



# Civil Resolution Tribunal

Date Issued: July 16, 2024

Files: SC-2023-003803  
and SC-CC-2023-006223

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Knezy v. Barbosa*, 2024 BCCRT 689

B E T W E E N :

CSABA KNEZY

**APPLICANT**

A N D :

FRANK ROBERT BARBOSA

**RESPONDENT**

A N D :

CSABA KNEZY

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Jeffrey Drozdiak

## INTRODUCTION

1. This is a dispute about a co-owned property in Harrison Hot Springs (the Harrison property). This decision relates to 2 linked disputes, SC-2023-003803 and SC-CC-2023-006223. I find these disputes are a claim and counterclaim involving the same parties and related issues. So, I have issued one decision for both disputes.
2. The applicant, Csaba Knezy, says since 2018 the respondent, Frank Robert Barbosa, has missed several monthly payments towards shared property expenses. Mr. Knezy seeks payment of \$2,800.88. Mr. Barbosa says he has paid an equal share of property expenses and denies owing any more money. Mr. Barbosa also argues Mr. Knezy missed the limitation period for filing a claim.
3. In the counterclaim, Mr. Barbosa says Mr. Knezy has not returned a utility trailer he borrowed. Mr. Barbosa wants \$2,000 for his alleged unreturned trailer. Mr. Knezy says the trailer is at the Harrison property, and Mr. Barbosa has access to it. Mr. Knezy also denies the trailer is worth \$2,000.
4. The parties are each self-represented.

## 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Downing v. Strata Plan VR2356*, 2023 BCCA 100, in which the court

recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind that an oral hearing was not requested by either party, and the CRT's mandate is for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. Where permitted by CRTA section 118, 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. Knezy's claim, or parts of his claim, out of time under the *Limitation Act*?
  - b. How much, if any, does Mr. Barbosa owe Mr. Knezy for property expenses?
  - c. How much, if any, does Mr. Knezy owe Mr. Barbosa for the alleged unreturned trailer?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Knezy, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). Likewise, Mr. Barbosa must prove his counterclaim to the same standard. In his counterclaim, Mr. Barbosa did not provide any evidence, despite having the opportunity to do so.
11. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

### ***The Harrison Property***

12. Mr. Knezy says in 2010, 3 families agreed to buy and co-own the Harrison property. The 3 families included, Mr. Knezy and DK (the Knezys), Mr. Barbosa and AB (the Barbosas), and AF and RF (the Fs). Mr. Barbosa provided a state of title certificate. The Knezys and the Barbosas are listed as the owners of the Harrison property.
13. Neither party says why the Fs are not on title to the Harrison property. Mr. Knezy says the Fs beneficially own the Harrison property, and the Fs have started a separate lawsuit. I find nothing turns on a family's type of property interest. So, I find I do not need to discuss this issue.
14. For the shared property expenses, Mr. Barbosa set up a CIBC chequing account. Mr. Knezy says each family made monthly deposits, and service providers automatically withdrew monthly expenses. The authorized accountholders were AF, Mr. Barbosa, and DK.
15. Mr. Knezy says in December 2017, he and DK reviewed the bank account statements and addressed any shortfalls. After a further review in May or June 2021, Mr. Knezy says he discovered that the Barbosas missed numerous monthly payments going back to January 2018.

### ***Is Mr. Knezy's Claim Out of Time?***

16. Mr. Knezy claims \$2,800.88 for Mr. Barbosa's alleged missed monthly payments. Mr. Knezy provided a spreadsheet summarizing the withdrawals and deposits from the bank account between January 2018 and January 2023. From the spreadsheet, I find Mr. Knezy's claim amount is based on the period from January 2018 to January 2023.
17. Mr. Barbosa argues Mr. Knezy missed the limitation period, so I should dismiss his claim. Mr. Knezy argues he did not miss the limitation period. He claims the BC Supreme Court has found that there is no limitation period on negligent acts discovered more than 2 years before being brought to court.

18. Mr. Knezy did not provide any cases to support his limitation argument. Instead, Mr. Knezy provided a newspaper article about a criminal case where a bookkeeper was charged with fraud going back 10 years. I find this evidence and the criminal case are not relevant. For criminal cases, the *Criminal Code* applies to limitation periods. This dispute is a civil case, so the *Limitation Act* applies.
19. CRTA section 13 says the *Limitation Act* applies to the CRT. The *Limitation Act* creates a 2-year limitation period for most claims, including Mr. Knezy's claim in this dispute.
20. Section 8 of the *Limitation Act* says the limitation period starts running when a person discovers their claim. A person discovers a claim when they know, or reasonably should know, that another person caused them to incur a loss, and that a legal proceeding, such as the CRT dispute process, would be a suitable way to remedy the loss.
21. Mr. Knezy applied to the CRT for dispute resolution on April 4, 2023. This means any missed payments he discovered, or reasonably should have discovered, before April 4, 2021, are out of time and I must dismiss them.
22. Mr. Knezy claims he initially discovered the alleged missed payments in May or June 2021. He says he downloaded the 2018 – 2021 monthly account transactions from the CIBC website to complete a review. During his review, Mr. Knezy says he discovered that the Fs mostly made their deposits, the Knezys missed a few deposits, and the Barbosas had missed numerous deposits.
23. In *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, the Supreme Court ruled that a person discovers, or reasonably should discover, a claim when they have either actual or constructive knowledge of the facts that give rise to a claim. Constructive knowledge means the evidence shows a person should have discovered the facts by exercising reasonable diligence. Suspicion may trigger that exercise.

24. On February 14, 2021, DK messaged Mr. Barbosa saying that the bank account was at a negative balance. DK asked Mr. Barbosa if he was keeping up with his payments. Mr. Barbosa responded he had and questioned if DK was. Mr. Knezy describes Mr. Barbosa's responses as negative and displaying combative behavior. I agree. I find the messages show that the parties did not get along or trust each other.
25. Mr. Knezy admits Mr. Barbosa had a history of being hesitant with payments. He says it was obvious from the evidence that Mr. Barbosa struggled to figure out the source of bank deposits. I find that Mr. Knezy's evidence as a whole shows that by February 14, 2021, Mr. Knezy likely had a suspicion that the Barbosas were missing their monthly payments.
26. Based on his suspicion, I find on February 14, 2021, Mr. Knezy should have exercised reasonable diligence and reviewed the bank account statements. It had been over 3 years since the last time he had reviewed the account, and the account now had a negative balance. DK was also an authorized accountholder, so Mr. Knezy could easily download the records off the CIBC website.
27. Instead, Mr. Knezy completed an account review in May or June 2021. Mr. Knezy did not say why he waited 3 – 4 months to complete a review. Even if it took 4 weeks to complete a review after he discovered the account's negative balance, I find Mr. Knezy should have discovered the alleged missed payments by at least March 15, 2021.
28. Mr. Knezy also says he discovered an account shortfall in his December 2017 review. Once he discovered the 2017 shortfall, I find Mr. Knezy should have exercised reasonable diligence and reviewed the account more than once in 3.5 years. Based on the evidence, I find nothing prevented Mr. Knezy from regularly reviewing the account. If Mr. Knezy regularly reviewed the account, I find he would have discovered a shortfall well before February 14, 2021.

29. Overall, I find Mr. Knezy did not exercise reasonable diligence to discover the alleged missed payments. I find Mr. Knezy should have discovered the alleged missed payments by March 15, 2021 at the latest, and started his claim before March 15, 2023. Mr. Knezy started his claim more than 2 years later on April 4, 2023. So, I find Mr. Knezy's claim for any alleged missed payments before April 4, 2021 (2 years from when Mr. Knezy filed his claim) are out of time under the *Limitation Act*.

***How Much, If Any, Does Mr. Barbosa Owe Mr. Knezy?***

30. Mr. Knezy argues that the Barbosas missed numerous monthly payments since January 2018, which means they breached the parties' agreement. On March 3, 2024, AB emailed Mr. Knezy acknowledging their missed payments. In the email, AB promised they would repay their share of the missed payments separately from Mr. Barbosa. So, Mr. Knezy says his claim against Mr. Barbosa is only for 50% of the Barbosas' alleged missed payments.

31. From Mr. Knezy's account spreadsheet, I found that Mr. Knezy's claim amount is for account transactions between January 2018 and January 2023. Since I found any claims before April 2021 are out of time, I will only discuss any alleged missed payments between April 2021 and January 2023.

32. Mr. Knezy says from 2011 to 2015, each family agreed to pay \$250 per month for shared property expenses, including utilities, mortgage payments, and repair costs. Mr. Knezy says in 2015, the Fs discharged the mortgage and the 3 families agreed to reduce their monthly payments to \$100 each.

33. In support, Mr. Knezy provided October 2012 emails where Mr. Knezy and Mr. Barbosa discussed the shared expenses and having sufficient funds in the account. In these emails, Mr. Knezy and Mr. Barbosa agreed that starting November 1, 2012, each family would decrease their monthly payments from \$300 to \$250. I note that the Fs were not included in these emails. However, there is no evidence before me that the Fs dispute an expense sharing agreement.

34. I find Mr. Knezy's account spreadsheet shows routine withdrawals by BC Hydro, FortisBC, and the Village of Harrison Hot Springs. However, I find the families' deposit history does not show that each family agreed to pay \$100 per month towards these expenses. From the spreadsheet, I find:
- a. The Fs paid between \$0 - \$700 per month and they rarely missed paying monthly.
  - b. The Knezys paid between \$0 - \$609 per month, but they paid nothing in 7 months of 2019 and 9 months of 2020.
  - c. The Barbosas paid between \$0 - \$761.25 and they missed numerous monthly payments every year.
35. Mr. Barbosa argues that there is no legal contract between the families to have a set amount placed into the account for shared expenses. He claims the families informally paid funds into the account for standard monthly expenses, but there was no consistent amount.
36. Mr. Barbosa also argues that there are only 4 legal owners on title, and those owners should split expenses. However, Mr. Barbosa does not dispute that the Fs paid off the mortgage, used the Harrison property, and contributed monthly towards property expenses.
37. Regardless of who legally owned the Harrison property, based on the evidence before me, I find the 3 families agreed to equally share the property expenses. I also find the 3 families agreed to deposit money into the account to cover the expenses.
38. As for the monthly amount, I find Mr. Knezy has not sufficiently proven that the 3 families agreed to pay \$100 each per month. However, I find nothing turns on this, as Mr. Knezy's damages, or loss, would not change.
39. Mr. Knezy argues his damages are the difference between Mr. Barbosa's required monthly payments and Mr. Barbosa's actual payments. I disagree. Damages for



breach of contract are generally intended to put the innocent party in the same financial position they would have been in if the parties had completed the contract as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at para 39).

40. Here, I find the families intended to use the monthly payments to cover the monthly expenses. If a family missed their payment, the other families' payments would equally cover the shortfall. So, I find Mr. Knezy's damages, or loss, would be his family's share of the shortfall. This would be 50% of the difference between Mr. Barbosa's total payments and Mr. Barbosa's portion of the shared expenses. I find I can decide this amount from Mr. Knezy's account spreadsheet.
41. Mr. Barbosa argues the account spreadsheet is generally inadmissible and not relevant. He claims the spreadsheet is custom made by Mr. Knezy. Since Mr. Knezy did not provide the corresponding bank statements, Mr. Barbosa argues that Mr. Knezy could have changed the numbers. However, Mr. Barbosa does not highlight any errors in the spreadsheet, or explain which numbers Mr. Knezy allegedly changed. Since Mr. Barbosa is an authorized account holder, he had the opportunity to confirm the numbers himself.
42. CRTA section 42 gives me discretion to accept as evidence information that I consider relevant, necessary, and appropriate. I find the spreadsheet is relevant, as it summarizes the account transactions for the relevant period. I find the spreadsheet is necessary to decide Mr. Knezy's alleged loss. Since Mr. Barbosa did not provide evidence disputing that the numbers are inaccurate, I find the spreadsheet is an appropriate form of evidence. So, I accept Mr. Knezy's spreadsheet as the account's transaction summary.
43. From the spreadsheet, I find from April 2021 – January 2023:
  - a. The Barbosas' share of the monthly expenses was \$2,378.36, and Mr. Barbosa owed 50%, or \$1,189.18.

- b. The Barbosas deposited \$1,331.25, so Mr. Barbosa gets credit for 50%, or \$665.63.
  - c. Mr. Barbosa's shortfall to the account was \$523.56.
  - d. The Knezys deposited \$2,999, and the Fs deposited \$2,779 during this time.
44. I find Mr. Barbosa breached the families' agreement by not depositing enough money into the account to cover the monthly expenses. Since Mr. Barbosa's shortfall was \$523.56, I find the Knezys' and the Fs' deposits into the account covered the shortfall. Mr. Knezy, which I infer represents the Knezys, is the only party to this dispute. Since the Fs are not a party to this dispute, I find Mr. Knezy's claim is limited to 50% of the shortfall. So, I find Mr. Knezy is entitled to \$261.78.
45. Mr. Barbosa argues any alleged shortfall was offset by other payments he made for materials, property taxes, or insurance. So, Mr. Barbosa argues he does not owe any money. I find Mr. Barbosa is looking for a set-off for what he owes on monthly expenses.
46. A set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. As the party alleging a set-off, Mr. Barbosa has the burden of proving it.
47. Mr. Barbosa provided evidence showing he paid for insurance in 2017, 2019 and 2020, property taxes in 2020 and 2021, and materials in 2021. He also provided evidence showing he transferred money to the Knezys in 2019 and 2020. Since Mr. Knezy's claim is limited to April 2021 onwards, I will only discuss Mr. Barbosa's alleged unequal contributions for the 2021 property taxes and the 2021 materials.
48. Based on a June 2021 bank statement, Mr. Barbosa says he paid \$1,245.28 towards the 2021 property taxes, which totaled \$1,867.91. However, in the same bank statement, 6 days later AF transferred him \$622.64, or 1/3 of the property tax amount. Mr. Knezy argues that the 3 families equally paid the property taxes. Since

Mr. Barbosa only paid 2/3 of the property tax amount before receiving AF's transfer, I infer the Knezys paid the remaining balance. So, I find the 3 families equally split the 2021 property taxes.

49. Mr. Barbosa argues in April 2021 he paid \$2,167.20 to Superior Door Services for a new garage door, and in October 2021 he paid \$782.62 for lumber. Mr. Knezy argues that the families jointly built a garage on the Harrison property and the Fs covered the costs. There is no evidence before me showing the total cost for the garage. So, I find Mr. Barbosa did not provide sufficient evidence to prove he incurred an unequal share of the garage expenses.
50. Mr. Barbosa also argues that from January 2023 to February 2024 he paid \$55 per month towards monthly expenses. He says these payments resulted in a \$110 surplus, which I should apply to any money owed to Mr. Knezy. Mr. Barbosa did not provide any evidence to prove the surplus, including the amount for the monthly expenses. So, I find Mr. Barbosa has not proven that he is entitled to a \$110 set-off.
51. In summary, I find Mr. Barbosa has not proven he is entitled to a set-off. So, I find Mr. Barbosa owes \$261.78 to Mr. Knezy.

***How much, if any, does Mr. Knezy owe Mr. Barbosa for the Trailer?***

52. In his counterclaim, Mr. Barbosa argues that Mr. Knezy borrowed his utility trailer 5 years ago and Mr. Knezy has not returned the trailer. Mr. Barbosa says he no longer lives in the area, so he should receive the trailer's replacement cost.
53. Originally, Mr. Barbosa claimed \$2,000 for the trailer. After receiving Mr. Knezy's evidence showing a similar trailer was worth \$900, in his reply submissions, Mr. Barbosa admitted he would accept \$1,200. So, I find Mr. Barbosa's claim is for \$1,200.
54. In July 2019, Mr. Knezy says he borrowed the uninsured trailer from Mr. Barbosa's Burnaby property and paid for 12 months of insurance. Mr. Knezy says he used the trailer to move maintenance materials from Vancouver to the Harrison property, for

shared property maintenance. After the insurance expired, Mr. Knezy says the trailer remained at the Harrison property and Mr. Barbosa used the trailer. Mr. Knezy argues he never agreed to return the trailer to Mr. Barbosa's Burnaby property.

55. Mr. Barbosa only provided brief submissions and no evidence. Mr. Barbosa says he has asked for the trailer back but provided no evidence to prove it. Mr. Barbosa does not dispute that he has access to the trailer, which remains at the parties' shared property. Instead, he argues Mr. Knezy did not return the trailer to his principal residence. Mr. Barbosa did not provide any evidence about the terms of the agreement to lend the trailer. So, I infer Mr. Barbosa argues there was an implied term that Mr. Knezy return the trailer to his Burnaby property.
56. Implied terms are contractual terms that the parties did not expressly consider, discuss, or write down. The court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Such terms are founded on a common presumed intention of the parties. In other words, an implied term must be something that both parties would have considered obvious when they entered the contract (see *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216 at paras 25 to 32).
57. I find based on the parties' conduct that it was not obvious that Mr. Knezy had to return the trailer to Mr. Barbosa's Burnaby property. On November 16, 2022, Mr. Barbosa emailed Mr. Knezy and others saying, "I have my utility trailer that someone has moved to uncovered area onto the grass in Harrison. As utility trailer has been used for numerous projects by all owners with respect to Harrison property, it's vital it is protected from the elements." I find from Mr. Barbosa's email that the parties agreed to keep the trailer at the Harrison property.
58. Mr. Barbosa also argues that since he no longer lives at his Burnaby property, the only option is for Mr. Knezy to pay the trailer's replacement cost. Based on the evidence before me, I find there was no implied term that if Mr. Barbosa moved away, Mr. Knezy would pay to replace the trailer.

59. Although not raised by either party, I have considered whether the tort of conversion applies here. Conversion is when a person wrongfully deals with another's personal property in a way that interferes with the owner's rights to it. To prove conversion, Mr. Barbosa must show Mr. Knezy wrongfully handled, disposed of, or destroyed the trailer, and that the act was intended to, or actually interfered with, Mr. Barbosa's right or title to the trailer (see *Li v. Li*, 2017 BCSC 1312 at para 214).
60. Mr. Knezy argues the trailer is still at the Harrison property and Mr. Barbosa, as the legal property owner, has access to the trailer. In support, Mr. Knezy provided a date and location stamped photograph of the trailer, showing as of March 22, 2024, the trailer was stored at the Harrison property. Mr. Knezy also provided evidence showing Mr. Barbosa still spends time at the Harrison property. Mr. Barbosa does not dispute this. So, I find Mr. Barbosa has not proven Mr. Knezy has interfered with his right or title to the trailer.
61. In summary, I find Mr. Barbosa has not proven that Mr. Knezy should reimburse him for the trailer. So, I dismiss Mr. Barbosa's claim for the trailer's replacement cost.

### **Conclusion**

62. In conclusion, I find Mr. Barbosa breached the families' agreement to equally pay for the Harrison property's monthly expenses. So, I order Mr. Barbosa to pay Mr. Knezy \$261.78.
63. Mr. Knezy did not claim interest, so I do not award any.
64. 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 find Mr. Knezy was successful in proving a loss. So, Mr. Knezy is entitled to reimbursement of \$125 in CRT fees. Mr. Knezy did not claim dispute-related expenses, so I order none. As Mr. Barbosa was unsuccessful in his counterclaim, I dismiss his claim for reimbursement of CRT fees.

## ORDERS

65. Within 30 days of the date of this order, I order Mr. Barbosa to pay Mr. Knezy a total of \$386.78, broken down as follows:
- a. \$261.78 in damages,
  - b. \$125 for CRT fees.
66. Mr. Knezy is entitled to post-judgment interest, as applicable.
67. I dismiss Mr. Barbosa's counterclaim.
68. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Jeffrey Drozdiak, Tribunal Member