



Civil Resolution Tribunal

Date Issued: December 16, 2022

File: SC-2021-009229

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chu v. Navigator Properties Inc.*, 2022 BCCRT 1347

BETWEEN:

SIU HA CHU

APPLICANT

AND:

NAVIGATOR PROPERTIES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Siu Ha Chu hired Navigator Properties Inc. (Navigator) to build 2 buildings. Miss Chu paid a \$5,000 deposit. She says that she later cancelled the project after Navigator failed to reasonably communicate with her and tried to unilaterally change their agreement. She says that after she cancelled the project, Navigator initially

agreed to return the deposit, but later changed its mind. She asks for an order that Navigator return the \$5,000 deposit. Miss Chu is self-represented.

2. Navigator says that it was entitled to keep the deposit and asks me to dismiss Miss Chu's claims. Navigator is represented by Qingshun Lu.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
7. As discussed in more detail below, the parties signed a written agreement on October 7, 2021. The original contract was in Chinese, but Miss Chu provided a professionally translated English version. I accept the translation is accurate because Navigator does not argue otherwise. Most of the parties' text messages are in English, but one is in Chinese. CRT rule 1.7(5) requires all evidence to be in English or translated into English. Neither party provided a translation of this message, so I have disregarded it.
8. Navigator provided evidence and submissions after the CRT's deadline. The CRT provided the late evidence and submissions to Miss Chu, who provided submissions and 2 additional pieces of evidence in response. I find that Miss Chu was not prejudiced by the late evidence or submissions. I did not give Navigator an opportunity to comment on Miss Chu's late evidence because I did not find it relevant. Bearing in mind the CRT's mandate for flexibility, I have admitted and considered the parties' late evidence and submissions where relevant.

ISSUES

9. The issues in this dispute are:
 - a. Was the \$5,000 payment a true deposit?
 - b. Did Navigator agree to return it?
 - c. If not, is Miss Chu entitled to the deposit's return because Navigator repudiated the contract?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Miss Chu as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Miss Chu owns a home that was destroyed by fire. When the parties first met in August 2021, the house was still boarded up. Miss Chu's insurance covered the demolition of the damaged house and the reconstruction of a new one.
12. On September 20, 2021, Miss Chu agreed to hire Navigator to rebuild Miss Chu's house. Miss Chu also expressed an interest in having Navigator build a laneway house at a different property, which she would pay for personally.
13. The parties signed a 2-page "letter of intent" for the 2 projects on October 7, 2021. Even though the parties contemplated signing a more detailed construction contract later, I find that this "letter of intent" was a binding contract because it included the essential components of the construction project. Neither party argues otherwise.
14. The contract said that Miss Chu would pay Navigator a \$5,000 deposit, and then Navigator would begin "early preparation" for the 2 construction projects. The contract said that Navigator would build the house first, then the \$5,000 deposit would be applied against the first payment for the laneway house. The contract also said that the parties would negotiate the final cost of the laneway house after the municipality approved the final drawings. If the parties could not agree on a price, the \$5,000 "shall not be returned". Miss Chu paid the \$5,000 deposit the same day.
15. Mr. Lu emailed Miss Chu's insurer on October 12, 2021, confirming that Miss Chu wanted to hire Navigator to rebuild her house. Mr. Lu included a proposed work agreement.
16. On October 13, 2021, Mr. Lu emailed Miss Chu a 33-page standard form construction contract. Miss Chu says that she "did not like" how long this contract

was, so she requested a simpler one. Mr. Lu provided a new construction contract on October 19, 2021. Neither of these contracts is in evidence.

17. On October 20, 2021, Miss Chu asked Mr. Lu if they could meet to discuss the proposed construction contract. Mr. Lu responded the next day that his schedule was very full, but they could meet on October 22. However, it is undisputed that Mr. Lu was not available that day. Instead, Miss Chu texted him some changes to the proposed contract, and phoned to follow up. Miss Chu says that Mr. Lu told her to make whatever changes she wanted. Navigator does not dispute any of this, so I accept that it is true. In any event, on October 26, 2021, Mr. Lu texted Miss Chu that he would get back to her that day about the contract. There is no evidence he did.
18. However, on October 26, 2021, Mr. Lu provided a signed work agreement to Miss Chu's insurer, copying Miss Chu on the email. Miss Chu says that this work agreement required her to buy course of construction insurance, which she had never agreed to. She says that this unilateral change and Mr. Lu's general failure to follow through on his commitments caused her to lose faith in Navigator.
19. On October 27, 2021, Miss Chu texted Mr. Lu that the parties had been unable to reach an agreement and he had been unavailable to meet her to discuss the situation. She said that she was going to hire a different builder and asked him to refund the deposit.
20. Miss Chu says that the parties spoke on the phone on October 28, 2021, and met on November 2, 2021. She says that she asked Mr. Lu if Navigator would still build the laneway house, but he refused. Mr. Lu admits this. She also says that Mr. Lu promised to return the deposit in both conversations. Mr. Lu denies this. I return to these allegations below.
21. On November 16, 2021, Mr. Lu emailed Miss Chu that he had spent more than \$5,000 of his time on her project along with a breakdown of his time. He declined to refund the deposit.

22. I turn then to the applicable law. The first question is whether the \$5,000 payment was a “true deposit”. In law, a true deposit is designed to motivate the parties to carry out their bargains. A buyer (here, Miss Chu) who repudiates a contract generally forfeits the deposit, even if the seller (here, Navigator) did not suffer any losses. In contrast, a partial payment is made with the intention of completing a transaction. For a seller to keep a partial payment, they must prove actual losses to justify keeping the money received. See *Tang v. Zhang*, 2013 BCCA 52, at paragraph 30.
23. The parties both referred to the \$5,000 as a deposit, but I find that using this word is not determinative. The question is what the parties intended. As noted above, the contract said that the deposit “shall not be returned” if the parties ultimately did not proceed with the projects. I find that this shows that the parties intended the \$5,000 to be a true deposit.
24. Navigator is only entitled to retain the deposit if Miss Chu repudiated the contract. Repudiation occurs when a party does or says something to show that they reject their obligations under a contract. See *No. 151 Cathedral Ventures Ltd. v. Gatrell et al*, 2003 BCSC 1801.
25. While Miss Chu does not use this term, I find that she argues that Navigator repudiated the contract. She argues that Mr. Lu’s failure to communicate generally and the last-minute change about course of construction insurance meant that she could no longer trust Navigator to rebuild her house. She also says that the deposit was for the laneway house, which she still wanted Navigator to build. Finally, she says that Mr. Lu agreed to give her back the deposit.
26. First, I find that Navigator did not make a last-minute change in the contract by requiring Miss Chu to buy course of construction insurance. The original contract required her to purchase “construction insurance”, which I find is the same thing.
27. Second, I find that Navigator did not repudiate the contract by failing to communicate with Miss Chu. I acknowledge that the process was stressful for Miss

Chu and she was anxious to finalize the various contracts so that construction could start. However, I find that viewed objectively, there were only minor communication delays. I find that an objective bystander would conclude that Navigator intended to follow through on the contract. Notably, Navigator provided the insurer with a signed work agreement the day before Miss Chu cancelled their contract, which I find shows it intended to fulfill its obligations.

28. Third, I find that it is irrelevant that Miss Chu still wanted Navigator to build the laneway house after initially cancelling the entire project. When a party repudiates a contract, the other party may accept or reject the repudiation. I find that Navigator's actions show that it accepted the repudiation, which means that the entire contract was at an end, which included both construction projects. I find that Navigator had no obligation to build the laneway house as a standalone project.
29. Finally, I find that Mr. Lu did not agree to give the deposit back. Miss Chu says that Mr. Lu confirmed this in a text message, but she did not provide it in evidence despite providing other text messages. I find that if Mr. Lu agreed to return the deposit in a text message, Miss Chu would likely have provided it. Also, I find that her November 2, 2021 email to Mr. Lu is inconsistent with her allegation that Mr. Lu had already agreed to return the deposit. In particular, she said that she "really hoped" to get the deposit back. I find this shows uncertainty about whether Navigator would do so voluntarily.
30. In summary, because Navigator did not repudiate the contract, it was still a valid contract when Miss Chu cancelled the rebuilt project. By doing so, I find that Miss Chu repudiated the contract. It follows that she is not entitled to a refund of the deposit.
31. Having reached that conclusion, I find it unnecessary to address the parties' other arguments. I dismiss Miss Chu's claim.
32. 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. Miss Chu was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. Navigator paid \$50 in CRT fees to cancel a default decision. I order Miss Chu to reimburse these fees.

ORDERS

33. Within 30 days of the date of this order, I order Miss Chu to pay Navigator \$50 in CRT fees.
34. Navigator is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
35. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member