



# Civil Resolution Tribunal

Date Issued: November 22, 2022

File: ST-2022-004927

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bradshaw v. The Owners, Strata Plan KAS 1627*, 2022 BCCRT 1259

B E T W E E N :

FRANCIS BRADSHAW

**APPLICANT**

A N D :

The Owners, Strata Plan KAS 1627

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This is a final decision dismissing this dispute as it is out of time under the *Limitation Act* (LA).

2. The applicant, Francis Bradshaw, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1627 (strata). Ms. Bradshaw says the strata failed to properly maintain and repair the common property roof. She says that failure caused the roof to leak into her strata lot on September 18, 2019 and again on June 14, 2020. Ms. Bradshaw claims \$15,953.39 in water damage repair costs and fees.
3. The strata says Ms. Bradshaw is responsible for paying to repair any damage to her own strata lot. It also says this dispute is out of time under the *Limitation Act* (LA).
4. Ms. Bradshaw represents herself. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says 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. CRTA section 39 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 and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

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

## **EVIDENCE AND ANALYSIS**

10. In making this decision I have reviewed the Dispute Notice, Dispute Response, and the parties' submissions and evidence on this preliminary matter.
11. Section 6 of the LA says "a court proceeding in respect of a claim" must not be commenced more than 2 years after the day on which the claim is discovered. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known the following:
  - a. That injury, loss or damage occurred,
  - b. That the injury, loss or damage was caused or contributed to by an act or omission,
  - c. That the party against which the claim is made did the act or omission, and
  - d. That a court proceeding would be an appropriate way to remedy the injury, loss or damage.
12. Section 13 of the *Civil Resolution Tribunal Act* (CRTA) confirms that the LA applies to CRT claims.
13. Ms. Bradshaw applied for dispute resolution through the CRT on August 3, 2022. I find this is more than 2 years after the strata lot leaks which Ms. Bradshaw said occurred on September 18, 2019 and June 14, 2020.

14. Ms. Bradshaw says she filed this claim because her insurer refused to pay to repair the water damage from the first leak, on December 2, 2019. She says her insurer found the leak was due to the strata's failure to maintain the common property roof. To the extent Ms. Bradshaw argues she did not discover her claim against the strata until December 2, 2019, I find that does not assist her, as December 2, 2019 is still more than 2 years before Ms. Bradshaw's August 3, 2022 CRT application date.
15. Ms. Bradshaw also argues that the CRT should not refuse to resolve this dispute because she initially filed her claim in the BC Provincial Court (BCPC) on May 31, 2021. I infer she argues the BCPC filing satisfied section 6 of the LA, or otherwise postponed the running of the 2-year limitation period.
16. Based on BCPC documents provided by the parties, I find Ms. Bradshaw filed her BCPC claim against Associa British Columbia Inc. (Associa) on June 2, 2021 for water damage repair costs resulting from the September 18, 2019 and June 14, 2020 leaks into her strata lot. I infer Associa is the current or former strata manager.
17. Ms. Bradshaw later amended her BCPC claim to include the strata as a defendant and to increase her claimed damages to \$15,953.59. I accept that the BCPC action and this CRT dispute are in relation to the same claim. However, the BCPC dismissed Ms. Bradshaw's claims as outside the court's jurisdiction (legal authority) at an April 6, 2022 settlement conference.
18. I note that section 13.1 of the CRTA says an applicable limitation period under the LA does not run after a party applies for dispute resolution under CRTA section 4. There is no such provision in the *Small Claims Act*. So, I find there is no statutory provision which suspends the running of an applicable limitation period upon starting a BCPC action.
19. Ms. Bradshaw says that she did not know that her claim should be filed at the CRT, rather than the BCPC. She points out that the BCPC accepted her claim for filing, and held 2 separate settlement conferences, before it decided it did not have jurisdiction to consider the matter. Ms. Bradshaw says that, after the April 6, 2022 settlement conference, she met with her lawyer (AJ), who confirmed that Ms. Bradshaw should

file this matter with the CRT. I infer Ms. Bradshaw argues that no one told her she should file her claim with the CRT until she spoke with AJ. Even if this is true, I find Ms. Bradshaw did, or should have “discovered” her claim prior to her conversation with AJ, as explained below.

20. First, as noted above, a claim is discovered when a party either knew, or should have known, all the factors laid out in LA section 8. Section 8(d) refers to knowing that “a court proceeding” is appropriate to remedy the loss. As the LA uses the term “a court proceeding, rather than “the court proceeding”, I find it intends to be a general reference to any level of court. I find this includes the CRT, by virtue of CRTA s. 13. So, I find section 8(d) of the LA is satisfied as soon as a claimant is aware, or should be aware, that some level of court or tribunal proceeding is the appropriate way to remedy the loss.
21. As Ms. Bradshaw filed her BCPC action on June 2, 2021, I find she was then aware that “a court proceeding” was the appropriate way to remedy her alleged loss, even if she was unaware that the BCPC was not the correct court, or forum, for her dispute.
22. Second, I find Ms. Bradshaw could have discovered that the CRT was the appropriate forum for her claim, had she taken reasonable steps to investigate the matter. Specifically, the CRT’s website clearly describes the type of claims within its jurisdiction, including strata disputes such as this one. Further, Ms. Bradshaw could have consulted AJ, or obtained other legal advice about the correct forum before she filed her BCPC action on June 2, 2021.
23. Third, BC courts have considered similar situations where a claimant files in the wrong forum within the applicable limitation period, but the limitation period expires before the party files the claim anew in the correct forum. In *Allen v. Dennis P.A. Nimchuk*, 2015 BCSC 940, the court found the plaintiff’s argument that the limitation period should not flow because she filed her action in the wrong court was “without merit”. In *Janus v. The Central Park Citizen Society*, 2019 BCCA 173, the court found that filing a claim in the wrong forum did not postpone the running of the limitation period. The courts have found that an applicant’s error or ignorance of the law does

not postpone the running of limitation periods. As noted by the Supreme Court of Canada at paragraph 8 of *Novak v. Bond*, [1999] 1 SCR 808, almost all applications of limitations statutes will seem harsh, but they are necessary to uphold the important principles of finality and expeditious dispute resolution.

24. On balance, I find that Ms. Bradshaw discovered her claim more than 2 years before she filed her August 4, 2022 application for dispute resolution with the CRT. I further find the limitation period was not postponed at any point during the BCPC action Ms. Bradshaw filed. So, I dismiss Ms. Bradshaw's claims as I find they are out of time under the LA.
25. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Bradshaw was unsuccessful in her claims, she is not entitled to reimbursement of any paid CRT fees. As the successful respondent, the strata paid no CRT fees and claimed no dispute-related expenses.
26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Bradshaw.

## **ORDER**

27. I dismiss Ms. Bradshaw's claims and this dispute.

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Sherelle Goodwin, Tribunal Member