



# Civil Resolution Tribunal

Date Issued: July 5, 2019

File: SC-2019-000781

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Whelan v. Milkov*, 2019 BCCRT 811

BETWEEN:

JERRY WHELAN

**APPLICANT**

AND:

BORIS MILKOV

**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, Jerry Whelan, and the respondent, Boris Milkov, are both self-represented.

## **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. The respondent advised the tribunal case manager that the applicant's claims were potentially out of time and asked the tribunal to decide the issue. The tribunal obtained submissions from the parties. 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 otherwise been successful.
9. The respondent submits that this dispute is about an unpaid invoice for plumbing repairs that occurred on September 24, 2016. The respondent received the applicant's invoice on September 28, 2016. On October 8, 2016, the respondent texted and emailed the applicant to advise that he disagreed with the invoice amount and that the work done was faulty. On December 7, 2016, the respondent received a "Notice of Claim" from the applicant for \$2,224.33. The respondent replied by email on December 10, 2016, that he disputed the Notice of Claim and the September 28, 2016 invoice. The Notice of Claim is not before me in evidence but given the title I infer it refers to a Provincial Court action.
10. The applicant submits that he is aware of the limitation period and that he filed his Dispute Notice in time. However, while the tribunal gave the parties the opportunity to provide submissions on the *Limitation Act* issue, the applicant provided no details. The applicant's Dispute Notice states that the applicant became aware of the claim in March 2017 but is otherwise largely silent on the timing of events.
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 December 7, 2016 at the latest. The respondent had told the applicant earlier in October 2016 that the respondent did not intend to pay the September 28, 2016 invoice. The applicant then provided the respondent the Notice of Claim on December 7, 2016. It is unclear from the parties' submissions if this was an actual court document, but as noted I infer it refers to a court proceeding. In any event, I find that by giving this document to the respondent the applicant showed that he was considering a court proceeding at the time. It follows that the limitation period expired on December 7, 2018.
13. I acknowledge the applicant's submissions. However, he did not refer to any facts or evidence to support his position. He did not disagree with any of the specific dates the respondent referred to or dispute that he provided the respondent a Notice of Claim in December 2016.
14. The applicant filed the Dispute Notice on January 26, 2019, past the December 7, 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. The respondent referred to the time spent on this dispute as well as legal fees from one related consultation. Tribunal rule 9.4 that says legal fees are only reimbursed in extraordinary cases, and the tribunal generally does not award parties compensation for their time spent on dealing with the dispute. I see no reason to deviate from that practice here. This was not an extraordinary case calling for expenses for time spent and I therefore do not award them to any party.

## **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