



Civil Resolution Tribunal

Date Issued: November 23, 2022

File: SC-2022-001149

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shi v. Chen*, 2022 BCCRT 1263

BETWEEN:

MAGUANGYU SHI

APPLICANT

AND:

ALEX CHEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about allegedly deficient repairs to leaking wall cracks. The applicant, Maguangyu Shi, hired the respondent, Alex Chen, to patch interior cracks in a below-grade concrete foundation wall in Mr. Shi's house. Mr. Shi says Mr. Chen agreed the repairs would stop any further leaks through those cracks from outside the house. Mr. Shi says water leaked through the patches and Mr. Chen did not make further repairs,

so Mr. Shi had to hire someone else to make effective repairs. Mr. Shi claims \$2,600: \$1,300 for a refund of amounts paid to Mr. Chen, and \$1,300 for repairs made by a different contractor plus worry, time spent, and floor damage, not including additional tribunal fees discussed below.

2. Mr. Chen says he only agreed to patch the visible cracks on the concrete wall, and specifically told Mr. Shi that those repairs alone would not entirely stop water from leaking into the house. Mr. Chen says Mr. Shi agreed to address exterior drainage and foundation issues, and did not pay the full \$1,800 price for Mr. Chen's repairs. Mr. Chen says he owes nothing.
3. Both parties are self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. These are the formal 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 Mr. Chen adequately completed the wall repairs as agreed, and if not, whether he owes Mr. Shi \$2,600.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Shi must prove his claim on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. It is undisputed that water leaked through several cracks in the below-grade concrete foundation wall on the perimeter of Mr. Shi’s house. The parties agree that the water source was environmental and related to rainfall, and that moisture in the soil surrounding the house seeped through visible cracks on the concrete wall’s inside face. Submitted photos show that the concrete wall was covered by an interior wall made of drywall. Mr. Chen undisputedly agreed to patch the concrete wall’s leaking interior cracks and repair the drywall that covered them.
11. I find none of the documentary evidence before me describes the parties’ repair agreement, and they do not say that they made their agreement in writing. So, I find the parties’ repair agreement was verbal. Contracts made verbally are enforceable just like written contracts. However, it may be more difficult to prove with evidence the content of a verbal contract.

12. Mr. Shi says Mr. Chen agreed that his repairs would stop the water leaks, but heavy rains led to further leaks through Mr. Chen's repairs, contrary to their agreement.
13. Mr. Chen denies that he agreed his repairs would stop the leaks entirely. He says he only agreed to Mr. Shi's request that he patch the visible concrete wall cracks as a stopgap measure, because Mr. Shi planned to sell his house in the coming years. Mr. Chen says he told Mr. Shi that the patches would mitigate but not fully cure the leaks, and would not be a "fix-all" for the house's foundation and exterior. Mr. Chen says he only agreed to the patch work on the condition that Mr. Shi address the moisture entering the house from outside of the foundation, which Mr. Chen was not responsible for.
14. Mr. Shi did not address any other foundation issues, and says the house foundation was "fine." However, I find that is not consistent with the undisputed evidence that exterior ground water leaked through the foundation and out of the interior concrete wall cracks. Further, there is no documentary evidence before me showing that the foundation was problem-free despite these admitted leaks.
15. I find the parties' submissions on whether Mr. Chen agreed to stop the leaking entirely are equally likely, and equally credible. Other than those unsupported submissions, I find none of the evidence before me shows whether the parties agreed Mr. Chen's repairs would stop the leaks. So, I find each party's submission on whether Mr. Chen agreed to stop the leaking is no more likely than the other party's submission about that. I find the evidence on this point is equally balanced. As noted, Mr. Shi bears the burden of proof in this dispute, on a balance of probabilities. I find Mr. Shi has not proven it is more likely than not that Mr. Chen agreed his repairs would stop any further water leaks.
16. So, although it is undisputed that water leaked through some of Mr. Chen's patches, that does not necessarily mean that Mr. Chen broke the parties' agreement.
17. Mr. Shi also says that Mr. Chen's repairs were substandard. I find the allegation of substandard repairs is mostly based on the fact that those repairs did not stop certain

further leaks. As noted, Mr. Chen says, and Mr. Shi does not deny, that he agreed to patch the interior concrete wall cracks, but not perform further foundation repairs. In the circumstances, I find it was an implied term of the parties' verbal contract that Mr. Chen would patch the wall cracks to a reasonable quality standard.

18. I find the question of whether Mr. Chen completed his work to a reasonable quality standard is a technical subject outside of an ordinary person's knowledge and experience. So, I find expert evidence is required to prove any deficiencies in Mr. Chen's repair work (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124 and *Schellenberg v. Wawanese Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
19. I find there is no expert evidence before me in this dispute. Further, I find photographs in evidence show that Mr. Chen patched the cracks in the concrete wall and replaced drywall, and there is nothing obviously wrong with those repairs, although the parties agree that they were never fully completed. So, I find Mr. Shi has not proven, with required expert evidence, that Mr. Chen's repairs were deficient. In particular, there is no expert evidence showing whether the wall patches, if properly made, should have stopped any further leaks through the wall cracks even in the presence of the admittedly heavy rains that caused them.
20. Turning to the value of the completed work, I find Mr. Shi does not directly deny Mr. Chen's submission that the parties agreed to an \$1,800 fixed price for all the repair work. The parties agree that Mr. Shi paid Mr. Chen a total of \$1,300 for the not-fully-completed repairs. The parties also say that the repairs were not completed because they strongly disagreed about repair methods and which repairs Mr. Chen was required to do, although each blames the other for the incompleteness. However, I find there is no evidence before me showing that Mr. Chen's completed repairs were worth less than the \$1,300 Mr. Shi paid. So, I find the evidence does not show that Mr. Shi is entitled to a refund of any or all of the \$1,300 he paid to Mr. Chen.
21. Next, Mr. Shi says he paid a different contractor to properly complete the wall repairs. I find there is no documentary evidence before me showing that any other contractor

performed wall repairs, whether those repairs stopped further leaks, or how much Mr. Shi paid for that work, if anything. I find Mr. Shi has not proven that he paid a different contractor for repairs, or that those alleged further repairs resulted from Mr. Chen's failure to adequately complete his agreed wall repairs.

22. Given my conclusion above, that Mr. Shi has not proved his claim of faulty repairs, I find I do not need to discuss his claims for resulting damages from the "worries and time" that his family and his tenant's family spent, and damage to the new floors Mr. Shi installed.

23. For all of the above reasons, I dismiss Mr. Shi's claim for \$2,750.

CRT Fees and Expenses

24. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Mr. Shi claims \$150 for "the claim" as well as \$125 in CRT fees. I find those are likely duplicate CRT fee claims. However, I find nothing turns on that because Mr. Shi was unsuccessful, so he is not entitled to reimbursement of any CRT dispute-related fees. Similarly, as the unsuccessful applicant, I find Mr. Shi is not entitled to reimbursement of \$341.25 for a CRT dispute-related skip tracing expense. Mr. Chen was successful in this dispute, but paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

25. I dismiss Mr. Shi's claim, and this dispute.

Chad McCarthy, Tribunal Member