



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-002677

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Contact Resource Services Inc. v. Harcus*, 2019 BCCRT 316

B E T W E E N :

Contact Resource Services Inc.

APPLICANT

A N D :

Sean Reed Harcus

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a debt claim. The applicant, Contact Resource Services Inc., says the respondent, Sean Reed Harcus, owes it \$4,295.03, plus interest. The respondent says the claim is out of time and that it does not owe the amount claimed.

2. The applicant is represented by an employee or principal, and the respondent is self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
4. 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 "they said, he 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.
5. 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.

6. 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

7. The issues in this dispute are:
 - a. Is the applicant out of time to bring its claim?
 - b. If not, is the respondent required to pay the applicant \$4,295.03?

EVIDENCE AND ANALYSIS

8. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
10. The applicant says the respondent opened a credit card account with HSBC on September 18, 2010. The applicant says the respondent's last payment on that account was \$300 on May 10, 2012. On January 6, 2013 HSBC charged off the respondent's account due to delinquency. The applicant submitted monthly statements from the account from June 6, 2012 to January 6, 2013, which support its claim. These statements show that while the account was active HSBC charged interest at an annual rate of 29.9 percent, compounded monthly. As of January 6, 2013, the total amount owing including interest accrued to that date was \$4,295.03. As further noted below, I am unable to determine precisely how much of this sum is contractual interest, but I find it is at least \$771.12.
11. On January 15, 2015, HSBC assigned liability for the debt to the applicant and notified the respondent by letter. On January 26, 2015 the applicant sent the

respondent a letter notifying him it had taken over the HSBC debt, and setting out resolution and payment options. On February 5, 2018 the applicant sent the respondent a statement of account for \$4,295.03. The statement shows an interest rate of zero percent, indicating the applicant had not charged interest on the \$4,295.03 since taking over the debt.

12. The respondent submitted a credit report dated October 25, 2018 which shows an HSBC finance debt for \$0 dated September 10, 2010 and an HSBC auto finance debt for \$0 dated September 2, 2010. The respondent says he paid his only HSBC debt in 2010 and the fact that the HSBC credit card debt is not on his credit report is proof that he does not owe anything. However, the respondent also says he made a settlement offer to the applicant, although he provided no details of the offer. The respondent also says his debts owing before September 2015 are subject to divorce proceedings but provided no evidence to support this claim.
13. On balance, I prefer the applicant's evidence. It submitted documentation consistent with its claim, and all of the documents are addressed to the respondent at the same address he used for this dispute. The respondent gave different reasons why he is not required to pay the applicant but provided no supporting evidence of divorce proceedings or of making a settlement offer. The fact that a debt is not included in a credit report is not determinative of the existence of the debt.

Is the applicant out of time to bring its claim?

14. The respondent says the applicant is out to time to bring its claim. The *Limitation Act* applies to disputes before this tribunal. The current *Limitation Act* came into force on June 1, 2013, and it stipulates that a debt claim must be started within 2 years of the date it was discovered. For claims discovered before June 1, 2013, the former *Limitation Act* applies. Under that *Limitation Act* a debt claim had to be started within 6 years of the date it was discovered. A person discovers a claim on the day they first learned of the matters in the claim or reasonably ought to have known about the claim.

15. In *Contact Resource Services Inc. v. Alblas*, 2019 BCCRT 56, the tribunal was tasked with determining the date the applicant creditor discovered its debt claim. The tribunal determined that the creditor's charge-off date was arbitrary, as it was a matter internal to the creditor, and determining the limitation period based on that date would allow a creditor to extend a limitation period by its own action. The tribunal relied on the decision in *Hunky Dory Sawmills v. Hassell*, 2018 BCPC 68, to find that the limitation period began running on the date the debtor made their last payment.
16. While I am not bound by the tribunal's decision I find it persuasive and I rely on it. I find the limitation period in this case began running on May 10, 2012, which is the date the respondent last made a payment on the account. Since this date is before June 1, 2013, the former *Limitation Act* applies, and the applicant was required to bring its claim against the respondent within 6 years, or before May 10, 2018. The applicant's Dispute Notice was issued on April 17, 2018, and therefore I find the applicant brought its claim in time, within the limitation period.

Is the respondent required to pay the applicant \$4,295.03?

17. I have found the applicant brought its claim in time, and that I prefer the applicant's evidence over the respondent's. I am satisfied the applicant has proven its claim and I find the respondent must pay the applicant \$4,295.03. The applicant has claimed interest on this amount, but not at a contractual rate. I take this to mean the applicant is claiming pre-judgment interest under the *Court Order Interest Act (COIA)*. However, the evidence before me indicates that at least \$771.12 of the amount I have found owing is contractual interest. Since HSBC compounded interest monthly, and since I do not have all the monthly account statements before me, I am unable to determine exactly how much of the \$4,295.03 is contractual interest. I therefore decline to award pre-judgment interest beyond what is included in the \$4,295.03 for the period up until January 6, 2013, as the applicant is not entitled to interest under the COIA on top of contractual interest. However, I find the applicant is entitled to COIA interest from January 7, 2013 until the date of this

decision on \$3,523.91 of the amount owing, which is \$4,295.03 less the \$771.12 of contractual interest.

18. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

19. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$4,682.50, broken down as follows:
 - a. \$4,295.03 as payment of the debt,
 - b. \$212.47 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
20. The applicant is entitled to post-judgment interest, as applicable.
21. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

22. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member