



# Civil Resolution Tribunal

Date Issued: March 7, 2019

File: SC-2018-006193

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Honghot Enterprises Inc v. Yu et al*, 2019 BCCRT 278

**B E T W E E N :**

Honghot Enterprises Inc

**APPLICANT**

**A N D :**

FU LI YU and JING YANG

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

### **INTRODUCTION**

1. This dispute is about payment for asbestos abatement services. In May 2017, the respondents, FU LI YU and JING YANG, hired the applicant, Honghot Enterprises Inc, to perform asbestos abatement in a house they owned. The applicant says the respondents failed to fully pay for that work. Specifically, the applicant says the

respondents agreed to pay an additional \$2,100 on top of the already-agreed amount, after the discovery of asbestos-containing vermiculite that had been concealed in the attic. The applicant says it removed the vermiculite, but the respondents did not pay the agreed-upon \$2,100.

2. The applicant seeks payment of a total of \$4,200. Although it is unclear from the evidence how the applicant arrived at this amount, the \$4,200 appears to be made up of \$2,100 for the extra abatement work and \$2,100 for vermiculite disposal. The applicant described the second \$2,100 as an “extra service charge”.
3. The respondents deny the applicant’s claims. They say they paid the applicant \$13,000 on June 22, 2017, which was the full amount owed under the parties’ contract. They say this contract included removal and disposal of asbestos-contaminated materials, and they did not agree to pay for additional asbestos abatement.
4. The applicant is represented by Jason Du, an employee or principal. FU LU YU is self-represented. JING WANG did not provide a response, although served with a copy of the Dispute Notice. I will address both respondents’ liability below.

## **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* (Act). 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. In the circumstances 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. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issue in this dispute is whether the respondents must pay the applicant \$4,200 for asbestos abatement work.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Some of the email content provided by the applicant, and text messages provided by FU LI YU, contains written material that is not in English. Since no translation was provided, I have given no weight to this non-English evidence.
12. For the reasons set out below, I find the applicant has not met the burden of proving its claims.

13. Mr. Du says that during a telephone conversation on June 16, 2018, FU LI YU agreed to pay an extra charge of \$2,100. I infer that Mr. Du means June 16, 2017, since all documents provided in evidence, such as waste disposal invoices and manifests, are dated 2017.
14. Mr. Du says this extra \$2,100 was a reasonable charge, based on the type of work, risk, materials, tools, a third party inspection charge, and a disposal fee. Mr. Du says vermiculite is defined by WorkSafeBC as a high-risk material, which is not disputed. However, FU LI YU denies agreeing to pay any extra amount to the applicant beyond that included in the original quote, and says the applicant has not proven there was vermiculite at the jobsite.
15. Based on the evidence before me in this dispute, I find the applicant has not proven its claims. The applicant did not provide copies of any invoices, timesheets, quotations, or the original contract between the parties. It is unclear from the evidence before me whether the original contract was written or verbal. However, without some confirmation of the amount and nature of that contract, including the scope of work, it is impossible to determine whether vermiculite removal at issue was an “extra”, or whether it was included in the original contract. I also find that without an invoice, it is impossible to determine what the respondents are being charged for.
16. I have reviewed the waste disposal invoices and manifests provided by the applicant. However, without knowing the scope of the original contract, it is impossible to determine whether the removed waste is an extra, or was part of the original contract. I also note that the invoice from Westcan Disposal Ltd. lists only “asbestos drywall” waste, and no vermiculite or similar material. The manifests do not show any specific type of waste. Similarly, while the air monitoring invoice shows that air monitoring was performed, it does not confirm vermiculite removal. Thus, these documents provided by the applicant do not prove that FU LI YU agreed to pay an extra \$2,100 for vermiculite removal, or that this work was performed.

17. I find the applicant has not met the burden of proving that FU LI YU agreed to pay an extra \$2,100 on June 16, 2017. Given that FU LI YU denies agreeing, and that the applicant has no documentation of agreement such as a change work order or even notes from the time of the call, I find that the applicant has not established any agreement to pay extra.
18. From the evidence and submissions before me, it is unclear what the second \$2,100 claimed by the applicant is for. Mr. Du describes it in his submissions as an “extra service charge”, but I cannot tell what the charge relates to. Again, there is no invoice, contract, or change work order to confirm this amount. For these reasons, I find the applicant is not entitled to any payment.
19. As the applicant has not met the burden of proving its claims, the participating respondent, FU LI YU, is not liable to pay.
20. As previously stated, the respondent JING YANG did not respond to the Dispute Notice. Under the tribunal’s rules, a respondent must respond within 14 days of receiving the Dispute Notice, as indicated on the Dispute Response Form. Thus, JING YANG is in default. Normally, a respondent in default is presumed to be liable. However, I find that this presumption is rebutted in this case, because the applicant has failed to prove any part of the contract between the parties, including any agreement to pay for extra work. Thus, I find that JING YANG is not liable.
21. For all of these reasons, I dismiss the applicant’s claims and this dispute.
22. The tribunal’s rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss its claim for reimbursement of tribunal fees. FU LI YU claims reimbursement of \$45 for dispute-related expenses, but provided no receipts or particulars to support or explain that claim. I therefore do not order reimbursement.

## **ORDER**

23. I dismiss the applicant's claims and this dispute.

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Kate Campbell, Tribunal Member