



Civil Resolution Tribunal

Date Issued: July 10, 2019

File: ST-2019-003294

Type: Strata

Civil Resolution Tribunal

Indexed as: *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 836

BETWEEN:

WENDY HARVEY

APPLICANT

AND:

The Owners, Strata Plan VR 390

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal). Only the evidence and submissions relevant to this decision are referenced below. This is not a final decision on the substance or merits of this dispute.

2. The respondent strata corporation, The Owners, Strata Plan VR 390 (strata), asks the tribunal to dismiss this dispute on the basis that the applicant's claims are out of time under the *Limitation Act*.
3. In the alternative, the strata asks the tribunal to decline to hear this dispute for lack of jurisdiction over what the strata says amounts to contempt of BC Supreme Court orders.
4. The applicant, Wendy Harvey (owner), owns a strata lot in the strata. The dispute involves allegations that the strata did not repair its common property, forcing the owner to do so. The owner seeks reimbursement of \$18,566.10 she says she had to pay to repair common property, for which she says the strata is responsible.
5. The owner is self-represented. The strata is represented by a lawyer, Veronica Franco.
6. For the reasons that follow, I find the owner's claims are statute-barred and I dismiss this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 121 of the Act. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
10. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

11. The issues before me are:
 - a. Are the owner's claims out of time under the *Limitation Act* (LA)?
 - b. If not, does the tribunal have jurisdiction to decide contempt issues arising out of BC Supreme Court Orders?

BACKGROUND, EVIDENCE AND ANALYSIS

12. The parties have been involved in ongoing litigation in the BC Supreme Court for several years.
13. Under section 13 of the Act, the LA applies to the tribunal as if it were a court. The current LA came into force on June 1, 2013. Prior to June 1, 2013 a former version of the LA (former LA) was in force.
14. The LA defines a claim as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". The limitation period only applies to claims, as defined.
15. I find the LA applies to the claims in this dispute, because the owner's claims are for financial loss or damage.

16. Section 6 of the LA says of the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after it is discovered.
17. Section 8 of the LA says that, except for special situations referred to in sections 9 to 11 that do not apply here, a claim is discovered by a person on the first day on which the person 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 proceeding would be an appropriate means to seek remedy for the injury, loss or damage.
18. Under section 30(3) of the LA, if a claim that was discovered before the LA came into force, the former LA applies.
19. The applicant makes 3 claims involving property repairs that I will refer to as the wall repairs, the deck repairs, and firestop repairs. I will refer to the 3 claims collectively as the property claims.
20. The respondent argues all 3 claims are out of time under either the current LA, which has a 2-year limitation period, or the former LA, which I agree also had a 2-year limitation period for property claims. Specifically, the respondent alleges the respective dates of discovery were at the latest: 2012 for the wall repairs, March or April 2016 for the deck repairs, and November 2015 for the firestop repairs.
21. The applicant states that she did not discover any of the claims until “late May 2013” when her spouse completed a “construction survey”. She says the former LA

should apply, which she says has a 6-year limitation period, although she did not explain why she believes a 6-year limitation period would apply.

22. As noted, I agree with the respondent that the former LA had a 2-year limitation period, because its section 3(2) states:

After the expiration of 2 years after the date on which the right to do so arose a person may not bring any of the following actions:

- (a) ... for damages in respect of injury to person or property, including economic loss arising from the injury, whether based on contract, tort or statutory duty;

23. Therefore, given the applicant admitted to discovering the property claims at the end of May 2013, a 2-year limitation period would require the applicant to have started her claims by the end of May 2015. The Dispute Notice for this dispute was issued on May 23, 2019, well after the expiration of the 2-year limitation period. For these reasons, I find the applicants claims are out of time.

24. Therefore, I dismiss the applicant's claims and this dispute.

25. Given my conclusion, I find I do not need to address the strata's alternate argument about the tribunal's jurisdiction over contempt issues.

DECISION AND ORDER

26. I dismiss the owner's claims and therefore this dispute.

J. Garth Cambrey, Vice Chair