



# Civil Resolution Tribunal

Date Issued: September 3, 2021

File: SC-2021-000283

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Olsen v. Han*, 2021 BCCRT 968

BETWEEN:

CHRIS OLSEN

**APPLICANT**

AND:

YI JIANG HAN also known as ETHAN HAN

**RESPONDENT**

AND:

CHRIS OLSEN

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. This dispute is about a contract for concrete work. The applicant and respondent by counterclaim, Chris Olsen, says the respondent and applicant by counterclaim, Yi Jiang Han also known as Ethan Han, hired him to install a new concrete driveway, retaining wall, and stairs. Mr. Olsen says their contract provided that he could charge extra if there was clay under the existing driveway, and he says he spent several days removing and hauling away clay. Mr. Olsen claims \$2,000 for the clay work.
2. Mr. Olsen also says Mr. Han delayed the job start date and asked him to take additional days off, before ultimately cancelling the contract and asking Mr. Olsen not to finish the job. Mr. Olsen claims an additional \$3,000 for the delays, which Mr. Olsen says prevented him from accepting another project.
3. Mr. Han denies he was responsible for any delays. He says Mr. Olsen worked for 3 days, during which time he says Mr. Olsen caused various damage to his property. Mr. Han says he lost confidence in Mr. Olsen's ability to professionally complete the job, so he asked him not to return. Mr. Han says he paid Mr. Olsen \$3,000, which he says is more than the work was worth, so he owes Mr. Olsen nothing.
4. Mr. Han counterclaims \$5,000 for the various damage he says Mr. Olsen did to his property, as detailed further below. Mr. Han also says Mr. Olsen threatened him and his wife. Mr. Olsen admits to causing some damage, but says he was not provided the opportunity to fix any alleged deficiencies. Mr. Olsen also denies responsibility for other alleged damage and for making any threats.
5. The parties are each self-represented.

## **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. Much of the argument in this dispute amounts to a 'he said, he said' scenario, with each party calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weight the evidence and submissions before me without holding an oral hearing. I have considered the CRT's mandate that includes proportionality and a speedy resolution of disputes. I also note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required in all cases where credibility is in issue.
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:
  - a. Is Mr. Olsen entitled to \$2,000 for extra work involving clay?
  - b. Is Mr. Olsen entitled to \$3,000 in damages due to Mr. Han's alleged delays?
  - c. Is Mr. Han entitled to damages for the alleged property damage Mr. Olsen caused or for the alleged threats, and if so, how much?

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Olsen must prove his claims on a balance of probabilities. Mr. Han must prove his counterclaim on the same standard. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
12. The parties in this dispute agree on very little. The conflict in their positions is aggravated by the limited evidence each party provided. For instance, both parties made submissions about text messages they sent or received from each other, but neither party provided copies of the alleged text messages. Further, the parties also made submissions about witnesses that were present and could corroborate their positions, but neither party submitted any statements from these potential witnesses.
13. That said, it is undisputed that Mr. Han hired Mr. Olsen remove Mr. Han's existing concrete driveway and to install a new concrete driveway, retaining wall, and set of stairs. The written December 7, 2020 quote in evidence shows it was a fixed price contract for \$14,000 plus GST, though it included a statement in bold that "extra charges may apply if the sub-base under the existing driveway is clay". I find the quote comprises the parties' contract.
14. I note that Mr. Han says the quote was provided on letterhead for Precision Curb & Concrete (Precision), and that Mr. Olsen's web page indicates Precision is a limited company. I infer that Mr. Han is suggesting Mr. Olsen may not have standing (entitlement) to bring these claims in his own name. However, Mr. Han did not provide a screenshot of Mr. Olsen's webpage or any other evidence proving that Precision is a corporation. I note that the quote does not include an "Ltd." designation for Precision. On balance, I find Mr. Han has not shown that he contracted with Precision as a corporation, and I find Mr. Olsen has standing to bring this dispute in his personal capacity.
15. In their submissions, the parties agree that after approximately 2.5 to 3 days of work on the project, Mr. Han told Mr. Olsen to stop work and to not return to his property.

Mr. Han says the main reason he did not want Mr. Olsen to do further work is because he learned Mr. Olsen had damaged his property. However, in his submissions, Mr. Han also says he had other concerns about Mr. Olsen's professionalism, including his alleged failure to provide a contract in a timely manner, and his alleged failure to attend a required meeting with a municipal official.

16. An owner may terminate a construction contract if the contractor commits a substantial breach of the contract, such that the breach amounts to repudiation of the contract by the contractor (see *Lind v. Storey*, 2021 BCPC 2 at paragraph 94). While there is an implied warranty in all contracts for work and labour that the work will be carried out in a good and professional manner, in general, merely bad or defective work will not be enough to entitle an owner to terminate a contract (see *Lind* at paragraphs 83 and 94).
17. For the following reasons, I find Mr. Han has not proven that any of Mr. Olsen's alleged breaches were serious enough to amount to repudiation of the contract, such that Mr. Han was entitled to terminate the contract. First, I find the damage Mr. Han alleges Mr. Olsen caused on his property as shown in the photographs in evidence is not significant, unexpected, or unreasonable given Mr. Olsen was demolishing and removing a concrete driveway. I also find Mr. Han has provided insufficient evidence to show that Mr. Olsen did not take responsibility for or refused to repair the alleged damage.
18. Further, I find nothing turns on Mr. Han's complaint that Mr. Olsen only provided the written quote the day before he started work. The evidence suggests that the parties started discussing the project in late November 2020, and Mr. Han received the quote on December 8, 2020. I find there was nothing substantially different in Mr. Olsen's written quote than what the parties had previously discussed in terms of price and scope of work. While Mr. Han might have preferred to receive the written quote sooner, I find there was no unreasonable delay. In any event, Mr. Han accepted the quote and hired Mr. Olsen for the project.

19. Finally, I find Mr. Han has not proven that Mr. Olsen failed to attend a required meeting with a municipal official. In fact, Mr. Han admits in his submissions that he had no first-hand knowledge of the meeting's purpose or scheduling. While he alleges that Mr. Olsen missed a scheduled December 14, 2020 meeting and refused to attend a subsequent meeting, Mr. Han provided no supporting evidence of these allegations. In contrast, Mr. Olsen says he met with a municipal civil engineer on December 17, 2020, as scheduled, and there were no delays in coordinating the meeting that impacted his ability to work on the project. I find there is insufficient evidence to conclude that Mr. Olsen missed any meeting that impacted the project in any way.
20. I find Mr. Han has not shown Mr. Olsen committed any substantial breach of the parties' contract. Therefore, I find it was Mr. Han that repudiated the contract when he told Mr. Olsen to stop work. I find that Mr. Olsen accepted Mr. Han's repudiation of the contract, and Mr. Olsen is entitled to seek damages for the repudiation.
21. I turn first to Mr. Olsen's claim for "extra" clay work.

### ***The clay work***

22. I find that Mr. Olsen was entitled to be paid for all the work he did on the project before Mr. Han repudiated the contract. Neither party provided specific evidence about how much of the project Mr. Olsen had completed. From the parties' submissions, I find that Mr. Olsen removed the existing 800 square foot concrete driveway and worked on excavating and removing the sub-base material from underneath the existing driveway. There is no evidence before me that Mr. Olsen started work on the retaining wall or stair area or that he started any concrete forms for the driveway.
23. As noted, Mr. Olsen's quote provided that extra charges may apply if there was clay under the existing driveway. It also stated that all work not included in the quoted price would be charged at \$100 per hour plus trucking and disposal charges. It is undisputed the sub-base material under Mr. Han's existing driveway was entirely clay. On that basis, Mr. Olsen says he is entitled to \$2,000 under the contract for extra clay work.

24. I note that Mr. Han says he paid Mr. Olsen \$3,000 on December 10, 2020 toward the total cost of the job. Mr. Olsen does not address this payment in his submissions or evidence. I find there are no terms about payments or a deposit in the December 7, 2020 quote. However, given that Mr. Olsen does not dispute it, on balance, I find Mr. Han paid Mr. Olsen \$3,000 towards the quoted price for the project.
25. So, having been paid \$3,000 for the 2.5 to 3 days of work Mr. Olsen completed, the question is whether Mr. Olsen is entitled to anything extra because the work involved clay excavation and removal.
26. Notably, Mr. Olsen did not provide an invoice setting out how he arrived at the claimed \$2,000. Mr. Olsen says he used his own skid steer, an earth moving machine, to remove the clay. He provided invoices for towing on December 8 and 17, 2020, which I infer relate to towing Mr. Olsen's skid steer to and from the site. However, Mr. Olsen did not say that he would not have required his skid steer if the sub-base was not clay. Further, given the skid steer was delivered to the site before Mr. Olsen started work and presumably discovered the clay, I find he is not entitled to be paid extra for the towing charges.
27. Mr. Olsen also did not provide any evidence about how many hours he spent excavating the clay, above what he would have spent had the sub-base material been something other than clay. So, I cannot determine what he might be entitled to on an hourly basis.
28. Finally, Mr. Olsen provided 2 invoices from an excavating company, DME, dated December 10, 2020 for \$1,113.29, and December 11, 2020 for \$991.33. However, Mr. Olsen did not explain the charges reflected on the invoices. I cannot determine what, if any, of the charges were incurred solely because the material being removed was clay.
29. On balance, I find that \$3,000 is appropriate compensation for the work Mr. Olsen performed over the 2.5 to 3 days he worked, including clay excavation and removal.

I find Mr. Olsen has not proven he is entitled to “extra” amounts above what he has already been paid.

30. I turn now to Mr. Olsen’s claim for damages for lost income.

***Delay and lost income***

31. Mr. Olsen says that he cleared his schedule in December so he could complete Mr. Han’s driveway before Christmas. Mr. Olsen says that Mr. Han delayed the project start date by several days, and that Mr. Han was responsible for other delays after he started work, which prevented him from taking on other projects. Mr. Olsen claims \$3,000 for lost income due to the delays.

32. Specifically, Mr. Olsen says that Mr. Han suggested he start on December 3, 2020, but that the date got pushed back due to delays from Mr. Han’s other contractors. In contrast, Mr. Han says Mr. Olsen advised him on November 25, 2020 that he would be unable to start for a few weeks, or maybe up to a month. Mr. Han also says he told Mr. Olsen that he required a written quote or contract before Mr. Olsen could start work, and that he only received Mr. Olsen’s quote on December 8, 2020.

33. Given Mr. Olsen’s quote is dated December 7, 2020, I find it is unlikely the parties agreed he would start work on December 3, 2020. In any event, Mr. Olsen concedes in his submissions that small delays are understandable and often unavoidable, especially due to weather in the winter months. I find Mr. Olsen has not proven that he is entitled to any damages for a delayed start date.

34. As for the other delays, Mr. Olsen says that on December 11, 2020 Mr. Han asked him to take December 14 off due to other projects he wanted to complete at the site. Mr. Olsen says that Mr. Han later informed him at the last minute that he would not be needed on December 15 or 16 either. As noted, on December 17, 2020, Mr. Han told Mr. Olsen not to do any further work.

35. Mr. Han does not specifically deny requesting that Mr. Olsen not come into work between December 14 and 17. However, he submits that Mr. Olsen advised him that



he went to work on another job on December 14 and 16. I note that Mr. Olsen submits that he “scrambled” to put a one-day job together on December 16. Neither party provided any supporting evidence about the alleged delays or other jobs.

36. On balance, I find there is insufficient evidence to conclude that Mr. Olsen lost income due to Mr. Han’s delays between December 14 and 17, 2020.

37. I also considered whether Mr. Olsen is entitled to compensation for his loss of opportunity to complete the parties’ contract after December 17. However, there is no evidence before me about the anticipated length or completion date of the project. So, I find there is no basis to determine whether Mr. Olsen could have reasonably mitigated his losses, by finding another project. As noted, Mr. Olsen was able to put together a one-day job at the last minute on December 16. While I acknowledge that the impending holidays may have hampered his ability to find other work, I find Mr. Olsen has not met his burden to prove he lost income, or if he did, how much.

38. I dismiss Mr. Olsen’s claim for lost income.

### ***The counterclaim***

39. I find Mr. Han’s claims for alleged property damage amount to claims for deficiencies in Mr. Olsen’s work. Generally, a contractor must either remedy the deficiencies themselves, or bear the cost of fixing their deficiencies.

40. Here, Mr. Olsen admits to damaging Mr. Han’s stucco when a piece of concrete rolled into it. He says he had already arranged to have it repaired by a third party and agrees with Mr. Han’s claimed \$483 repair cost, so I order him to pay it.

41. Mr. Olsen also admits that a piece of concrete fell out of a bucket and damaged Mr. Han’s concrete retaining wall. Mr. Olsen says he was prepared to repair the wall himself. Given that Mr. Han prevented Mr. Olsen from returning to the property to repair this deficiency, I find he is not entitled to claim the costs to fix it. In any event, I find Mr. Han did not prove his damages for this deficiency, as he says the repair

estimate was \$210, but he provided no supporting evidence of the estimate. I dismiss this claim.

42. While Mr. Olsen admits to partially knocking over a cedar hedge, he says he consulted with an arborist, had staked it up, and added new soil to help it survive. Mr. Olsen says when he returned to the site on December 17, 2020, the hedge had been completely knocked over in the other direction, and other contractors had dug a hole that undermined the hedge's root system. Mr. Olsen denies responsibility for the hedge's replacement. I find Mr. Han has not proven Mr. Olsen damaged the hedge to the point that it required replacement. Further, Mr. Han has not proven the claimed \$2,940 replacement cost. I dismiss this claim.
43. Mr. Olsen denies that he was responsible for the alleged broken water pipe main and storm clean out. Mr. Han provided no independent evidence that Mr. Olsen was responsible for this damage. Further, Mr. Han did not provide any evidence proving their alleged \$350 and \$150 repair costs, respectively. I dismiss these claims.
44. Mr. Han also claims \$100 to clean up clay on the sidewalk. Mr. Olsen denies that he left the site dirty. From the parties' evidence, it is apparent that other trades people with equipment were working at Mr. Han's property at the same time. Further, even if Mr. Han proved that Mr. Olsen left the site dirty, I find Mr. Olsen's quote provided that he would thoroughly clean the site "upon completion". Given Mr. Han prevented Mr. Olsen from completing the project, I find Mr. Han cannot claim costs for clean-up. I dismiss this claim.
45. Finally, as noted, Mr. Han also alleges that Mr. Olsen threatened him and his wife on September 17, 2020. However, Mr. Han did not provide any further details about the alleged threats, including their content. There is no statement from Mr. Han's wife before me to corroborate these allegations. Mr. Olsen denies making any threats and says Mr. Han's wife was the one making threats. I find that Mr. Han has provided insufficient evidence to prove Mr. Olsen threatened him.

46. However, even if I had found Mr. Olsen threatened Mr. Han, I find Mr. Han has not proven his \$767 in claimed damages, which I infer are for mental distress. The BC Court of Appeal has found there must be an evidentiary basis for awarding damages for mental distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at paragraphs 48 to 49). As discussed in the non-binding but persuasive CRT decision in *Eggberry v. Horn et al.*, 2018 BCCRT 224, there must be some medical evidence supporting the mental distress for such a claim to be successful. I agree with the reasoning in *Eggberry* and apply it here. As Mr. Han did not provide any medical evidence, I find he is not entitled to damages for this claim, so I dismiss it.

### **Conclusion**

47. In summary, I find Mr. Olsen must pay Mr. Han \$483 for the stucco repair. I dismiss Mr. Olsen's claims and Mr. Han's remaining counterclaims.

48. The *Court Order Interest Act* applies to the CRT. Mr. Han is entitled to pre-judgment interest on the \$483 from March 18, 2021, the date the Dispute Notice for Mr. Han's counterclaim was issued, to the date of this decision. This equals \$1.01.

49. 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 find Mr. Han was partially successful, so he is entitled to reimbursement of \$62.50 for half his CRT fees. Mr. Olsen was unsuccessful and so I dismiss his claim for CRT fees. Neither party claimed any dispute-related expenses.

### **ORDERS**

50. Within 30 days of the date of this decision, I order Mr. Olsen to pay Mr. Han a total of \$546.51, broken down as follows:

- a. \$483 for stucco repair costs,
- b. \$1.01 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

51. Mr. Han is entitled to post-judgment interest, as applicable.
52. I dismiss Mr. Olsen's claims and Mr. Han's remaining counterclaims.
53. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
54. 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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Kristin Gardner, Tribunal Member