



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Shimizu (dba Vector International Homes) v. Mao*, 2023 BCCRT 285

B E T W E E N :

MAYUMI SHIMIZU (Doing Business As VECTOR INTERNATIONAL
HOMES)

APPLICANT

A N D :

HUA YU MAO

RESPONDENT

A N D :

MAYUMI SHIMIZU (Doing Business As VECTOR INTERNATIONAL
HOMES)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. These disputes are about interior design services. This decision relates to 2 linked disputes with the same parties that I find collectively consist of a claim and a counterclaim. So, I have issued a single decision for both disputes.
2. The respondent and applicant by counterclaim, Hua Yu Mao, hired the applicant and respondent by counterclaim, Mayumi Shimizu (Doing Business As Vector International Homes), to perform interior design services for her residential condo. Ms. Shimizu says that Ms. Mao failed to pay her final invoice, and she claims \$3,202.50.
3. Ms. Mao says that Ms. Shimizu's work was not fully complete or "perfectly done". She also says that Ms. Shimizu gave the construction contractor, Anova Constructions Ltd. (Anova), a key to Ms. Mao's condo without permission, and that Anova refused to return the key. Ms. Mao says Ms. Shimizu and Anova then harassed her for payment, which Ms. Mao says caused her significant emotional distress. Ms. Mao says that given these issues, she feels that Ms. Shimizu does not deserve to be paid for the claimed invoice. Anova is not a party to this dispute.
4. Ms. Mao also counterclaims \$5,000 for the cost to complete Ms. Shimizu's work and damages for emotional distress, including prescription medication costs, expenses related to feeling too unsafe to move into her renovated condo, and compensation for being unable to perform her usual work duties. Ms. Mao did not otherwise break-down her counterclaim.
5. Ms. Shimizu says she completed all agreed work under the parties' contract. She denies harassing Ms. Mao, and says she is not responsible for any emotional distress Ms. Mao may have suffered. Ms. Shimizu says that she is also not responsible for Anova's actions because Anova undisputedly had its own separate contract with Ms. Mao.
6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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.
10. 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.

Preliminary issues

11. Ms. Mao submitted one item of late evidence consisting of text messages between herself and Ms. Shimizu and Anova. Ms. Shimizu had the opportunity to respond to the late evidence, and as she did not object to it, I find there is no prejudice in allowing the late evidence. So, noting the CRT's flexible mandate, I allow Ms. Mao's late evidence and have considered it in my analysis.

12. Between the \$3,202.50 withheld payment and the \$5,000 counterclaim, I find Ms. Mao is effectively claiming \$8,202.50 for deficiencies and damages related to Ms. Shimizu's work and alleged conduct. This exceeds the CRT's \$5,000 small claims monetary limit. I find that by pursuing her CRT counterclaim, Ms. Mao has abandoned her claim to any amount over \$5,000. Given the outcome of my decision below, nothing turns on this finding.

ISSUES

13. The issues in this dispute are:
- a. Did Ms. Shimizu substantially complete her work, such that she is entitled to the claimed \$3,202.50 for interior design services?
 - b. Was Ms. Shimizu's work deficient?
 - c. Did Ms. Shimizu improperly give Ms. Mao's keys to Anova?
 - d. Is Ms. Mao entitled to compensation for emotional distress?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant Ms. Shimizu must prove her claims on a balance of probabilities (meaning "more likely than not"). Ms. Mao must prove her counterclaims to the same standard. I have read all the parties' submissions and evidence but refer only to what I find is necessary to provide context for my decision.
15. It is undisputed that Ms. Mao hired Ms. Shimizu for interior design work related to her condo renovation project. The evidence shows the project was extensive and included complete replacement of all flooring, removing a bedroom wall, building a closet partition wall, removing a solarium sliding door, replacing the bathroom and kitchen sinks, cabinets and countertops, installing new appliances, painting, retiling the fireplace, and furnishing the condo.

16. The evidence shows that Ms. Shimizu was responsible for the project's furniture, materials, electrical, and general design elements, and that Anova was responsible for the project's construction and material installation elements. While there is some dispute about which party Anova worked for, I find that it was Ms. Mao who hired Anova, as discussed further below.
17. Ms. Shimizu provided Ms. Mao with a December 17, 2021 quote for her interior design services. The first page was for materials, and included itemized bathroom and kitchen fixtures, lighting, door handles, wall and floor tiles, and tatami, totaling \$3,712.98 plus tax. The second page was for electrical and design work, and it set out itemized electrical work and various design fees totaling \$2,475 plus tax. The quote also said additional trips and drawings would be an extra charge, as would delivery fees, kitchen appliances, and "furniture and décor".
18. Given the number of items expressly not included in Ms. Shimizu's quote, I find it is best characterized as a budget or estimate, rather than a fixed-price contract. Neither party suggested otherwise. The quote also did not include any terms about how Ms. Shimizu would bill Ms. Mao or when payment was due. Nevertheless, I find that the quote formed the general basis of the parties' contract.

Did Ms. Shimizu substantially complete the work under the parties' contract?

19. Ms. Shimizu's March 16, 2022 invoice for materials and "interior décor and furniture" totaled \$6,649.44. It stated Ms. Mao had previously paid a \$4,000 deposit. It is undisputed that Ms. Mao also paid the \$2,649.44 outstanding balance of this invoice on March 16, 2022. Neither party makes any claims about this invoice in this dispute.
20. The evidence shows Ms. Shimizu also issued Ms. Mao a March 15, 2022 invoice for the electrical and design work totalling \$3,275. This invoice set out the same totals as Ms. Shimizu's quote for the itemized electrical and design fees, plus \$800 in additional charges for furniture selection and staging, purchasing and furniture

pickup, a sofa and table delivery fee, and \$50 in additional electrical work. It is undisputed that Ms. Mao did not pay this invoice.

21. Ms. Shimizu later issued Ms. Mao an April 20, 2022 invoice totalling the claimed \$3,202.50. I find this invoice replaced the earlier March 15 invoice. The April 20 invoice did not include the \$50 for additional electrical work and expressly discounted the \$125 for “trip charges” set out in Ms. Shimizu’s quote and March 15 invoice. I also find the claimed invoice discounted the design fees by \$50 from what Ms. Shimizu had indicated on her quote and March 15 invoice.
22. Ms. Mao does not take issue with any of the charges set out on Ms. Shimizu’s April 20 invoice. That is, she does not suggest that Ms. Shimizu overcharged her for any materials or services. Rather, Ms. Mao says she withheld payment mainly because she felt Ms. Shimizu did not properly assist her with a dispute she had with Anova about its work on the renovation project. More on this below.
23. In general, contractors are entitled to be paid for their work once the work is substantially complete. If there are deficiencies with the contractor’s work, the customer may claim for damages. The customer bears the burden to prove any alleged deficiencies. See *Balfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403, at paragraph 16, and *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287.
24. Ms. Mao’s only allegation relating to Ms. Shimizu’s work being incomplete is that she says Ms. Shimizu failed to install a curtain, which Ms. Shimizu denies. Ms. Mao did not provide any supporting evidence about the alleged missing curtain. I also note that Ms. Shimizu’s December 17 quote did not include curtains, and there is no indication the parties had any specific agreement about curtains. Overall, I find Ms. Mao has not established that Ms. Shimizu breached the parties’ contract by failing to install a curtain.
25. As Ms. Mao did not suggest Ms. Shimizu’s work was incomplete in any other way, I find that Ms. Shimizu substantially completed her work under the parties’ contract.

Therefore, I find that Ms. Shimizu is entitled to payment of her claimed \$3,202.50 invoice, subject to any proven deficiencies.

Was Ms. Shimizu's work deficient?

26. Generally, expert evidence is required when a customer alleges that a professional's work fell below a reasonably competent standard because an ordinary person does not know the standards of a particular profession or industry, such as interior design. The exceptions to this general rule are when the work is obviously substandard, or the deficiency relates to something non-technical. See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.
27. As noted, Ms. Mao says that Ms. Shimizu's work was not "perfectly done", though she provided little explanation of what she meant by this comment other than a photo of a curtain rod that appears to have fallen at one end. Ms. Mao provided no evidence about when or why the rod fell. It is also unclear whether Ms. Shimizu or Anova was responsible for installing the curtain rod. Further, while Ms. Mao says it cost her money to fix the rod, she did not say how much it cost or provide any supporting evidence of that expense.
28. I find the standard for a professional such as Ms. Shimizu is not likely one of perfection, as Ms. Mao suggests. In any event, Ms. Mao provided no expert evidence stating that Ms. Shimizu's work fell below the required standard for an interior designer. I find Ms. Mao has not established that Ms. Shimizu's work was substandard or that she must compensate Ms. Mao for the fallen curtain rod.
29. I note the parties also provided extensive submissions and evidence about allegedly sloped floors in Ms. Mao's condo. It is undisputed that Anova installed the floors. While Ms. Mao says she is not seeking compensation from Ms. Shimizu for the cost to fix the alleged floor deficiency, she says Ms. Shimizu failed to properly explain the floor problem to her in advance and did not adequately help her resolve the alleged deficiency with Anova's work.

30. The legal basis for Ms. Mao's submission that Ms. Shimizu should have advised and assisted her with the alleged floor slope issue is not entirely clear. Ms. Mao says that Ms. Shimizu and Anova were "business partners" and that Ms. Shimizu "insisted" that Ms. Mao hire Anova as the construction contractor. I infer that Ms. Mao is arguing that Ms. Shimizu was Anova's agent or was acting as a project manager, and in that sense, Ms. Shimizu was responsible for supervising and advising her about Anova's work.
31. In contrast, Ms. Shimizu denies any formal connection to Anova or responsibility for its work. She says that she works with several contractors, including Anova, but that none are her business partners. She admits that she recommended Anova to Ms. Mao but says she did so only because Ms. Mao asked her to find a contractor. Ms. Shimizu says she also would have worked with a contractor of Ms. Mao's choice.
32. Overall, I find there is insufficient evidence to conclude that Ms. Shimizu and Anova were business partners, or that Ms. Shimizu was otherwise responsible for supervising or advising Ms. Mao about Anova's work in any way. While Ms. Shimizu referred to Anova as "my contractor" in one text message, I find that reference is consistent with the undisputed evidence that Ms. Shimizu recommended Anova to Ms. Mao, and it is insufficient prove Ms. Shimizu and Anova were partners or that Ms. Shimizu was Anova's agent.
33. As noted, it is undisputed that Ms. Mao had a separate contract with Anova. The evidence also shows that Anova billed Ms. Mao for its work and that Ms. Mao paid Anova directly. There is nothing in Ms. Shimizu's quote or invoices that suggests she was the project manager or was responsible for supervising the project's construction elements.
34. For these reasons, I find Ms. Mao has not proven Ms. Shimizu was contractually obligated to advise or assist her with potential deficiencies related to Anova's work. As Ms. Mao is not claiming any compensation from Ms. Shimizu for the slanted floors themselves, I make no findings about that alleged deficiency.

35. I find Ms. Mao has not proven Ms. Shimizu's work was deficient, and so I dismiss that aspect of Ms. Mao's counterclaim.

Did Ms. Shimizu improperly give Ms. Mao's keys to Anova?

36. Ms. Mao says that despite knowing about the flooring dispute with Anova, Ms. Shimizu provided Anova with keys to her condo without her consent. Ms. Mao alleges that Ms. Shimizu "coordinated" with Anova to convince her the sloped floors were not a serious issue, and that she "partnered" with Anova to withhold Ms. Mao's keys so that she would pay Anova for its work.
37. Ms. Shimizu admits she gave Anova the keys but says she believed Anova was still working in the condo and she was unaware Ms. Mao did not want Anova to have access anymore. Ms. Shimizu says it was only after she gave Anova the keys that she learned Anova did not intend to return them until Ms. Mao paid its invoice.
38. While Ms. Mao does not specifically use these words, I find she is alleging that Ms. Shimizu and AC conspired to get Ms. Mao to pay Anova. This is known as the tort of conspiracy or civil conspiracy. However, I find there is no evidence of any agreement between Ms. Shimizu and Anova to take certain action against Ms. Mao, which is required to prove a claim for civil conspiracy: see *Golden Capital Securities Limited v. Rempel et al*, 2004 BCCA 565 at paragraphs 45 to 47 and *LeRoy v. TimberWest Forest Corp.*, 2020 BCSC 978 at paragraphs 422 to 426.
39. Specifically, I note that before Anova installed the new floors, Ms. Shimizu advised Ms. Mao in a December 17, 2021 text that the floor level was worse than Anova had initially expected, and that Ms. Mao should consult with Anova about it. I find this shows Ms. Shimizu warned Ms. Mao there could be a potential problem, and that she should deal with Anova about it. I also find there is no evidence to support Ms. Mao's submission that Ms. Shimizu verbally minimized or attempted to convince Ms. Mao that the floor slant was reasonable once the new floors were installed, which Ms. Shimizu denies.

40. Further, the parties' text messages show Ms. Shimizu told Ms. Mao that she repeatedly asked Anova to return Ms. Mao's keys. Anova confirmed in a March 23, 2022 text that Ms. Shimizu had asked for the keys back, but that it would only do so once Ms. Mao paid its invoice. I find from Anova's text that Ms. Shimizu was likely unaware of the payment dispute until after she had provided Anova with the keys. Anova also stated in its texts to Ms. Mao that the keys had nothing to do with Ms. Shimizu.
41. Overall, I find Ms. Mao's allegation that Ms. Shimizu conspired with Anova about the keys or to help Anova get paid is unproven. Rather, I find the evidence before me supports Ms. Shimizu's submission that she innocently provided Anova with keys to Ms. Mao's condo so that Anova could complete its work, and that she was unaware Ms. Mao had withdrawn her consent for Anova to access the condo.
42. As Ms. Mao has not established Ms. Shimizu improperly provided Anova with the keys to her condo, I find Ms. Shimizu is not responsible for Anova withholding the keys. I dismiss this aspect of Ms. Mao's counterclaim.

Is Ms. Mao entitled to compensation for emotional distress?

43. As noted, part of Ms. Mao's counterclaim includes an unspecific amount for emotional distress. She submits that she suffered significant stress due to Anova withholding her keys and frustration due to the conflict over the sloped floors. She also says Anova and Ms. Shimizu harassed her at her workplace for payment of their outstanding invoices.
44. As noted, I find Ms. Shimizu is not responsible for the sloped floors or for Anova withholding Ms. Mao's keys. Also, while there is some evidence Anova may have attended Ms. Mao's workplace, I find there is no evidence that Ms. Shimizu was also involved in that alleged harassment. Further, I note there is no recognized tort of harassment in BC. For these reasons, I find Ms. Mao has not proven that Ms. Shimizu is responsible for any emotional distress she may have suffered.

45. Given this finding, it is unnecessary for me to address the details of Ms. Mao's claimed damages. I dismiss Ms. Mao's claim for emotional distress damages.

INTEREST, CRT FEES AND EXPENSES

46. The *Court Order Interest Act* applies to the CRT. I find Ms. Shimizu is entitled to pre-judgment interest on the \$3,202.50 from April 30, 2022 (the stated payment due date on her April 20, 2022 invoice), to the date of this decision. That equals \$66.98.

47. 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 find Ms. Shimizu was the successful party, and so she is entitled to reimbursement of \$175 in CRT fees. As Ms. Mao was unsuccessful, I dismiss her claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

48. Within 21 days of the date of this order, I order Ms. Mao to pay Ms. Shimizu a total of \$3,444.48, broken down as follows:

- a. \$3,202.50 in debt,
- b. \$66.98 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

49. Ms. Shimizu is entitled to post-judgment interest, as applicable.

50. I dismiss Ms. Mao's counterclaim.

51. 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.

Kristin Gardner, Tribunal Member