



Civil Resolution Tribunal

Date Issued: September 11, 2017

File: SC-2017-002508

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Israel v. Lochansky*, 2017 BCCRT 74

BETWEEN:

Randy Israel

APPLICANT

AND:

Lori Lochansky

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION AND JURISDICTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal) regarding an issue of non-compliance. Only the evidence and submissions relevant to this issue is referenced below.
2. Both parties are self-represented.

3. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules;
 - b. make an order dismissing a claim in the dispute made by the non-compliant party; or
 - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
4. The applicant is the non-compliant party in this dispute and has refused to participate in the case management phase despite several attempts by the facilitator to contact him.
5. The respondent has asked the tribunal to dismiss this dispute and the facilitator has referred this issue to me for a decision.
6. For the reasons which follow, I order that the tribunal dismiss the applicant's claim in this dispute.
7. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 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.

ISSUES

8. The issue in this dispute is whether I should hear the applicant's claim, dismiss the applicant's claim, or refuse to resolve the claim or the dispute.

BACKGROUND AND EVIDENCE

9. The key difference between a dismissal order and a refusal to resolve under section 36 of the Act is that, subject to cancellation or notice of objection requests, disputes which are dismissed may not be re-filed with the tribunal, another tribunal or court at a later date. Claims or disputes which the tribunal refuses to resolve may be re-filed with leave of the tribunal, subject to any applicable limitation period.
10. As shown on the Dispute Notice, the applicant made one claim against the respondent, seeking payment for work completed totalling \$1,060.00. In their response, the respondent denies any further payment for work completed is due.
11. On my request, the facilitator provided details of the applicant's non-compliance in not participating in the facilitation process. Over a 2 week period, the facilitator attempted to contact the applicant 5 times through the email address and telephone number he provided, including leaving at least one voice message. These attempts occurred between August 21, 2017 and September 1, 2017. On September 5, 2017, the respondent requested the dispute be dismissed.
12. At the time of the applicant's non-compliance and the respondent's request that the dispute be dismissed, the dispute was in the tribunal's case management phase. The parties had not begun the tribunal decision process, in which the parties prepare their submissions and evidence which are provided to a tribunal member to make a binding decision.

ANALYSIS

Should the applicant's claim be heard or should the tribunal dismiss or refuse to resolve the claim or dispute?

13. For the following reasons, I dismiss the applicant's claim.
14. Based on the email provided by the facilitator, I find the facilitator made a reasonable number of attempts to contact the applicant. Given the applicant's contact information was provided by the applicant in June 2017, a relatively short time before the facilitator's first attempt, I find it is more likely than not that the applicant was aware of facilitator's attempts to contact him and chose not to respond.
15. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
 - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
16. I find that holding a hearing would not be an appropriate process to resolve this dispute. Though not binding on me, I agree with the tribunal's conclusion in *Grand-Clement v. The Owners, Strata Plan, KAS 2467, 2017 BCCRT 45* that it would be problematic to force an unwilling applicant to pursue a dispute with the tribunal. To do so would go against the mandate of the tribunal and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.

17. Further, this is a debt claim that does not affect persons other than the parties involved in this dispute.
18. The non-compliance here occurred at the outset of the facilitation process and no discussions between the parties occurred. The applicant has exhibited a lack of interest and refused to participate in the process after receiving the respondent's response. Given the repeated attempts at contact and the applicant's refusal to respond, I find the nature and extent of the non-compliance is significant.
19. Given the respondent has agreed to the claim being dismissed, I see no prejudice to the respondent in making such an order. On the other hand, if I refuse to resolve the claim, the respondent would be deprived of any finality to this dispute as the applicant would be able to make a further request for tribunal resolution, subject to any limitation period and the tribunal granting leave to do so. I therefore find that if the tribunal refuses to resolve this dispute, the respondent would be prejudiced as the dispute would not be resolved and there would be no consequence to the applicant for failing to participate.
20. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not participate. I find that it would be wasteful for the tribunal to continue applying its resources to assist an applicant who appears not to want the tribunal's assistance in resolving his claim. Further, given the nature of the claim, I recognize it is unlikely a continuing relationship of the parties exists.
21. Weighing all of the factors, I find the applicant's claim in this dispute should be dismissed. Given there is only one claim, the dispute is also dismissed.
22. In deciding to dismiss the claim rather than refuse to resolve it, thereby issuing a final order to resolve the dispute, I have put significant weight on the following factors:
 - a. the extent of the non-compliance is significant;

- b. there should be a consequence to the applicant for not participating;
- c. the respondent requested the dispute be dismissed and is not prejudiced if such an order is made;
- d. there is no need to continue to waste the tribunal's resources; and
- e. it is unlikely a continuing relationship between the parties exists.

DECISION AND ORDERS

- 23. I order that the applicant's claim, and therefore this dispute, is dismissed.
- 24. Under tribunal rule 131 the tribunal can make orders regarding payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The respondent did not pay tribunal fees or claim expenses in this dispute. Accordingly, I make no order as to the payment of tribunal fees or expenses.

J. Garth Cambrey, Vice Chair