



Civil Resolution Tribunal

Date Issued: August 7, 2019

File: SC-2019-002138

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rodriguez v. Dollarama GP Inc. et al*, 2019 BCCRT 943

B E T W E E N :

JORGE RODRIGUEZ

APPLICANT

A N D :

DOLLARAMA GP INC. and CORPORATION GARDAWORLD
SERVICES TRANSPORT DE VALEURS CANADA / GARDAWORLD
CASH SERVICES CANADA CORPORATION

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is final decision of the Civil Resolution Tribunal (tribunal), but it is not a decision on the merits of the claim. The issue is whether the applicant JORGE RODRIGUEZ

is out of time to bring his claim against the respondents DOLLARAMA GP INC. (Dollarama) and CORPORATION GARDAWORLD SERVICES TRANSPORT DE VALEURS CANADA / GARDAWORLD CASH SERVICES CANADA CORPORATION (Gardaworld).

2. The applicant is self-represented. Dollarama is represented by Antonietta Pastorelli, director of legal affairs. Gardaworld is represented by Chloé Normand, whom I infer is a lawyer. Dollarama advised that it should be identified as Dollarama L.P. Gardaworld provided some submissions as Garda Canada Security Corporation. Given my conclusion below that the applicant is out of time to bring his claim, I find that it is not necessary to seek submissions on the correct legal entities. I say this also because it is generally up to the applicant to name the parties correctly.

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 (CRTA)*. 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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.

ISSUE

7. The issue is whether the applicant is out of time to bring his claim against the respondents.

EVIDENCE AND ANALYSIS

8. The tribunal case manager invited all parties to make submissions on the issue of whether the applicant's claim is out of time. Dollarama adopted the submissions of Gardaworld. I only refer to the evidence and submissions below to the extent necessary to explain my decision.
9. The *Limitation Act* 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.
10. In British Columbia, the current *Limitation Act* became law on June 1, 2013. It provides that a claim generally must be started within two years of when it was discovered.
11. A limitation period begins on the first day that a person discovers a claim. A claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
 - 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 whom the claim is or may be made;
 - 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. On November 4, 2016, a Gardaworld security guard accused the applicant of shoplifting at a Dollarama store in Vancouver, BC. The applicant says the guard attacked him and dragged him back into the store, detained him in the store for several minutes and inspected his belongings without permission. The applicant's claim is for damages for wrongful arrest and false imprisonment.
13. The applicant submitted his application to the tribunal on March 14, 2019, more than two years after the November 4, 2016 incident. He argues that section 8(d) of the *Limitation Act* is not satisfied because he did not realize until much later that a court or tribunal proceeding would be an appropriate means to seek to remedy his injury.
14. On November 15, 2017, the applicant sought advice from the Law Students' Legal Advice Program (LSLAP). On February 2, 2017 LSLAP sent him a letter concluding that his matter was outside the scope of its mandate. On March 14, 2017, the applicant met with an injury lawyer through Access Pro Bono. He says it was on this day that he became aware that a court proceeding would be an appropriate means to remedy his injury.
15. Gardaworld says the clock started on November 4, 2016, when the incident occurred. It relies on *Bush v. City of Vancouver et al.*, 2006 BCSC 1207, in which the court held that the plaintiff's claim for damages from a wrongful arrest and illegal search was statute barred. Although *Bush* was decided under a previous version of the *Limitation Act*, dealt with a *Charter* argument, and involved the police rather

than private security services, I find that the principles of *Bush* apply to this case. Absent unusual circumstances (that do not exist here), an applicant is deemed to discover his claim when the events he complains of occur, not when he receives legal advice about his claim. Accepting the applicant's position on discoverability would mean a person could delay the application of the limitation period indefinitely simply by waiting to seek legal advice or information.

16. The test is not only whether the applicant knew he could bring a court or tribunal proceeding, it is also whether he reasonably ought to have known he could bring a court or tribunal proceeding. The applicant sought advice from LSLAP shortly after the incident. In LSLAP's February 2, 2017 letter, the law student advised that "a private lawyer might be able to assist you with a personal injury lawsuit against the store, or the company that employs the security guard." The student also said there have been cases where security guards have been found to have committed the tort of unlawful imprisonment.
17. If the applicant read the letter, then as of February 2, 2017 he knew that he could bring a lawsuit or court proceeding. If he did not read the letter, then as of February 2, 2017 I find he ought to have known that he could bring a lawsuit or court proceeding, because he ought to have read the letter. This was more than two years before the applicant submitted his application to the tribunal, which on June 1, 2017 assumed jurisdiction over small claims disputes \$5,000 and under.
18. I find that the applicant discovered his claim on November 4, 2016, or at the latest, February 2, 2017. This means that the limitation period expired on November 4, 2018, or at the latest, February 2, 2019. As the applicant submitted his application on March 14, 2019, I find his claims are statute-barred by the *Limitation Act*. I dismiss the applicant's claim and this dispute in accordance with section 46(1)(a) of the Act.
19. 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. The applicant was unsuccessful, and the respondents have not incurred any tribunal fees, so I decline to make such an order.

ORDER

20. I dismiss the applicant's claims and this dispute.

Micah Carmody, Tribunal Member