



# Civil Resolution Tribunal

Date Issued: June 27, 2024

File: SC-2023-005421

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yang v. Gibbs (dba D & G Cedar Fencing)*, 2024 BCCRT 613

B E T W E E N :

ZHONGXUN YANG and QIANXIN MO

**APPLICANTS**

A N D :

DARYL GIBBS (Doing Business As D & G CEDAR FENCING)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. The applicants, Zhongxun Yang and Qianxin Mo, hired the respondent, Daryl Gibbs (doing business as D & G Cedar Fencing), to repair their fence. The applicants say they sent a \$4,300 deposit for the fence by e-transfer as instructed by Mr. Gibbs. When Mr. Gibbs denied receiving the e-transfer, the applicants ultimately paid Mr. Gibbs for the fence by cheque. The applicants say that Mr. Gibbs has been unjustly

enriched by the duplicate payments, and they claim \$4,300 as a refund for the alleged overpayment.

2. Mr. Gibbs denies receiving the e-transfer from the applicants. He says he only received the cheque payment. So, Mr. Gibbs asks me to dismiss this dispute.
3. Mr. Yang represents the applicants. Mr. Gibbs is self-represented.
4. For the following reasons, I dismiss the applicants' claims.

## **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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although neither party requested an oral hearing, I considered whether one would be appropriate given the credibility issues involved in this dispute. While credibility issues can, in some cases, be resolved by an oral hearing, the advantages of an oral hearing must be weighed against the CRT's mandate for speedy, economical and proportionate dispute resolution. Here, the central issue is whether Mr. Gibbs received the e-transfer as the applicants allege. The parties have addressed this issue in their written submissions and evidence. Given this, and the relatively small amount involved, I decided that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions. So, I decided this dispute on the written material before me.
7. CRTA section 42 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.

## **ISSUE**

8. The issue in this dispute is whether Mr. Gibbs received the applicants' \$4,300 e-transfer and if so, whether he must refund it to them.

## **EVIDENCE AND ANALYSIS**

9. In this civil proceeding, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The background facts are undisputed. On May 1, 2023, Mr. Yang emailed Mr. Gibbs and requested a quote for repairing or replacing some broken fence panels and posts in the applicants' yard. Mr. Gibbs emailed Mr. Yang a quote on May 5. The quote itself is not in evidence, but the emails show that Mr. Yang agreed to it and asked if Mr. Gibbs accepted transfer or cheque for payment.
11. Later the same day, Mr. Yang emailed Mr. Gibbs again asking how to pay. Mr. Yang says that Mr. Gibbs responded the next day, May 6, and instructed him to e-transfer \$4,300 to a Gmail address. This email is in evidence, and shows that it was sent by Mr. Gibbs' business email address, which is a Hotmail address. The Gmail address in the body of the email does not include Mr. Gibbs' name or business name.
12. The applicants say that Qianxin Mo e-transferred \$4,300 to the Gmail address on May 6. They provided a screenshot of the e-transfer confirmation in evidence.
13. On May 6, Mr. Yang emailed Mr. Gibbs at the Hotmail address and advised that Qianxin Mo had transferred \$4,300. A May 8 response from the Hotmail address says "Yes, we received the payment. Thank you."
14. Mr. Gibbs denies receiving the e-transfer, and denies sending the email providing the Gmail address to the applicants for payment. In support of this, Mr. Gibbs provided a screenshot of his email account's "sent" folder, which does not show any sent emails on May 6. Mr. Gibbs also provided his business bank account statements for April

and May 2023, which do not show any deposits on May 6. The statements show an ATM deposit of \$4,300 on May 11, which Mr. Gibbs says is from the cheque that the applicants later provided.

15. I find neither of these documents is determinative about whether Mr. Gibbs received the e-transfer. I say this because Mr. Gibbs could have deleted an email from his sent folder, and could have deposited the e-transfer into a different account. However, I acknowledge that it would be difficult for Mr. Gibbs to entirely disprove receiving an e-transfer. With this in mind, I find this evidence persuasive and consistent with Mr. Gibbs' description of the events.
16. As noted, the applicants bear the burden of proving their claims on a balance of probabilities. The applicants say that Mr. Gibbs has been unjustly enriched by the duplicate payments. To prove unjust enrichment, the applicants must show that a) Mr. Gibbs was enriched, b) the applicants suffered a corresponding loss, and c) there was no "juristic reason" or valid basis for the enrichment.<sup>1</sup>
17. Here, I find the applicants have not proven that Mr. Gibbs was enriched. In other words, I find they have not proven that Mr. Gibbs received the e-transfer. Mr. Gibbs denies receiving it, and I find the applicants' own conduct after sending the e-transfer shows that they accepted that Mr. Gibbs likely did not receive it. For example, in a May 9 text message to Mr. Gibbs, Mr. Yang said that he had contacted his bank and the e-transfer would be reported to police for investigation. In the message, Mr. Yang said "Meanwhile, just a reminder that your email might be hacked and accessed by someone else. You need to change the password to prevent this happening again to the other customers." Mr. Yang also asked for Mr. Gibbs' permission to share the email threads with the bank and the police for investigation.
18. The applicants also provided an email that Mr. Yang sent to the Gmail address on May 10. He addressed the recipient as "Debra", which matches the first name of the e-transfer confirmation. In the email, Mr. Yang advised that he believed he had been

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<sup>1</sup> *Moore v. Sweet*, 2018 SCC 52.

given the wrong email address for the e-transfer. He asked the recipient to send the money back, and said that they could keep \$300 if they returned \$4,000.

19. I find this evidence shows that in the days following the e-transfer, the applicants accepted Mr. Gibbs' explanation that he had not received it. However, the applicants say that they then conducted an analysis which showed that Mr. Gibbs' email attaching the quote and the email requesting e-transfer payment originated from the same source. So, I infer they argue that Mr. Gibbs sent the email requesting the e-transfer payment to the Gmail address.
20. In support of this, the applicants provided a January 26, 2024 interaction with ChatGPT, an artificial intelligence tool. The interaction shows that a user labeled "Anonymous" uploaded Mr. Gibbs' quote email and the email requesting the e-transfer payment, and instructed ChatGPT to check if the emails were sent from the same device.
21. The response from ChatGPT says that based on the emails' "headers", including the originating IP addresses and the structure of the "Message ID" headers, it is highly likely that the two emails were sent from the same device or at least the same local network. However, it notes that it is not possible to state this without absolute certainty.
22. The BC Supreme Court recently discussed the risks of relying on generative artificial intelligence tools such as ChatGPT in a case in which ChatGPT generated references to non-existent court decisions.<sup>2</sup> The court noted that there is an express warning on the ChatGPT website that the output could be inaccurate, and that using ChatGPT is not a substitute for professional advice. Similarly, the Ontario Superior Court of Justice has noted the inherent risks of unregulated artificial intelligence tools and declined to rely on ChatGPT-generated research.<sup>3</sup> Based on these decisions and absent any evidence to the contrary, I find information provided by ChatGPT is

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<sup>2</sup> *Zhang v. Chen*, 2024 BCSC 285.

<sup>3</sup> *Floryan v. Luke et al.*, 2023 ONSC 5108.

unreliable at best. So, I give no weight to the applicants' ChatGPT evidence about the origin of the emails they received.

23. The applicants also say that Mr. Yang's educational and professional background make him capable of detecting and preventing digital fraud. They say that Mr. Yang verified the authenticity of the email requesting the e-transfer by thoroughly checking the email headers and scrutinizing the email content before sending payment. CRT Rule 8.3(7) says that a party generally cannot act as their own expert in a CRT dispute because they lack neutrality, so I do not accept Mr. Yang's submissions as expert evidence of the emails' origin. In any event, even if the applicants took reasonable precautions before sending the e-transfer, this does not mean that Mr. Gibbs received the e-transfer.
24. In summary, I find the applicants have not proven on a balance of probabilities that Mr. Gibbs was enriched by the \$4,300 e-transfer. So, I find their claim for unjust enrichment must fail.
25. I also considered whether the applicants may recover the e-transfer under the doctrine of mistake of fact. An applicant may recover money that they have paid under an honest mistake of fact.<sup>4</sup> However, this doctrine requires that the mistake must be between the person paying the money and the person receiving it. For the reasons explained above, I find the applicants have not proven that Mr. Gibbs received the \$4,300 e-transfer. So, I find mistake of fact does not apply in these circumstances. I dismiss the applicants' claim for reimbursement of the \$4,300 e-transfer.
26. Under CRTA section 49 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. As the applicants were unsuccessful, I dismiss their claim for CRT fees. Mr. Gibbs did not pay CRT fees, and none of the parties claimed dispute-related expenses, so I make no order for them.

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<sup>4</sup> *Dyson et al. v. Moser*, 2003 BCSC 1720.

## **ORDER**

27. I dismiss the applicants' claims and this dispute.

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Alison Wake, Tribunal Member