a budgeted 40 hours in May 2013. He invoiced Aqua Tech in the amount of \$1,125.00 for the work (Invoice #20130531).

[21] In May 2013, Mr. Thompson provided Ms. Schultz with detailed instructions as to how to complete the necessary work while he stepped back a bit. He stated that he would receive phone calls from her every second day seeking his assistance, which he would provide without charging Aqua Tech for his time.

[22] He stated that he prioritized his allotted 10 hours per week to updating the Accounts Receivable ledger and working on the bank reconciliations. He directed Ms. Schultz to process the account statements for all outstanding invoices to balance the Accounts Receivable account. However, it became apparent to him that Ms. Schultz's inexperience and poor work habits caused more delays and increased his workload, as incorrect transactions had to be reversed and correctly reposted. As BusinessVision is complicated software, this made the process more time-consuming.

[23] Mr. Thompson stated that he worked 41.5 hours out of a budgeted 40 hours in June 2013. He invoiced Aqua Tech in the amount of \$2,075.00 for this work (Invoice #20130630).

[24] While he had completed the December 2012 bank reconciliation, further incorrect posting transactions by Ms. Schultz impacted this reconciliation. Numerous transactions for the entire year then had to be located, reversed and redone. Correcting these errors took twice as long as the initial work, and although Mr. Thompson spent 2.5 months working on the bank reconciliations, he was not able to entirely rectify them due to the numerous errors.

[25] Mr. Thompson stated that he regularly reported to Mr. Albisser about the progress he was making on the 2012 fiscal year-end and the status of the current period bookkeeping and backlog. He said that he informed Mr. Albisser that extra help to clear the backlog of transactions would be of assistance, and also of the fact that he was completing work that should have been done by Ms. Schultz and that correcting her mistakes was delaying the completion of the financial statements for the 2012 fiscal year-end.

[26] Mr. Thompson stated that he worked 46.5 hours out of a budgeted 40 hours in July 2013. He invoiced Aqua Tech in the amount of \$2,325.00 for the work (Invoice #20130731).

[27] By this time Ms. Schultz was no longer working for Aqua Tech, having been let go, and there was no full-time Office Manager/Administrator in place. Mr. Thompson assisted with the day-to-day bookkeeping responsibilities. He

continued to process the payroll and keep the Accounts Receivable current, but was unable to provide the approximate 25 hours per week necessary to maintain the current bookkeeping functions. In addition, at times he was the only person in the office so he ended up answering the phone, dealing with walk-in customers and responding to client and supplier inquiries; all functions that would normally be the responsibility of the Office Manager. This interrupted the other work that Mr. Thompson was doing. Mr. Thompson agreed that he spent much of his time doing work that was outside of his contractual requirements but stated that as no one else was often there he ended up doing this work by default. Also, most of the phone calls were related to invoices and thus were connected to the work he was doing.

[28] Further, the office computer crashed in July 2013 and could not be repaired. Following discussions with Mr. Albisser, Mr. Thompson ordered and set up a new computer. He also ordered a new POS system that would be integrated into the BusinessVision software, in order to increase the efficiency and accuracy of Aqua Tech's invoicing. He discussed with Mr. Albisser the purchase of a front-end scanner as that would have made the POS system easier to use and keep track of. However, Mr. Albisser told him to wait until the year-end was completed before doing so.

[29] Mr. Thompson stated that he requested Mr. Albisser provide some assistance with respect to completing the day-to-day work, but that no such assistance was provided.

[30] All of the above prevented Mr. Thompson from completing the Financial Statements for 2012 or making progress with respect to the backlog.

[31] Mr. Thompson stated that in August 2013 he worked 26 hours out of a budgeted 20 hours. He invoiced Aqua Tech in the amount of \$780.00 for this work (Invoice #20130831). He reduced his hourly rate on this invoice from \$50.00 per hour to \$30.00 per hour.

[32] There was still no full-time Office Manager in August 2013. Mr. Thompson continued to maintain the current bookkeeping period while trying to complete the 2012 fiscal year-end. He stated that this was 90% complete but that he was working backwards to find some missing entries. He also processed the customer statements from July 2013 and ran the mid-August 2013 payroll advances.

[33] When Mr. Thompson returned in September 2013 from being out-of-town on a previously scheduled holiday for the last two weeks of August 2013, he was advised that his services were no longer required, as Aqua Tech had hired an Office Manager who would complete the unfinished work.

[34] Mr. Thompson testified that at that time he left for holidays he had completed a template for the bank reconciliations and had made paper copies. These included POS, VISA, MasterCard, Debit and chequing, although there remained some work to do on these. The spreadsheet he had created was on

the computer that he had been working on. He stated that he had no access to this computer upon his return in September 2013. He is unable to say what may have happened to these files after he left.

[35] On September 4, 2013, Aqua Tech provided Mr. Thompson with a cheque in the amount of \$3,200.00. This corresponds with the amount of the May 2013 and June 2013 invoices. Mr. Thompson stated that he returned the cheque because it was made out to an incorrect payee (GJet Consulting). He said that he requested that the cheque be re-issued in the correct name (Gerald Thompson) and that at no time did he refuse to accept a cheque in that amount. He stated that he has never been re-issued the cheque.

[36] I note that all of the invoices from April 2013 through August 2013 contain a bolded direction as follows:

**Please make cheque payable to: GERALD THOMPSON**

[37] I also note that the cheque for April 2013 was made out to GJet Consulting and was cashed. Mr. Thompson stated that this appears to have been an error on the part of the bank and that the bank would not put the second cheque through. He says that he has since altered all his invoices to ensure that cheques are made out to the right party.

[38] Mr. Thompson stated that he has not been re-issued the cheque for \$3,200.00 and thus has not been paid for any of the May 2013 through August

2013 invoices. He testified that Mr. Albisser advised him that Aqua Tech was only prepared to pay 50% or less of the amount being claimed by Mr. Thompson.

[39] Mr. Thompson stated that he had agreed to reduce the hourly rate charged on the final invoice to \$30.00 from \$50.00.

[40] In response to the assertions in the Counterclaim filed by Aqua Tech, Mr. Thompson stated that any extra expenses incurred by Aqua Tech were as a result of the failure of the Office Manager(s) for Aqua Tech to do their job properly. As a result, Mr. Thompson was required to do considerable additional work; work that, in his opinion, should have been done properly before he was brought in to complete the 2012 fiscal year-end. This extra work included bank reconciliations that should have been properly completed by the Office Manager.

[41] Mr. Thompson stated that he conveyed his concerns in this regard to Mr. Albisser on several occasions.

[42] Mr. Thompson stated that the extra work required by the new Office Manager and those assisting her to locate the missing documentation, bank accounts and sub-accounts, could have been avoided if he had been contacted, as he could have directed them to where these were. He stated that he had saved these on the desktop on the office computer. It is his opinion that the numerous hours Aqua Tech states were spent on completing the year-end were because Aqua Tech started over rather than picking up where he had left off.

[43] Also obtained by Mr. Thompson and filed on January 8, 2015 prior to the continuation of the trial, was the Affidavit of Ms. Ashley Schultz. Ms. Schultz's Affidavit states:

I was hired by Aquatech in February of 2013 to be their front office manager. There was quite a back log of information that needed to be done and I did not have a clear understanding of the accounting software (Business Vision) that the company was using so in April 2013 Mr. Albisser told me to contact Mr. Gerald Thompson as Mr. Albisser knew that Mr. Thompson was familiar with the program. I contacted Mr. Thompson and asked him to come in and assist me with payroll to which he agreed. While he was there Mr. Albisser asked him if he could spend some time training me on the software to which he also agreed. On Mr. Thompson's next visit we started working on the piles of paper that had been piling up due to the fact that I was unfamiliar with BV and the previous front office manager had left in December of 2012. We worked together sorting, filing and reconciling Accounts Receivable, Accounts Payable and the Bank account. I created files outlining step by step instructions on what and how to enter information in BV. Mr. Thompson created the bank reconciliation file as I had not done this before so we worked on this together. When a month was reconciled there was a paper copy printed out and attached to the appropriate month. At the end of June 2013 I had a falling out with Mr. Albisser and left Aquatech. When I left Aquatech all the files that Mr. Thompson and I had been working on were on the computer that I had been working on.

[44] Mr. Albisser was made aware of his right to cross-examine Ms. Schultz on her Affidavit but declined to seek to do so.

#### **Evidence of the Defendant (Plaintiff by Counterclaim)**

[45] Mr. Albisser testified for Aqua Tech, as did Ms. Natasha Chevrier, his partner, and Ms. Jodee Bassett, who is the current bookkeeper for Aqua Tech.

[46] Mr. Albisser testified that he is the owner of Aqua Tech. He hired Mr. Thompson upon the recommendation of his former Office Manager.

[47] He testified that he hired Ms. Schultz in January, 2013. (I note this differs from Ms. Schultz's Affidavit in which she states she was hired in February 2013).

[48] Mr. Albisser was familiar with BusinessVision as Aqua Tech had been using it for 26-27 years. He hired Mr. Thompson to train Ms. Schultz and to assist her. Prior to Mr. Thompson being hired, Aqua Tech was subscribed to a BusinessVision plan that Ms. Schultz could call into for assistance as required. Mr. Thompson was hired as this service was not the same as having someone physically present to assist, as it was clear Ms. Schultz required more training.

[49] Mr. Albisser had the following concerns regarding the services provided by Mr. Thompson:

- He did not show up regularly at Aqua Tech and was hard to reach by phone;
- He took a vacation to Salmon Arm unbeknownst to Mr. Albisser;
- He did not finish training Ms. Schultz;
- He did not finish the 2012 year-end contrary to the terms of the contract;
- He only moved the piles around without completing anything;
- He was not authorized to take over the day-to-day bookkeeping between the time Ms. Schultz's employment was terminated and the new office manager was hired.

[50] Mr. Albisser testified that he terminated the contract with Mr. Thompson and hired a new Office Manager, Ms. Bassett. She spent a significant number of hours completing the 2012 year-end work that was supposed to have been completed by Mr. Thompson.

[51] Mr. Albisser stated that there was not a significant concern when one of the office computers crashed as there were three other computers. He said that he never discussed the new computer with Mr. Thompson, only the new system. He stated that he only discussed the POS issue with Mr. Thompson in generalities with respect to the pros and cons of it.

[52] He further testified that the relationship between himself and Mr. Thompson was fine until Mr. Thompson failed to show up for work and provided his final bill. Mr. Albisser stated that he would only pay 50% of what Mr. Thompson was asking.

[53] Mr. Albisser testified that he recognized Ms. Schultz was difficult to train and that she did not seem to grasp the tutoring she was receiving. He stated that he was not sure whose fault this was. He stated that he was prepared to credit Mr. Thompson for the work he did in regard to attempting to train Ms. Schultz.

[54] Mr. Albisser testified that he did not recall the WCB audit and does not know if Mr. Thompson was present for this.

[55] Mr. Albisser testified that he disputes both the hours billed by Mr. Thompson and the amount charged. He clarified this by stating that he does not dispute that Mr. Thompson was there for the hours that he billed, but that many of these hours were unproductive.

[56] He stated that there were not many occasions that Mr. Thompson was left alone in the office. After Ms. Schultz left, there were four other employees, one of whom was usually there.

[57] Mr. Albisser agreed in cross-examination that the bookkeeping was getting behind after Ms. Schultz left and that Mr. Thompson was not hired to do that.

[58] Mr. Albisser agreed that the accounting books were in a state that could be described as a “mess”.

[59] He agreed that he had no idea how many times Ms. Schultz or “Jason” (another employee), called Mr. Thompson seeking assistance.

*Natasha Chevrier*

[60] Ms. Chevrier is Mr. Albisser’s partner. She testified that she is not an employee of Aqua Tech. She would often come to the Aqua Tech office after her workday at an insurance company. When she saw Mr. Thompson there she assumed he was training Ms. Schultz and that the required work was being done. She said that little work appeared to be going on between 4:30 - 5:00 pm when she was there, mostly talking, but that she could not say what had been done earlier in the day.

[61] She stated that Ms. Schultz was a difficult employee to train and that she did not appear to listen well, to the point that many things had to be repeated for her.

[62] Ms. Chevrier said she had conversations with Mr. Thompson in regard to general bookkeeping issues but not about the 2012 year-end he was working on. She recalled speaking with Mr. Thompson and being told that the BusinessVision year-end needed corrections as entries had not been made from the previous year, and that as a result it was taking more time than expected, although Mr. Thompson was hopeful he could complete it.

[63] She stated that she was aware Mr. Thompson had to leave town on one occasion due to a dog's illness and that this was understood by Aqua Tech. She did not provide any dates for this travel.

[64] She stated that after Ms. Schultz's employment was terminated and Ms. Bassett was hired, Mr. Albisser decided to terminate the contract with Mr. Thompson and assume responsibility for completing the year-end.

[65] She testified that they had to start from the beginning in order to do this. She said that it appeared that nothing had been done and nothing had been balanced.

[66] She stated that she and Ms. Bassett completed the year-end and that this required a considerable amount of work on weekends, evenings and holidays.

[67] Ms. Chevrier stated that she agreed that the amount of work that the new bookkeeper had to do required the same expenditure of time that Mr. Thompson had indicated was required in this regard.

*Jodee Bassett*

[68] Ms. Bassett testified that she was hired as the new Office Manager/Bookkeeper on August 14, 2013.

[69] She was a graduate of Yukon College and had 13 years of experience working in a number of places.

[70] She was not familiar with BusinessVision at the time she was hired. She stated that BusinessVision was difficult and cumbersome to work with. She only met Mr. Thompson on August 15, 2013 and he trained her only briefly on BusinessVision. They posted one entry together and he showed her how to set up the payroll. They spent very little time together and he had not shown her any of the work that he had done or where he had left off. She stated that there was no opportunity for that to have occurred. She agreed that she had never asked him to do so.

[71] Ms. Bassett stated that she had unsuccessfully attempted to contact Mr. Thompson in her first week at Aqua Tech but was aware that he had intended to be away on holidays. She did not see any point in contacting him afterwards.

[72] She stated that the bookkeeping was in a pretty bad state and that the Account Payables were far behind. Invoices were being sent out for services already paid for as a number of payments had not been posted.

[73] Ms. Bassett testified that the 2013 year-end for Aqua Tech took “forever” to complete. It finally went to BDO the end of June or the first week of July 2014.

She stated that it was hard to say how much time was devoted to the 2014 year-end (I note that the answers provided by Ms. Bassett were in relation to a question regarding the work involved in completing the 2013 year-end. It would appear that the reference to 2014 should have been to 2013. Nothing, in the end, turns on this however).

[74] She stated that it took 300 hours of work into November 2013 and another 300 hours until March 2014 when the 2012 year-end was completed and turned in. Two binders were filed as Exhibits. Parts A-C of Binder #1 detailed the work that was done by Ms. Bassett and Ms. Chevrier for preparation of the year-end for Aqua Tech. The cost is set out as being \$6,092.50.

[75] In addition, the Binders contained the following:

- a. Reconciliation preparation
- b. Charts summarizing journal

[76] She said that she had to make approximately 270 corrections that she found when she was doing the reconciliations. This was tedious and time-consuming work.

[77] The year-end for Aqua Tech was January 31 and the year-end documentation had to be filed with Revenue Canada within six months from that date.

[78] Ms. Bassett stated that she searched the office computer but could not find any year-end work that had been done on it. She could not locate any

spreadsheets or paperwork related to any reconciliations, only numbers. She only located limited year-end documentation, but it was dated and not particularly useful for her purposes. There was no starting point that she could find to work from. Despite searching, she was unable to locate any record of the hours Mr. Thompson spent working on the year-end or books, or any paper records. She testified that there should have been back-ups made of all information stored on the computer system before the upgrade to Windows 8 occurred. She did not testify to having made any such backups herself, or having any direct knowledge that this had occurred, although at the conclusion of her testimony she responded to a question by stating that: "We backed everything up before we did the updates". Ms. Bassett testified that she could not see why anyone would have done anything to delete any information. She acknowledged that Mr. Thompson had no access to the computer system after his contract was terminated.

[79] She went through the paper files, sorted them chronologically and then went through the statements. She said that there were still holes and pieces that needed to be filled in.

[80] Ms. Bassett testified that it requires about six and one-half to seven hours per day to accomplish the day-to-day accounting for Aqua Tech.

[81] She stated that if the bookkeeping was not done for four months, a fairly deep stack of paperwork would have piled up, in particular for accounts

receivable. If there had been daily work completed by a bookkeeper, there would not have been these deep stacks of paperwork.

[82] Currently the day-to-day bookkeeping is fairly easy and straightforward, involving primarily the posting of payables and receivables. The General Ledger is mostly in shape and up to date, requiring only monthly reconciliations.

[83] Ms. Bassett stated that the computer system had crashed at least a dozen times since she started working at Aqua Tech. It was up and running when she first came to work at Aqua Tech. It had since been upgraded to compatibility with Windows 8, with a new operating system.

[84] She was not aware of the WCB audit until she called WCB and received copies of it. She acknowledged that this audit had been completed.

#### *Other Information*

[85] Documents attached to the Counterclaim set out the foundation for the costs Aqua Tech asserts have been incurred since August 2013 in order to complete the 2012 fiscal year end. Aqua Tech states that these costs would not have been incurred had Mr. Thompson done the job he was hired to do. The total amount of these costs is \$6,012.50. All the work was done by either Ms. Bassett or Ms. Chevrier. The vast majority of the work was for reconciling the bank accounts.

[86] The Counterclaim states that there were no bank reconciliations that Aqua Tech was able to work from in order to figure out what had been done

previously by Mr. Thompson. Due to the number of entries that were required to be done, Aqua Tech is of the opinion that the bank reconciliations cannot have been done.

[87] While some of the sub-account paper work was in place and organized, some statements had to be downloaded and printed.

[88] Outstanding work at the time of the Counterclaim included the petty cash income and expenses, the Accounts Receivable and the Accounts Payable computer files. It was estimated that one month of afternoons and three weekends would be required to complete the year-end. In addition there would be CRA penalties and interest charged.

### *Submissions*

[89] Mr. Thompson submits that while he was initially contracted by Aqua Tech to complete the fiscal year-end, his duties changed. At Aqua Tech's request, he attempted to train Ms. Schultz. Of necessity, he also became involved in working with some of the day-to-day activities of Aqua Tech, including cleaning up the payroll, and general office duties as there was often no one present in the office besides himself when issues related to the business of Aqua Tech needed to be addressed.

[90] He submits that he had only originally agreed to provide approximately 10 hours per week to Aqua Tech and not on any particular schedule as he had other contracts with other customers. Had the books not been in such a mess and had

he not been required to expend time working on other business needs of Aqua Tech, he could have finished the work he was originally contracted to do in a timely fashion.

[91] He submits that all the work that he had done on the 2012 year-end should have been located on the office computer. As he was denied access to the computer after his contract was terminated he cannot explain where this work went.

[92] He submits that completing the 2012 fiscal year end should not have taken anywhere near the time that Aqua Tech states was required and, had he been able to do so, he could have completed the same work in much less time. As it was, he only had a small number of hours left to do before it would have been completed, had he been allowed to finish.

[93] Mr. Albisser submits that Aqua Tech does not dispute the hours that Mr. Thompson states he was at Aqua Tech. It is Aqua Tech's position, however, that the hours Mr. Thompson was present were not as productive as they should have been and, as such, Aqua Tech should not have to pay for many of these hours.

[94] Aqua Tech agrees that Mr. Thompson was also contracted to provide system training to Ms. Schultz, and that he cleaned up the payroll, completed month-end work and cleaned up some issues. He also stated that Aqua Tech is prepared to credit Mr. Thompson for the \$3,200.00 cheque that was not cashed.

[95] The major concerns for Aqua Tech relate to their assertion that Aqua Tech was never able to know when Mr. Thompson would be on site, that he was hard to get a hold of, there was little to no work done on the 2012 fiscal year-end, and there were errors in what work was done by Mr. Thompson that needed to be corrected at great time and expense by Aqua Tech.

[96] Any work that had been done on the 2012 year-end should have been stored on one of the computers at Aqua Tech, but no such work was located, therefore the work cannot have been done.

### **Analysis**

[97] I find that all of the witnesses testified in a manner that causes me no concern with respect to any deliberate attempts to fabricate or falsify the evidence or to mislead the Court. Every witness appeared to be doing their best to testify honestly as to what he or she observed and recalled.

[98] In particular, however, I find the evidence of Mr. Thompson to be persuasive. His recollection of events and the work that he provided, as well as the difficulties he encountered, was quite clear and convincing. He had a grasp of time and events that left me with little room to have any concerns about the reliability and credibility of his evidence.

[99] On the contrary, I found Mr. Albisser's evidence to be less reliable. Again, this was not due to any concerns about him attempting to mislead the Court through the evidence he gave, but more due to what I consider to be him having

been involved on a more cursory basis with the day-to-day operations of Aqua Tech in regard to what Mr. Thompson was doing. His recollection of events was less detailed and somewhat vague. One example is his lack of recollection of the WCB audit, an event that clearly occurred. In my opinion, insofar as the evidence of Mr. Albisser was at odds with the evidence of Mr. Thompson, I prefer the evidence of Mr. Thompson.

[100] I find that the evidence of Ms. Chevrier and Ms. Bassett was credible and reliable with respect to what work they performed in relation to this matter. I have no reason to doubt their evidence in this regard. However, where it differs, I find that their evidence does not undermine the credibility of Mr. Thompson's evidence.

[101] I am satisfied that Mr. Thompson had saved on the office computer the work that he doing for Aqua Tech in regard to the 2012 year-end. It is completely illogical to me, in light of the entirety of the evidence, that Mr. Thompson did not perform the work that he says he did and that he did not enter this work on the computer. In her Affidavit, Ms. Shultz states that the work being done was input on the computer. The actual time Mr. Thompson says he put in at Aqua Tech is not being disputed. While it is clear that he was working on things other than the year-end, I find that he spent considerable time, as he testified to, working on the year-end as well.

[102] The fact that this work was not located on the computer system cannot be held against Mr. Thompson. Aqua Tech terminated his contract without notice to

him and assumed full responsibility thereafter. Mr. Thompson was not provided a meaningful opportunity to assist Aqua Tech in the transition of the work, and thus, he was not able to show Aqua Tech where the work done was located. I find that his holiday at the end of August, while likely contributing to the lack of passing on of information, was not intended to have this impact, nor was it reckless. I have no evidence before me that Mr. Thompson was aware when he left that his contract would be terminated prior to his return.

[103] I find that Aqua Tech, being entirely in control of the computer system, must accept full responsibility for the inability to locate the work done. Given the time that lapsed between the contract being terminated and the parties jointly examining the computer system after adjournment, and also considering the difficulties with crashing that the system was noted to have had, I find Aqua Tech wholly responsible for what appears to be a loss of the data. To do otherwise would simply be unfair.

[104] There was clearly an oral agreement between Aqua Tech and Mr. Thompson to complete the 2012 year-end and to train Ms. Schultz. There was also, however, not much in the way of parameters to define just how this was to be done. I note that Mr. Albisser had concerns about Mr. Thompson showing up for work. However, there was no evidence before me that the agreement between Aqua Tech and Mr. Thompson had any specified hours that Mr. Thompson was to be present at the Aqua Tech office. At best, the evidence was

that Mr. Thompson would provide 10 hours per work per week. Exactly at what times and days does not appear to have been part of the contractual arrangement.

[105] In this regard, I note that Mr. Thompson only billed Aqua Tech for 22.5 hours in May 2013. No explanation was provided as to why Mr. Thompson did not provide the agreed-upon 10 hours per week. However, there does not appear to have been any concern raised by Aqua Tech at that time in regard to the work done in the month of May in particular.

[106] It is also quite clear that Ms. Schultz was not a “quick study” in regard to the training she received from Mr. Thompson and, as such, required an expenditure of time and effort on Mr. Thompson’s part that went beyond what either of the parties could have anticipated.

[107] Mr. Thompson testified that he provided on-going information to Mr. Albisser as to what work he was doing at Aqua Tech, both in regard to what he had been contracted to do and the services that he was further providing. I accept that he did so. It does not appear that Mr. Albisser generally provided a clear response or direction. The situation appeared to be somewhat analogous to two ships passing in the night, each going their own direction, with one ship, Mr. Thompson’s, communicating, while the other, Mr. Albisser’s, provided little in the way of a meaningful, in the sense of being directional, response.

[108] In my opinion, this lack of reciprocal on-going communication provided the foundation that gave rise to the dispute before me. Both parties played a role in

the lack of communication and each bears some of the responsibility. I find, however, that Aqua Tech, as the party requesting the services and being in control of the workplace, as well as being the recipient of information from Mr. Thompson, carries the greater share.

[109] Mr. Thompson's responsibility is significantly less. In this respect, I find that Mr. Thompson could perhaps have been more aggressive in following up on the information that he was providing in order to obtain clear instructions, preferably in writing, rather than simply continuing to provide the services he was in a form of "blind faith", given the general lack of response from Mr. Albisser.

[110] This said, Aqua Tech, if there were any concerns arising from the information being provided from Mr. Thompson and the work he was doing, should have made it clear what was expected and, in particular, what Mr. Thompson should not have been doing.

[111] I find that the inexperience of Ms. Schultz, partnered with the state the books were in prior to her being hired, and the complexity of the BusinessVision accounting system, all resulted in a considerably more time-consuming year-end reconciliation process than either of the parties would have contemplated at the time that they contracted together for the work to be done.

[112] I find that Mr. Thompson provided additional work, well beyond what was initially agreed to. Some of this work was sufficiently related to the 2012 year-end or training of Ms. Shultz that it could be said to be within the terms of the oral agreements, including Accounts Payable or Receivable inquiries. Some was not,

such as otherwise dealing with customers on unrelated matters. However, it would be wrong not to assign Mr. Thompson compensation for his time on a *quantum meruit* basis as there was clearly a benefit to Aqua Tech and, in the absence of Mr. Thompson being compensated for his time, Aqua Tech would be unjustly enriched. It also appears that this additional non-contractual work was implicitly condoned by Aqua Tech.

[113] With respect to the Counter-Claim, therefore, I find that this claim is based upon Aqua Tech having to start the year-end work from scratch. Given my finding that Aqua Tech bears full responsibility for not being able to start from where Mr. Thompson finished, I must dismiss the Counter-Claim. As such, any dispute about the time Aqua Tech took to complete this work as compared to what Mr. Thompson testified it should have taken is not of significant relevance.

[114] With respect to the Claim, it is conceded that Aqua Tech is prepared to pay Mr. Thompson the \$3,200.00 for the un-cashed cheque representing the May 2013 and June 2013 invoices. I am not holding either party particularly responsible for the circumstances of the cheque not being cashed.

[115] The remaining issue is the \$3,554.20 claimed by Mr. Thompson.

[116] I am satisfied that Mr. Thompson should be paid for the hours he claimed he spent on the 2012 fiscal-year end and for training Ms. Schultz.

[117] I am satisfied that, on a *quantum meruit* basis, he should be compensated for the remaining hours he provided services to Aqua Tech.

[118] The invoices, however, do not provide a detailed hourly breakdown of what hours were spent performing what tasks. This makes it somewhat difficult to sort out the proper amount to be awarded on a *quantum meruit* basis.

[119] I also am aware of, and agree with, the submission that some of the tasks Mr. Thompson performed could have been done by other less qualified individuals at a lower hourly rate of pay than even the \$30.00 per hour in Mr. Thompson's reduced invoice. This said, Mr. Thompson's time has a value that reflects his qualifications. While his heightened monetary hourly wage value has to be balanced against what another individual could have done the work for, it nonetheless still required Mr. Thompson to expend time and effort. As I have accepted his evidence that he requested, unsuccessfully, that Aqua Tech provide enough employee support to avoid him expending time and effort on certain work I am not prepared to unfairly undervalue Mr. Thompson's time. I also keep in mind the reduction in hourly wage agreed to by Mr. Thompson as reflected by the final invoice.

[120] In conclusion, I award Mr. Thompson judgment in the amount of \$6,250.00.

[121] Mr. Thompson shall have his costs for filing the Claim, Sheriff's fees for service of documents and for filing the Notice of Trial in the amount of \$255.00.

[122] He shall also have post-judgment interest pursuant to the *Judicature Act*, RSY 2002, c. 128. I decline to award any pre-judgment interest.

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COZENS T.C.J.