



# Civil Resolution Tribunal

Date Issued: March 12, 2019

File: SC-2018-007081 and SC-2018-007082

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Bayer v. Yang*, 2019 BCCRT 298

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

Donald Peter De Bayer

**APPLICANT**

**A N D :**

Qian Yang

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

### **INTRODUCTION**

1. The case manager referred a preliminary issue to me for a decision about whether the Civil Resolution Tribunal (tribunal) should join the above 2 disputes into a single dispute because they represent a single claim. The issue is the tribunal's monetary jurisdiction of \$5,000 per claim. The tribunal has the authority to make any order it

thinks necessary to achieve the objects of the tribunal under section 61 of the *Civil Resolution Tribunal Act* (Act).

## **EVIDENCE AND ANALYSIS**

2. The 2 disputes have the same parties. The applicant in both disputes is Donald Peter de Beyer and the respondent in both disputes is Qian Yang. In both disputes, the applicant claims \$5,000 per claim, the maximum amount allowed under the tribunal's small claims jurisdiction.
3. These disputes are before me because the respondent believes that the applicant's claims should be joined together because they are actually a single claim. If the claims in the 2 disputes are joined into a single claim, the total claim would be for \$10,000, which is above the tribunal's monetary jurisdiction of \$5,000. As such, under the tribunal's practice when an applicant's claim exceeds the tribunal's monetary jurisdiction, the applicant would have the option of abandoning the amount in excess of \$5,000 or withdrawing the claim, which would allow the applicant to pursue the claim in Provincial Court.
4. I have reviewed the Dispute Notice and Dispute Response for each of the 2 disputes. Both parties have made submissions about whether to join the disputes. I have not reviewed any other evidence, and make no comment about the merits of the issues in the 2 disputes.
5. The respondent submits that the 2 disputes are about the same underlying series of events. The respondent submits that the applicant brought the 2 disputes separately to inappropriately get around the tribunal's monetary jurisdiction and that they are therefore an abuse of process.
6. The applicant says that while the claims in the 2 disputes are somewhat related, they relate to separate incidents.
7. At the times relevant to the disputes, the applicant and the respondent lived in the same condominium building in Clearwater. The applicant's unit was below the

respondent's unit. Both disputes are about water leaks that the applicant says originated in the respondent's unit and caused damage.

8. In SC-2018-007082, the applicant claims for damages arising from water leaks that occurred on March 11, 2017, April 12, 2017 and November 6, 2017. The applicant says that he could not use his unit after these leaks because of the restoration work being done. He also claims for pain and suffering.
9. In SC-2018-007081, the applicant claims that there was another water leak on April 25, 2018. By this time, the applicant had sold his unit and the sale was scheduled to complete on May 1, 2018. As a result of this leak, the applicant says that he had to repair the unit and compensate the purchaser. He says that there was a holdback from the sale proceeds that ultimately went to the purchaser.
10. Section 118(1) of the Act says that the tribunal has jurisdiction to resolve a claim if it is less than or equal to a prescribed amount, which the *Civil Resolution Tribunal Small Claims Regulation* sets at \$5,000. Section 1 of the Act says that for the purposes of the Act, a claim "includes any matter that may be resolved by the tribunal". The Act does not define a "claim" further.
11. The British Columbia Provincial Court has considered the same issue several times because it also has a monetary limit. The Provincial Court has jurisdiction over civil claims pursuant to the *Small Claims Act (SCA)*. Section 1 of the SCA says that a claim "includes a counterclaim made by a defendant against a claimant". The SCA does not define a "claim" further. I find that there is no substantive difference between how a "claim" is defined in the Act and the SCA. Therefore, I find that the reasoning of the Provincial Court on this issue is binding on me.
12. In *Kids Only Market Ltd. v. Chan*, [1993] B.C.J. No. 2728 (P.C.), the applicant brought 2 separate court actions for the breach of a commercial lease. The applicant was the landlord and the defendant had abandoned the lease before the end of its term. Both claims were under the Provincial Court's monetary limit, which at the time was \$10,000, but together they added up to over \$19,000.

13. Several months after the defendant abandoned the lease, the claimant started leasing a part of the premises to another tenant, at lower rent. The first court action was for the difference between the defendant's rent and the new tenant's rent for the remainder of the term of the defendant's lease. The second court action was for unpaid rent.
14. The claimant argued that the 2 court actions were for separate claims under the SCA because the first was for damages and the second was for a debt. The Court disagreed, finding that because the claims arose from the same event, the breach of the lease, they were 2 parts of the same claim. The Court also found that permitting the claimant to split its claim would undermine the Court's mandate to provide speedy and efficient access to justice.
15. In *Telus Services Inc. v. Hussey*, 2016 BCPC 41, the Court applied the same reasoning to 2 court actions, one for damages for breach of contract and the other for contractual interest. The Court found that they arose from the same breach of contract and were therefore the same claim.
16. In *Bishop v. Lamb*, 2001 BCPC 376, the claimant alleged in one court action that the defendant owed her rent for the rental of her barn and in a second court action that the defendant stole a trailer that was supposed to stay in the barn. The Court found that the 2 court actions were "integrally interwoven" because they arose from the same series of events. The Court found that the claimant should not have started 2 court actions and limited her damages to \$10,000.
17. In *Khodarahmi v. Conkin*, [1994] B.C.J. 2411 (P.C.), the Court found that a claimant could not bring 2 separate court actions against different defendants because they were based on the same "wrongful conduct".
18. In *Wah Loong Ltd. v. Fortune Garden Restaurant (Richmond) Ltd.*, 2000 BCPC 163, the claimant filed 8 separate court actions against the same defendant, each under the Court's monetary limit of \$10,000 but totaling over \$70,000. Each court action was for payment of multiple invoices.

19. The Court analyzed the parties' relationship and determined that each invoice was for payment under a distinct contract. Each time the respondent failed to pay an invoice, it was a separate claim. Therefore, the Court found that the claimant had not inappropriately split its case. The Court permitted the claimant to pursue the 8 court actions.
20. In contrast, in *Greenomics Corp. v. Big Feats Management & Logistics Inc.*, 2011 BCPC 223, the claimant was not permitted to bring separate court actions for each invoice that the defendant had not paid. Unlike in *Wah Loong*, the Court found that the invoices did not represent distinct contracts. Rather, the defendant had issued periodic invoices on a single, continuing contract.
21. Based on the above, I find that an applicant may bring multiple claims against the same defendant even if the total amount is above the tribunal's monetary limit, as long as the claims are sufficiently distinct such that they are different and separate claims. In the context of claims for breach of contract, the key consideration is whether multiple claims arise from the same breach of contract. In the context of tort claims, the key consideration is whether the claims arise from the same wrongful conduct or are integrally interwoven. For example, if a person suffers different types of damage from a single motor vehicle accident, it is a single claim.
22. In the context a series of water leaks, the distinction may not always be clear. For example, a water leak could persist intermittently over a period of time and constitute a single claim. However, in these disputes I find that the leak at issue in SC-2018-007082 is clearly distinct from the 3 leaks at issue in SC-2018-007081. There were several months between the last leak in SC-2018-007082 and the leak in SC-2018-007081. The applicant says that after each leak, his unit was restored back to its original state. In other words, it was not a continuous leak that caused the same damage or overlapping damage. I find that the leak in SC-2018-007082 represents distinct wrongful conduct from the leaks in SC-2018-007081.

## **EVIDENCE AND ANALYSIS**

23. In summary, I find that the applicant is permitted to pursue the 2 claims as separate disputes even though together they add up to \$10,000. That said, I find that the disputes should be linked during the tribunal process. This will conserve the tribunal's resources and avoid inconsistent findings of fact. I direct that the SC-2018-007081 and SC-2018-007082 be linked. The tribunal proceeding will continue.

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Eric Regehr, Tribunal Member