



Civil Resolution Tribunal

Date Issued: August 17, 2020

File: SC-2020-004164

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McWilliams v. Pashco Blasting Ltd.*, 2020 BCCRT 914

BETWEEN:

CAROL MCWILLIAMS

APPLICANT

AND:

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

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT), further to a preliminary referral on the question of whether the applicant, Carol McWilliams, is out of time to bring her claim against the respondents, Pashco Blasting Ltd. (Pashco), 19th Ventures Ltd., and T.D. Excavating Ltd. Ms. McWilliams claims \$1,680 for drywall

repairs which she says were necessary due to cracking allegedly caused by the respondents' blasting work that was being done nearby. She also claims \$130.50 for reimbursement of legal expenses, plus CRT fees.

2. Ms. McWilliams is self-represented. Each of the respondents are represented by an employee or principal.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. 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 Ms. McWilliams' claims were filed out of time.

EVIDENCE AND ANALYSIS

8. In British Columbia, the current *Limitation Act* (LA) came into effect on June 1, 2013. Under section 13 of the CRTA, the LA applies to the CRT. Under the current LA, a damages claim must be started within 2 years of the day it was discovered, which is the first day a person had knowledge of the matters in the claim or reasonably ought to have known about the claim, and knowledge that the respondent was an appropriate party to claim against.
9. Under section 13.1 of the CRTA, the limitation period stops running on the date the applicant files the application for dispute resolution with the CRT. Here, Ms. McWilliams filed her application on May 27, 2020. That means if her claim was discovered within the meaning of the LA before May 27, 2018, her claim was filed too late and is out of time.
10. In the Dispute Notice that started this proceeding, Ms. McWilliams stated it was February 9, 2018 when she first became aware of her claim. Her submissions for this referral indicate that she was meeting with representatives of the respondents by March 23, 2018 to discuss her concerns.
11. Ms. McWilliams' submissions on the question of the limitation period are essentially three-fold. First, she appears to argue that because she was having discussions with the respondents, in part through her lawyer, that that should extend the limitation period. I disagree. Ongoing negotiations do not change the date when Ms. McWilliams knew or ought to have known she had a claim against the respondents. I find her claim was discoverable by March 23, 2018, if not by February 9, 2018 as she originally indicated. Based on either of those dates, her claim is out of time.
12. Ms. McWilliams' second argument is that with the COVID-19 pandemic, government closures made compliance with time frames "challenging". Ms. McWilliams did not elaborate. The CRT is an online tribunal and was operating as normal during the relevant time periods, including up to March 23, 2018. Notably, the state of emergency was only declared on March 17, 2018, less than week before the latest

possible date the limitation period expired. Ms. McWilliams does not say she suffered from any COVID-19 related illness or challenges apart from her argument about government offices, which I find is irrelevant to her ability to start a CRT dispute. I find there is no basis here to extend the time for filing the claim due to the COVID-19 pandemic or otherwise. I decline to exercise my discretion to do so.

13. Ms. McWilliams' third argument is that Pashco (who appeared to be responding on all respondents' behalf) submitted it had "no opinion" about whether the limitation period had expired or whether it should be extended under the Ministerial Order under the *Emergency Program Act* that allows extensions given the COVID-19 pandemic. Bearing in mind the CRT's mandate that generally requires self-representation, I find that the respondents' submission was not a waiver of their right to invoke the limitation defence. Rather, I find their comment meant they were leaving it to me as the decision-maker to decide if the claims were out of time. I find this conclusion is consistent with the fact that the very purpose of the preliminary referral was on the question of whether Ms. McWilliams' claims were out of time, and not on the merits of the dispute. I find the respondents did not waive their right to argue a limitation defence.
14. Given my conclusions above, I find Ms. McWilliams' claims were filed out of time, as her claims were discoverable by March 23, 2018 at the latest, and so she needed to file her claim by March 23, 2020 in order to be in time. Since she started this dispute on May 27, 2020, her claims were filed too late. So, I dismiss Ms. McWilliams' claims.
15. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. McWilliams was unsuccessful in its claim, she is not entitled to have its CRT fees reimbursed.

ORDER

16. I dismiss Ms. McWilliams' claims and this dispute.

Shelley Lopez, Vice Chair