



# Civil Resolution Tribunal

Date Issued: May 17, 2019

File: SC-2018-007294 and SC-2018-007723

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kwong Shing Cheung dba Kongson Construction Company v. Wong*,  
2019 BCCRT 604

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

Kwong Shing Cheung (doing business as Kongson Construction Company)

**APPLICANT**

**A N D :**

Alice Yin Fun Wong

**RESPONDENT**

**A N D :**

Kwong Shing Cheung (doing business as Kongson Construction Company)

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This dispute is about payment for home renovation work.
2. The applicant (and respondent by counterclaim), Kwong Shing Cheung (doing business as Kongson Construction Company) (Kongson), did renovations in the home of the respondent (and applicant by counterclaim), Alice Yin Fun Wong. Kongson says Ms. Wong failed to pay for the work, and seeks an order for payment of \$2,395.
3. Ms. Wong says that Kongson's work is incomplete and contains many deficiencies, and that Kongson breached their contract. She says she already paid Kongson \$20,500, and is not obligated to pay more.
4. In her counterclaim, Ms. Wong says Kongson refused to fix the deficiencies, so she will have to pay another contractor \$3,300 to redo or fix Kongson's work. She also says she paid Kongson \$138.06 for supplies she never received. Ms. Wong seeks compensation for these amounts, which total \$3,438.06.
5. Kongson is represented by Anissa Li, whom I infer is an employee. Ms. Wong is represented by Trix Law, a lawyer.
6. The pleadings in these 2 disputes variously refer to Kongson as "Anissa Li (Doing Business As Kongson Construction Company)", and "Kwong Shing Cheung (Doing Business As Kongson Construction Company)". BC Registry Services documents show the business is a sole proprietorship, with the registered name of Kongson Construction Company. The registered proprietor is Kwong Shing Cheung. I have amended the style of cause above to reflect these registered names.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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.
9. 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.
10. Under tribunal rule 9.3(2), 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.

### ***Late Evidence***

11. Ms. Wong objects to late evidence filed by Kongson, and says it should be excluded. I disagree. Ms. Wong had the opportunity to review the late evidence and respond to it. I therefore find there is no actual prejudice to her in allowing the late evidence, and I do so.

## **ISSUES**

12. The issues in this dispute are:
  - a. Must Ms. Wong pay Kongson \$2,395 for renovation work?
  - b. Must Kongson pay Ms. Wong damages of \$3,438.06?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Kongson must prove its claims and Ms. Wong must prove her counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. Ms. Wong signed a written contract (the contract) prepared by Kongson on May 15, 2018. Most of the contract is written in a language other than English, which the parties identify as Chinese. Kongson did not provide a translation. Ms. Wong provided a translated copy, and Kongson did not particularly dispute the translation, although it says that the copy of the Chinese document Ms. Wong provided does not include some remarks with a red circle stamp and an initial that appear on the final copies. Since these remarks are not in English and were not translated, I cannot read them and place no weight on them in any event.
15. Kongson also provided copies of many text messages that are not in English, with no translation. As I cannot read these, I place no weight on them.
16. Ms. Wong says she paid Kongson \$20,500, which is the total amount she owed under the original contract, and for the extra work she requested after the contract was signed.

### ***GST on Contract***

17. Kongson does not dispute that Ms. Wong paid \$20,500, but says she also owes \$865 for GST on the contract. Wong disputes this, and says the parties agreed that she would pay cash, and that GST was included in the quoted price of \$17,300.
18. Based on the written contract between the parties, which Ms. Wong signed, I find she agreed to pay GST on top of the quoted price of \$17,300. The written contract is very specific on this point.
19. Some monetary amounts on the untranslated contract are written in Roman numerals. These indicate that the price for 14 items of work was “\$17,300 + GST”, which equaled \$18,165.00.
20. Ms. Wong’s translated contract is also consistent on this point. It says the “project total” was “\$17,300 + 5% GST = \$18,165.00”. I find that the written contract supersedes any verbal agreement the parties may have made about GST. Kongson denies any contrary agreement about GST, and the written contract is very specific. I find Ms. Wong has not proved that Kongson agreed to different terms on GST than those set out in the contract.
21. I therefore find Ms. Wong must pay Kongson \$865 for GST.

### ***\$1,530 for Extras***

22. Kongson also says Ms. Wong owes \$1,530, including GST, for the following “extras” that were not included in the contract:
  - a. \$100 – Removal of old stove, delivery of new stove
  - b. \$20 – Removal of old dishwasher
  - c. \$600 – 2<sup>nd</sup> hand dishwasher provided by Kongson
  - d. \$468 – Living room painting (extra)

- e. \$200 – Colour change for living room painting (extra)
- f. \$20 – New flooring strip (extra)
- g. \$600 – Garbage removal & disposal for garage renovation (3 trips)

23. This list totals more than the claimed \$1,530. However, Kongson says it already agreed to deduct \$550 from its outstanding bill for deficiencies. I will deal with deficiencies later in this decision, when I address Ms. Wong's counterclaim.
24. The parties did not complete written change orders, or document any post-contract extra work requests in writing.
25. Ms. Wong wrote to Kongson on September 24, 2018, disputing its bill for the extras and GST, and requesting a refund for deficiencies. In her letter, she agreed to pay \$400 for living room painting and \$100 for stove removal and delivery. Since Ms. Wong agreed to pay these amounts, totalling \$500, I order her to do so. Kongson says the charge for living room painting was \$465. However, it has not provided proof that Ms. Wong ever agreed to pay this amount, so I do not accept it.
26. Regarding the dishwasher, Ms. Wong says Kongson voluntarily gave her a used dishwasher taken from another renovation site. She says no one told her there would be any charge for the dishwasher, and did not agree to pay \$600. She says if she had known it would cost \$600, she would have purchased a new dishwasher with a warranty.
27. I find Kongson, who bears the burden of proving its claims, has not proved that Ms. Wong agreed to pay \$600, or any amount for the dishwasher. Kongson has also not proved that the dishwasher is worth \$600. However, the evidence shows that the dishwasher is installed, and there is no indication that it does not work. Since Ms. Wong has not opted to have the dishwasher removed, I find, on a judgement basis, that Ms. Wong must pay \$100 for the dishwasher.
28. Kongson claims \$200 for paint colour changes in the living room, and says Ms. Wong changed her mind about the colour 3 times. Ms. Wong says she did not

change her mind 3 times, Kongson only painted a small sample area, and she was not informed of a charge for colour changes. I find Kongson has not proved any agreement on this point, and has not proved work or supplies totalling \$200 (or any amount) related to colour changes. I therefore do not order payment for colour changes.

29. Ms. Wong says the \$20 new flooring strip should be included in the charge for the installation of new tile in the garage. I agree, as there is no evidence that Ms. Wong agreed to pay for this separately.
30. Similarly, the translated contract says the charge for garbage removal in the garage would be \$200. There is no limitation on the amount of garbage included in that price, and no evidence that Ms. Wong agreed to pay more for additional loads. I therefore do not order payment of \$600 for garbage removal.
31. For these reasons, I conclude that Ms. Wong must pay Kongson \$600 plus GST for the dishwasher, living room painting, and stove removal and delivery. This totals \$630. Added to the \$865 for GST on the initial contract, I find Ms. Wong owes Kongson \$1,495. I deal with pre-judgement interest and tribunal fees at the end of this decision.

### ***Counterclaim***

32. In her counterclaim, Ms. Wong seeks a refund of \$3,438.06. She claims \$3,300 for deficiencies in Kongson's work, plus \$138.06 for supplies she says paid for but did not receive.
33. In her correspondence to Kongson and in her submissions, Ms. Wong lists the deficiencies as follows:
  - a. Powder room not painted
  - b. Painting in stair area and on stair handrail incomplete
  - c. Paint deficiencies in living room

- d. Grout and paint deficiencies in kitchen
- e. Baseboard in living room needs repair
- f. Sliding door does not work properly
- g. Shoe cabinet mirror door needs repair

34. Kongson does not specifically deny any of these deficiencies, and admits offering Ms. Wong a \$450 refund for deficiencies in the handrail and powder room painting, and \$100 for grout touch-ups in the kitchen. I find Ms. Wong provided photographic evidence showing the deficiencies, and since Kongson does not dispute them, I accept the deficiencies as listed above.
35. Kongson says it was justified not fixing the deficiencies, as Ms. Wong owed money for its outstanding bill. Kongson also says there were often many people in the home, and active cooking in the kitchen, which made construction difficult and was not covered under their site insurance. Kongson says Ms. Wong would not provide them with a guest-free time to enter the home and fix the deficiencies.
36. I find that none of these reasons justify charging Ms. Wong for work that was not completed, or not done to a professional standard. I therefore find that Ms. Wong is entitled to some refund for deficiencies.
37. She claims \$3,300 for deficiencies, based on a (translated) quote from another contractor, M. I am not persuaded by M's quote. M's quote appears high, as a substantial portion of Kongson's \$13,000 contract price for renovating the entire kitchen and power room and adding a kitchen door, as well as painting the kitchen, living room, and powder room. There is no indication that Ms. Wong obtained quotes from other contractors. Also, while I find the photos in evidence show some unpainted areas and need for touch-ups, I find the evidence does not support the need for 2 full coats of repainting in the entire living room, staircase, and powder room, as shown in M's estimate.



38. Finally, in her September 24, 2018 letter to Kongson, Ms. Wong requested a refund of \$1,038.06 for deficiencies, including painting. Ms. Wong has not explained this difference, other than to rely on M's quote.
39. I find, on a judgement basis, that it is reasonable in the circumstances for Ms. Wong receive a refund of \$1,495 for the deficiencies and unused supplies. In addition to the painting, grout, and baseboard deficiencies, the evidence shows (and Kongson admits) that the sliding kitchen door does not work properly. I find that \$1,495, which fully offsets the amount Ms. Wong owes to Kongson, is appropriate in the circumstances.
40. In summary, Kongson says Ms. Wong would not allow them to schedule deficiency repairs, and Ms. Wong says Kongson refused to do the repairs. The translated text messages in evidence indicate that the relationship between the parties broke down after the majority of the work was completed, and I find it would not be reasonable in these circumstances to order Kongson to attend Ms. Wong's home to do further work. I therefore do not make this order (which neither party requested).
41. Since the amounts owed by each party offset each other, I make no order for payment. Thus, pre-judgment interest under the *Court Order Interest Act* does not apply.
42. Both parties were partially successful in their claims. Each party paid \$125 in tribunal fees. Again, I find these amounts are fully offset, and I order no reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

## **ORDER**

43. Kongson's claims and Ms. Wong's counterclaims were partially successful. As they fully offset each other, I make no orders.

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Kate Campbell, Tribunal Member