



# Civil Resolution Tribunal

Date Issued: December 21, 2022

File: SC-2022-003599

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kuo v. Q & L Construction Service Ltd.*, 2022 BCCRT 1361

BETWEEN:

JOLENE KUO and SUE HUI KUO LIN

**APPLICANT**

AND:

Q & L CONSTRUCTION SERVICE LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a contract for electrical work.
2. The applicants, Jolene Kuo and Sue Hui Kuo Lin, say they hired the respondent, Q & L Construction Service Ltd. to complete electrical work for \$8,000.

3. The applicants say the respondent completed some electrical work, but then refused to complete the outstanding electrical work in breach of the parties' contract. The applicants also say the respondent installed improper pot lights. The applicants claim \$3,000 in damages to have another electrician complete the unfinished work and switch out the pot lights.
4. The respondent says the applicants delayed the outstanding electrical work for several months, during which time its materials and labour costs rose significantly. The respondent says applicants refused to pay for these increased costs, and owes the respondent \$1,500 for the work the respondent did complete. The respondent denies installing improper pot lights. It says the applicants demanded that the respondent install different pot lights at no cost, which it refused to do. The respondent did not file a counterclaim.
5. The applicants are both represented by Jolene Kuo. The respondent is represented by its owner, Qun Luo.

## **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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The

assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an 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. What were the contract's terms?
  - b. Did either party breach the contract?
  - c. What remedies, if any, are appropriate?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

### ***What were the contract's terms?***

12. It is undisputed the applicants agreed to pay the respondent \$8,000 for electrical work, which included installing pot lights, completing electrical work to rough-in inspection and final inspection that was started by another contractor.
13. A translated and unsigned hand-written document dated September 15, 2021 lists the following work: apply for permit, finish wiring (originally planned lines), establish service, complete panel, install pot lights, finishing and plugs. Both parties rely on it as the parties' contract, so I find it reflects the electrical work the parties' agreed to. The parties undisputedly agreed to \$8,000 for the above-listed work, and this is reflected on the contract. I find the parties' agreed to a \$8,000 fixed price contract.
14. The parties' contract also includes a 3-part payment schedule with a \$2,000 deposit, \$3,000 payment when the "rough-in" inspection passed, and \$3,000 when the final inspection passed. The applicants have undisputedly paid the respondent \$5,000, and the applicants say the "rough-in" inspection occurred around October 2021. So, I find the respondent has likely completed the work required up to and including passing the rough-in inspection. It is undisputed that there is unfinished electrical work, but as discussed below it is unclear what specific electrical work remains unfinished.

### ***Did either party breach the contract?***

#### ***Alleged improper pot lights***

15. As noted, the applicants say the respondent installed improper pot lights, and refused to re-install the correct pot lights.
16. The party alleging deficiencies in a professional's or trade's work product has the burden to prove those deficiencies. See *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 6. Here, that burden falls on the applicants.
17. The applicants say that the respondent installed improper pot lights that did not allow adequate space for insulation. The respondent disputes this and says it installed the

pot lights in compliance with the applicable building codes. The respondent says the applicant asked it to install different pot lights for free, which the respondent refused to do.

18. In general, when a party alleges that a professional or trade was negligent, there must be expert evidence about the professional's or trade's standard of care, See *Bergen v. Guliker*, 2015 BCCA 283. There are 2 exceptions to this general rule. First, if the alleged breach relates to something non-technical and within the knowledge and experience of the ordinary person, then there is no need for expert evidence. Second, if the breach is so egregious that it is obvious, then expert evidence may not be required. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112.
19. The applicants submitted photographs of some installed pot lights. However, I cannot tell from these photographs that the pot lights were improper or did not allow adequate space for insulation. The applicants also submitted an email from a safety officer at Technical Safety BC. The email said that pot lights in direct contact with insulation are required to be the "insulation contact" type. However, the email does not say that the pot lights installed by the respondent were improper, or that they were not installed correctly. Therefore, I find the email does not prove that the respondent installed incorrect pot lights. There is no evidence about the specifications of the pot lights themselves. The applicants did not provide other evidence, expert or otherwise, to prove that the respondent installed improper pot lights. I dismiss this aspect of the applicants' claim.

#### Unfinished work

20. As noted, the applicants say the respondent refused to complete the electrical work agreed to under the parties' contract. The respondent does not dispute that it did not complete outstanding work, but alleges that the applicants delayed completion. The respondent says its materials and labour costs increased significantly during this time frame, but the applicants refused to pay for the increased costs.

21. It is undisputed that the “rough-in” inspection occurred around October 2021, and the applicants did not contact the respondent to complete the outstanding electrical work until May 2022. However, the evidence does not show that the respondent followed up with the applicants in the interim, or that the parties agreed to any particular timeline to complete the electrical work. The applicants also say they told the respondent they were going a trip between January and April 2022, and the respondent did not object or raise any concerns. The respondent did not dispute this. Therefore, based on the evidence, I find the applicants did not unreasonably delayed the outstanding electrical work. Even if they did, apart from the respondent’s bare assertion, there is no evidence that the respondent’s labour and materials costs increased between October 2021 and May 2022.
22. Unless an agreement is terminated, parties must fulfill their obligations. Termination by repudiation occurs when a party shows an intention not to be bound by the agreement and the other party accepts this repudiation. See *Kuo v. Kuo*, 2017 BCCA 245.
23. I find the respondent repudiated the parties’ contract when it refused to complete the outstanding electrical work agreed to in the parties’ fixed price contract.

***What remedies are appropriate, if any?***

24. The remedy for repudiation depends on the response of the non-repudiating party (here, the applicants). As the non-repudiating party, the applicants had two options: 1) treat the contract as still in force and sue for damages or performance or both, or 2) accept the repudiation, terminate the contract, and discharge the parties from future obligations. The non-repudiating can also sue for damages under this option. See *Kuo v. Kuo*, 2016 BCSC 767 at paragraphs 31 and 32 (affirmed on appeal, 2017 BCCA 245), and *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361 at paragraph 11.
25. The applicants say they have no interest in working further with the respondent, and did not ask for any orders that the respondent complete the outstanding electrical

work. I find the applicants accepted the respondent's repudiation, and are asking for damages.

26. Damages for breach of contract are intended to place the applicants in the position they would have been in if the contract for electrical work had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.
27. As noted, the applicants ask for an order that the respondent pay them \$3,000, which they say is the difference between the outstanding \$3,000 they would have paid the respondent to complete the remaining electrical work under the parties' contract and the cost of having a different contractor complete the electrical work and switch out the pot lights.
28. A January 6, 2022 estimate shows that another electrician quoted \$6,300 for "re-finishing work". The re-finishing work includes electrical work that was likely covered by the parties' contract, including installing switches, light fixtures, pot light trims, and hooking up appliances and a hot water heater, among other electrical work. Although pot light trims are included in the estimate, it does not include the cost of installing different pot lights themselves. The applicants say they also paid \$750 to switch out the pot lights. However, the applicants are not entitled to reimbursement for the cost to install different pot lights because they have not proved the respondent installed improper pot lights, as discussed above.
29. The parties did not detail what work remained outstanding under the parties' contract, so on its face I cannot find that the estimate covers only the outstanding work, or includes extra electrical work. However, the respondent did not dispute the electrical work covered by the estimate, or suggest that the estimate included additional work not covered by the parties' contract. Therefore, I find the estimate likely reflects the cost to complete the outstanding electrical work under the parties' fixed price contract, and does not include the cost of switching out the pot lights.

30. As noted, the applicants have paid the respondent \$5,000 for the completed portion of the electrical work, and would have paid the respondent an additional \$3,000 for the outstanding work under the parties' contract. Therefore, I find the appropriate measure of damages is the additional cost incurred by the applicants to have a new electrician complete the outstanding work. Based on the estimate, I find the additional cost to complete the outstanding work totals \$3,300. The applicants only claim \$3,000 in damages for both the outstanding work and the cost of switching out the pot lights. I find it unnecessary to make any reduction to account for the cost of switching out the pot lights because I find the estimate did not include these costs. Therefore, I find the applicants are entitled to \$3,000 in damages.

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

31. The applicants are entitled to pre-judgment interest on the \$3,000 from the date the respondent repudiated the contract. Although the specific date is unclear, I find the repudiation occurred in May 2022. Therefore, I find the applicants are entitled to pre-judgment interest from May 28, 2022 to the date of this decision, which I find is reasonable in the circumstances. This equals \$29.06.

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. I see no reason in this case not to follow that general rule. I find the applicants are entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I award none.

## **ORDERS**

33. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$3,154.06, broken down as follows:

- a. \$3,000 in damages,
- b. \$29.06 in pre-judgment interest under the *Court Order Interest Act*, and



c. \$125 in CRT fees.

34. The applicants are entitled to post-judgment interest, 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.

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Leah Volkers, Tribunal Member