



# Civil Resolution Tribunal

Date Issued: May 17, 2023

File: SC-2022-006254

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ma v. Li*, 2023 BCCRT 413

BETWEEN:

CHUCK MA

**APPLICANT**

AND:

NA LI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about payment for design work for a garden suite.
2. The respondent, Na Li, engaged a contractor (L) to build a garden suite on her property. L introduced the applicant, Chuck Ma, to Ms. Li as the suite's designer. Mr. Ma says L told him Ms. Li would pay him directly for his design work. However, Mr.

Ma says when Ms. Li cancelled the project, she refused to pay him for the preliminary work he had done. Mr. Ma seeks \$1,500 for the design work he says he performed.

3. Ms. Li denies Mr. Ma's claim. Ms. Li says her contract was with L, and she did not have any agreement with Mr. Ma. She says she assumed Mr. Ma was L's subcontractor and if he is owed any money, he should seek to recover it from L. Ms. Li says in any event, the drawings Mr. Ma did under her contract with L were "unsatisfactory" as they did not comply with the municipality's garden suite bylaw. L is not a party to this dispute.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. 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.

7. 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.
8. 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**

9. The issue in this dispute is whether Mr. Ma is entitled to the claimed \$1,500 for design work.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Ma must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. Around December 4, 2021, Ms. Li began discussions with L about construction of a garden suite. Over the next several months, Ms. Li and L discussed plans for the suite including size, layout, and budget. Translated text messages in evidence which Mr. Ma does not dispute show that on March 23, 2022, Ms. Li approved proceeding with a 700 square foot 1-bedroom suite for about \$170,000. On May 16, L requested \$10,000 “for the initial survey, design and applications”, which Ms. Li undisputedly paid. However, on June 4, Ms. Li told L the project was “too much” and that she and her husband, who is not a party to this dispute, had decided not to go ahead with it. It is undisputed that L returned the \$10,000 and Ms. Li’s husband paid the \$2,303.93 survey fee.

12. It is unclear when exactly Mr. Ma and Ms. Li met, but the parties agree L introduced them at some point to discuss the garden suite's design. As noted above, Mr. Ma says L told him Ms. Li would pay him for his design work. However, there is no evidence from L confirming this before me.
13. Mr. Ma says he discussed the suite's plans with Ms. Li and her husband, and over the course of 4 meetings he prepared a site plan, drafted preliminary designs, modified the designs, and finalized Ms. Li's preferred design. Mr. Ma says after the fourth meeting, L informed him that Ms. Li had changed her mind and was not proceeding with the project. He said he met with Ms. Li again, at which point she told him she would not pay him for the work he had done.
14. Ms. Li has a different version of events. She says she never had an agreement with Mr. Ma and that all her business dealings were with L. She says L presented Mr. Ma as a designer and an expert who would be able to navigate permit and approval processes with the municipality. However, she says the site plan was "continually in flux" and the drawings went through several iterations, none of which were satisfactory as they failed to comply with the municipality's garden suite bylaw. So, she says no preliminary work was completed. Ms. Li also says she was never advised of the cost of Mr. Ma's services, and never received an invoice or breakdown of costs from L or Mr. Ma.
15. Mr. Ma says even if there was no written agreement between the parties, they had an "unwritten agreement", and I infer he says Ms. Li breached it by not paying for his design work.
16. A claim in breach of contract requires a valid and enforceable contract. The party relying on the contract must prove a mutual intention to create legal relations, consideration (something of value) given in return for a promise, essential terms that were sufficiently clear, and offer and acceptance of those terms (see *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216 at paragraph 66). Whether there is an enforceable contract involves an objective test based on what a reasonable

person in the parties' situation would have believed, rather than on the parties' subjective beliefs (see *Berthin v. Berthin*, 2016 BCCA 104, at paragraph 46).

17. While a verbal contract is enforceable like a written contract, it is generally harder to prove. Here, I find the evidence does not support a conclusion Mr. Ma and Ms. Li had an unwritten agreement. Although the parties met and discussed the garden suite's design, the correspondence in evidence about the project is only between Ms. Li and L. It shows all arrangements, including payment for design work, flowed through L. There is nothing to suggest Ms. Li had any separate agreement directly with Mr. Ma. The only evidence of any correspondence between Mr. Ma and Ms. Li is an August 20, 2022 text message in which Mr. Ma writes his "service charge is \$1,500." However, I find nothing turns on this direct communication fee quote since there is no evidence the parties ever discussed a service charge, and the amount is unproven (more on this below).
18. In these circumstances, I find there was no contract between Mr. Ma and Ms. Li. As L is not a party to this dispute, I make no findings about their liability for the amount Mr. Ma claims.
19. In the absence of an enforceable contract, I considered whether Mr. Ma has a claim under the common law doctrine of unjust enrichment, which is when one person is unfairly enriched at the expense of another. To prove unjust enrichment, Mr. Ma must show a) Ms. Li was enriched, b) Mr. Ma suffered a corresponding loss, and c) there was no "juristic reason" or valid basis for the enrichment (see *Moore v. Sweet*, 2018 SCC 52).
20. Here, I find there is no evidence Ms. Li was enriched. That is, there is no evidence Ms. Li benefited in some way from Mr. Ma's work without paying for it. Mr. Ma does not say he gave Ms. Li the drawings he did or that she otherwise derived some value from his work, for example. So, on that basis alone I find Mr. Ma does not have a valid claim for unjust enrichment.

21. For the reasons above, I find Mr. Ma is not entitled to the claimed \$1,500 for design work, and I dismiss his claim.
22. Even if I had found Mr. Ma and Ms. Li had an enforceable contract or that Mr. Li had a valid claim for unjust enrichment, I would have found the \$1,500 claimed amount unproven. I say this because Mr. Ma did not provide evidence of the time he spent on the design work or his rate, other than to say “the going rate for computer design work is about \$95/hr” without any support.
23. 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. Mr. Ma was unsuccessful, so I dismiss his claim for CRT fees. Ms. Li did not pay CRT fees and neither party claimed any dispute-related expenses, so I make no order for reimbursement.

## **ORDER**

24. I dismiss Mr. Ma’s claim and this dispute.

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Megan Stewart, Tribunal Member