



# Civil Resolution Tribunal

Date Issued: September 4, 2019

File: SC-2018-004846

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ABM Environmental Inc. v. Chin Wing Chun Tong Society of Canada et al*,  
2019 BCCRT 1046

B E T W E E N :

ABM Environmental Inc.

**APPLICANT**

A N D :

Chin Wing Chun Tong Society of Canada and Wilkins Chan

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. The applicant, ABM Environmental Inc., says it provided mold inspection, sampling and analysis services to the respondents Chin Wing Chun Tong Society of Canada

(society) and Wilkins Chan, for which it has not been paid. Mr. Chan is a director of the society.

2. The applicant wants the respondents to pay \$525 for its outstanding June 9, 2017 invoice, \$140.81 in contractual interest on the unpaid invoice at 26.82% per year, \$157.50 in collection agency fees, and \$19.08 for search fees, for a total of \$842.39.
3. The society says it had nothing to do with hiring the applicant and that the applicant's claim is against Mr. Chan. It also says the society is out of time to bring this dispute. As addressed further below, Mr. Chan did not submit a Dispute Response or participate in this dispute on his own behalf. However, Mr. Chan represents the society.
4. The applicant is represented by an employee or principal.

## **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* (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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the

circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - a. order a party to do or stop doing something:
  - b. order a party to pay money:
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is the applicant out of time to bring this dispute?
  - b. If not, is the applicant is entitled to \$842.39 for payment of its invoice, contractual interest, and collection agency and search fees.

## EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. The tribunal served Mr. Chan with the amended Dispute Notice by email on February 28, 2019 and he acknowledged receipt of the email on March 13, 2019. I find Mr. Chan was properly served with the amended Dispute Notice in accordance with the tribunal rules in force at the time, and that he failed to file a Dispute Response before the required deadline or at all. Therefore, I find Mr. Chan is technically in default. Normally when a party is in default their liability is assumed. However, since Mr. Chan participated in this dispute as the society's representative and responded to the tribunal's email attaching the Dispute Notice, I find it likely he intended to participate. Also, given his representation of the society, I find he articulated his position with respect to the claims against him. Therefore, in these circumstances, I find Mr. Chan's liability is not assumed, and I must decide the applicant's claims against both parties on the merits.
12. The society filed a Dispute Response and made submissions through Mr. Chan but chose not to provide evidence despite having the opportunity to do so. I have only addressed the applicant's evidence and the parties' submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.

### ***Is the applicant out of time to bring this dispute?***

13. The society says the applicant is out of time to bring this dispute. Under the *Limitation Act*, a party has 2 years to start a dispute from the time it discovers its claim. It is uncontested that this claim arises from events that took place on June 6, 2017. The Dispute Notice was issued on July 5, 2018, which is within the 2-year limitation period. However, the parties' contract in evidence has a 1-year limitation clause. Since the applicant started this dispute more than 1 year after June 6, 2017,

the applicant is out of time to bring this dispute if that contractual limitation clause applies. Therefore, I must determine whether the contract is binding on the parties.

14. The applicant says it spoke to Mr. Chan over the phone before June 6, 2017. It says Mr. Chan was acting for the society and it provided him with a verbal estimate for a mold assessment at a property the society owned. The applicant says the parties agreed to the scope and cost of the services over the phone, and on June 6, 2017 it went to the property to conduct an inspection and take samples. The applicant says it met Mr. Chan on site and that day and he signed an agreement on the society's behalf.
15. The applicant submitted a written mold inspection and sampling agreement dated June 6, 2017 signed by the applicant and Mr. Chan. The name of the client on the agreement is "Wilkins Chan (Chin Wing Chun Tong Society)."
16. The society says its executive board never authorized Mr. Chan to sign the agreement, and that he thought it was simply an estimate that was subject to change. However, the society provided no documentary evidence to support these contentions, and I find the agreement clearly indicates that Mr. Chan signed the agreement on behalf of the society on June 6, 2017. Therefore, I find that on June 6, 2017 the parties entered into a binding contract.
17. The contract contains an arbitration clause requiring any dispute concerning the contract's interpretation or arising from the inspection and report to be resolved through arbitration, with the exception of a dispute based on payment of the applicant's fee. The contract also has a limitation clause which states that, "any legal action" arising from the contract, inspection or report, "including (but not limited to)" any arbitration proceeding described in the arbitration clause, must be started within 1 year from the date of the inspection. The clause states that failure to bring a legal action within the 1-year limitation period means a party loses its right to ever bring such an action.

18. The applicant says the arbitration clause in the contract excludes disputes based on payment of its fee. I agree. However, I note the limitation clause in the contract does not contain the same exception. Rather, that clause specifically includes all legal claims beyond those that may be subject to arbitration. I also note that the applicant wrote the contract, so it should be aware of this limitation clause.
19. The applicant also says it started “this process” within 1 year of June 6, 2017 by hiring a third-party collection agency, however I find that hiring a collection agency does not amount to a legal action as contemplated by the contract. I also note that the tribunal’s dispute resolution process is a separate and distinct legal process from hiring a collection agency.
20. I find this tribunal dispute clearly falls within “any legal action” contemplated by the limitation clause in the contract, and that the dispute was started more than a year after June 6, 2017. Therefore, I find that under the terms of the contract the applicant is out of time to bring this dispute, and I dismiss it.
21. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant is unsuccessful I find it is not entitled to reimbursement of its tribunal fees or dispute-related expenses.

## **ORDER**

22. I dismiss the applicant’s claims and this dispute.

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Sarah Orr, Tribunal Member