



Civil Resolution Tribunal

Date Issued: March 21, 2019

File: SC-2018-004520

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Contact Resources Services Inc. v. Hood*, 2019 BCCRT 352

B E T W E E N :

Contact Resource Services Inc.

APPLICANT

A N D :

Duncan Roderick Hood

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a debt.
2. The applicant, Contact Resource Services Inc., says the respondent, Duncan Roderick Hood, owes it \$4,571.38 in debt, and seeks an order for payment of that amount.

3. The respondent neither admits nor denies the debt, but says it is unenforceable as the limitation period has expired.
4. The applicant is represented by an employee. The respondent is 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 118 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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. Is the applicant's debt claim barred under the *Limitation Act* (LA)?
 - b. If not, must the respondent must pay the applicant \$4,571.83 for the debt?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. On October 6, 2010, the respondent opened a line of credit account with HSBC. The applicant made withdrawals from the account.
12. The applicant says the respondent's final payment to the account was on January 21, 2013, and after that the respondent was in default. This is consistent with the HSBC statement of account provided in evidence, which shows a final payment of \$1,211 on January 21, 2013. The respondent has not disputed this evidence, or provided contrary evidence, so I find that the last payment to the account was on January 21, 2013.
13. On August 22, 2013, the respondent's account was "charged off" due to delinquency. At that time, the balance owing was \$4,571.38.
14. On January 15, 2015, HSBC assigned the liability and interest to the applicant. This is the debt for which the applicant now seeks an order of payment. The applicant does not seek contractual interest beyond that already included in the \$4,571.38, so I will not address it.

Limitation Period

15. The respondent says the applicant's claim is barred under the LA. The applicant disagrees, and says its claim was filed within the applicable 6-year limitation period.
16. The LA applies to disputes before the tribunal. A limitation period is a period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have been successful.
17. In British Columbia, the current LA came into effect on June 1, 2013. It provides that a debt claim be started within two years of when it was discovered.
18. For claims discovered before June 1, 2013, the old LA applies. Under the pre-June 1, 2013 LA, a debt claim had to be started within 6 years of when it was discovered. Under the new LA, the limitation period for debt claims is 2 years.
19. A claim is "discovered" on the first day that the person had knowledge of the matters in the claim or reasonably ought to have known about the claim.

20. The applicant says that a 6-year limitation period applies, under the old LA. The applicant says the respondent made his last payment on January 21, 2013, so the limitation period began to run on that date. The applicant says that the dispute was filed within 6 years of January 21, 2013, so the claim is not barred under the LA.
21. In *Contact Resource Services Inc. v. Alblas*, 2019 BCCRT 56, the tribunal considered when a similar debt claim was discovered. The tribunal member relied on *Hunky Dory Sawmills v. Hassell*, 2018 BCPC 68, at paragraph 116, in which the provincial court found that the limitation period for a debt owing on a construction invoice would have run for 6 years after the date of last payment, had the claimant not acknowledged the debt again later. The tribunal member concluded, based on *Hunky Dory*, that the applicant's debt claim was discovered on the date of the respondent's last payment.
22. While previous tribunal decisions are not binding precedents, I find this decision provides useful guidance, and I rely on it and on the court's decision in *Hunky Dory*, which is binding on me. I therefore find the applicant's claim was discovered on the date of his last payment, which was January 21, 2013.
23. Since the claim was discovered before June 1, 2013, the old LA applies. As previously stated, the limitation period for debt claims under the old LA is 6 years.
24. For claims filed with the tribunal before January 1, 2019, like this one, the limitation period stopped when the tribunal issued the Dispute Notice. The Act was amended as of January 1, 2019, so for claims filed after January 1, 2019, the limitation period stops on the date the dispute is filed with the tribunal. In this case, the applicant filed the dispute on June 21, 2018, and the Dispute Notice was issued on the same day, so under either version of the Act the limitation period stopped on June 21, 2018.
25. Since June 21, 2018 is less than 6 years after January 21, 2013, I find the applicant's claim was filed within the applicable limitation period, and is not barred.

Debt

26. I find the applicant has provided documentation to support the amount owed of \$4,571.83. This includes the signed HSBC line of credit agreement and cost of borrowing disclosure. It also includes an HSBC statement of account showing amounts borrowed and repaid by the respondent, with a final balance of \$4,571.38 on August 21, 2013.
27. The applicant has not provided any contrary evidence, and did not specifically dispute the debt, or the amount of owed. Therefore, based on the evidence

provided by the applicant, I find the applicant is entitled to payment of \$4,571.83 for the outstanding debt.

28. The applicant is also entitled to pre-judgment interest on the loan balance amount, excluding interest, under the *Court Order Interest Act* (COIA). However, the applicant did not provide sufficient evidence showing what portion of the \$4,571.83 owed on the charge off date was principle, and how much was accrued interest. Since the COIA does not allow interest to be charged on interest, I do not order pre-judgment interest under the COIA.
29. 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.

ORDERS

30. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$4,746.83, broken down as follows:
 - a. \$4,571.83 for the debt, and
 - b. \$175 for tribunal fees and dispute-related expenses.
31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.

33. 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.

Kate Campbell, Tribunal Member