



# Civil Resolution Tribunal

Date Issued: October 21, 2022

File: SC-2022-000997

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanson v. Canpro Deck and Rail (BC) Inc. dba Canpro Deck and Rail Nanaimo*, 2022 BCCRT 1152

B E T W E E N :

WILLIAM HANSON

**APPLICANT**

A N D :

CANPRO DECK AND RAIL (BC) INC. dba CANPRO DECK AND RAIL  
NANAIMO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about the installation of vinyl decking on an existing deck.
2. The applicant, William Hanson, says the respondent, Canpro Deck and Rail (BC) Inc. dba Canpro Deck and Rail Nanaimo (Canpro) negligently installed vinyl decking on

his upper deck in 2018. Mr. Hanson says he first observed issues with the vinyl deck installation in December 2018. Mr. Hanson says that when he sold the property in 2020, he agreed to a \$4,000 holdback to repair the deck. He lost the holdback when the deck repairs were not completed. Mr. Hanson claims \$4,000 in damages for the lost holdback.

3. Canpro does not dispute that it installed vinyl decking on Mr. Hanson's existing deck in 2018, but denies that it did so negligently. It says Mr. Hanson only hired Canpro to install the vinyl decking surface. Canpro says Mr. Hanson was responsible for all other deck installation requirements, include surface preparation, but did not complete them properly or at all. Canpro does not dispute that the deck was damaged, but says Mr. Hanson is responsible for his claimed damages. As discussed below, there is also an issue about whether Mr. Hanson filed his claim in time.
4. Mr. Hanson is self-represented. Canpro is represented by its owner.

## **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. In some respects, both parties in 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is Mr. Hanson's claim out of time under the *Limitation Act*?
  - b. If not, did Canpro negligently install the decking?
  - c. If Canpro was negligent, to what extent, if any, is Mr. Hanson entitled to \$4,000 in damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Hanson must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

11. It is undisputed that Canpro installed vinyl decking on Mr. Hanson's existing deck in 2018.
12. Mr. Hanson says that in December 2018 it became apparent that there were issues with Canpro's deck installation, including alleged bubbling under the vinyl, lifting edges, edges cut back too far from the flashing, and unfinished posts. Mr. Hanson raised these issues with Canpro's vinyl deck installation in a December 11, 2018 text message conversation.
13. 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. Mr. Hanson filed his dispute application with the CRT on February 7, 2022. So, in order for his claim to be on time he must not have discovered his claim before February 6, 2020.
14. Section 8 of the *Limitation Act* says that a claim is discovered when Mr. Hanson 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.
15. Bearing in mind the CRT's flexible mandate and the fact the parties are lay litigants, I asked the parties for submissions about whether Mr. Hanson's claim was out of time under the applicable limitation period.

16. Canpro says it completed Mr. Hanson's deck work in 2018, which it says is clearly over 2 years ago. However, Canpro did not provide submissions on when it says Mr. Hanson discovered, or reasonably ought to have discovered his claim. As noted, Canpro says that Mr. Hanson is responsible for the alleged deck damage because he did not complete his portions of the deck installation requirements.
17. Mr. Hanson says he observed issues with the vinyl deck installation in December 2018, and raised this with Canpro at that time. Mr. Hanson says Canpro advised him that the issues were minor, and it would fix them. Mr. Hanson also says a January 5, 2020 inspection report prior to the sale of his property revealed that the vinyl was not sticking to the majority of his upper deck. This report identified damaged, buckling vinyl decking and leaks at the deck columns, among other things. Because of this report, he agreed to a \$4,000 holdback on his property sale proceeds to complete the deck repairs. Mr. Hanson says he lost the \$4,000 holdback because the repairs were not completed. A January 10, 2020 contract of purchase and sale amendment signed by Mr. Hanson shows that Mr. Hanson agreed to a \$4,000 holdback if he did not repair the vinyl decking on the property's deck by June 30, 2020.
18. Finally, Mr. Hanson says July 20, 2020 was the first time Canpro advised that there were serious issues with the vinyl decking. He says this is when he discovered his claim. He says he could not have been aware of his claim before that time because the parties were working together to resolve the deck issues.
19. I find Mr. Hanson's claim in substance is that Canpro's 2018 vinyl deck installation was negligent. Therefore, the loss or damage was first discovered when Mr. Hanson discovered the alleged deck installation deficiencies. Based on the evidence, I find he discovered his claim by January 10, 2020 when he agreed to the \$4,000 holdback, at the very latest. My further reasons follow.
20. I acknowledge Mr. Hanson's allegation that Canpro first advised him of serious deck issues when it came to look at the deck bubbling in July 2020. However, I find this occurred after Mr. Hanson was undisputedly already aware of the deck damage from the January 5, 2020 inspection report, and had already agreed to the \$4,000 holdback

on January 10, 2020 to repair the deck damage. Given Mr. Hanson's own documentary evidence, I do not accept that Mr. Hanson did not discover the deck damage until July 2020.

21. I also acknowledge that Mr. Hanson's claimed remedy is based on his loss of the \$4000 holdback in June 2020. However, the remedy sought does not change the date the claim was discovered. Under the *Limitation Act*, Mr. Hanson discovered his claim when he had "actual or constructive knowledge of the material facts upon which a plausible inference of liability" on Canpro's part could be drawn: see *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31. Discoverability of a claim is not dependent on knowledge of the exact extent of the loss. It is sufficient to know that some loss has occurred. See *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC). I find Mr. Hanson knew some loss occurred when he agreed to the \$4,000 holdback to repair deck damage.
22. As noted, Mr. Hanson alleges that Canpro agreed to fix the alleged deck deficiencies, but then failed to do so. The evidence shows that Canpro and Mr. Hanson discussed bubbles in the vinyl decking in December 2018. The evidence also shows that Canpro returned to look at the deck bubbling in July 2020, after the holdback's deadline. However, I find the evidence does not show that Canpro ever acknowledged responsibility for the alleged deficiencies with the decking install, or agreed to fix the alleged deficiencies for free. Mr. Hanson himself says that Canpro asked for further payment to return to address the alleged deck bubbling.
23. 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 Mr. Hanson allegedly working with Canpro to fix the deck issues between December 2018 and July 2020 did not suspend or delay the start of the limitation period.

24. Arguably Mr. Hanson discovered his claim in December 2018. However, I find I do not need to determine that. I say this because at the latest I find the limitation period expired on January 11, 2022, based on the inspection report and holdback. In either case, the limitation period expired before Mr. Hanson filed his application for dispute resolution on February 7, 2022. Therefore, I find Mr. Hanson's claim is out of time under the *Limitation Act*. As a result, I do not need to determine the other issues, and I dismiss Mr. Hanson's claims.
25. 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. I see no reason in this case not to follow that general rule. As Mr. Hanson was unsuccessful, I dismiss his fee claim. Canpro did not pay any CRT fees and neither party claimed any dispute-related expenses, so I award none.

## **ORDER**

26. I dismiss Mr. Hanson's claims and this dispute.

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Leah Volkers, Tribunal Member