



# Civil Resolution Tribunal

Date Issued: April 30, 2020

File: SC-2020-000500

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dajun Fu (dba Datang Flooring) v. Lucidea Technologies Corp.*,  
2020 BCCRT 473

BETWEEN:

DAJUN FU (Doing Business As DATANG FLOORING)

**APPLICANT**

AND:

LUCIDEA TECHNOLOGIES CORP., 555448 B.C.LTD., and  
RONALD REGINALD ASPE

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about painting services.

2. The applicant, DaJun Fu (Doing Business As DaTang Flooring), say he was hired by the respondents, Lucidea Technologies Corp. (Lucidea), 555448 B.C.Ltd. (555), and Ronald Reginald Aspe, to paint the interior of one commercial unit, and the exterior of another. Mr. Fu says he has not been paid for his services and seeks payment of \$3,759 for his painting invoice, plus \$598.19 for replacement ceiling panels, and \$1 for “psychological distress”.
3. The respondents say the painting work was unprofessional and had sprayed all over the ceiling tiles, requiring Mr. Fu to replace them at his own cost, and that deficiencies had to be completed by another company at greater expense. The respondents deny owing Mr. Fu any money.
4. Mr. Fu is represented by his spouse, LL. The respondents are all represented by Mr. Aspe.

## **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. 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.

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. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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.
9. The respondents submit Mr. Fu was hired as “Da Tang Construction”, not “DaTang Flooring”, and therefore, as named, has no standing to file his claims. Mr. Fu submits he is “the sole owner and operator of Da Tang Construction or Da Tang Flooring”. Mr. Fu submitted a Statement of Registration – Sole Proprietorship which shows he is the sole proprietor of “DaTang Flooring”. Although Mr. Fu’s quote and invoice indicate “Da Tang Construction” on the letterhead, I find nothing turns on this, as neither Da Tang Construction nor DaTang Flooring are incorporated businesses, and it is undisputed the painting agreement was with Mr. Fu. In this dispute, Mr. Fu has properly identified himself as “DaJun Fu (doing business as DaTang Flooring)”. As such, I find he has standing to file this claim.
10. Next, I note initially there were two named applicants in the Dispute Notice, DaJun Fu and DaJun Fu (Doing Business As DaTang Flooring). I find they are the same legal entity, meaning they refer to the same person, DaJun Fu, who, as noted above, is a sole proprietor doing business as DaTang Flooring. For this reason, I have amended the style of cause above to reflect only one applicant, DaJun Fu (Doing Business As DaTang Flooring).

## **ISSUES**

11. The issues in this dispute are:
  - a. Whether Mr. Fu fulfilled his painting obligations such that he is entitled to payment of his \$3,759 invoice,
  - b. Whether Mr. Fu is entitled to reimbursement of \$598.19 for new ceiling panels, and
  - c. Whether Mr. Fu is entitled to \$1 in damages for “psychological distress”.

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicant Mr. Fu bears the burden of proof on a balance of probabilities. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. It is undisputed that in early April 2019, an employee of 555 contacted Mr. Fu for painting services on a commercial property (2100). Mr. Fu provided an initial quote to 555, for \$3,080 before tax. A few days later, 555 added a small exterior painting job on another commercial property, 5108. The final invoice for the two jobs totaled \$3,759, the amount claimed in this dispute. That includes \$3,234 including tax for 2100, and \$525 including tax for 5108. It is undisputed that there are no issues with the 5108 work. It is also undisputed that Mr. Fu’s entire invoice remains outstanding.
14. At the outset, the respondents argue that Lucidea and Mr. Aspe are not proper parties to this dispute. Mr. Aspe is the president of both 555 and Lucidea. The parties all agree that Mr. Fu’s agreement was with 555. However, Mr. Fu says he named Lucidea because Mr. Aspe also owns that company.
15. I dismiss the claims against Lucidea and Mr. Aspe personally. There is no indication Lucidea was involved in the painting agreement. Further, although Mr. Aspe is the

president of 555, he was not a party to the agreement in his personal capacity. At law, officers, directors and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation (see: *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121). Here, Mr. Fu provided no evidence Mr. Aspe committed a wrongful act independent of 555.

16. I turn then to Mr. Fu's remaining claims against 555.

***Did Mr. Fu fulfil his painting obligations such that he is entitled to payment of his \$3,759 invoice?***

17. Mr. Fu says he performed his obligations under the painting agreement, and to a good, professional standard. He states there were deficiencies brought to his attention, which he remedied. These deficiencies included requiring another coat of paint on the walls, and overspray on the unit's ceiling tiles, which he replaced.

18. In contrast, 555 says Mr. Fu's work was substandard and, despite giving Mr. Fu multiple opportunities to fix the errors, it needed to pay another painter over \$7,000 to remedy the deficiencies. Specifically, 555 says it had to have the dropped ceiling's T-bars completely repainted because it says Mr. Fu oversprayed paint onto the T-bars, then damaged them further trying to remove the overspray. 555 asks that, if I decide Mr. Fu is entitled to payment under their agreement, that I set off any award with the amount 555 had to pay the following contractor to remedy Mr. Fu's deficiencies.

19. In response, Mr. Fu says he was never told about the T-bars' issue and that, in any event, the amount 555 says it paid to fix the T-bars is excessive.

20. The burden is on the party alleging deficiencies to prove them, and here that is 555 (see: *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91). 555 produced two photos which show some minor discolouration of the T-bars in two areas of the ceiling. In addition, 555 submitted an invoice from NEC, its subsequent contractor, for "office T-bar ceiling paint remediation", which included removing all ceiling tiles, cleaning, sanding and painting the T-bars, replacing the ceiling tiles, as well as

some minor painting tasks, such as painting the edge of the door and half a door jamb.

21. In the circumstances, I find Mr. Fu is entitled to payment of his \$3,759 invoice, as I find he completed the work agreed to. However, I also find 555 is entitled to a set off, but not in the amount it requests. First, as noted above, there is no dispute that the painting work done for 5108 is not in issue. Therefore, Mr. Fu is entitled to payment of the \$525 for that job, in its entirety.
22. Next, on a judgment basis, I find 555 is entitled to a \$500 set off against Mr. Fu's remaining invoice balance. I say this because although 555 has shown there was some overspray and light damage to some perimeter T-bars, it has not explained why the entire ceiling T-bar system needed to be repaired, not just those on the perimeter of the walls painted by Mr. Fu. Specifically, 555 does not say the T-bars damaged paint could not be matched, nor does NEC's invoice say that. Additionally, I find the photos in evidence do not show an extensive problem, but rather show two distinct areas of damage. In summary, I find 555 must pay Mr. Fu \$3,259 for his painting services.
23. Mr. Fu is entitled to pre-judgment interest on this amount, under the *Court Order Interest Act*. Calculated from May 1, 2019, the date the 555 and Mr. Fu's relationship terminated, this amounts to \$63.72.

***Is Mr. Fu is entitled to reimbursement of \$598.19 for new ceiling panels?***

24. As noted above, Mr. Fu oversprayed paint on to the ceiling tiles in the course of his work. When brought to his attention, Mr. Fu replaced the perimeter ceiling tiles. However, the new tiles did not match the old ones, so Mr. Fu replaced the entirety of the ceiling tiles. The total materials cost for this work was \$598.19, which he now seeks reimbursement for.
25. 555 says it is not responsible for the ceiling tiles' replacement due to Mr. Fu's poor workmanship. I agree. It was Mr. Fu's choice to replace the ceiling tiles instead of attempting to remove the oversprayed paint, which led to him replacing the entirety

of the ceiling. It was Mr. Fu's own error that caused the extra cost, and I find there was no agreement between the parties about any potential reimbursement. On balance, I find Mr. Fu has not proven he is entitled to reimbursement of the \$598.19 in ceiling tile materials cost. I dismiss this claim.

***Is Mr. Fu is entitled to damages for “psychological distress”?***

26. Mr. Fu claims \$1 for “psychological distress” because he says he has “never experienced such negative treatment”. I dismiss this claim. Although I acknowledge Mr. Fu found the situation stressful, a trivial or minor inconvenience is insufficient to establish a legal claim for damages. Mr. Fu has not provided any medical or other evidence to support a claim for psychological distress, and I find he is not entitled to such an award.

27. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Fu was partially successful, I find that he is entitled to reimbursement of half of his paid tribunal fees (\$87.50). Although the respondents specifically requested reimbursement of tribunal fees, I note none of them paid any tribunal fees, so I decline to make such an order. No party claimed dispute-related expenses.

**ORDERS**

28. Within 30 days of the date of this decision, I order the respondent, 555448 B.C.Ltd., to pay the applicant, DaJun Fu (Doing Business As DaTang Flooring) a total of \$3,410.22, broken down as follows:

- a. \$3,259 in debt for unpaid painting services,
- b. \$63.72 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$87.50 in tribunal fees.

29. Mr. Fu is also entitled to post-judgment interest, as applicable.

30. Mr. Fu's remaining claims, and all claims against the respondents, Lucidea Technologies Corp. and Ronald Reginald Aspe, 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
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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Andrea Ritchie, Vice Chair