



# Civil Resolution Tribunal

Date Issued: June 10, 2024

File: SC-2023-002869

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milani Plumbing Heating & Air Conditioning Ltd. v. Lotus Yuen Personal Real Estate Corporation* 2024 BCCRT 523

B E T W E E N :

MILANI PLUMBING HEATING & AIR CONDITIONING LTD.

**APPLICANT**

A N D :

LOTUS YUEN PERSONAL REAL ESTATE CORPORATION, MAN KIT YUEN, and WINNIE WONG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about unpaid services.

2. Man Kit Yuen is also known as Lotus Yuen. He is the director of Lotus Yuen Personal Real Estate Corporation (PREC). Winnie Wong is married to Mr. Yuen, and together they co-own a home in Burnaby. In December 2022, the PREC hired Milani to resolve a water drainage problem at the Burnaby home. Milani claims \$4,681.69 for unpaid drainage, sump-pump cleaning, and electrical services.
3. The respondents say Milani overcharged them, misrepresented its employees' qualifications, and failed to resolve the drainage problem. They agree to pay Milani \$1,155.31 for its services, but no more.
4. Milani is represented by an authorized employee. Mr. Yuen represents himself and the PREC, and Ms. Wong represents herself.

## **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. 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.
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 court.

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 Milani is entitled to \$4,681.89 for its services.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Milani must prove its claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
11. On December 7, 2022, Mr. Yuen called Milani to resolve a water drainage problem at his and Ms. Wong's home. Milani provided drainage, sump pump cleaning, and electrical services at the home on December 7 and 8, 2022. On the evening of December 9, 2022, Mr. Yuen called Milani again, because the home was experiencing another drainage problem. On December 10, 2022, Milani provided services at the home.
12. On December 12, 2022, Milani invoiced the PREC \$756.14 for the services it provided on December 10, 2022. On December 19, 2022, Milani invoiced the PREC \$3,935.55 for the services provided on December 7 and 8, 2022. The respondents have not paid either of these invoices.
13. The total of the 2 invoices is \$4,691.69, but Milani is claiming \$4,681.69 in this dispute. Milani does not explain this discrepancy, and I presume it is a typographical error. However, I find nothing turns on this discrepancy, because in its submissions Milani says it is willing to waive a 30-minute charge of \$79 for travel time on December 7, 2022. After calculating GST, I find this reduces the total of the 2 invoices to \$4,608.74. I find this is the maximum amount Milani may be entitled to for its services in this dispute.

14. Next, I address who is responsible for paying the invoices. The work orders and invoices in evidence are all addressed to the PREC, and in its submissions Milani says it provided the services under Mr. Yuen's commercial account, which none of the respondents dispute. So, I find it was the PREC that hired Milani, not Mr. Yuen or Ms. Wong. I dismiss Milani's claims against Mr. Yuen and Ms. Wong personally.
15. As noted above, the PREC agrees to pay a maximum of \$1,155.31 towards the invoices. The PREC says it does not owe Milani any more than that because Milani overcharged it, misrepresented its employees' qualifications, and failed to resolve the drainage issue. I address each of these allegations in turn.
16. The PREC says Milani overcharged it by 1 hour on December 7, 2022, for an employee's travel time. It says Milani agreed to deduct 1 hour of labour from the invoice, but I find a recorded phone call in evidence indicates that Milani agreed to deduct only 30 minutes of labour from the invoice. This is the \$79 that Milani has agreed to waive, as explained above. I find the GPS records, notes, and invoices in evidence show that Milani initially overcharged by 30 minutes, and so I find its agreement to waive that labour time is reasonable and accounts for the overcharge.
17. The PREC says that on December 8, 2022, Milani charged for time its employee J.L. spent speaking on the phone in their truck. However, Milani provided a statement from J.L. in which they said their job required them to update the head office, arrange for the electrical part of the project to be completed, and to contact co-workers for their recommendations about how to complete the work. I find J.L.'s statement is supported by Milani's file notes which indicate that J.L. was coordinating with the electrician and the head office. I am satisfied that Milani did not overcharge for J.L.'s time spent on the job.
18. The PREC says Milani never notified it that there was a 4-hour minimum charge for the vac truck on December 8, 2022. However, I find the minimum charge is irrelevant. This is because I find Milani's detailed GPS records, file notes, work orders, and invoices, are all internally consistent and they show that the vac truck was working from approximately 8:00 a.m. until 11:49 a.m. on December 8, 2022, including travel

and dumping time. Milani says it always rounds up to the closest half-hour, so I find Milani reasonably charged 4 hours for the vac truck's use on that date.

19. The PREC also says the vac truck idled outside the home for a significant amount of time on December 8, 2022, before driving off. It provided one photograph to show that the truck was idling, but I find this is insufficient to establish that the truck was not in use during that time.
20. The PREC also says the vac truck was unnecessary. It submitted an email from Patrick Lee, a red seal plumber at Anion Plumbing Services, which I accept as an expert opinion under the CRT's rules. Patrick Lee said they reviewed J.L.'s statement about the work they completed on December 7 and 8, 2022. Patrick Lee said they believed the issue could have been resolved more efficiently without using a vac truck. They said the sump could have easily been pumped out, then the debris and roots could have been removed manually. They said this was "pretty standard practice", and that they could have completed the work in 2 hours.
21. As Milani notes, Patrick Lee also acknowledged in their email that everyone and every company handles situations differently. Milani says it was impractical to manually remove 3 feet of sediment from a confined space at a significant depth in cold and rainy weather. Milani says Patrick Lee failed to address these factors in their email and says Patrick Lee's estimate of 2 hours to complete the work manually was unrealistic.
22. I find Patrick Lee's report does not suggest that Milani's decision to use the vac truck was wrong or fell below the required standard of care, but that it was simply less efficient. Whether or not that is true, Milani says it does not claim that it will beat its competitors' prices. I find there is nothing in the evidence to suggest that Milani's use of the vac truck was unreasonable in the circumstances.
23. The PREC says Milani's electrician, G.P., provided only 1 hour of work on December 8, 2022, but Milani charged for 4.5 hours of G.P.'s work, and the charge was excessive. The PREC acknowledges that G.P. came to the home on December 7,

2022, but says G.P. did nothing that day. It submitted a report and quote from Kennon Ng, at Wis Renovations & Contracting, who has been a red seal electrician since 2012. I accept Kennon Ng's report as expert opinion evidence under the CRT's rules. Kennon Ng said the respondents asked them to provide a quote to replace the electrical receptacle in the sump pump. Kennon Ng said such receptacles are common devices that can be purchased from any big box store for \$25-\$30 plus tax. Kennon Ng's \$280 quote was for 1 hour of travel, 30 minutes to purchase the receptacle, and 30 minutes to an hour to complete the work, depending on site conditions.

24. Again, Milani says it has never claimed it would beat its competitors' pricing. It also says Kennon Ng's quote does not consider any additional cost for an electrician to come to a job site on the same day they receive a call. Milani submitted a statement from G.P., who said they spent 40 minutes on December 7, 2022 diagnosing the electrical problem at the respondents' home because the sump pump electrical outlet breaker was unlabeled. G.P. said that on December 8, 2022, they spent an hour driving to pick up the required part to replace the electrical outlet and driving to the respondents' home. G.P. said when they arrived, the faulty electrical outlet was submerged in water, so they had to wait for a vacuum truck to arrive to remove the standing water before they could replace the outlet.
25. I find Milani's electrical service charges are supported by G.P.'s statement, which is consistent with its work orders, invoices, notes, and emails. I find Kennon Ng's report and quote do not suggest that Milani's charges for its electrical work were unreasonable, they simply provide a less expensive quote for similar work. I also find Kennon Ng's quote does not include any time spent diagnosing or troubleshooting, as was required of G.P. So, I find Milani's charges for G.P.'s work are reasonable and supported by the documentary evidence.
26. The PREC also says that Milani told it the electrical outlet was completely submerged when it was not. It submitted an email exchange with Patrick Lee who, as noted above, is a red seal plumber. The respondents asked Patrick Lee if it was possible

for the faulty electrical outlet to be submerged in water. Patrick Lee said that although they are not an electrician, they did not believe it could be, because the elevation of the plug is higher than the basement. They said this means that if the electrical outlet was submerged in water, the house would also have flooded, which it did not.

27. Milani says the lower pipe flowing water into the sump at the home became clogged, while water continued to fill the enclosed sump space from the top. Milani says Patrick Lee's email failed to consider this scenario, and instead assumed that there was no sediment in the sump pump. Milani also notes that Patrick Lee said the electrical outlet worked properly on their inspection, which Milani says shows G.P. completed their work properly. I agree. I find Patrick Lee's email is speculative, and it is insufficient to establish that the electrical outlet was not submerged.
28. The PREC also says it agreed to only some of Milani's charges, and that many of the charges were a surprise. However, there is no evidence the PREC asked Milani for a quote before it provided services. I find there is no evidence to indicate that Milani's rates were excessive, and I find its charges are supported by its detailed documentary evidence.
29. The PREC also says that Milani misrepresented its employees' qualifications. It says it requested a plumber, but J.L., who did much of the work for Milani, is only a plumber apprentice level 2. In their statement, J.L. said they are qualified to work on drainage systems, and I find the PREC has failed to provide any evidence to the contrary. I find the PREC has failed to prove that Milani misrepresented any of its employees' qualifications.
30. Finally, the PREC says Milani failed to resolve the drainage problem. It says the fact that the drainage problem recurred on December 9, 2022 shows that the work Milani did in the days prior was ineffective. It says Milani's employee who inspected the drainage problem on December 10, 2022, K.C., did not know what they were doing and failed to resolve the issue. The PREC says it hired a different plumbing company who resolved the problem in only 2 hours. It submitted a January 15, 2023 invoice

from Anion Contracting Group Inc. for \$945 for 2 hours of labour to replace a storm pump.

31. Milani says its work on December 7 and 8, 2022 was effective because by removing the sediment clogging the sump pump and replacing the faulty electrical outlet, it eliminated 2 causes of the drainage problem. I find the evidence supports this. Milani also says, and I find the evidence shows, that on December 10, 2022, K.C. recommended replacing the pump. K.C. provided the PREC with a \$4,500 quote for this work. Milani says the fact that the PREC chose to replace the pump through a different company means K.C.'s recommendations were correct. I agree, and I find the fact that the PREC found a different company to do the same work at a lower cost does not mean Milani's prior work or recommendations were substandard. I find there is nothing in the expert opinion evidence to suggest that Milani's work was negligent or that it fell below the required standard of care.
32. In conclusion, I find the PREC has failed to establish that Milani overcharged it, misrepresented its employees' qualifications, or provided substandard services. So, I find the PREC owes Milani \$4,608.74 for the 2 invoices.
33. Milani claims contractual interest at an annual rate of 24%, compounded monthly. Its invoices say payment is due within 30 days of the invoice, and that interest will be charged on overdue accounts at a rate of 2% per month. However, there is no evidence the parties had an agreement about interest before Milani issued the invoices, so I find Milani is not entitled to contractual interest. However, the *Court Order Interest Act* applies to the CRT. So, Milani is entitled to pre-judgment interest on the \$4,608.74 owing calculated from January 18, 2023, which is 30 days after the latest invoice date, to the date of this decision. This equals \$372.61.
34. 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. Since Milani was generally successful, I find it is entitled to reimbursement of the \$175 it paid in CRT fees. Milani claims \$12.25 in dispute-related expenses for a title search.

I find this claim is reasonable in the circumstances, so I find Milani is entitled to \$12.25 in dispute-related expenses.

## **ORDERS**

35. Within 14 days of the date of this order, I order the PREC to pay Milani a total of \$5,168.60, broken down as follows:

- a. \$4,608.74 as payment for the services,
- b. \$372.61 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$175 in CRT fees, and
- d. \$12.25 in dispute-related expenses.

36. Milani is entitled to post-judgment interest, as applicable.

37. I dismiss Milani's claims against Mr. Yuen and Ms. Wong.

38. This is a validated decision and order. 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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Sarah Orr, Tribunal Member