



Civil Resolution Tribunal

Date Issued: July 15, 2022

File: VI-2022-002422

VI-2022-003435

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Khairi v. Browne*, 2022 BCCRT 813

BETWEEN:

NAHIDA KHAIRI

APPLICANT

AND:

MATTHEW BROWNE

RESPONDENT

REASONS FOR PRELIMINARY DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a preliminary decision of the Civil Resolution Tribunal (CRT) about whether the claims in this dispute were filed out of time.

2. The applicant, Nahida Khairi, and the respondent, Matthew Browne, were involved in a motor vehicle accident on August 5, 2019 in Coquitlam, British Columbia. Mrs. Khairi was a passenger in their husband's vehicle at the time. It is undisputed that Mrs. Khairi was not responsible for the accident. Mrs. Khairi alleges they were injured as a result of the accident.
3. Mrs. Khairi filed two related motor vehicle disputes with the CRT: (1) a request that the CRT determine whether Mrs. Khairi's injuries are "minor injuries" under the *Insurance (Vehicle) Act* (dispute VI-2022-003435), and (2) a claim for personal injury damages (dispute VI-2022-002422).
4. The parties' insurer, Insurance Corporation of British Columbia (ICBC), insures both Mrs. Khairi and Mr. Browne. ICBC is not a party to either dispute.
5. Mrs. Khairi is self-represented. ICBC represents Mr. Browne.
6. ICBC alleged in Mr. Browne's filed Dispute Response that Mrs. Khairi's claim for damages was filed out of time under the *Limitation Act*. If it was, then the minor injury determination dispute is moot, and both disputes should be dismissed. If the damages claim is not out of time, both disputes may continue through the CRT's decision making process.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the CRT on this preliminary issue. The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(b) of the CRTA gives the CRT jurisdiction over the determination of whether an injury is a minor injury under the *Insurance (Vehicle) Act* (IVA). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over the determination of liability and damages in an accident claim, up to \$50,000.
8. At the time Mrs. Khairi filed their CRT disputes, there was an ongoing legal challenge about whether sections 133(1)(b) and (c) of the CRTA were constitutional. The British

Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect. The British Columbia Court of Appeal (BCCA) then granted a partial stay of the BCSC decision, which allowed the CRT to continue resolving claims under these CRTA sections while the challenge was heard at the BCCA. Mrs. Khairi elected to continue their dispute at the CRT.

9. On May 12, 2022, the BCCA overturned the BCSC's decision. This means the CRT retains jurisdiction to resolve claims under section 133(1)(c) of the CRTA, and has exclusive jurisdiction to resolve claims under section 133(1)(b), pending any future appeal to the Supreme Court of Canada. However, given Mrs. Khairi elected to continue their disputes at the CRT, nothing turns on the BCCA's decision.
10. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
11. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUE

12. The issue in this preliminary decision is whether Mrs. Khairi's claim for personal injury damages is out of time under the *Limitation Act*.

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant Mrs. Khairi bears the burden of proof on a balance of probabilities. In making this decision I have considered the Dispute Notices, Dispute Responses, the parties' submissions as documented in a

Preliminary Issue Tribunal Decision Plan, and the evidence submitted by the parties for this preliminary issue.

14. Under the *Limitation Act*, there is a 2-year limitation period in British Columbia to start a claim, which runs from when the claim was discovered or ought to have been discovered. It is undisputed Mrs. Khairi discovered, or ought to have discovered, their claim on August 5, 2019, the date of the accident. Mrs. Khairi filed their application for dispute resolution on April 6, 2022.
15. Mrs. Khairi therefore filed their application for dispute resolution more than 2 years after they discovered their claim. Generally, filing a claim “out of time” means that the claim is time barred and must be dismissed. However, limitation periods can be extended, postponed, or waived in certain circumstances.
16. In the Dispute Response it filed on behalf of Mr. Browne, ICBC argued Mrs. Khairi’s claims were out of time due to the *Limitation Act*. However, ICBC now says that the applicable limitation period was waived or extended. ICBC says Mr. Browne will not be taking the position the claims are barred by the *Limitation Act*.
17. Due to Covid-19, the Legislature enacted the *COVID-19 Related Measures Act* (CRMA). Under the authority of the CRMA, the *Covid-19 (Limitation Periods in Court Proceedings) Regulation* suspended limitation periods for one year. This automatic suspension applied only to the British Columbia Provincial Court, British Columbia Supreme Court, and British Columbia Court of Appeal. Administrative tribunals like the CRT were not included.
18. The CRMA gave administrative tribunals like the CRT discretion to waive, suspend, or extend any mandatory time limit, including limitation periods. That authority expired 90 days after the Covid-19 state of emergency ended in British Columbia. The state of emergency ended on June 30, 2021, so I find that the CRT’s power to waive, suspend, or extend a limitation period expired at the end of September 2021. As Mrs. Khairi applied for dispute resolution on April 6, 2022, I find the CRT has no authority to waive, suspend, or extend the limitation period under the CRMA.

19. However, a party may still be prevented from relying on the *Limitation Act* as a defence to a claim on the basis of a legal principle known as promissory estoppel. To establish promissory estoppel, it must be shown that ICBC, on behalf of Mr. Browne, by words or conduct, made a promise or assurance that was intended to affect the parties' legal relationship, and that Mrs. Khairi acted on it or in some way changed their position in reliance on the promise (see: *Maracle v. Travellers Indemnity Co. of Canada*, 1991 CanLII 58 (SCC)). For the following reasons, I find promissory estoppel proven.
20. As noted, the accident occurred on August 5, 2019, which means the limitation period under the *Limitation Act* would have expired on August 5, 2021. An email in evidence provided by ICBC shows that during settlement negotiations on April 28, 2021, an ICBC employee spontaneously advised Mrs. Khairi that due to Covid-19, their limitation period was extended to August 5, 2022. As a result, the ICBC employee advised Mrs. Khairi there was no rush to make any decisions about settlement at that time.
21. ICBC file notes in evidence also show that on each of March 23, 2022 and April 13, 2022, ICBC again incorrectly advised Mrs. Khairi that the limitation period for claims relating to the accident was extended to August 5, 2022. During this time, settlement negotiations broke down, and Mrs. Khairi applied for dispute resolution at the CRT on April 6, 2022.
22. Mrs. Khairi says they would not have waited to start their claim if ICBC had not informed them of the limitation period extension.
23. I find ICBC, on behalf of Mr. Browne, made assurances to Mrs. Khairi that the limitation period would be extended to August 5, 2022. I find ICBC intended that promise to affect the parties' legal relationship. Specifically, I accept ICBC told Mrs. Khairi of an extended limitation date, and intended to be bound by that later date.
24. I also accept Mrs. Khairi relied on ICBC's incorrect information, and delayed filing a claim due to that information.

25. I find there was an explicit promise by ICBC to not be bound by the statutory limitation period, and that ICBC, on behalf of Mr. Browne, waived Mr. Browne's rights under the *Limitation Act*. I find promissory estoppel has been made out. So, I find Mrs. Khairi's disputes may continue.

Andrea Ritchie, Vice Chair