



Civil Resolution Tribunal

Date Issued: July 9, 2020

File: SC-2020-004225

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Warner v. 19th Ventures Ltd.*, 2020 BCCRT 766

BETWEEN:

BEVERLY WARNER and KENNETH WARNER

APPLICANTS

AND:

19TH VENTURES LTD., PASHCO BLASTING LTD., and
T.D. EXCAVATING LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is the final decision of the Civil Resolution Tribunal (CRT), although it is not a decision on the merits of the claim. The issue is whether the applicants, Beverly Warner and Kenneth Warner, are out of time to bring their claim against the respondents, 19th Ventures Ltd., Pashco Blasting Ltd., and T.D. Excavating Ltd.

2. Beverly Warner represents the applicants. The respondents are each represented by an employee or principal.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the CRT. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue is whether the applicants are out of time to bring their claim against the respondents.

EVIDENCE AND ANALYSIS

8. The applicants claim that blasting conducted by the respondents cracked the drywall in their garage, and they seek compensation for repairs. The applicants indicated in the Dispute Notice that they first became aware of their claim in April 2018. The applicants submitted their application for dispute resolution with the CRT on May 28, 2020, which is more than 2 years after the end of April 2018.
9. The *Limitation Act* applies to CRT disputes. A limitation period is the 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. In British Columbia, the *Limitation Act* provides that a claim generally must be started within 2 years of when it was discovered. I find that is the limitation period that applies here.
10. A limitation period begins on the first day that a person discovers a claim. Specifically, 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 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, 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 it.
11. I note that BC is in a state of emergency under the *Emergency Program Act*. The Minister of Public Safety and Solicitor General has issued a Ministerial Order, which says that tribunals may waive, extend or suspend a mandatory time period, which I find includes a limitation period.

1. I find that the applicants discovered their claim when they first discovered the garage drywall damage and thought it could be related to the respondents' blasting activities. The question is, when was that date?
12. CRT staff emailed the parties on June 22, 2020 and noted there was a potential issue with the dispute's limitation period, because the applicants indicated they became aware of the dispute in April 2018 but did not file their CRT application until May 28, 2020. The email said that the dispute would proceed to a decision by a tribunal member on whether the applicable limitation period had expired, and if so, whether the CRT should exercise its discretion under the Ministerial Order to waive, suspend, or extend the limitation period. The CRT gave the parties an opportunity to present their written arguments on the limitation period issue. The applicants submitted arguments, but none of the respondents provided arguments in response.
13. The CRT staff email contained an internet link to the Ministerial Order, and an internet link to an information page about limitation periods on the CRT website. That information page contains links to the *Limitation Act*, as well as general information about limitation periods, the usual 2 year limitation period in BC, and the importance of both determining the start date of a limitation period, with help from a lawyer if necessary, and filing a dispute before the limitation period expires. The information page also recommends gathering more information about the limitation period that applies to a dispute, if one is not sure about it.
14. Based on the CRT's communications with the parties, including the information it made available, I find that the parties were aware, or ought to have been aware, of the importance of the limitation period start date and length, and that this was information that the CRT would consider in making its decision on the limitation issue.
15. In their arguments on this limitation issue, the applicants provided no further information about the date they first discovered the drywall cracks and connected them to the respondents' blasting. The applicants said that they initiated a conversation with the respondents shortly after they noted the claimed damage, and

that representatives of all the respondents visited the applicants' home. But the applicants said they did not recall the exact date of the visit. The applicants said they hired a lawyer in November 2018, who sent demand letters to the respondents. The applicants said they tried to resolve the claim within the 2-year limitation period, which I find is an implied acknowledgment that the limitation period in this dispute is 2 years.

16. The applicants said they do not believe the limitation period has expired. However, their arguments did not provide a different date or month, other than April 2018, when they discovered the claimed damage, or another reason showing their claim was filed with the CRT within 2 years of being discovered. I found above that the applicants knew or should have known the date they discovered the damage claim was important. But I find the best and only evidence of the discovery date was that it was in April 2018. So, I find that the applicants discovered their claim no later than April 30, 2018. This means that the 2-year limitation period expired no later than April 30, 2020. This was before the applicants filed their CRT application on May 28, 2020.
17. Although they said the limitation period had not expired, the applicants also said that the CRT should exercise its discretion under the Ministerial Order to extend the limitation period. However, the applicants provided no reason why the CRT should extend the limitation period. Their arguments do not suggest that the applicants were delayed in filing their CRT application for reasons related to the Covid-19 pandemic or for any other reason. I find the applicants' submission, that they had tried to resolve the claim directly with the respondents within the 2-year limitation period, is not a sufficient reason to exercise the CRT's discretion and extend the limitation period. Parties often attempt to resolve their disputes directly before seeking CRT dispute resolution.
18. I find the applicants filed their CRT application after the 2-year limitation period expired no later than April 30, 2020. I decline to exercise my discretion to extend the limitation period under the Ministerial Order. So, I find the applicants' claims are

statute-barred by the *Limitation Act*. I dismiss the applicants' claims and this dispute, in accordance with section 46(1) of the CRTA.

19. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The applicants were unsuccessful, and the respondents did not pay any CRT fees. None of the parties identified any dispute-related expenses. So, I decline to order any CRT fees or dispute-related expenses.

ORDER

20. I dismiss the applicants' claims and this dispute.

Chad McCarthy, Tribunal Member