



Civil Resolution Tribunal

Date Issued: April 7, 2021

File: SC-2020-008144

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. The Dominion Of Canada General Insurance Company*,
2021 BCCRT 367

B E T W E E N :

WING LOK LEE

APPLICANT

A N D :

THE DOMINION OF CANADA GENERAL INSURANCE COMPANY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about home insurance coverage. The applicant, Wing Lok Lee, says a third party roofer, Navco, replaced his home's roof in the summer of 2016, and it started leaking in October 2016. He says he successfully sued Navco for damages in BC Provincial Court (the BCPC action), but did not receive enough to cover the actual

cost of repairs. Mr. Lee says that the respondent, The Dominion Of Canada General Insurance Company, also operating as Travelers Canada (Dominion), insured his home. Mr. Lee says Dominion breached their insurance contract by denying his claim and failing to represent him in the BCPC action. Mr. Lee claims \$4,513.28 for remaining damages and expenses allegedly owed under the insurance policy, as well as an additional, unspecified amount in punitive damages.

2. Dominion says Mr. Lee's policy did not cover the alleged Navco damage, so it owes nothing and was not required to defend Mr. Lee in court. Dominion also says that Mr. Lee's claim is barred under the *Limitation Act* and *Insurance Act*, because he did not file the claim on time.
3. Mr. Lee is self-represented in this dispute. Dominion is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions each call into question the credibility of the other party in some respects, the credibility of interested witnesses cannot be determined solely by whose personal demeanour in a proceeding appears to be the most truthful. The most likely account depends on its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind

that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. Section 42 of the CRTA says 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.
7. 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.

ISSUES

8. The issues in this dispute are:
 - a. Are Mr. Lee's claims too late under the *Limitation Act* or *Insurance Act*?
 - b. If the claims are not too late, does Dominion owe \$4,513.28 for roofing repairs, and an additional amount for punitive damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Lee must prove his claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. For the following reasons, I find that Mr. Lee's claims are barred under the *Limitation Act* and the *Insurance Act*, and I dismiss them.
11. The *Limitation Act* applies to CRT disputes. It sets out specific time limits, called limitation periods, for pursuing claims. If the limitation period expires, the right to bring the claim disappears, and the claim must be dismissed. Dominion raised the limitation period issue in its Dispute Response and submissions, and in previous

correspondence with Mr. Lee. I find Mr. Lee was aware of the limitation period issue and had an opportunity to make submissions on it.

12. *Limitation Act* section 6 says the basic limitation period is 2 years, meaning that a claim may not be started more than 2 years after the day on which it is “discovered”. I find a 2-year limitation period applies to Mr. Lee’s claims.
13. *Limitation Act* section 8 says a claim is discovered on the first day the person knew, or reasonably ought to have known, that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to seek a remedy for the loss.
14. Further, section 23(1) of the *Insurance Act* says that a proceeding against an insurer about loss or damage to insured property must be commenced no later than 2 years after the date the insured person knew, or ought to have known, that the loss or damage occurred. It also says that proceedings not about loss or damage to insured property must be commenced no later than 2 years after the date the cause of action against the insurer arose.
15. It is undisputed that Mr. Lee discovered roof leaks on October 16, 2016. I find that under section 23(1) of the *Insurance Act*, Mr. Lee had until October 16, 2018 to bring any actions against Dominion related to that damage. Mr. Lee submitted his application for CRT dispute resolution on October 28, 2020 and the Dispute Notice was issued on November 4, 2020, both more than 4 years after he discovered the roof leaks and out of time under the *Insurance Act*.
16. I find that Mr. Lee also claims Dominion improperly denied him compensation under the insurance policy. As explained below, I find that Mr. Lee first learned of his insurance claim denial more than 2 years before commencing this CRT dispute.
17. Dominion undisputedly denied Mr. Lee’s insurance claim in an email and letter dated February 28, 2017, and told Mr. Lee that under the *Insurance Act* any actions must be filed within 2 years of discovering a loss. After further correspondence, Dominion

confirmed this denial in a detailed letter dated April 6, 2017, titled “Final Position Letter”, in which it also said that no limitation periods had been waived or extended. Following additional correspondence, Dominion sent Mr. Lee a May 30, 2018 letter confirming that it had denied Mr. Lee’s insurance claim in April 2017 and would not represent him in court, and reminding him about the 2-year limitation period. I find that all of these letters and email were dated more than 2 years before Mr. Lee commenced this CRT dispute. Mr. Lee does not deny receiving this correspondence.

18. In Mr. Lee’s Dispute Notice and submissions, he suggests that he discovered his claim during the April 2019 trial of the BCPC action. I find this is unsupported on the evidence before me. I find Mr. Lee says that the judge made findings at that trial which support his argument that Dominion should have provided the insurance benefits he seeks. However, obtaining additional information in support of a claim is not the same as discovering a claim. I find Mr. Lee first discovered his property damage claim against Dominion on October 16, 2016, and discovered his breach of insurance contract claim against Dominion no later than Dominion’s February 28, 2017 denial.
19. Mr. Lee also says that the judge asked him to have Dominion participate in the BCPC action, and Dominion did not. Mr. Lee suggests Dominion’s lack of participation negatively affected the outcome of that trial. However, there is no order or other documentation before me showing that the judge made such a request. I find the evidence does not show that the court required Dominion to participate in the BCPC action, or that Dominion’s refusal to participate resulted in a less favourable outcome for Mr. Lee. So, I find that Mr. Lee did not discover his claim against Dominion during the April 2019 trial. I note that Mr. Lee’s argument about Dominion’s lack of participation is based on Dominion’s decision to deny compensation, including legal representation, under his insurance policy. As noted, Mr. Lee knew about the insurance denial long before the trial.
20. For the above reasons, I find that Mr. Lee first discovered all of his claims against Dominion no later than February 28, 2017, more than 3 years before he commenced this CRT dispute. I find Mr. Lee failed to start his claims within the required 2-year

limitation periods. So, I find that Mr. Lee's claims are barred under the *Limitation Act* and the *Insurance Act*, and I dismiss them. Given this result, I find it is not necessary to consider the merits of Mr. Lee's claims for repair costs and punitive damages.

CRT FEES AND EXPENSES

21. 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. Mr. Lee was unsuccessful here, but Dominion paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

22. I dismiss Mr. Lee's claims, and this dispute.

Chad McCarthy, Tribunal Member