



Civil Resolution Tribunal

Date Issued: June 16, 2021

File: SC-2020-009019

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leeward International Trading Ltd. dba. Super Cabinet World v. Wong*,
2021 BCCRT 663

B E T W E E N :

LEEWARD INTERNATIONAL TRADING LTD. DBA. SUPER CABINET
WORLD

APPLICANT

A N D :

WOON FAI WONG also known as PAT WONG

RESPONDENT

A N D :

LEEWARD INTERNATIONAL TRADING LTD. DBA. SUPER CABINET
WORLD

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about cabinet installation. The applicant and respondent by counterclaim is Leeward International Trading Ltd. dba. Super Cabinet World (SCW). The respondent and applicant by counterclaim is Woon Fai Wong also known as Pat Wong. I will address him as Mr. Pat as that is his stated preference.
2. Mr. Pat hired SCW to provide and install cabinets in his home. SCW says Mr. Pat owes \$2,326.60 for work done and materials. SCW also claims contractual interest at a rate of 3% per month. Mr. Pat denies these claims. He says SCW was professionally negligent because it failed to ask about the size and characteristics of his chosen kitchen appliances before starting work. He says SCW wrongly charged him to correct its errors.
3. Mr. Pat counterclaims for \$623.69 as reimbursement for a replacement sink and \$300 as reimbursement for garbage removal services. He says SCW installed a cabinet that did not fit his kitchen sink and failed to remove garbage as required. SCW denies these counterclaims. It says it built the cabinets to the agreed-upon specifications and the garbage was only some cardboard boxes.
4. An employee or principal represents SCW. Mr. Pat represents himself.
5. For the reasons that follow, I find in favour of SCW and dismiss most of Mr. Pat's counterclaims. I order Mr. Pat to pay the amounts set out below.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. 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.

ISSUES

10. The issues in this dispute are as follows:
 - a. Must Mr. Pat pay SCW \$2,328.60 for cabinet installation?
 - b. Did SCW breach the parties' contract by failing to remove garbage, and if so, what is the appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, SCW and Mr. Pat must each prove their respective claims and counterclaims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed facts. On March 13, 2020, Mr. Pat visited SCW's business for an estimate for building and installing new cabinets throughout his new house. I

find Mr. Pat entered into a binding agreement that day to hire SCW for the work. This is because a copy of the March 13, 2020 agreement shows Mr. Pat signed it.

13. Term 8 of the agreement said that SCW would not accept any returns or exchanges for cabinets that had drill or screw holes in them.
14. Term 13(c) said the customer must inform SCW's designer of the dimensions of appliances to be used. Further, if the customer did not supply the information or provided inaccurate information, the customer was responsible for any cabinet mismatches or misfits with the appliances.
15. At the visit, Mr. Pat gave SCW architectural designs for the new house. They showed 2 stoves labelled "cooktop" in the floor 1 and floor 2 kitchens. SCW drew plans and 3D pictures based on this information. They show SCW would install 1) cabinets under 2 cooktops each measuring 36 inches in width and 2) cabinets above a kitchen vent hood on floor 2. SCW emailed the plans and 3D pictures to Mr. Pat on March 16, 2020.
16. At the time, Mr. Pat had already purchased 2 gas oven ranges for the 2 kitchens and a kitchen sink for floor 2. Photos show that, unlike cooktops, cabinets would not fit underneath the ranges. The oven ranges also measured 30 inches in width. As discussed below, this left a 6-inch gap between the other cabinets and the gas ranges.
17. SCW attended Mr. Pat's home on May 26, 2020 to check measurements. It updated the estimate on June 9, 2020, to \$20,248.20. Mr. Pat signed the quote. SCW also sent Mr. Pat updated drawings. The drawings showed no changes to the cooktops or cabinets above the vent hood on floor 2.

The Installation Work

18. In June or early July 2020 Mr. Pat paid SCW \$19,648 as a deposit. SCW began installing cabinets on July 2, 2020. It is undisputed that on July 7, 2020, Mr. Pat first advised SCW that he intended to use an oven range measuring 30 inches in the floor 1 kitchen. This is also reflected in a text message of that date. It is also undisputed that by this time, SCW had already finished installing 36-inch cabinets in the floor 1 and 2 kitchens, which were intended to sit beneath the cooktops.
19. On July 9, 2020, SCW texted Mr. Pat verify if the fridge had a cover kit. SCW wrote that without the kit, the cabinets above the fridge would be too short. Mr. Pat advised the fridge had no kit.
20. The next day, SCW increased its quote by \$687.68. This was for removing the floor 1 kitchen cabinet and installing longer cabinets above the fridge. This left a balance owing of \$1,287.88. SCW texted Mr. Pat a copy of the revised quote the next day. Mr. Pat did not object and given the circumstances, I find he agreed to the extra work and price.
21. Some text messages in evidence are in Chinese. I have relied on SCW's translations because Mr. Pat did not say they were inaccurate.
22. On July 14, 2020, Mr. Pat advised SCW by text, that he would use another 30-inch oven range on floor 2. From the text messages I find this is the first time Mr. Pat told SCW about this. At around this time, the parties also agreed that cabinets installed above one of the gas oven ranges were unnecessary and SCW would remove them.
23. The parties texted each other about what to do about the 2 cabinets installed in the kitchen. Mr. Pat stopped replying. SCW sought instructions from Mr. Pat's wife. I find Mr. Pat permitted her to act as his representative or agent as she explained in texts that Mr. Pat no longer wished to speak with SCW. She agreed by text to have SCW remove the 2 cabinets and put in decorative pillars to fill in any unsightly gaps for \$247. On July 17, 2020 SCW increased its quote by \$246.68 for this work, leaving a balance owing of \$1,534.65.

24. SCW finished its work and provided a revised quote on September 12, 2020, increased by \$794.04. This was for the 3 cabinets left with Mr. Pat. The total cost was \$21,976.60. This left a balance of \$2,328.60, which SCW claims in this dispute.
25. In a September 14, 2020 email to SCW, Mr. Pat disagreed with the cost. He also advised, I find for the first time, that his kitchen sink did not fit the floor 2 cabinets. I reach this conclusion because there is no indication in texts or emails that he discussed it earlier with SCW.

Issue #1. Must Mr. Pat pay SCW \$2,328.60 for cabinet installation?

26. SCW claims \$2,328.60. As noted above, this consists of fees for removing 3 installed cabinets from the 2 kitchens, installing longer cabinets above a fridge, installing decorative pillars to hide gaps, and the cost of the 3 cabinets left with Mr. Pat.
27. Mr. Pat says SCW acted negligently by failing to ask about the appliance dimensions. He submits the June 9, 2020 quote is excessive, because it charged for installing 3 unnecessary cabinets. He says SCW then unfairly charged more in subsequent quotes to remove them. He also counterclaims \$623.69 as the cost of buying a new kitchen sink to fit the cabinets installed on floor 2.
28. The test for negligence is set out by the Supreme Court of Canada in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. In order to succeed in a negligence claim, Mr. Pat must prove 1) SCW owed Mr. Pat a duty of care, 2) SCW breached the standard of care, 3) Mr. Pat sustained a loss, and 4) the loss was caused by SCW's negligence.
29. Based on the terms of the contract, I find SCW was not negligent. This is because, under term 13(c), the parties explicitly agreed that Mr. Pat would supply information about the appliances. Further, under that term, Mr. Pat would bear the risk of any cabinet mismatches or misfits with the appliances. SCW also provided Mr. Pat multiple opportunities to review its plans before it started construction. In March and June 2020, it provided Mr. Pat drawings for comment. The drawings included measurements for the kitchen cabinets below the cooktops. Mr. Pat signed a copy of

the drawings in March 2020. The 3D images also showed cabinets over the vent hood. Mr. Pat's receipts show he bought the 2 oven ranges in November 2019 and the unused sink in September 2019. I find that SCW could not have known the dimensions or specifics of these appliances unless Mr. Pat told SCW about them.

30. Mr. Pat says that, regardless of the agreement's terms, SCW was obliged to make further inquiries. I disagree. The contract terms are binding and specifically address SCW's obligations in this area.
31. Mr. Pat did not allege that the installed cabinets had any other problems. Emails indicate the 3 cabinets left with Mr. Pat had drill holes in them. I find they could not be returned under term 8, mentioned above. Given this, and my conclusions above, I find SCW was entitled to charge for the extra work and 3 cabinets. I find Mr. Pat must pay SCW \$2,328.60 for work under the September 12, 2020 quote, which was essentially a final invoice. For the same reasons, I also dismiss Mr. Pat's counterclaim for the cost of the replacement sink.

Issue #2. Did SCW breach the parties' contract by failing to remove garbage, and if so, what is the appropriate remedy?

32. On July 4, 2020, Mr. Pat texted SCW to remove cardboard cartons. He attached a picture that showed cardboard and some other debris. SCW replied that it would.
33. Mr. Pat next mentioned the garbage in his September 14, 2020 email. He said he hired someone to take away the cartons and other debris. Mr. Pat provided a July 13, 2020 waste disposal invoice for \$300 to support his claim.
34. SCW does not deny it was obliged to remove any garbage resulting from the cabinet installation. It says it had no opportunity to remove the cardboard because someone took it away before the installers returned to work. SCW submits the cardboard should not have cost \$300 to remove. It says the other debris shown is not theirs. Mr. Pat says there was more that piled up after he took the photo.

35. As Mr. Pat paid to remove the cardboard, I find he is entitled to compensation. From the photos I find removing the cardboard would have involved minimal effort or labour. I find Mr. pat has not proven that SCW left more garbage after the July 4, 2020 photo. This is because Mr. Pat did not complain about the garbage again until September 2020, after their dispute arose. I find it unlikely that Mr. Pat paid \$300 to remove the cardboard alone. On a judgment basis, I find that \$20 is fair compensation to Mr. Pat for removing the cardboard. I order a set-off for this amount.

INTEREST, FEES AND EXPENSES

36. Section 4 of the federal *Interest Act* says that when an interest rate in a contract is expressed as a percentage for any period less than 1 year, if the contract does not say the equivalent yearly interest percentage, the maximum allowable interest rate is 5% per year.

37. The March 13, 2020 agreement says SCW will charge 3% per month for late payments. I find this term is binding, but as it does not state the yearly interest rate, SCW is limited to contractual interest of 5% per year. I find SCW is entitled to contractual interest on \$2,328.60, less a \$20 set-off, from the invoice date of September 12, 2020 to the date of this decision. This equals \$9.70.

38. 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. I see no reason in this case not to follow that general rule. SCW was largely successful. It find it is entitled to reimbursement of \$125 in CRT fees. The parties did not claim dispute-related expenses, so I order none.

ORDERS

39. Within 14 days of the date of this order, I order Mr. Pat to pay SCW a total of \$2,443.30, broken down as follows:

- a. \$2,308.60 in debt,

- b. \$9.70 in contractual interest, and
 - c. \$125 in CRT fees.
40. SCW is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
41. I dismiss SCW's remaining claims and Mr. Pat's counterclaims.
42. 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.
43. 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.

David Jiang, Tribunal Member