



Civil Resolution Tribunal

Date Issued: October 27, 2022

File: SC-2022-001557

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhao (dba Burke Mountain Plumbing and Heating) v. Choi*,
2022 BCCRT 1176

B E T W E E N :

QING HONG ZHAO (Doing Business As BURKE MOUNTAIN
PLUMBING AND HEATING)

APPLICANT

A N D :

YOOJUNG CHOI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about payment for a hot water tank.

2. The applicant, Qing Hong Zhao (Doing Business As Burke Mountain Plumbing and Heating), installed a gas hot water tank for the respondent, Yoojung Choi. Mr. Zhao had previously told Ms. Choi she would only pay for installation costs because her old tank was under warranty with a third-party manufacturer, Rheem. Rheem is not a party to this dispute.
3. Mr. Zhao says he later discovered that the old tank's warranty had expired, so he was not reimbursed for the new tank as expected. As a result, he billed Ms. Choi for the new tank. Ms. Choi refused to pay. Mr. Zhao claims for the cost he paid for the new tank "plus 25% overhead", for a total of \$1,584.13.
4. Ms. Choi disagrees with the claim. Primarily, she says she would not have replaced her old tank if Mr. Zhao had not told her it was under warranty.
5. Each party is 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. 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.

ISSUE

10. The issue in this dispute is whether Mr. Zhao is entitled to the claimed \$1,584.13, or any amount, based on the parties' contract or the law of mistake or unjust enrichment.

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Zhao must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. Most of the facts are undisputed. On December 14, 2021, Ms. Choi asked Mr. Zhao to attend her home and fix certain valves and pipes. Ms. Choi paid Mr. Zhao for that work, which is not at issue in this dispute. While Mr. Zhao was completing the work, he noticed rust and staining on top of Ms. Choi's hot water tank.
13. Mr. Zhao told Ms. Choi about the rust and said it indicated a leak. In December 15, 2021 text messages, Mr. Zhao said he could replace the tank for \$714 (including GST) for his labour, materials and a permit fee. Importantly, he said he had confirmed with Rheem that the old tank was still under warranty. After some delay, on January 28, Ms. Choi asked Mr. Zhao to replace the tank. Mr. Zhao replied, "I know it's under warranty but in void soon" (reproduced as written). On February 19, 2022, Mr. Zhao removed and disposed of the old tank, and installed the new tank. Ms. Choi paid the \$714 installation charge as agreed.

14. On February 23, Mr. Zhao advised Ms. Choi that Rheem had declined the warranty claim because it was made outside the six-year warranty period, which he said ended in June 2020. Mr. Zhao asked Ms. Choi to reimburse him \$1,267.30, which corresponded to what his supplier invoiced him for the new tank on February 18, 2022. Ms. Choi refused. She asked Mr. Zhao to take back the new water tank and reinstall her old one, but he said he had already disposed of it.
15. Ms. Choi says her old tank was working fine and she would not have replaced it had Mr. Zhao not told her it was under warranty.
16. In this dispute, Mr. Zhao says Ms. Choi should also pay a customary 25% overhead fee, so he claims \$1,584.13.

Analysis

17. I find the parties' contract was that Ms. Choi would pay Mr. Zhao \$714 to install a new tank. I find both parties' met their obligations since Mr. Zhao installed the new tank and Ms. Choi paid him \$714. I further find the parties did not turn their minds to what would happen if Mr. Zhao's assertion that the old tank was under warranty proved incorrect.
18. Mr. Zhao does not explain the legal basis of his claim. This is not uncommon for self-represented litigants in CRT disputes. The evidence suggests the law of mistake may apply, or alternatively the legal doctrine of unjust enrichment. Regardless of the basis of Mr. Zhao's claim, he must prove that he experienced a loss, so I will begin there.
19. Mr. Zhao's claim depends entirely on his assertion that Rheem denied warranty coverage of Ms. Choi's old water tank. If Rheem did not deny coverage and Mr. Zhao was reimbursed for the cost of the new water tank, then he did not experience a loss and has no claim against Ms. Choi.
20. Mr. Zhao provided a short email chain between him and Rheem's warranty department. The Rheem representative confirmed that they had spoken to Mr. Zhao on the phone that day, and asked for photos or video of the old tank. Mr. Zhao

responded with photos. That is the only email from Rheem that Mr. Zhao provided. There is no email confirming that the warranty had expired or that Rheem denied warranty coverage.

21. In texts with Ms. Choi, Mr. Zhao said Rheem told him the old tank had a 6-year warranty that expired on June 2020. Photos of the old tank confirm that it was manufactured in June 2014. However, this is not determinative. I say this because when Ms. Choi later asked Mr. Zhao about the warranty on the new tank he installed, he said tank warranties run from the installation date, not the manufacture date. There is no evidence about when Ms. Choi's old tank was installed.
22. Mr. Zhao says on February 23 he tried to obtain a refund from his supplier for the new tank. He says his supplier told him the tank was not under warranty. Notably, Mr. Zhao did not provide a statement from his supplier to confirm this. Nor did he provide a copy of any documentation of his unsuccessful attempt to be reimbursed. Had Mr. Zhao attempted a warranty claim and been unsuccessful, I would expect him to be able to provide some objective evidence of the denial.
23. As noted, Mr. Zhao has the burden of proof in this dispute. I find he has not proved that the tank was not under warranty or that he was not reimbursed by his supplier or Rheem for the tank's cost. So, Mr. Zhao has not proved that he experienced a loss, and I dismiss his claim.
24. This means it is unnecessary to consider whether Mr. Zhao's assertion that the tank was under warranty amounted to a negligent misrepresentation that induced Ms. Choi to enter the contract. I will also say that had Mr. Zhao been successful, I would not have allowed Mr. Zhao's claim in full. In particular, I would not have allowed any markup of the February 18, 2022 invoice as there was no agreement about markup and Ms. Choi already paid Mr. Zhao for the tank's installation.
25. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Ms. Choi was

successful but did not pay CRT fees or claim expenses. I dismiss Mr. Zhao's claim for reimbursement of CRT fees.

ORDER

26. I dismiss Mr. Zhao's claims and this dispute.

Micah Carmody, Tribunal Member