



# Civil Resolution Tribunal

Date Issued: December 7, 2018

File: SC-2018-001020

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Philps v. Thomas*, 2018 BCCRT 817

**B E T W E E N :**

Paul Philps

**APPLICANT**

**A N D :**

George Thomas

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This is a dispute about hockey jerseys and socks. The applicant, Paul Philps, says he bought hockey jerseys and socks (the uniforms) for the respondent George Thomas' hockey team, with the respondent's agreement to reimburse him for the cost. The applicant says he delivered the uniforms to the respondent, but the respondent did not pay him the full cost of the uniforms.

2. The applicant wants the respondent to pay him \$760.55 for the remaining cost of the uniforms and \$126.17 in interest.
3. The respondent says he never made a specific agreement to pay the applicant and that he performed work for the applicant in exchange for the cost of the uniforms. The respondent also says the applicant started the dispute out of time.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. The tribunal 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. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in

which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the parties have an agreement?
  - b. Is the dispute out of time under the *Limitation Act*?
  - c. If not, is the respondent required to pay the applicant for the uniforms?

## **EVIDENCE AND ANALYSIS**

10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. The respondent participated in the facilitation process and provided submissions but chose not to provide any evidence, despite reminders from the tribunal case manager.
11. For the reasons that follow, I dismiss the applicant's claim.

### ***The Agreement***

12. It is undisputed that the applicant ordered, paid for, and delivered the uniforms to the respondent. There is, however, conflicting evidence about the exact terms of the

parties' agreement. The applicant says the respondent agreed to pay him for the uniforms. The applicant submitted an email he sent to the respondent on January 18, 2014 setting out the details and cost breakdown of the uniforms, for a total cost of \$910.55.

13. The respondent says he never agreed to pay the applicant for the uniforms. He says he performed work for the applicant and insinuates that the work was in exchange, or at least partial exchange, for the uniforms. However, the respondent also says he had a separate agreement with the respondent to pay him only for the hockey socks. The respondent says there was an agreement in 2013 but provides no explanation or details about that agreement. The respondent denies receiving an invoice from the applicant for the uniforms. However, the applicant sent the January 18, 2014 email with a breakdown of costs for the uniforms to the respondent at the same email address the respondent used for this dispute.
14. The applicant submitted many Facebook messages between him and the respondent from February 2014 to January 2018 in which the applicant repeatedly asks for payment from the respondent. In many of these messages the respondent acknowledges that he owes the applicant money and promises to pay him. Although many of these messages are vague, they support the applicant's version of the parties' agreement. Considering the inconsistencies in the respondent's submissions and his failure to provide evidence, I prefer the applicant's evidence. I am satisfied that the respondent agreed to pay the applicant for the uniforms.

### ***Limitation Period***

15. The *Limitation Act* applies to disputes before the tribunal and sets out limitation periods which are specific time limits for filing a dispute. As of June 1, 2013, section 6 of the *Limitation Act* says the basic limitation period is 2 years, and that a claim cannot be started more than 2 years after the day it was discovered. If the time limit expires, the right to bring the dispute disappears, and the dispute must be dismissed. I find that the 2-year basic limitation period applies to this dispute.

16. While I have found that the respondent agreed to pay the applicant for the uniforms, there is no evidence of the specific date the respondent agreed to pay. The applicant says when he delivered the uniforms the respondent said he would send the applicant a cheque the following week. The respondent denies this and says he does not use cheques. The earliest Facebook message in evidence in which the applicant asks the respondent for payment is February 5, 2014. This timing is consistent with the applicant's offer to deliver the uniforms in the January 18, 2014 email. Given the inconsistencies in the respondent's submissions and his failure to submit evidence, I prefer the applicant's evidence that the respondent promised to pay him the week following delivery of the uniforms. I therefore find the applicant discovered his claim against the respondent on February 5, 2014. According to the *Limitation Act*, the applicant was required to start his dispute before February 5, 2016.
17. The applicant's Dispute Notice was issued on February 13, 2018, which is what stopped the limitation period from running. This is more than 2 years past the 2-year deadline in the *Limitation Act*, however, section 24 of the *Limitation Act* says a limitation period may be extended if a person acknowledges liability before the expiry of the limitation period. Payment or partial payment of a "liquidated sum" is considered an acknowledgement of liability.
18. It is undisputed that the respondent paid the applicant \$100 on July 25, 2015, and \$50 on October 2, 2015. The respondent says these payments were only for the socks, and he says the sock purchase was a separate transaction and a separate agreement with the applicant. Given my findings with respect the parties' agreement for the respondent to pay the applicant for the uniforms, I am satisfied that these payments were an acknowledgement of the respondent's liability to the applicant under that agreement. Since the last payment was on October 2, 2015, this means the limitation period was extended 2 years from that date to October 2, 2017.

19. The applicant says the respondent acknowledged liability in a Facebook message on August 28, 2016, which further extended the limitation period. In that message the respondent said, "I will have payments coming your way very soon."
20. According to section 24 (6) of the *Limitation Act*, an acknowledgement of liability must be in writing, must be signed by hand or by electronic signature as defined in the *Electronic Transactions Act*, it must be made by the person making the acknowledgement and it must be made to the person with the claim.
21. There is no dispute that the Facebook message is in writing and was made by the respondent to the applicant. However, the Facebook message does not contain a signature.
22. An electronic signature is defined in the *Electronic Transactions Act* as information in electronic form that a person has created or adopted in order to sign a record that is in, attached to, or associated with the record. In *Johal v. Nordio*, 2017 BCSC 1129 (*Johal*), the court said the statute's language focuses on whether the sender of the electronic message intended to create a signature to identify him or herself as its composer and sender. In that case the defendant did not deny sending the email in question and had attached his name, position and contact information to the bottom of the email acknowledging liability. The court found the email satisfied the requirements of section 24 (6) of the *Limitation Act*.
23. In *Druet v. Girouard*, 2012 NBCA 40, the court said formal requirements for signatures serve the purposes of identifying the source and authenticity of the document, as well as establishing the signatory's approval of the document's contents.
24. The respondent's August 28, 2016 Facebook message contains no signature of any kind, which differentiates this case from *Johal*. Based on the courts' rationale for requiring a signature, and the strict requirement for a signature in the *Limitation Act*, I find the respondent's August 28, 2016 Facebook message fails to meet the

requirements of an acknowledgement of liability under section 24 (6) of the *Limitation Act*.

25. I find the limitation period expired on October 2, 2017, and I find the applicant brought this dispute out of time.
26. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and neither party claimed dispute-related expenses.

## **ORDER**

27. I dismiss the applicant's claims and this dispute.

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Sarah Orr, Tribunal Member