



Civil Resolution Tribunal

Date Issued: April 28, 2020

File: SC-2019-003999

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sound Developments Ltd.v. Harvey*, 2020 BCCRT 459

BETWEEN:

SOUND DEVELOPMENTS LTD.

APPLICANT

AND:

EDWARD HARVEY and EDWARD HARVEY (Doing Business As
HARBOUR TECH SYSTEMS)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is over an alleged debt.
2. The named respondents, Edward Harvey and Edward Harvey (dba Harbour Tech Systems), are the same legal person, Edward Harvey, so I use the singular word, “respondent” in this decision.

3. The applicant, Sound Developments Ltd., sold the respondent some electronic goods in 2016. The applicant claims that the respondent owes it \$2,089.37 plus 24% annual interest calculated from June 10, 2016.
4. The respondent denies that he owes anything for the goods and says the applicant's claims are out of time under the *Limitation Act*.
5. The applicant is represented by an employee. The respondent is self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Are the applicant's claims out of time under the *Limitation Act*?
 - b. To what extent, if any, does the respondent owe the applicant \$2,089.37, plus 24% annual interest, for the electronic goods?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The parties agree that the respondent purchased some electronic goods from the applicant in 2016. According to the 4 invoices in evidence, the respondent made the purchases on May 10, 2016, July 28, 2016, August 3, 2016, and October 14, 2016 and payment was due 'promptly'. The applicant says that the respondent did not pay the 2016 invoices in full and seeks payment of \$2,089.37 plus 24% annual interest.
13. The applicant submitted a manufacturer's product pricelist, which includes payment terms. It says the pricelist formed the "fundamental base" of the parties' business relationship and applied to the sale. The pricelist says that payment is due in "net 30 days" with a 2% monthly or 24% annual interest charge on overdue accounts. On the "Dealer Application" in evidence, I accept that the pricelist terms applied to the parties' transactions. I find that payment was due within 30 days with 24% annual interest on overdue accounts.
14. Are the applicant's claims out of time? For the reasons that follow, I find that they are.

15. A limitation period is a period of time within which a person has a right to bring a claim. When the limitation period expires, the right to bring the claim ends, even if the claim would have been successful.
16. The BC *Limitation Act* applies to the tribunal. It provides that a debt claim must be started within 2 years of when it was “discovered”. Under section 8 of the *Limitation Act*, 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.
17. The limitation period stopped running when the applicant applied for dispute resolution with the tribunal on May 23, 2019. The parties agree that the 2-year limitation period applies to this dispute. This means if the applicant’s claims were “discovered” before May 23, 2017, its claims are out of time. Here, the parties disagree on the date the applicant discovered its claims.
18. The respondent says the applicant’s claims were discovered in 2016 when the commercial transaction took place and the applicant invoiced him for the goods. The applicant says that the invoice dates are not determinative. It says the claims were not discovered until it demanded payment by email on August 11, 2017, after issuing a partial credit for some returned goods. The applicant says that before April 11, 2017 the parties were still disputing the debt and reviewing their records on

some returned goods. It argues that in the context of the parties' long business relationship it did not expect that the respondent would refuse to pay for the goods.

19. The applicant relies on the tribunal's decisions in *Lesko v. Solhjell*, 2019 BCCRT 941 and *Milani Plumbing Drainage & Heating Ltd. v Sandeep Singh Chouhan*, 2018 BCCRT 77. I note that other tribunal decisions may be persuasive but are not binding on me.
20. The claim in *Lesko* was for payment of a personal loan with no due date. The debt in *Lesko* was a demand loan and engaged section 14 of the *Limitation Act*, which is specific to demand obligations. I find *Lesko* is not helpful in resolving the limitation issue here. In the dispute before me, the claim is for alleged non-payment of invoices and not for payment on a demand obligation debt. The 2016 invoices requested "prompt payment". I find this means that payment was due within a reasonable period from the invoice dates.
21. The facts in *Milani* are different from the dispute before me. In *Milani*, the applicant had not sent any payment invoice until about 4 months after it performed furnace work for the respondent. The tribunal member found the claim was discovered on the invoice date. In the dispute before me, the applicant had immediately invoiced the respondent when he purchased the goods in 2016. While he also demanded payment on April 11, 2017, I find this was a follow-up request for payment. On the invoices and pricelist terms discussed above, I find payment was due within a reasonable period, which was 30 days from the invoice dates.
22. I find the parties' discussions and investigations into the debt did not, on their own, extend the limitation period. Under section 24 of the *Limitation Act*, the limitation period is extended if liability is acknowledged in writing or by partial payment. The parties' emails in evidence show that the respondent never acknowledged liability for the debt throughout the discussions or at any other point. Instead, I find he explicitly denied liability. Also, the applicant's payment records show that the respondent had made no payment towards the claimed debt. Therefore, I find that none of the circumstances in section 24 of the *Limitation Act* apply to this dispute.

23. Despite the parties' long business relationship, I find the applicant should have reasonably known it had a claim when the respondent failed to pay its invoices within 30 days. I have insufficient information about the parties' business relationship to find otherwise. Therefore, I find the applicant's claims were discovered 30 days after the invoice dates when the respondent failed to pay. I find the applicant's right of action expired 2 years later.

24. For the reasons above, I find that all the applicant's claims arose before May 23, 2017, and so I find they are out of time. Accordingly, I dismiss the applicant's debt and interest claims.

25. As the applicant was unsuccessful in this dispute, I also dismiss its claim for tribunal fees and dispute-related expenses.

ORDER

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

Trisha Apland, Tribunal Member