



# Civil Resolution Tribunal

Date Issued: July 5, 2019

File: SC-2019-002355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *KSD Holdings Ltd. v. Gurjas Enterprises Ltd.*,  
2019 BCCRT 809

B E T W E E N :

KSD HOLDINGS LTD.

**APPLICANT**

A N D :

GURJAS ENTERPRISES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. The issue of whether the applicant's claims are out of time was referred to me. This is a final decision of the Civil Resolution Tribunal (tribunal) dismissing the applicant's claims on the basis they are out of time. My reasons follow.

2. The applicant, KSD Holdings Ltd., is represented by Komal Dodd. The respondent, Gurjas Enterprises Ltd., is represented by Dharinder Singh Randhawa.

## **JURISDICTION AND PROCEDURE**

3. These are the tribunal's formal written reasons. 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.
4. 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 of this dispute, I find that I am properly able to assess and weigh the 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.
5. During the facilitation phase the tribunal facilitator became aware of concerns that the applicant's claims were potentially out of time. The tribunal facilitator obtained submissions from the parties and asked the tribunal to decide this issue. While final, my decision is therefore not a decision on the merits of the claim.
6. 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.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make an order one or more of the following orders:
  - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

## **EVIDENCE AND ANALYSIS**

8. The *Limitation Act* applies to disputes before the tribunal. A limitation period is a period within which a person may bring a claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years. If that period expires, the right to bring the claim ends, even if the claim would have been successful.
9. This dispute is about whether the respondent correctly installed a roof, gutters, soffits, down pipes, and leaf guards at the applicant's property in the summer of 2015. In the winter of 2015 the gutters started leaking. Although the respondent visited the applicant's property to fix the problem, the leaking continued into 2016. In October 2016, the applicant texted the respondent that if it didn't fix the leaks it would take legal action. The respondent's representative replied that he would be away until December 2016 and would attend to it when he came back.
10. The applicant sought legal advice in November 2016. Its lawyer sent a letter dated November 24, 2016 to the respondent, demanding the respondent repair the faulty work, otherwise it would seek someone else to do the repairs. The applicant did not describe the contents of the letter further, but presumably the applicant also advised that it would seek reimbursement for such repairs from the respondent.
11. Section 8 of the *Limitation Act* provides that a claim is discovered by a person on the first day that person knew, or reasonably ought to have known
  - a. that injury, loss or damage had occurred;
  - b. that the injury, loss or damage was caused by or contributed to by an act or omission;

- c. that the act or omission was that of the person against who the claim is or may be made; and
  - d. that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
12. I find that this claim was discovered by November 24, 2016, at the latest. By that time the applicant knew that that the gutters were leaking and had determined that the respondent's repairs were to blame. The applicant had also advised in October 2016 that it was contemplating legal action and sought legal advice the month after. The applicant therefore knew, or reasonably ought to have known, that a legal proceeding would have been an appropriate means to seek a remedy. It follows that the limitation period expired on November 24, 2018.
13. The applicant submits that it was unclear what its damages would be until the leaks were repaired by a third party, starting in the spring of 2017. However, under section 8 of the *Limitation Act*, a person does not need to know the quantity of damages for a claim to be discoverable. The knowledge that damage has occurred is enough.
14. The applicant filed the Dispute Notice on March 22, 2019, past the November 24, 2018 expiry date set out above. I therefore find this claim is statute-barred under the *Limitation Act*.
15. As the applicant was unsuccessful in this dispute, I do not order any reimbursement of its tribunal fees.

## **ORDER**

16. I order the applicant's claims and this dispute dismissed, on the basis that the claims are out of time.

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David Jiang, Tribunal Member