



# Civil Resolution Tribunal

Date Issued: August 15, 2019

File: SC-2019-002938

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Wesley Mullin dba Roto-Rooter*, 2019 BCCRT 976

BETWEEN:

(GARY) JIANBAI LIU

**APPLICANT**

AND:

WESLEY MULLIN DBA ROTO-ROOTER

**RESPONDENT**

AND:

(GARY) JIANBAI LIU

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about drain cleaning services. The applicant (and respondent by counterclaim), (Gary) Jianbai Liu, says the respondent (and applicant by counterclaim), Wesley Mullin dba Roto-Rooter), “accidentally” left a plumbing snake’s drill bit in his sewer line after he provided drain cleaning services. Mr. Liu claims \$1,334.38 for expenses related to having his sewer line repaired.
2. Mr. Mullin denies negligence and any responsibility for Mr. Liu’s claims. Mr. Mullin says his drill bit became lodged not due to any accident but because Mr. Liu’s drain line was corroded to the point of disintegration. Mr. Mullin counterclaims for \$509.25, the amount of his plumbing services invoice.
3. The parties are self-represented. I note Mr. Liu named Mr. Mullin as “Wes Mullin (Doing Business As Roto-Rooter)”. I have used the name Mr. Mullin used to describe himself in the counterclaim, Wesley Mullin, and amended the style of cause above accordingly.

## **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, 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.

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. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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**

8. The issues in this dispute are to what extent, if any:
  - a. Mr. Mullin owes Mr. Liu \$1,334.38 for sewer line repair expenses, and
  - b. Mr. Liu owes Mr. Mullin \$509.25 for drain cleaning services.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the burden of proof is on the applicant Mr. Liu to prove his claims on a balance of probabilities. Mr. Mullin bears this same burden on his counterclaim. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

### ***Mr. Liu's claim for \$1,334.38 for sewer line repair expenses***

10. On March 30, 2019, Mr. Mullin attended Mr. Liu's home in response to a March 29 call to clear the sewer or drain line, which Mr. Mullin also refers to as a "sani line". For the purposes of this decision, the specific pipe line name is not relevant. It is

undisputed that in the process of trying to “snake” the line, Mr. Mullin’s drill bit became lodged in the pipe. On April 2, 2019, Mr. Mullin returned to try and deal with the issue, which efforts were ultimately unsuccessful.

11. Mr. Liu says he had to hire another plumber to “break the whole concrete and cast iron pipe” to get the drill bit out. As discussed below, the repair involved excavating the concrete floor, but the pipe was corroded and did not need to be broken to remove Mr. Mullin’s drill bit. The repair was to a large section of corroded pipe, not just the retrieval of the stuck drill bit.
12. Mr. Liu alleges Mr. Mullin “accidentally” left his drill bit in the pipe. He says Mr. Mullin unreasonably refused to fix the issue and left. Mr. Mullin says he explained to Mr. Liu his service did not extend to concrete excavation or repairing and replacing a pipe. I accept Mr. Mullin’s position, as there is no evidence before me to suggest otherwise. As noted, Mr. Mullin had once again been hired to snake Mr. Liu’s pipe in an effort to clear it. Mr. Liu does not deny Mr. Mullin had serviced his pipe in the past and had previously recommended its repair and possible replacement because it was obviously deteriorating. I accept Mr. Mullin had given that advice and that Mr. Liu had declined to follow it.
13. On April 3, 2019, Mr. Liu hired M&K Plumbing & Heating Co. Limited (M&K) to fix the pipe. Mr. Mullin discovered M&K had attended and asked for a letter from them about what they found. In its May 23, 2019 letter, M&K said it was called out to assist with a blocked underground drain. After inserting a drain camera, M&K observed a separated piece of drain clearing equipment (Mr. Mullin’s drill bit). After jackhammering a section of the concrete floor to expose the area, M&K said they found the bottom of the drain pipe was corroded “to the point of failure” and the drill bit was in the gravel bedding under the pipe. M&K wrote the pipe had failed for 18 linear feet in the same section of the pipe, yet the undisputed evidence before me is that the drill bit was only about 3 to 4 feet in from where Mr. Mullin inserted it. M&K replaced all faulty pipe. The fact that the pipe was corroded is repeated in M&K’s

April 11, 2019 invoice for \$1,344.38 to Mr. Liu. I accept the pipe was corroded, which is shown in photos in evidence and is also not disputed by Mr. Liu.

14. Mr. Liu's claim is essentially rooted in negligence. It is uncontroversial that the general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.
15. There is no question Mr. Mullin owed his customer Mr. Liu a duty of care. The first issue here is whether Mr. Liu has proved Mr. Mullin breached the applicable standard of care and the second issue is whether Mr. Liu has proved Mr. Mullin caused his claimed damages.
16. Generally, in claims of professional negligence, it is necessary for the applicant to show a breach of the standard of care through expert opinion evidence. In the circumstances here, I find expert evidence is required because whether the drill bit's breakage meant Mr. Mullin was negligent is not within the knowledge of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283).
17. Significantly, there is no indication in M&K's letter or its invoice that Mr. Mullin had done anything wrong. In other words, M&K did not suggest Mr. Mullin's drain clearing technique or the fact that his drill bit broke off fell below the standard of care of a drain cleaner like Mr. Mullin, or of a plumber. There is no evidence Mr. Mullin ever agreed to provide excavation or pipe replacement services. While Mr. Liu provided a copy of Roto-Rooter's website, I find Mr. Mullin did not represent himself as a plumber and further Mr. Liu has not shown he was misled about Mr. Mullin's qualifications or that he relied on any representation in hiring Mr. Mullin to try and clear his drain line.
18. I also note Mr. Liu's argument that M&K is somehow affiliated with Mr. Mullin. Yet, Mr. Liu does not dispute M&K's findings about the corroded pipe. There is nothing

before me critical of Mr. Mullin's work, which as noted is necessary for me to find Mr. Mullin breached the applicable standard of care.

19. In short, there is no expert evidence before me that might suggest Mr. Mullin's actions fell below the standard of care for a drain cleaner or of a plumber. Given the corroded pipe, Mr. Mullin's past advice, Mr. Liu's decision to nonetheless ask Mr. Mullin to try to clear the blocked drain, I cannot conclude without expert evidence that Mr. Mullin was negligent in proceeding to try and clear the pipe or in the way he did so. I find Mr. Liu has not established Mr. Mullin was negligent.
20. I note Mr. Mullin's acknowledgement that he never had Mr. Liu sign his standard "Hold Harmless Agreement" for this visit, because he was a repeat customer. This is an indemnity agreement that includes a statement that Mr. Mullin is not responsible for the cost of fixing problems related to broken equipment lodged in the pipe. Nothing turns on this 'Hold Harmless' agreement as I have found Mr. Liu has not established negligence, though I note Mr. Liu appears to acknowledge at one point that he saw the agreement at the time of service, but then elsewhere says he did not.
21. Next, Mr. Liu's claimed damages relate to M&K's repair and replacement of the pipe. There is no evidence that the drill bit stuck in the pipe is what necessitated the pipe's replacement. I find the fact that the pipe was already corroded was the reason it needed to be replaced, something I find Mr. Liu knew about before he had Mr. Mullin try to clear the pipe again in late March 2019. I note M&K's invoice is for replacement of a large section of corroded pipe, and not just removal of the drill bit. It is not accurate that M&K had to break up the pipe to get the drill bit out. Even if Mr. Mullin had been negligent, I find Mr. Liu has not proved he would be entitled to the entire amount claimed. I dismiss Mr. Liu's claim.

***Mr. Mullin's counterclaim for \$509.25***

22. Mr. Mullin's April 2, 2019 invoice for \$509.25 sets out his labour services for attending Mr. Liu's home. It is undisputed Mr. Mullin tried to clear the drain pipe as

requested. It is also undisputed that Mr. Mullin returned a couple days later at Mr. Liu's request to try and locate the drill bit with a camera.

23. Mr. Mullin's invoice breakdown is: \$180 for the initial service on March 30, \$235 for shop supplies and 2 labourers to attend on April 1 to remove the cable and close the clean-out, and \$70 for camera charges. With GST, the total is \$509.25.
24. Mr. Liu's argument appears to be that he would pay for Mr. Mullin's work if Mr. Mullin had got his own drill bit out. I find that is not necessarily required. I accept that in hiring Mr. Mullin, there was no guarantee that he would be able to clear the drain. The job was to use professional efforts to try and clear the drain, and I find this is what Mr. Mullin did. I find Mr. Mullin is entitled to payment for that labour, and I find \$180 is reasonable.
25. Next, what about the April 1, 2019 charges to try and remove the drain equipment and camera charges? Mr. Liu knew the pipe was corroded and asked Mr. Mullin to once again try to clear the drain, something he had done yearly for some period of time. I have found above the evidence does not establish Mr. Mullin was negligent. At Mr. Liu's request, he tried to remove the drill bit and used a camera to locate it. It is undisputed that Mr. Mullin was not able to remove the drill bit given the pipe's corrosion. I find Mr. Mullin was under no obligation to absorb the cost of removing his drill bit in the circumstances. His service was billable on a time and materials basis. I find his time was reasonably spent in the circumstances and the charges are reasonable.
26. Finally, nothing turns on the fact that Mr. Mullin at one point prior to this dispute had offered to reduce his invoice. Mr. Liu did not accept that offer and Mr. Mullin withdrew it.
27. I find Mr. Mullin is entitled to payment of his \$509.25 invoice. He is entitled to \$3.67 in pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$509.25, calculated from April 3, 2019.

### ***Tribunal fees***

28. In accordance with the CRTA and the tribunal's rules, the successful party is generally entitled to reimbursement of tribunal fees and reasonable dispute-related expenses. Mr. Liu was unsuccessful so I dismiss his claim for tribunal fees. Mr. Mullin was successful and I find he is entitled to reimbursement of \$125 in paid tribunal fees. There were no dispute-related expenses claimed.

### **ORDERS**

29. Within 14 days of this decision, I order Mr. Liu to pay Mr. Mullin a total of \$637.92, broken down as follows:

- a. \$509.25 in debt,
- b. \$3.67 in interest under the COIA, and
- c. \$125 in tribunal fees.

30. Mr. Mullin is entitled to post-judgment interest. Mr. Liu's claims are dismissed.

31. 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.



32. 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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Shelley Lopez, Vice Chair