



Civil Resolution Tribunal

Original Decision Issued: July 29, 2024

Amended Decision Issued: August 12, 2024

File: SC-2023-001982

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chow v. Chow*, 2024 BCCRT 731

B E T W E E N :

EDMOND CHOW

APPLICANT

A N D :

TAI CHOW, WENDY LI and BRILLIANT ENTERPRISES INC.

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about a custom ring. The applicant, Edmond Chow, claims the respondents, Tai Chow, Wendy Li, and Brilliant Enterprises Inc. (Brilliant Enterprises), did a poor job re-designing his late wife's jade ring. He claims a \$4,144 refund, which is the amount Brilliant Enterprises was paid to remake the ring.

2. The respondents say they spent time designing the ring, including receiving feedback from Mr. Chow, and are entitled to bill for \$3,584.40. As the funeral home which damaged the ring paid Brilliant Enterprises \$4,144, the respondents say Mr. Chow is entitled to a \$560 refund.
3. Mr. Chow is self-represented. The respondents Mr. Tai Chow and Ms. Li are self-represented. Brilliant Enterprises did not file a response and is technically in default, which I will discuss below.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Is Mr. Chow entitled to a refund?
 - b. If so, is Brilliant Enterprises entitled to a set-off for work done?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Chow must prove his claims on a balance of probabilities. 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.

The Respondents

10. As mentioned above, Brilliant Enterprises did not file a Dispute Response and is technically in default. However, based on the company registry search, I accept that Mr. Tai Chow is a director of Brilliant Enterprises. I infer Ms. Li is an employee of Brilliant Enterprises. It is clear that Mr. Tai Chow's and Ms. Li's responses, which are identical, are intended to be on behalf of Brilliant Enterprises. Brilliant Enterprises also provided submissions. So, I accept Mr. Tai Chow's and Ms. Li's Dispute Responses and submissions were made on behalf of themselves and Brilliant Enterprises, and exercise my discretion not to assume liability against Brilliant Enterprises, despite its technical default status.
11. I turn now to the proper respondents in this dispute. A corporation is a distinct legal entity, separate from its directors, shareholders, officers, or employees. Officers, directors and employees of corporations are not personally liable unless they have committed a wrongful act independent from that of the corporation (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121). Brilliant Enterprises is incorporated, and Mr. Chow has provided no evidence that Mr. Tai Chow or Ms. Li interacted with Mr. Chow in any other capacity than as employees of Brilliant Enterprises. So, I find there is no legal basis for Mr. Chow's claims against Mr. Tai

Chow¹ or Ms. Li personally, and I dismiss Mr. Chow's claims against them. This leaves Mr. Chow's claims against Brilliant Enterprises, which I now turn to.

Background

12. Mr. Chow says Brilliant Enterprises provided him with substandard designs for the remaking of his late wife's ring. As a result, he says he ended the contract and asked for a refund.
13. The background is relatively straightforward and undisputed, and I find as follows:
 - a. Mr. Chow provided his late wife's ring to Ocean View Funeral Home (Ocean View), for her to wear during her funeral. Though Ocean View refers to itself as "Dignity Memorial" on some documents, I accept it also uses the name Ocean View. In any event, Ocean View is not a party to this dispute.
 - b. Though I was not provided with details, somehow the ring was damaged while in Ocean View's care.
 - c. Ocean View agreed to pay to have the ring remade, using the jade center stone and diamonds from the original ring, but with a new setting.
 - d. Mr. Chow sought a quote from Brilliant Enterprises to remake the ring. Mr. Tai Chow advised this would be a cost of \$3,700 plus tax.
 - e. Mr. Chow provided the quote to Ocean View and Ocean View the full \$4,144, which was \$3,700 plus tax, directly to Brilliant Enterprises.

Privity of contract

14. I must first consider Brilliant Enterprises' argument that it owes nothing to Mr. Chow because it was paid by Ocean View, not Mr. Chow himself. The legal term for this is "privity of contract", which means a person or entity cannot sue under a contract it is not party to. There are exceptions to privity of contract, including agency, which I find applies here.

15. Here, there is no formal contract between any parties for the ring's remaking. However, I find that the contract was between Mr. Chow and Brilliant Enterprises, for the following reasons.
16. Mr. Chow at all times provided instructions to Brilliant Enterprises about the ring's design. Mr. Chow sought the quote from Brilliant Enterprises, and Brilliant Enterprises provided it to him directly. Mr. Chow then forwarded the quote to Ocean View and directed it to pay Brilliant Enterprises. So, I find Ocean View merely acted as agent to make the payment to Brilliant Enterprises on Mr. Chow's behalf.
17. KS, a manager at Ocean View, told Mr. Chow by email to seek a refund from Brilliant Enterprises directly after he emailed them about his difficulties with the ring design. I find this further supports my finding that Ocean View was only acting as an agent for Mr. Chow.

Is Mr. Chow entitled to a refund?

18. It is undisputed that Brilliant Enterprises did not provide the ring it eventually made to Mr. Chow, and that Mr. Chow eventually had another ring remade by a different jeweler.
19. Based on the text messages, I find Ms. Li and Mr. Chow had discussions about ring design between March and July 2021. Mr. Chow was unhappy with the original design and asked for revisions. During these discussions, there was never an update to the original quote of \$3,700 plus tax to remake the ring.
20. On August 12, Mr. Chow asked how much he owed for "all the design and drafting works to date". Ms. Li responded saying \$500. While Brilliant Enterprises¹ argues this was only for the design fees and did not include any other labour, I find Mr. Chow's question broad enough to include all work done to that date.
21. Mr. Chow and Ms. Li had some phone conversations after August 12, though they disagree about the contents of those calls. On September 2, Mr. Chow asked Ms. Li to confirm what her accountant had said about the refund, minus the \$500 design fee.

Ms. Li replied disagreeing that she told Mr. Chow Brilliant Enterprises would provide a refund, and Mr. Chow responded he would pursue other legal means. I find this amounted to a cancellation of the contract.

22. Despite this, on September 22, Ms. Li advised Mr. Chow the ring was ready, to which Mr. Chow responded he had not authorized the ring to be made. Brilliant Enterprise¹ argues in submissions that it made an “executive decision” to remake the ring matching Mr. Chow’s original ring. As Ms. Li and Mr. Chow had been most recently discussing a completely different ring, I find this was not the ring agreed to by Mr. Chow.
23. I note here that both parties provide evidence about the interactions after Ms. Li asked Mr. Chow to pick up the ring, including the involvement of a mutual acquaintance, P. I find nothing turns on this involvement of P because they were not party to the contract, and their involvement seems to be limited to trying to mediate between the parties.
24. I reach the same conclusion about Mr. Chow’s brother’s statement, which details the involvement of P, and seems to be solely based on what Mr. Chow told him. I find this evidence is not relevant, and do not rely on it. Finally, I also find the voicemails from Mr. Tai Chow asking Mr. Chow to pick up the ring are not relevant.

Business Practices and Consumer Protection Act

25. Mr. Chow does not specifically argue the application of the *Business Practices and Consumer Protection Act* (BPCPA), though he does refer to Brilliant Enterprises’ failure to deliver promised services. However, the BPCPA’s relevant sections are mandatory, and the facts connected to compliance with the BPCPA are undisputed. So, bearing in mind the CRT’s mandate that includes speed and efficiency, I find it is not necessary for the parties to make submissions on the BPCPA’s application.
26. The BPCPA regulates contracts between consumers and suppliers. I find Mr. Chow was a “consumer” and Brilliant Enterprises was a “supplier”, as defined in the BPCPA.

27. Section 17 of the BPCPA says a “future performance contract” is a contract between a supplier and a consumer where either a) the supplier does not get fully paid or b) the customer doesn’t get their products or services, when the contract is made. Section 17 lists certain exclusions but these do not apply here.
28. Because Brilliant Enterprises was undisputedly paid before anything was supplied, I find the contract between the parties is a future performance contract.
29. Sections 19 and 23 of the BPCPA state that for future performance contracts, among other terms not relevant to this dispute, the contract must set out:
- a. The supplier’s name, business address and other contact information.
 - b. The date the contract was made, a detailed description of the goods or services, an itemized purchase price, the total price, and a detail statement of the terms of payment.
 - c. The supply date and the date the supply will be complete.
30. BPCPA section 23(5) states a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract if the contract does not contain the required information.
31. The parties undisputedly did not have a written contract. While it is possible for Brilliant Enterprises’ quote to form the basis for a contract, I find that it is missing a contract date, a supply date and a detailed statement of the payment terms. So, I find the contract does not comply with BPCPA section 23(2) and Mr. Chow was entitled to cancel the contract, if done within the prescribed time limit.
32. Ocean View paid Brilliant Enterprises the full purchase price on April 14, 2021. I found above Mr. Chow cancelled the contract on September 2, 2021. So, I find this cancellation was in time under BPCPA section 23(5).

33. BPCPA section 28 says a consumer who cancels a future performance contract must deliver any goods received under the contract back to the supplier. It is undisputed Brilliant Enterprises never gave the ring to Mr. Chow, and so I find he is not required to return anything.
34. BPCPA section 27 says that if a consumer cancels a contract, the supplier must refund to the consumer all money received, without deduction, within 15 days after the notice of cancellation has been given. Section 55 says the consumer may recover the refund from the supplier as a debt due. So, I find Brilliant Enterprises must refund Mr. Chow \$4,144.

Is Brilliant Enterprises entitled to a set-off for work done?

35. Brilliant Enterprises did not make a counterclaim. However, Brilliant Enterprises says it did a significant amount of work on the ring redesign, including many discussions with Mr. Chow. It provided an invoice showing 27 hours of work, which at \$100 per hour, is \$3,584.40.
36. I infer it is asking for a set-off against any refund owing to Mr. Chow. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted. The burden of proving a set-off is on the party alleging it, which in this case is Brilliant Enterprises (see *Wilson v. Fotsch*, 2010 BCCA 226).
37. I find Brilliant Enterprises has not proven entitlement to a set-off of more than \$500. This is because I found above the text message of Ms. Li on August 12 saying Mr. Chow owed \$500 was for all work done to that date. I agree with Mr. Chow that Brilliant Enterprises¹ “statement of account” contains inflated hours billed. I also find this was for work Mr. Chow never agreed to pay for, accounts for almost the full quote to remake the ring, and does not account for any materials or time spent making the ring.
38. I find Brilliant Enterprises is entitled to a set-off of \$500. So, I find Brilliant Enterprises must refund Mr. Chow \$3,644.

39. The *Court Order Interest Act* applies to the CRT. Mr. Chow is entitled to pre-judgment interest on the \$3,644 from September 17, 2021, which is 15 days after Mr. Chow asked for a refund, per BPCPA section 27, to the date of this decision. This equals \$263.50.
40. 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 Mr. Chow was mostly successful and is entitled to reimbursement of \$175 in CRT fees.
41. Mr. Chow also claims \$54 for the translations of the voicemails left by Mr. Tai Chow. Brilliant Enterprises¹ opposes this expense as “overindulgent”. However, while I have not relied on these specific messages in coming to my decision, I find they directly related to the matter in issue and provide context for the parties’ communications. So, I find Mr. Chow is entitled to be reimbursed \$54 for the translations.

ORDERS

42. Within 30 days of the date of this order, I order Brilliant Enterprises to pay Mr. Chow a total of \$4,136.50, broken down as follows:
- a. \$3,644 in damages,
 - b. \$263.50 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$229, for \$175 in CRT fees and \$54 for dispute-related expenses.
43. The applicant is entitled to post-judgment interest, as applicable.

44. 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.

Amanda Binnie, Tribunal Member

¹ Amended under CRTA section 64(a) to correct a typographical error.