



Civil Resolution Tribunal

Date Issued: March 13, 2024

Files: SC-2023-008086 and
SC-2023-012595

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wu v. Home Depot of Canada Inc.*, 2024 BCCRT 260

B E T W E E N :

XIUQI WU

APPLICANT

A N D :

HOME DEPOT OF CANADA INC.

RESPONDENT

A N D :

SAMSUNG ELECTRONICS CANADA INC.

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This is a final decision dismissing this claim as out of time under the *Limitation Act* (LA). This decision relates to 2 linked disputes that I find are a primary claim and a third-party claim involving the same issues. So, I have issued one decision for both disputes.
2. In the primary claim (dispute SC-2023-008086), the applicant, Xiuqi Wu, says that the respondent, Home Depot of Canada Inc., sold them a defective refrigerator. The applicant claims \$5,000, which includes a full \$2,211.14 refund for the refrigerator's purchase price and \$2,788.86 in other damages for the cost of repairs, expenses related to replacing spoiled food, lost time, hardship, stress, frustration, and anxiety related to dealing with the allegedly defective refrigerator.
3. The respondent says the applicant's claims are out of time under the LA. Further, the respondent says if there was a deficiency in the refrigerator, then the refrigerator's manufacturer, the third party, Samsung Electronics Canada Inc., is responsible.
4. The respondent filed dispute SC-2023-012595 against the third party, seeking contribution and indemnity for any judgment awarded to the applicant in the primary claim.
5. The third party says the refrigerator's manufacturer's warranty expired, and so the applicant is not entitled to any free repairs or the claimed refund for the refrigerator.
6. The applicant is self-represented. The respondent is represented by an authorized employee. The third party is represented by in-house counsel.

JURISDICTION AND PROCEDURE

7. 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.

8. 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 to provide proportional and speedy dispute resolution, I find that an oral hearing is not necessary in the interests of justice.
9. 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 inform itself in any other way it considers appropriate.

ISSUE

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

EVIDENCE AND ANALYSIS

11. In making this decision, I have reviewed the Dispute Notice, the Dispute Response, and the parties' submissions and evidence on the limitation issue.
12. Section 13 of the CRTA says 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 ends, even if the claim otherwise would have been successful.
13. 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.

14. The applicant filed their application for CRT dispute resolution on August 9, 2023. So, in order to have filed their claim within the 2-year limitation period, the applicant must have discovered their claim no earlier than August 9, 2021.
15. In their application for dispute resolution, the applicant said they became aware of their claim in August 2019. They said the refrigerator has had “consistent cooling problems”, and that they have been dealing with the problem for the “past 4 consecutive years”.
16. The third party says the applicant contacted it online around June 2, 2020, to report the refrigerator’s evaporator coils were freezing up and causing cooling issues. The third party says it advised the applicant that the refrigerator’s warranty was expired, and so they were not eligible for free repairs. The third party provided evidence showing a technician replaced the defrost sensor and fan unit on the refrigerator on July 29, 2020. The applicant does not dispute this.
17. I find the July 29, 2020 repair was likely ineffective. I say this because the applicant sent the respondent a March 27, 2023 email, which stated the refrigerator had had consistent ice buildup issues on the evaporator coils “for the past 5 consecutive years”. The email also stated that previous repair attempts had “no effect” and the icing continued to be a persistent issue.
18. Both the respondent and the third party argue that the applicant discovered their claim in August 2019, when the applicant says the refrigerator’s cooling issues started. So, the respondent and third party say the applicant’s claim is out of time under the LA.
19. The applicant says that while the refrigerator’s cooling problem first arose in 2019, the applicant thought the problem could be repaired. So, the applicant says they only discovered their claim when they exhausted all options to fix the refrigerator, which the applicant says was the date they filed their application for dispute resolution.

20. In *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, the Supreme Court of Canada confirmed that a claim is discovered when a plaintiff has “actual or constructive knowledge of the material facts on which a plausible inference of liability” can be drawn. A claim’s discoverability does not require knowledge of the exact extent of the loss. Rather, it is sufficient to know that some loss has occurred. See *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC).
21. I find the applicant likely discovered their claim in about August 2019 when the refrigerator started having cooling issues. As that is when the refrigerator began malfunctioning, I find that is likely when the applicant started incurring expenses, such as for spoiled food. In other words, I find the applicant knew some loss had occurred. Given the nature of the malfunction and the applicant’s claim, I find the applicant also knew or should have known that a court or tribunal proceeding was an appropriate way to remedy the loss at that time.
22. Even if I accepted the applicant’s argument that they did not discover their claim until attempted repairs failed to fix the problem, I find their claim would still be out of time. As noted, a technician undisputedly replaced the refrigerator’s defrost sensor and fan on July 29, 2020. So, I find the applicant would have discovered their claim as soon as they noticed the cooling system problem return after the repairs. Given the applicant told the respondent the repairs had “no effect” on the problem, I find the cooling system problem likely reappeared relatively quickly after the repairs were completed. I find this is also consistent with the applicant’s allegation that they suffered emotional distress and had to discard “unethical amounts of food” from dealing with the defective refrigerator over 4 years.
23. In summary, I find the applicant discovered their claim about the allegedly defective fridge in August 2019, which was well before August 9, 2021. However, even if the applicant only discovered their claim shortly after the July 29, 2020 repair failed, I would still have found they discovered their claim well before August 9, 2021.
24. For these reasons, I find the applicant’s claim was out of time when they filed it on August 9, 2023, and so I dismiss the applicant’s claim.

25. Given this conclusion, it is unnecessary for me to consider the respondent's claim against the third party.
26. 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 the applicant was unsuccessful, I find they are not entitled to reimbursement of their paid CRT fees.
27. The respondent paid \$125 in CRT fees for its third-party claim, an expense I find the respondent reasonably incurred to defend itself against the applicant's unsuccessful claims. So, I order the applicant to reimburse the respondent \$125 for its CRT fees. The third party did not pay any fees, and no party claimed dispute-related expenses.

ORDERS

28. I dismiss the applicant's claims and the respondent's claims against the third party.
29. I order the applicant to reimburse the respondent \$125 for CRT fees, within 30 days of this decision.
30. The respondent is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
31. 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 British Columbia Provincial Court. Once filed, a CRT order has the same force and effect as an order of the court in which it is filed.

Kristin Gardner, Tribunal Member