



# Civil Resolution Tribunal

Date Issued: December 30, 2020

File: SC-2020-006090

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ying v. Zhou*, 2020 BCCRT 1467

B E T W E E N :

NAN YING

**APPLICANT**

A N D :

FU XIANG ZHOU

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. The applicant, Nan Ying, hired the respondent, Fu Xiang Zhou, in April 2018 to repair an exterior balcony above his front door. Mr. Ying says that Mr. Zhou did not perform the work properly, which caused the balcony to deteriorate further. He seeks \$3,000 for a partial refund.

2. Mr. Zhou says his work was covered by a 1 year warranty, which has now expired.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT 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 CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether balcony repairs performed by Mr. Zhou were done to a reasonable standard, and if not, the appropriate remedy.

## EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. Mr. Ying stated that he contracted with Mr. Zhou “of Prosperous Decorating Co Ltd.” (Prosperous) to renovate a balcony on his house. However, Mr. Ying did not name Prosperous as a party in this dispute. Since Mr. Zhou did not deny that he was personally responsible for the repairs he performed, I find he was properly named as a respondent in this dispute.
11. The parties agree that Mr. Zhou repaired an exterior balcony located above the front door of Mr. Ying’s house. They also agree the repair work was completed by the end of June 2018 and that Mr. Ying paid Mr. Zhou \$4,500 for labour and materials.
12. Mr. Zhou says he provided 1 year of free maintenance on his work. He did not explain if the warranty applied to materials, labour, or both. However, based on my reasons below, I find nothing turns on this.
13. Mr. Ying says by July 14, 2018 he noticed “visible defects”, although he did not explain what the defects were. He says although he notified Mr. Zhou promptly, Mr. Zhou did not perform repairs until May 2019. Mr. Ying did not describe the repairs that were done.
14. Mr. Ying says the condition of the balcony deteriorated even further after the May 2019 repairs. He says by March 2020 paint was missing, the wood was rotting, there were holes on the side of the balcony, and pieces of board and debris were falling off the balcony. Mr. Ying submitted photographs and a short video recording that showed the balcony’s condition in May 2020. I find they are consistent with Mr. Ying’s description.

15. Mr. Ying also says Mr. Zhou had removed an overflow water pipe from the balcony when he initially repaired it in 2018. He says this caused excess rain water to create a “waterfall” in front of his main door.
16. Mr. Ying says he was willing to pay Mr. Zhou for further repairs, but the parties could not agree on a price. He says he hired another contractor, PM Professional Tile & Stone Works Ltd. (PM Professional), to rebuild the balcony.
17. Mr. Ying seeks \$3,000 for a partial refund for the work done by Mr. Zhou.
18. Mr. Zhou says that he guaranteed his work for 1 year after completion. He says Mr. Ying contacted him on April 4, 2020 to complete further repairs to the balcony but by then the guarantee had expired. He says the balcony’s condition is consistent with repairs being done in 2018.

***Was Mr. Zhou negligent?***

19. Mr. Ying says the balcony’s condition deteriorated because Mr. Zhou was incompetent. He says Mr. Zhou did not use the proper materials and did not have the skill and knowledge to repair it.
20. Mr. Zhou does not deny the balcony has deteriorated but says its condition before PM Professional repaired it was reasonable since Mr. Zhou did his repairs 2 years ago. He says he used pressure treated wood to build the balcony. He also says he thinks the holes were caused by birds. He denies that he removed an overflow water pipe.
21. In essence, Mr. Ying’s claim is that Mr. Zhou was negligent in repairing the balcony in 2018. In order to succeed in a claim for negligence, Mr. Ying must prove that Mr. Zhou owed him a duty of care, that Mr. Zhou breached the applicable standard of care, that the loss was reasonably foreseeable, and that Mr. Zhou’s failure to meet the standard of care caused the loss.
22. I accept that as a paid contractor, Mr. Zhou owed Mr. Ying a duty of care to ensure that the repairs he did were to the standard of a reasonably competent contractor. I

must now determine whether Mr. Zhou breached the standard of care of a reasonable contractor in the circumstances and whether such a breach caused Mr. Ying's claimed damages.

23. I find that the fact that the balcony's condition deteriorated approximately 2 years after the respondent repaired it is not determinative. The questions of whether Mr. Zhou's work fell below the required professional standard or caused the claimed losses are not within ordinary knowledge and must be answered with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283).
24. Mr. Ying submitted a statement from ShiQin Liu and FengEr Wang as an expert opinion about the standards of a contractor. They worked for PM Professional and repaired the balcony in 2020. The original statement was written in a Chinese dialect and I asked Mr. Ying to submit a version translated into English. Mr. Ying did not use an accredited translator but says Mr. Zhou is fluent in the Chinese dialect and should be able review the English version's accuracy. Since Mr. Zhou did not contest the accuracy of the English version, I accept that the translation was accurate.
25. Mr. Zhou says that there is a conflict of interest since Mr. Ying hired ShiQin Liu and FengEr Wang to also repair the balcony. I have carefully reviewed the statement and I find ShiQin Liu and FengEr Wang's descriptions of the balcony are consistent with Mr. Ying's photographs. In addition, Mr. Zhou did not contest ShiQin Liu and FengEr Wang's description of the deficiencies in his work, aside from saying that he used pressure treated wood.
26. Neither ShiQin Liu or FengEr Wang stated their qualifications in their statement. Mr. Ying says they are "licensed" and a "registered business" but he did not state the type of license they hold. Since Mr. Zhou did not object to their qualifications, I accept that ShiQin Liu and FengEr Wang are qualified under CRT rule 8.3 to provide an expert opinion about how an outdoor balcony should be repaired.
27. ShiQin Liu and FengEr Wang inspected the balcony on August 8, 2020 and completed repairs by October 15, 2020. They stated the front of the balcony had large

areas of peeling paint with exposed wooden boards underneath and the wood was severely rotting with a few holes. They also stated that untreated wood that was typically used for indoors was used to previously repair the balcony. They stated the wood was too thin and no moisture prevention steps were taken. They stated due to the local winter rainy conditions, they added a moisture barrier to the boards and wood, then metal mesh, and then a cement layer. They say they installed “EPS” boards and then painted the exterior with water resistant paint. They did not comment on whether a drain pipe was added.

28. Mr. Zhou did not contest ShiQin Liu and FengEr Wang’s assessment of the balcony’s condition or their opinion of the need for a moisture barrier. Mr. Zhou also did not provide a contrary expert opinion about the cause of the balcony’s deterioration.
29. Based on ShiQin Liu and FengEr Wang’s opinion, I find that Mr. Zhou breached the standard of care he owed Mr. Ying by not using the proper materials or technique to repair an exterior balcony that was exposed to rainy conditions. I also find that this caused the balcony to deteriorate faster than if the repairs had been done properly. I find Mr. Ying was required to hire another contractor to repair the damaged balcony.
30. Based on my reasons above, I do not need to consider Mr. Ying’s claims that Mr. Zhou breached implied warranties about quality, performance, or durability.

***What damages are appropriate?***

31. The parties agree that Mr. Ying paid Mr. Zhou \$4,500 for the repairs he did, which included a 1 year warranty. Mr. Ying seeks \$3,000 as a partial refund from Mr. Zhou. He did not state how he arrived at this amount or how much he paid PM Professional for its recent repairs. ShiQin Liu and FengEr Wang stated it estimated the material and labour would cost approximately \$10,000. They did not state how much of Mr. Zhou’s repairs had to be redone. On a judgment basis, I award Mr. Ying \$2,250.

## **CRT FEES AND INTEREST**

32. The *Court Order Interest Act* applies to the CRT. Mr. Ying is entitled to pre-judgment interest on the monetary award from October 15, 2020, the date PM Professional completed its repairs, to the date of this decision. This equals \$2.16.
33. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Since Mr. Ying was partially successful, I find he is entitled to reimbursement of 50% of the CRT fees, which is \$87.50. Mr. Ying did not claim dispute-related expenses.

## **ORDERS**

34. Within 14 days of the date of this order, I order Mr. Zhou to pay Mr. Ying a total of \$2,339.66, broken down as follows:
- a. \$2,250 in damages,
  - b. \$2.16 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$87.50 in CRT fees.
35. Mr. Ying is entitled to post-judgment interest, as applicable.
36. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider

waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

37. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Rama Sood, Tribunal Member