



# Civil Resolution Tribunal

Date Issued: March 22, 2022

File: SC-2021-003764

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Roberts v. Schrader Family Holdings Inc.*, 2022 BCCRT 321

B E T W E E N :

CATHERINE ROBERTS also known as KATHY, and ATKINSON JOHN

**APPLICANTS**

A N D :

SCHRADER FAMILY HOLDINGS INC.

**RESPONDENT**

A N D :

CATHERINE ROBERTS also known as KATHY

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about responsibility for the cost of replacing a headstone or memorial.
2. The named applicant and respondent by counterclaim, Catherine Roberts also known as Kathy, purchased a memorial for a deceased family member as part of a package from the Kamloops Funeral Home (KFH). The respondent and applicant by counterclaim, Schrader Family Holdings Inc. (Schrader), owns and operates KFH. It is not clear how the other applicant, Atkinson John, is involved in this dispute's underlying facts.
3. The memorial has undisputedly deteriorated over the years. The applicants want to obtain a replacement memorial from another supplier as they say their trust in Schrader has been eroded. They say \$4,999.99 is the appropriate value of their claim because it is what Schrader was going to charge them for a replacement memorial.
4. Schrader says it is not responsible because it did not own KFH when the memorial was created and installed. Schrader also says the memorial's manufacturer "should be liable" but there is no warranty implied or otherwise. I infer Schrader says the applicants' claims should be dismissed.
5. In the counterclaim filed against Ms. Roberts, Schrader says it wants her to "stop harassing me and to reimburse me for all my time", for which it claims \$2,000. Ms. Roberts denies harassing anyone.
6. The applicants are represented by Ms. Roberts. Schrader is represented by its owner.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
9. 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.
10. 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**

11. The issues in this dispute are:
  - a. Is the applicants' claim out of time under the *Limitation Act*?
  - b. If not, is Schrader bound by contracts entered into by KFH's previous owner?
  - c. Was any warranty on the memorial breached, and if so, what remedy is appropriate?
  - d. Is Schrader entitled to \$2,000 for harassment or inconvenience?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claim on a balance of probabilities, meaning more likely than not. Schrader has this same burden to prove their counterclaim. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
13. The applicants use the term "headstone" in their submissions, while Schrader uses "grave marker". Although nothing in this dispute turns on this distinction, I have used the term "memorial" based on its broad definition in the *Cremation, Interment and Funeral Services Act*. The memorial at issue in this dispute included 2 colour photographs and was placed flat on the ground. The parties did not provide details about its materials or manufacture.
14. Based on the date of KFH's invoice for the memorial, I find KFH provided the memorial around April 1999. The applicants' evidence includes photos of the memorial at different times. They say in 2003 the photos began to fade. In 2006 they noticed 1 photo missing. Schrader replaced the missing photo, which the applicants thought was a permanent fix. By 2017, both photos were gone again and the bare stone beneath them was visible. The applicants raised this with Schrader in fall 2017 or spring 2018. None of this is disputed.
15. Schrader says it did not own KFH when the memorial was ordered and installed. It says the applicants' issue is with the company that owned KFH in 1999 or possibly the memorial's manufacturer. Schrader also says it contacted the memorial's manufacturer but it "would not offer a warranty."
16. The parties' submissions did not address a potential limitation period issue. A limitation period is a specific time period within which a person can pursue a legal claim, such as a CRT claim. If the limitation period expires, the right to bring the claim disappears. Section 6 of the *Limitation Act* says a person must start a claim within 2 years of discovering it. The applicants filed their dispute application on May 10, 2021,

so in order for their claim to be on time, they must not have discovered the claim before May 10, 2019.

17. I asked the parties for submissions about when the applicable limitation period started and whether the limitation period was suspended or extended for any reason. Schrader said the limitation period had expired but did not elaborate. The applicants said that they did not seek legal advice until July 28, 2020. They provided a copy of correspondence with a lawyer. They also said they had numerous conversations with Schrader beginning in 2016. They say it only became obvious that Schrader had no intention of repairing or replacing the memorial in November 2020, when its owner Mr. Schrader told them the price was \$4,999.99. Thee applicants say if Mr. Schrader had been upfront about his intentions of not paying for the headstone, the dispute would have been started much sooner.
18. Section 8 of the *Limitation Act* says that a claim is discovered when the applicants 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 (or CRT) proceeding would be an appropriate means to seek a remedy.
19. I find that the applicants knew that a loss had occurred in 2017 when the memorial photos were no longer attached despite previous repairs. I find they were aware that the loss was caused by Schrader's act or omission because Schrader completed the previous repairs and they asked Schrader to address the issue in late 2017 or early 2018. So, the factual elements of discovery were met by early 2018. To clarify, I find the applicants' claim in substance is that the memorial was defective, and so the loss

or damage was discovered when the applicants discovered the defects, not when Schrader refused to replace the memorial for free as the applicants apparently assumed it would. The applicants did not explain why they believed Schrader would replace the memorial for free. Schrader had replaced a different memorial for Ms. Roberts at no charge, but it was a different type of memorial and was purchased in 2007. There is no evidence that Schrader intentionally misled the applicants about whether it would charge a fee to replace the memorial.

20. As for knowing that a court or CRT proceeding would be an appropriate way to seek a remedy, our courts have found that the limitation period runs even if the parties are engaged in negotiations to settle the claim (see *Arbutus Environmental Services Ltd. v. South Island Aggregates Ltd.*, 2017 BCSC 1). Our courts have also observed that people are presumed to know the law and failing to appreciate the legal significance of certain facts is unlikely to postpone the commencement of a limitation period (see *Aubichon v. Grafton*, 2022 BCCA 77, at paragraph 40). So, I find the applicants' negotiations with Schrader and their delay in seeking legal advice did not suspend or delay the start of the limitation period. I find the limitation period expired in early 2020, and certainly before May 10, 2019, so the applicants' May 10, 2021 claim is out of time under the *Limitation Act*. As a result, I do not need to determine the other issues, and I dismiss the applicants' claim.

### **Counterclaim**

21. In the counterclaim, Schrader seeks \$2,000 in damages for harassment and compensation for time spent on the dispute. Schrader does not break down the claim. I dismiss this claim for the following reasons. First, Schrader says Ms. Roberts "harassed me", which I infer means Mr. Schrader, but Mr. Schrader is not a party to this dispute. I find a corporation cannot be harassed. In any event, there is no recognized tort of harassment in BC (see *Total Credit Recovery v. Roach*, 2007 BCSC 530).
22. Second, Schrader provided no evidence to support its claim for time spent. Third, under CRT rule 9.5(5), except in extraordinary circumstances, the CRT will not order

a party to compensate another party for time spent dealing with the CRT proceeding. So, I dismiss Schrader's counterclaim.

23. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Neither party was successful in its claims, so I dismiss both parties' claims for CRT fees. Neither party claimed dispute-related expenses.

## **ORDER**

24. I dismiss the applicants' claims, Schrader's counterclaims, and this dispute.

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Micah Carmody, Tribunal Member