



Civil Resolution Tribunal

Date Issued: April 15, 2020

File: SC-2019-007774

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eos Canada Inc. v. Dyck*, 2020 BCCRT 401

BETWEEN:

EOS CANADA INC.

APPLICANT

AND:

TIMOTHY DYCK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Eos Canada Inc., says the respondent, Timothy Dyck, failed to repay a credit card debt to a third party, CTB. The applicant says that CTB tried unsuccessfully to collect the debt and then assigned it to the applicant. The applicant now seeks payment of \$2,388.90 as principal and annual contractual

interest of 25.99%. The respondent acknowledges he held a credit card issued from CTB but doubts the debt was assigned to the applicant.

2. The parties also disagree on whether the applicant's claim is out of time under the *Limitation Act*. I will address this issue first in my decision.
3. The applicant is represented by an employee or principal. The respondent 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are as follows:
 - a. Is the applicant's claim out of time under the *Limitation Act*?
 - b. If not, does respondent owes the applicant \$2,388.90 plus annual contractual interest of 25.99%?

EVIDENCE AND ANALYSIS

9. 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.
10. The evidence shows that in December 2013 the respondent obtained a credit card from CTB, under the terms of a loan agreement. The applicant says CTB sold and assigned its rights under the loan to the applicant on March 20, 2019.
11. The respondent does not deny obtaining a credit card with CTB but questions whether CTB ever sold and assigned the credit card loan. However, I am satisfied this happened based on the applicant's evidence. This evidence includes 2 agreements between the applicant and CTB dated October 3, 2017 and March 20, 2019, for the purchase of credit card accounts from CTB. The applicant also provided a copy of the respondent's credit card application with CTB or its affiliate. The document says it was provided as part of an "Account Acquisition", which I find refers to the applicant acquiring the CTB's rights under the credit card loan.
12. In its arguments, the applicant raised the issue of whether its claims were out of time. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is discovered. Section 8 states that a claim is discovered when the applicant knew or reasonably knew they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy.

13. CRTA section 13.1 says the basic limitation period under the *Limitation Act* does not run after the applicant requests dispute resolution with the tribunal.
14. The applicant submitted its application for dispute resolution on September 24, 2019. This means the claim is out of time if it arose before September 24, 2017 and the limitation period was not otherwise postponed.
15. The applicant says the limitation period started running when CTB discovered its claim against the respondent, rather than when the applicant obtained the respondent's account on March 20, 2019. I find the applicant's position is appropriate. Previous tribunal decisions have held that the "charge-off date" (here, March 20, 2019) does not extend a limitation period for similar kinds of debt as the one in this dispute. See, for example, *Contact Resource Services Inc. v. Alblas*, 2019 BCCRT 56 (*Alblas*) at paragraphs 14 to 17 and *Contact Resource Services Inc. v. Marcus*, 2019 BCCRT 316 (*Marcus*) at paragraph 15. Although not binding, I find the reasoning in these decisions applicable. A key fact is therefore when CTB discovered its claim against the respondent.
16. In *Alblas*, *Marcus*, and *Contact Resources Services Inc. v. Hood*, 2019 BCCRT 352 (*Hood*), the tribunal considered when claims were discovered for similar debts, including credit card debt. The tribunal concluded that the limitation period started to run from the date of last payment on such debts. As briefly referenced in *Alblas* at paragraph 24, section 24 of the *Limitation Act* says that if a person acknowledges liability for a claim before the limitation period expires, the limitation period is restarted when the person acknowledges liability. Section 24(7) provides that a partial payment may be an acknowledgement of an amount owing.
17. When did the respondent make his last payment on the credit card debt? The evidence and submissions before me show the last payment was made at some point before August 24, 2017.
18. A September 23, 2017 credit card statement for the period of August 24 to September 23, 2017 shows that the respondent's account was already past due by

\$312.02. The statement explains that the past due amount was the minimum payment owing but not received from the last statement. There is no indication on the statement that any payment was made from August 24 to September 23, 2017. I find this means the respondent did not make a payment to CTB since August 24, 2017, if not earlier.

19. The applicant says the respondent made one payment to CTB after the September 23, 2017 credit card statement was issued, which was a partial payment on August 26, 2018. However, the applicant did not provide any evidence to support this submission. I find it unlikely the respondent would make such a payment after failing to make payments since August 2017. In arguments, the respondent also denied making such a payment to CTB or the applicant. Given the lack of evidence and the respondent's denial, I find the respondent did not pay CTB or otherwise acknowledge his credit card debt under the *Limitation Act*.
20. Given the above, and the decisions of *Alblas*, *Harcus*, and *Hood*, I conclude that the applicant's entire claim was discovered by August 24, 2017 at the latest. As noted above, the September 2017 statement shows that by the August 24, 2017 date, the respondent had not made any payments.
21. The applicant also proposed October 23, 2017 as the respondent's default date on the loan and the discovery date for this claim. However, I disagree this date is appropriate as there is no indication that respondent provided a payment to CTB on this date.
22. As the applicant's claim was discovered by August 24, 2017 at the latest, I find that the applicant had to start its claim by August 24, 2019. As the applicant submitted its application for dispute resolution on September 24, 2019 (one month late), it is out of time.
23. In conclusion, I dismiss the applicant's claims and this dispute as they are out of time.

24. 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. I see no reason in this case not to follow that general rule.

25. The respondent is the successful party. He claims no tribunal fees or dispute-related expenses, so I order none.

ORDER

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

David Jiang, Tribunal Member