



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2019-004568

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *A&T Hi-Fi Centre Ltd. v. Madeira*, 2019 BCCRT 1028

B E T W E E N :

A&T HI-FI CENTRE LTD.

APPLICANT

A N D :

ACACIO MADEIRA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. In a previous tribunal dispute, SC-2019-002838, the respondent, Acacio Madeira, claimed \$4,500 from the applicant, A&T Hi-Fi Centre Ltd. (A&T). In a decision dated June 13, 2019, the tribunal dismissed Mr. Madeira's previous claim because the applicable limitation period had expired.

2. A&T had hired a lawyer to help its defence in the previous dispute. The lawyer charged A&T \$4,184.89. A&T claims \$4,200 as reimbursement of its legal fees from Mr. Madeira.
3. A&T is represented by a person I infer is an employee or principal. Mr. Madeira is self-represented.

JURISDICTION AND PROCEDURE

4. 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* (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.
5. 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.
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 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

8. The issue in this dispute is whether A&T is entitled to reimbursement of its legal fees from the previous dispute.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, A&T must prove its case on a balance of probabilities. I have read all the parties' evidence and submissions but I will only refer to what is necessary to explain and give context to my decision.
10. Mr. Madeira initiated the previous dispute on April 10, 2019. He claimed \$4,500 for a subwoofer he bought from A&T. He said that the subwoofer did not work properly and that A&T breached a warranty or, alternatively, was negligent. In the Dispute Notice, Mr. Madeira said that he became aware of his claim on September 13, 2011.
11. A&T's Dispute Response did not raise a limitation defence, but the tribunal's staff recognized the potential limitation issue and referred the dispute to a tribunal member for a decision on the limitation issue.
12. In A&T's submissions about the limitation issue, it asked for "reimbursement for tribunal fees and reasonable expenses". A&T did not pay any tribunal fees in the previous dispute and did not specify what, if any, expenses it had incurred.
13. On June 13, 2019, the tribunal dismissed the previous dispute because the limitation period expired. The tribunal did not award any tribunal fees or dispute-related expenses. A&T initiated this dispute the same day.
14. Tribunal rule 9.4(3) says that the tribunal may order one party to pay another party's legal fees but only if there are extraordinary circumstances.
15. Does that mean that a party can bring a new dispute to claim their legal fees from a prior dispute? As a general legal principle, a successful party's right to recover legal

fees must arise from a statute or rule. See *MacKenzie v. Rogalasky*, 2014 BCCA 446.

16. In *The Law Firm of Owen Bird v. Nanaimo Shipyards Ltd.*, 1996 CanLII 1981 (BC SC), a client successfully applied to have its former law firm removed as the lawyers for another company based on a conflict of interest. After winning that application, the client brought a case to the BC Provincial Court for reimbursement of its legal fees, which it won. The law firm appealed to the BC Supreme Court.
17. In the appeal, the Court said that legal fees incurred in the context of a court action can only be claimed as “costs” under the BC Supreme Court Civil Rules. The Court found that the client could not bring a separate court case to claim its legal fees because it would be *res judicata*, which is a legal principle that prevents parties from bringing multiple legal proceedings about the same issues. One aspect of *res judicata* is that a party will not be allowed to bring a new proceeding about an issue if they could have, with reasonable diligence, raised that issue in a previous proceeding. See *East Barriere Resort Limited v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22.
18. Based on those principles, which I find apply to the tribunal, I find that A&T’s opportunity to seek reimbursement of its legal fees was in the previous dispute. I find that with reasonable diligence, A&T could have asked for reimbursement of its legal fees but it failed to do so. The fact that A&T filed this dispute on the same day the decision in the previous dispute supports this conclusion. In other words, I find it likely that A&T had the necessary information to make a claim for legal fees in the previous dispute. Accordingly, A&T’s claim for legal fees is *res judicata* and it must be dismissed.
19. Neither party made submissions about whether A&T’s claims were *res judicata*. I decided not to ask for further submissions because even if I had not dismissed this dispute as *res judicata*, I would have dismissed it on its merits.

20. As discussed above, the tribunal will only order reimbursement of legal fees in extraordinary circumstances, which reflects the general rule found in section 20 of the CRTA that parties in small claims disputes will represent themselves. The previous dispute was about an alleged warranty breach and alleged negligence. The tribunal dismissed the claim because of a missed limitation date. These are all common legal issues.
21. I find that there was nothing extraordinary about the previous dispute that would justify an order that Mr. Madeira pay A&T's legal fees. Therefore, A&T's claim would have failed despite the *res judicata* issue.
22. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. A&T has not been successful so I dismiss its claim for reimbursement of tribunal fees and dispute-related expenses. Mr. Madeira did not claim any dispute-related expenses.

ORDER

23. I dismiss A&T's claim, and this dispute.

Eric Regehr, Tribunal Member