



# Civil Resolution Tribunal

Date Issued: May 17, 2022

File: SC-2021-006862

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carlson v. Gudjonson*, 2022 BCCRT 584

BETWEEN:

ERIC CARLSON

**APPLICANT**

AND:

TERRY GUDJONSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about payment for construction services. The applicant, Eric Carlson, says that the respondent, Terry Gudjonson, hired him to rebuild some stairs. Mr. Carlson says he told Mr. Gudjonson he charged by the hour and estimated it would cost about \$1,000, based on completing the job within a couple of days. Mr. Carlson says the job turned out to be more complicated than anticipated, and it took him

almost 60 hours to complete. Mr. Carlson says Mr. Gudjonson refused to pay his bill and offered only \$1,100, which Mr. Carlson says was insufficient. Mr. Gudjonson has paid Mr. Carlson nothing. Mr. Carlson claims \$3,120 for his stair-building services.

2. Mr. Gudjonson denies that Mr. Carlson mentioned charging an hourly rate. He says Mr. Carlson only spent about 46 hours replacing the stairs, and that the quoted \$1,000 for his labour is reasonable for the number of hours worked. Mr. Gudjonson also says Mr. Carlson is out of time to bring this dispute.
3. The parties are each self-represented.

## **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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to 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.
8. Both parties submitted late evidence after the CRT's deadline. Each party was given an opportunity to comment on the other's late evidence. Therefore, I find that neither party was prejudiced by the late evidence. Given the CRT's mandate that includes flexibility, informality, and accessibility, I have admitted the late evidence, which I find is relevant to this dispute.
9. On January 12, 2022, another tribunal member issued a preliminary decision about whether Mr. Carlson's claim was out of time under the *Limitation Act*. That tribunal member decided Mr. Gudjonson had not proven that Mr. Carlson started this dispute too late. The tribunal member said that his decision was not binding on any future tribunal member. Mr. Gudjonson made further submissions during the tribunal decision phase that Mr. Carlson is out of time to bring this dispute, and Mr. Carlson provided additional evidence. So, I will address this issue further below.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is Mr. Carlson out of time to bring his claim?
  - b. If not, is Mr. Carlson entitled to the claimed \$3,120 for his services?

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Carlson must prove his claims on a balance of probabilities (meaning “more likely than not”). This is subject to the burden of proving the applicable limitation period, as discussed below. I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision. I note that Mr. Carlson did not provide any final reply submissions, despite having the opportunity to do so.

### ***Is Mr. Carlson out of time to bring his claim?***

12. The *Limitation Act* applies to disputes before the CRT. A limitation period is a 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.

13. Section 6 of the *Limitation Act* states that a proceeding in respect of a claim must be started within 2 years of when it was “discovered”. Under section 8 of the *Limitation Act*, a claim is discovered when the applicant knew, or reasonably ought to have known, they had a claim against the respondent and that a court or tribunal proceeding was an appropriate way to seek a remedy.

14. The burden of proving the applicable limitation period and whether it has expired is on the party seeking to rely on it, which here is Mr. Gudjonson.

15. Section 13.1 of the CRTA says the running of time for a limitation period stops when the applicant files an application with the CRT and pays the required fee. Mr. Carlson applied to the CRT on September 3, 2021, so if he discovered his claim before September 3, 2019, I find it is out of time.

16. It is undisputed that Mr. Gudjonson asked Mr. Carlson about replacing his deck stairs on about July 19, 2019. Mr. Carlson agreed to do the job, though the parties did not put the terms of their agreement in writing. In any event, the evidence shows Mr. Carlson started the stair project on August 14 and completed the job on August 27, 2019.

17. The parties agree that they met on August 31, 2019. Mr. Gudjonson says he went to the meeting expecting to pay Mr. Carlson \$1,000, which was the amount Mr. Carlson undisputedly estimated for his work at the outset. However, Mr. Carlson says he had significantly underestimated the amount of time it would take to complete the project. So, when the parties met, Mr. Carlson requested that Mr. Gudjonson pay him \$3,600, which was based on 60 hours at a rate of \$60 per hour.
18. Mr. Gudjonson refused to pay Mr. Carlson \$3,600. Mr. Carlson says he offered to reduce his rate to \$50 per hour, and that Mr. Gudjonson told him he would think about it and get back to him. It is undisputed that Mr. Gudjonson left the meeting without paying Mr. Carlson anything. Mr. Gudjonson says that his refusal to pay Mr. Carlson's \$3,600 "bill" on August 31, 2019, was the date Mr. Carlson discovered his potential claim against Mr. Gudjonson. For the following reasons, I agree.
19. I find the parties did not have an agreement about when Mr. Gudjonson's payment for Mr. Carlson's work was due. Further, there is no evidence before me that Mr. Carlson issued an invoice to Mr. Gudjonson for his services with any payment due date. So, I find Mr. Carlson's request for payment on August 31, 2019 was a demand obligation, which simply means that payment was due on demand.
20. Section 14 of the *Limitation Act* says that a claim for a demand obligation is discovered on the first day that there is a failure to perform the obligation after a demand for the performance is made. Therefore, I find that Mr. Carlson discovered his claim for payment when Mr. Gudjonson failed to pay the demand obligation by September 1, 2019.
21. I infer from Mr. Carlson's submissions that his position is that the limitation period did not start running until Mr. Gudjonson made an offer in response to his demand. I do not accept this position. As noted, Mr. Carlson attempted to negotiate with Mr. Gudjonson on August 31, 2019 by offering to reduce his hourly rate. If a party is negotiating, they must know, or reasonably ought to know, that a court (or the CRT) proceeding is an appropriate way to seek a remedy: see *Arbutus Environmental Services Ltd. v. South Island Aggregates Ltd.*, 2017 BCSC 1. I find that Mr. Carlson's

decision to negotiate and wait to see what Mr. Gudjonson would offer in response did not delay the start of the applicable limitation period.

22. Under section 24 of the *Limitation Act*, the limitation period will be extended if a person acknowledges liability before the limitation period expires. Section 24(6) of the *Limitation Act* says an acknowledgement of liability must be: a) in writing, b) signed by hand or by electronic signature as defined in the *Electronic Transactions Act*, c) made by the person making the acknowledgement, and d) made to the person with the claim.
23. The evidence shows that Mr. Gudjonson texted Mr. Carlson on September 2, 2019, disputing the number of hours Mr. Carlson claimed he had worked and offering to pay him \$1,100. Mr. Carlson says he did not receive or read this text until the following day. However, while Mr. Gudjonson's text appears to acknowledge some liability to pay Mr. Carlson for his services, I find the text is insufficient to extend the limitation period because it does not include a signature.
24. An electronic signature is defined in the *Electronic Transactions Act* as information in electronic form that a person has created or adopted in order to sign a record that is in, attached to, or associated with the record. In *Lesko v. Solhjell*, 2019 BCCRT 941, a Vice Chair found that text messages containing no signature of any kind did not meet the strict requirement for a signature to qualify as an acknowledgement of liability under section 24(6) of the *Limitation Act*. While CRT decisions are not binding on me, I find the reasoning in *Lesko* persuasive, and I adopt it here.
25. Because it was unsigned, I find the September 2, 2019 text did not delay the running of the applicable limitation period. Given that conclusion, I find that when Mr. Carlson received and read the text is irrelevant.
26. For all the above reasons, I find the limitation period had expired by September 1, 2021, which was before Mr. Carlson started this dispute on September 3, 2021. Therefore, I find Mr. Carlson's claim is barred under the *Limitation Act*, and I dismiss this dispute.

27. Because I find Mr. Carlson's claim is out of time, I do not need to consider whether he is entitled to the claimed payment for his services.

28. 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. Neither party paid any fees or claimed dispute-related expenses, so I make no order.

## **ORDER**

29. I dismiss Mr. Carlson's claims and this dispute.

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Kristin Gardner, Tribunal Member