



Civil Resolution Tribunal

Date Issued: July 27, 2022

File: SC-2022-000489

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cotton Bros. Contracting Ltd. v. Thind Properties Ltd.*, 2022 BCCRT 856

B E T W E E N :

COTTON BROS. CONTRACTING LTD.

APPLICANT

A N D :

THIND PROPERTIES LTD. and D-THIND DEVELOPMENT LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This is a final decision dismissing this claim as out of time under the *Limitation Act* (LA).
2. The applicant, Cotton Bros. Contracting Ltd. (Cotton), says it provided equipment, operators and labourers to the respondents, Thind Properties Ltd. (Thind) and D-

Thind Development Ltd. (D-Thind). Cotton says the respondents refused to pay for the services provided in 2018 and claims \$1,231.50

3. The respondents say they paid Cotton for the services provided. The respondents say they did not pay Cotton for lunch break hours billed, which equal approximately \$1,233.
4. Cotton is represented by a director. The respondents are both represented by a principal or employee.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issue is whether the CRT should dismiss Cotton's claim as out of time under the LA.

EVIDENCE AND ANALYSIS

10. In making this decision I have reviewed the Dispute Notice, the Dispute Response, and the parties' submissions on the limitation issue.
11. Section 13 of the CRTA confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears.
12. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known, that the loss or damage 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 remedy the damage.
13. Section 24 of the LA says that the limitation period starts anew if a person acknowledges liability before the limitation period expires. Payment or partial payment of a liquidated sum is considered acknowledgement under LA section 24(7). A liquidated sum is one which is already determined or capable of being determined with a simple calculation (see *Sawry v. Roshanagh et al*, 2006 BCSC 470). I find Cotton's claim for unpaid but invoiced amounts is a liquidated sum.
14. The respondents say Cotton's 2-year limitation period has now expired and so this dispute should not proceed.

15. Cotton says it provided services to the respondents between March and June 2018. The respondents say the services were provided between March 26 and April 10, 2018. The respondents say Cotton invoiced them on April 19, 2018 and they paid what they thought they owed on June 22, 2018. Cotton says the respondents' last payment was September 1, 2018.
16. While the parties' positions on the facts are slightly different, I find I need not determine what the exact dates are. This is because all parties agree that the services were rendered, invoiced, and partially paid for in 2018. I find Cotton could have discovered its claim for non-payment by September 1, 2018 at the latest. So, I find the 2-year limitation period for Cotton's claims against the respondents expired well before it applied for dispute resolution on January 20, 2022.
17. Cotton says that the normal time limit fell within the Covid-19 pandemic lockdown period. It says it was not aware of the correct procedures during the lockdown. I infer it argues the limitation period did not apply or should have been extended because of the Covid-19 pandemic public health orders.
18. On March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order 86/2020 (MO86) under the *Emergency Program Act*, which suspended mandatory limitation periods for court actions. The mandatory suspension did not apply to the CRT. The order said that a tribunal, such as the CRT, may waive, extend, or suspend a mandatory time period.
19. MO86 was repealed on July 10, 2020 when the *COVID-19 Related Measures Act* (CRMA) came into force. Section 3(5) and item 7 of Schedule 2 of the CRMA, confirmed the limitation period suspensions set out in MO86. For clarity, under the CRMA, the CRT's authority to extend timelines was discretionary, not mandatory. The CRMA also said the suspension of limitation periods would end 90 days after the state of emergency ended, which was on June 30, 2021. This means the CRT's discretion to waive, extend, or suspend a limitation period during the Covid-19 pandemic ended on September 28, 2021, before Cotton applied for dispute resolution. So, even if Cotton's limitation period could have been extended during the

Covid-19 pandemic, I find the CRT no longer has the legal authority to grant such an extension.

20. Cotton says the respondents cannot rely on the LA because they did not initially argue that the limitation period had expired in their filed Dispute Responses. However, section 6 of the LA specifically says a proceeding **must** not be started more than 2 years after the discovery date, subject to exceptions set out in LA section 7, which I find do not apply here. The word “must” indicates the statute is mandatory and applies whether the respondents argue it or not. Further, the CRT’s mandate requires the CRT to apply principles of law and justice, in an informal flexible manner. I find this supports a finding that the CRT must apply applicable laws, even if those laws are not raised by the parties.
21. I disagree with Cotton’s argument that the claim should be allowed to proceed because the CRT’s online portal accepted Cotton’s dispute application. Simple acceptance of a dispute application does not mean that the LA or other statutory limits are not considered. As noted above, the LA is obligatory and must be applied unless another statute (such as the CRMA) says otherwise.
22. Overall, I find Cotton discovered, or could have discovered, its claim by September 1, 2018. So, as noted above, I find the 2-year limitation period for this claim had expired well before Cotton applied for dispute resolution on January 20, 2022.
23. 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 Cotton was unsuccessful in its claim, it is not entitled to reimbursement of its paid CRT fees.

ORDER

24. I dismiss Cotton's claims and this dispute.

Sherelle Goodwin, Tribunal Member