



# Civil Resolution Tribunal

Date Issued: September 23, 2021

File: SC-2021-001290

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Chao*, 2021 BCCRT 1029

**B E T W E E N :**

XIAOMING LIU also known as JACK LIU

**APPLICANT**

**A N D :**

JAMES PAO-HERNG CHAO and JOYCE CHUN-CHIH KO

**RESPONDENTS**

**A N D :**

XIAOMING LIU also known as JACK LIU

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

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## **INTRODUCTION**

1. This dispute is about a residential bathroom renovation project. The respondents and applicants by counterclaim, James Pao-Herng Chao and his spouse Joyce Chun-Chih Ko, hired the applicant and respondent by counterclaim, Xiaoming Liu also known as Jack Liu, to do the labour. Mr. Liu claims \$1,470 (including GST) for 2 days of work he completed in late October 2020 before Mr. Chao and Ms. Ko fired him.
2. Mr. Chao and Ms. Ko say Mr. Liu's work was deficient and damaged their property. They counterclaim for \$1,500, which is what they say it will cost to repair the work.
3. Mr. Liu is represented by a family member. The respondents are self-represented and make identical submissions as discussed below.

## **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). 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 parties to a dispute that will likely continue after the dispute resolution 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Was Mr. Liu's work deficient?
  - b. To what extent, if any, is Mr. Liu entitled to the claimed \$1,470 for his labour?
  - c. To what extent, if any, are the respondents entitled to the claimed \$1,500 for repair expenses?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, as the applicant Mr. Liu has the burden of proving his claim, on a balance of probabilities (meaning "more likely than not"). Mr. Chao and Ms. Ko bear this same burden for their counterclaim. I have only referenced below what I find is necessary to give context to my decision.
10. The parties all say:
  - a. The respondents hired Mr. Liu to perform their bathroom renovation.
  - b. On October 19, 2020, the parties agreed to a \$1,900 job quote for Mr. Liu's labour.

- c. On October 20, 2020, the parties agreed to add \$300 to the job quote for the removal and installation of a vanity sink.
  - d. On October 29, 2020, the respondents told Mr. Liu his services were no longer required, at which point the bathroom renovation was not yet complete.
  - e. The respondents are dissatisfied with the work done.
11. The parties had no written contract. The evidence shows the renovation project initially included removing an old bathtub and toilet, replacing vinyl flooring with tile flooring, installing a new tub shower unit along with a frame and glass doors, reinstalling the old toilet, and garbage disposal. As noted, the parties later agreed Mr. Liu would remove a mirror, vanity sink and cabinet and install a new IKEA vanity sink. The parties agree the cost of ceramic tile was also included, which undisputedly was the only materials cost Mr. Liu agreed to bear as part of the quote.
12. Mr. Liu did the work with Mr. Z, who Mr. Liu describes as a subcontractor. Mr. Liu says he did the “removal work” on October 20, and on October 24 installed the new tub shower and the vanity’s lower half. Mr. Liu says he did water testing and the respondents do not allege leaks.
13. Mr. Liu says on October 26, he and Mr. Z attended the home to remove some garbage, with a plan to finish the work on October 30. At that point, Mr. Liu says the outstanding work was to reinstall the toilet, install the new tile flooring (that he had admittedly not yet bought) and the vanity’s top half, and clean up. More on what was completed below.
14. On October 29, 2020, Mr. Liu says Ms. Ko called him to say there were “imperfections” and that his services were no longer needed. I find the evidence shows Ms. Ko refused to let him finish the job or inspect the alleged deficiencies. Apart from a \$300 cash payment on October 30, the respondents undisputedly refused to pay Mr. Liu for any of the work he completed.

15. The parties each submitted an English translation of a recorded October 30, 2020 conversation between Mr. Liu and Ms. Ko. Undisputedly, they both acknowledged Mr. Liu had been paid only \$300 cash and that his work was terminated. Otherwise, the translations are slightly different, as in the respondents' version Mr. Liu asked Ms. Ko to confirm the \$300 settled the job. Ms. Ko did not acknowledge any settlement. I find neither party agreed that \$300 was a final resolution.
16. I turn next to Mr. Liu's claim. First, I note Mr. Liu claims \$1,400 plus \$70 GST. He says this is for 33 hours worked but unpaid. He and his subcontractor undisputedly worked for 2 days, although I note Mr. Liu submitted no particular details, such as an hourly rate, of how he arrived at a \$1,700 value for the completed work. Mr. Liu does say the \$300 he received was applied to \$200 of garbage removal costs and incidental supplies he bought.
17. In any event, the parties' contract was a fixed-price contract, not an hourly rate one. The job was undisputedly not completed. So, I find Mr. Liu essentially claims for what is known in law as '*quantum meruit*', meaning value for the work done. Mr. Liu expressly only claims payment for work he says he completed, rather than the contract balance.
18. I note I place no weight on Mr. Liu's submitted witness statement from BL, the respondents' neighbour for whom he had worked before. I say this because BL's only relevant evidence is that the respondents had fired Mr. Liu by October 30, which again is undisputed. The fact that BL also says Mr. Liu did good work for her is not relevant to whether he did so for the respondents. BL does not say she observed Mr. Liu's work for the respondents.
19. The parties agree the removal and disposal of the old bathtub was completed. They also agree the vinyl flooring had not yet been replaced with the new ceramic tile. The respondents say Mr. Liu installed the shower basin with only a partial back wall, rather than the entire new shower stall kit. Mr. Liu says he installed the whole shower kit, and that the respondents must have removed 2 walls to take photos.

20. I accept Mr. Liu's explanation that he has no photos of his work because he expected to return to work on October 30 but was denied entry. However, Mr. Liu did not submit a witness statement from Mr. Z, which if Mr. Liu's version of events was accurate would have supported his position that they completely installed the shower wall unit. At the same time, the respondents did not address in their response Mr. Liu's detailed submissions about how he had installed the entire shower wall unit on October 24. On balance, I find it more likely that Mr. Liu had installed the entire shower unit. That said, the evidence before me indicates this is a relatively straightforward process and not a large aspect of Mr. Liu's quote.
21. The respondents also say only the shower valve was installed rather than the whole shower head. I accept Mr. Liu had not yet installed the shower head, which is undisputed. There is no suggestion installing the shower head itself is a large task. I will address below the value of the work Mr. Liu completed, after I consider the alleged deficiencies.
22. I turn then to the alleged deficiencies. As the party asserting deficiencies, the respondents have the burden of proving them (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91).
23. The respondents say Mr. Liu scratched and dented a shower basin they bought for the project. I find for the most part the photos do not show scratches or dents. Even if they did, I find it unproven Mr. Liu scratched or dented it, bearing in mind the respondents provided the materials and the undisputed evidence that the basin photographs were taken long after Mr. Liu's work on the project.
24. Other than the basin scratches and dents, I find the respondents' complaints are all issues that are outside ordinary knowledge and require expert evidence to establish the required standard of care (see *Bergen v. Guliker*, 2015 BCCA 283).
25. The respondents submitted Ms. Ko's June 2021 email exchange with "Jason" with an email address containing "homeinstalls". Elsewhere the respondents appear to say Jason is a "contractor" from RONA, where they bought materials. I find Jason's

email is not expert evidence under the CRT's rules as the author is not fully identified and their qualifications were not provided. Notably, Jason does not say he ever attended the respondents' home to view the site and does not say he reviewed any photos either. Given the lack of information here, I decline to exercise my discretion under CRT rule 1.2(2) in these circumstances to waive the rules' qualification requirements.

26. In any event, Jason's email only set out a \$4,285 plus GST quote to complete tasks that in large part were things that were not in Mr. Liu's quote or Mr. Liu undisputedly did not get to before he was fired. For instance, Jason's quote also included floor levelling and supply and installation of vinyl tiles rather than ceramic.
27. Jason's quote also included removing the new shower tub to "clean mess left behind" the shower, "reset shower controls to the correct depth", and "buff out scratches" in the shower's basin. Even if I had accepted Jason's email as expert evidence, he did not say it was below the standard of care to leave some debris inside the wall. His email responded to the respondents' request for a quote for certain work. Further, while the respondents separately submitted a screenshot of 2 pages from the shower's installation manual, Jason did not say Mr. Liu improperly installed the shower. I cannot rely on the manual screenshot to conclude Mr. Liu was negligent. Mr. Liu's quote also did not include subfloor levelling or installation. The evidence before me is unclear as to whether Mr. Liu installed shower controls in the location that was allegedly incorrect. Given the above, on balance I place no weight on Jason's email.
28. The respondents say while the tub, a mirror and wooden cabinet were all disposed of, the wall tile and wire mesh plaster were still left on site. As noted, some of this complaint is about a small amount of debris left on the floor behind the shower unit's walls, which the photos show would be hidden with all the shower walls in place. While the respondents query asbestos contamination, as support for their claim for debris removal, I find that query speculative. There is no evidence before me that asbestos is present. As noted, there is also no opinion before me that leaving

behind such a small amount of debris in a hidden wall space is below the standard of care for a project of this scope and type. I do not accept this was a deficiency.

29. Next, the respondents say that while Mr. Liu removed and installed the new IKEA vanity, Mr. Liu partially assembled the drawer the wrong way. I cannot conclude from the respondents' photos that the drawer was assembled improperly, and there is no breakdown of what it would cost the respondents to remedy such an error.
30. Similarly, I find I cannot conclude from the respondents' submitted photo that Mr. Liu's drywall removal was "poor workmanship" that left "extra work in the future". As noted, the respondents fired Mr. Liu before he could complete the job.
31. Finally, the respondents argue Mr. Liu negligently damaged a wall stud when he affixed the shower basin. Mr. Liu denies this, and says his approach was standard and that there is no evidence of any structural damage. I have no evidence otherwise. I find this was not a deficiency.
32. Overall, I find the respondents have not proved deficiencies with Mr. Liu's completed work. So, I dismiss their counterclaim.
33. I turn then to assessing a value for the work Mr. Liu did complete out of the overall job.
34. I accept that Mr. Liu did not finish the overall garbage removal aspect of the fixed-price job, as this is undisputed and the respondents' photos show about a dozen garbage bags filled with waste material. I find the only jobs Mr. Liu accomplished were removal of the tub and toilet, some garbage disposal, and installation of the tub/shower enclosure and the vanity's lower half. As noted, he did not remove the vinyl tile, buy the ceramic tile or begin installing it. I find on the evidence that he did not install the shower's metal frame or glass doors. He had not reinstalled the old toilet. Given the above, I find Mr. Liu completed approximately 1/3 of the quoted job.



35. So, what is the value of Mr. Liu's completed and unpaid work? I do not agree that it is \$1,400 (plus GST), as Mr. Liu claims. I find he is not entitled to be paid based on time spent. Rather, it must be based on the value of the work he completed.
36. The quote was \$2,200 (including the vanity work). He has been paid \$300, and I find some of this was for the incidentals he bought, including the \$29.04 in supplies he submitted receipts for. Bearing in mind the work completed and uncompleted, on a judgment basis, I have found Mr. Liu completed 1/3 of the job, which amounts to \$733 plus GST. He has already been paid \$300, and so I find the respondents must pay him \$433 plus GST, which equals \$454.65.

### **Interest, fees, and expenses**

37. The *Court Order Interest Act* (COIA) applies to the CRT. I find the respondents must pay Mr. Liu pre-judgment COIA interest on the \$454.65, calculated from October 30, 2020 to the date of this decision. This interest equals \$1.84.
38. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Liu was partially successful and so I find the respondents must reimburse him ½ his paid CRT fees of \$125, which is \$62.50. As the respondents were unsuccessful in their counterclaim, I dismiss their claim for reimbursement of paid CRT fees.
39. Mr. Liu also claims \$200 for a translation expense he incurred for this dispute, which is supported by a May 18, 2021 receipt in evidence. I allow ½ the \$200, or \$100, as I find the expense reasonable. He also claims \$300 for another translation fee, which I do not allow because Mr. Liu did not provide any receipt for the \$300 expense.

### **ORDERS**

40. Within 30 days of this decision, I order the respondents to pay Mr. Liu a total of \$618.99, broken down as follows:

- a. \$454.65 in debt,
- b. \$1.84 in pre-judgement COIA interest, and
- c. \$162.50, as \$62.50 for CRT fees and \$100 for dispute-related expenses.

41. Mr. Liu is entitled to post-judgment interest, as applicable. I dismiss the respondents' counterclaim. I dismiss Mr. Liu's remaining claims.

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 BC 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.

43. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

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Shelley Lopez, Vice Chair