



Civil Resolution Tribunal

Date Issued: October 17, 2019

File: SC-2019-000141

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lu v. Jiang*, 2019 BCCRT 1198

BETWEEN:

WAN ZONG LU

APPLICANT

AND:

JUDD JIANG

RESPONDENT

AND:

WAN ZONG LU

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about construction labour the applicant and respondent by counterclaim, Wan Zong Lu, provided to the respondent and applicant by counterclaim, Judd Jiang.
2. Mr. Lu says he was the framer for Mr. Jiang's new house under construction. Mr. Lu says he completed "additional work" in deconstructing a crawl space and increasing the floor area. Mr. Lu claims \$1,800, which Mr. Jiang admits was the parties' agreed price for the work. However, Mr. Jiang says he had to spend \$1,965 to hire a third party to finish work he says Mr. Lu failed to complete. Given this, Mr. Jiang argues that he does not owe Mr. Lu the claimed \$1,800.
3. In his counterclaim, Mr. Jiang says Mr. Lu made open vents incorrectly that led to Mr. Jiang having to install a heat recovery ventilator unit (HRV unit). Mr. Jiang claims for 10 years of the HRV's future operational costs, which he values at \$336 per year for a total of \$3,360. Mr. Jiang also says he wasted 400 square feet of lumber, valued at \$600, due to Mr. Lu's alleged error in raising the house 2 extra inches. Mr. Jiang claims a total of \$3,960. Mr. Lu says he framed the basement according to the builder's requirements, and denies any responsibility for Mr. Jiang's claims.
4. The parties each represent themselves.

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 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, credibility is at issue in this dispute, in terms of how and where the accident happened. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to hear this dispute based on the documentary evidence and written 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue.
8. 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.

ISSUE

9. The issue in this dispute whether Mr. Lu properly completed his framing work such that he is entitled to full payment under the contract, and if not, whether Mr. Jiang is entitled to his claimed damages.

EVIDENCE AND ANALYSIS

10. In civil claims such as these, the burden of proof is on the applicant Mr. Lu to prove his claims on a balance of probabilities. Mr. Jiang 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. I note that Mr. Lu chose not to submit any evidence, despite being given the opportunity to do so.

11. It is undisputed that there was a change in Mr. Jiang's original floor plan and that he agreed to pay Mr. Lu an additional \$1,800 to deconstruct his basement crawl space and increase the floor area. Mr. Lu submits that it was a "tripartite agreement" between himself, Mr. Jiang, and the builder DC. DC is not a party to this dispute. DC's statement, discussed below, suggests he played a role in the crawlspace agreement but I find there is no suggestion DC was responsible to pay Mr. Lu. Mr. Jiang submitted an April 18, 2017 contract largely in a foreign language (without English translation), which based on signatures and printed names is only between Mr. Jiang and Mr. Lu. Based on the dollar value shown on that contract, I infer it is for the original project. I have no copy of the crawlspace contract and the evidence indicates it was a verbal agreement. On balance I find the contract for the project, including the crawlspace project, was between only Mr. Jiang and Mr. Lu. More on DC's role further below.
12. Mr. Jiang admits he did not pay Mr. Lu the agreed \$1,800 for the crawlspace work. However, he says he had to spend at least \$1,965 to complete the job and deal with Mr. Lu's alleged errors and that this more than offsets Mr. Lu's \$1,800 claim.
13. More generally, Mr. Jiang says Mr. Lu failed to finish all projects "according to city hall approved drawings" and failed to pass completed projects through inspection. I infer Mr. Jiang claims a complete set-off from Mr. Lu's \$1,800 claim, given the overall deficiencies Mr. Jiang alleges with respect to the entire project, not just the crawlspace work.

Mr. Lu's \$1,800 claim

14. It is true Mr. Jiang generally acknowledged the agreed price for the crawlspace work was \$1,800. It is undisputed he has not paid this to Mr. Lu. But, Mr. Jiang also generally argued he incurred many expenses and owes Mr. Lu nothing.
15. Mr. Jiang identified various aspects of the original project that he says Mr. Lu failed to properly complete. I do not agree the weight of the evidence shows Mr. Lu was responsible for ventilation decisions, and I discuss this below in my analysis of Mr. Jiang's counterclaim. However, I agree it is likely Mr. Lu failed to complete the original framing job properly. In his response to Mr. Lu's claims Mr. Jiang has identified at least \$865 in deficiencies in the original project (he did not claim this amount in his counterclaim). I find the original job and the additional crawlspace work to be sufficiently related that deficiencies in the original job could be properly set-off from Mr. Lu's claim for the additional crawlspace work.
16. The significant point is that Mr. Lu's claim in this dispute is for payment for his crawlspace work. Significantly, Mr. Lu provided no evidence and minimal arguments in support of his claim. His copy-typed translated email from DC does not address the quality of Mr. Lu's work or whether his job was completed. Mr. Lu did not provide a contract or any texts or emails. He did not provide an invoice. Mr. Lu does not say when he completed the work.
17. Given the above, I find Mr. Lu has not met the burden of showing he is entitled to any payment for the crawlspace project. I dismiss Mr. Lu's claims.

Alleged failure to install crawlspace vents correctly - \$1,000 for HRV unit plus \$3,360 counterclaim for increased utility costs

18. Mr. Jiang says Mr. Lu cut 5 open vents incorrectly, which the City of Burnaby (City) found were a fire hazard and required Mr. Jiang to install an HRV unit at a labour and materials cost of \$1,000. Mr. Jiang provided 2 receipts totaling the claimed \$1,000. Mr. Jiang referred to the \$1,000 in his defence to Mr. Lu's claim, rather than

claiming it in his counterclaim. For ease of reference, I will deal with the ventilation issues together here, since I find Mr. Lu is not responsible for any of them.

19. Mr. Jiang says Mr. Lu failed to follow the drawings approved by the City, because he cut 5 vents rather than 6, changed the vent shape from a circle to a rectangle, and changed the vents' position from uniform to nonuniform. Mr. Jiang says the changes were contrary to the BC Building Code (Code). Because the vents allegedly could not be modified to become Code-compliant, Mr. Jiang says he was required to install the HRV unit that is the basis for his counterclaim for increased electrical costs. However, the City's inspection records do not clearly say an HRV unit was required due to faulty vent installation. I do not know if the original vent plan could have passed inspection in any event. There is simply insufficient evidence in support of Mr. Jiang's assertions, including that Mr. Lu acted improperly in his framer role.
20. Mr. Jiang acknowledges DC was his builder and did not deny DC was giving instructions to trades on the job. In his counterclaim reply submission, on the issue of the vent installation, Mr. Jiang says "I don't know if the temporary builder [DC] has asked him or not, but the builder had no power to violate" the City's drawings. On balance, I find this supports a conclusion that DC was Mr. Jiang's authorized agent for the construction. The evidence shows DC at some point stopped work on the job, but other than alleging DC is Mr. Lu's friend there is no explanation from Mr. Jiang why he did not obtain evidence from DC. As noted, DC is not a party to this dispute.
21. Instead, Mr. Jiang simply submits Mr. Lu as the framer should be held responsible for building the house according to the City's approved drawings. Mr. Jiang submitted what appear to be rough plans, but they do not show City approval on them. Based on the evidence before me, I cannot tell what was originally approved in terms of the crawl space and vents. The City's inspection reports simply indicate a certain type of ventilation was required.

22. Notably, Mr. Lu says it was the builder DC who specified the vent size and that this was outside Mr. Lu's scope as the framer. Mr. Lu also says his quote was based on the electrical plan, not the City's "permit plan". I do not understand why a framer's quote would be based on an electrical plan, and Mr. Lu does not explain. However, again, apart from Mr. Jiang's submission there is no evidence that Mr. Lu improperly followed DC's instructions. Mr. Jiang does not say he instructed Mr. Lu personally. The material point is that I have no expert evidence before me to support a conclusion that a framer's role includes deciding the size, shape, or location of vents, or with Code compliance. There is no expert evidence from any other framer or builder at all, to say that Mr. Lu as a framer was responsible for compliance with Code requirements about ventilation.
23. In any event, there is no evidence before me about Mr. Lu's role in this specific project because there is no translated contract in evidence. While I make no findings about what DC instructed Mr. Lu, as noted there is also no expert evidence that Mr. Lu should not have followed DC's instructions.
24. On balance I find there is insufficient evidence to conclude Mr. Lu should be held responsible for any incorrect ventilation. I dismiss Mr. Jiang's counterclaim for \$3,360 based on estimated increased utility costs. I note I would have dismissed that claim in any event, as I find it is too remote and speculative.

Wasted lumber - \$600 counterclaim

25. Mr. Jiang says he wasted 400 square feet of lumber because Mr. Lu allegedly mistakenly raised his house an extra 2 inches. Mr. Jiang claims \$600 as the estimated total cost including shipping. Yet, he relies on a July 22, 2017 invoice from Dick's Lumber that totals only \$319.54 for items Mr. Jiang highlighted, and the invoice indicates the items were for pick-up. I cannot tell from the face of the invoice what the items are.
26. More significantly, even if Mr. Jiang's house was raised incorrectly, there is insufficient evidence that Mr. Lu should be held responsible. Like the ventilation

issue, Mr. Lu says he relied on the builder DC. Mr. Lu submitted in his arguments a typed translation of what he said was DC's email, that set out the house height issue. Mr. Jiang objects to DC's evidence and says he is incorrect and that he is Mr. Lu's friend. However, again, Mr. Jiang has not shown why Mr. Lu as the framer should be held responsible for raising the house or that Mr. Lu was instructed to specifically follow certain plans. I find Mr. Jiang has not proved Mr. Lu is responsible on the evidence before me. I dismiss this counterclaim.

27. According to the CRTA and the tribunal's rules, the successful party is usually entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. I see no reason to deviate from that here. Neither party was successful so I make no order for reimbursement of tribunal fees or expenses.

ORDER

28. I dismiss Mr. Lu's claims, Mr. Jiang's counterclaims, and this dispute.

Shelley Lopez, Vice Chair