



# Civil Resolution Tribunal

Date Issued: September 28, 2017

File: SC-2017-002914

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Langlois v. Vajai*, 2017 BCCRT 85

**BETWEEN:**

Richard Langlois

**APPLICANT**

**AND:**

Laszlo Vajai

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, 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 are 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 failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite several attempts by the facilitator to contact him.
5. The facilitator has referred the applicant's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
6. 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.
7. For the reasons which follow, I dismiss the applicant's claim in this dispute.

## **ISSUES**

8. The issue in this dispute is whether I should dismiss the applicant's claim, hear 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 that are dismissed may not be re-filed with the tribunal, another tribunal or a court at a later date. Claims or disputes that 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 June 28, 2017 Dispute Notice, the applicant made one claim against the respondent, seeking payment of a remaining balance of \$1,300 for a boat or the return of the boat. The applicant said the respondent had only paid \$200 towards the boat, whereas the respondent had said he had paid \$400. In their response, the respondent says the boat is not seaworthy and suggests the applicant took advantage of him. The respondent's Response stated that he wants the applicant to return the \$400 that he says he had paid as partial payment towards the boat, and then he would return the boat. No counterclaim was filed.
11. The facilitator provided details of the applicant's non-compliance in not participating in the facilitation process. Over a 3- week period, the facilitator attempted to contact the applicant 6 times through the email address and telephone number he provided, including leaving at least 2 voice messages. These attempts occurred between August 29, 2017 and September 22, 2017. In the facilitator's September 22, 2017 email, the facilitator warned the applicant that due to his lack of response, she was referring his non-compliance to a tribunal member under section 36 of the Act, following which the tribunal member may dismiss the claim or refuse to resolve it.
12. At the time of the applicant's non-compliance, the dispute was early 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 dismissed or should the tribunal refuse to resolve the claim or dispute?**

13. For the following reasons, I dismiss the applicant's claim.
14. Based on the emails 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 on June 28, 2017, only 2 months 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. I

agree that 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 effectively abandoned the process after receiving the respondent's response. Given the facilitator's repeated attempts at contact and the applicant's total refusal to respond, I find the nature and extent of the non-compliance is significant.
19. I see no prejudice to the respondent in making an order dismissing the applicant's dispute. Nothing prevents the respondent from filing his own dispute to recover the \$400 he says he paid to the applicant, should he wish to do so. To that end, again I note no counterclaim was filed in the applicant's dispute that is before me.
20. On the other hand, if I refuse to resolve the claim, there would be no finality to this dispute as it would be open to the applicant to make a further request for tribunal resolution, subject to any limitation period. I find that in refusing to resolve, there would be finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
21. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on a dispute where the applicant does not appear to want the tribunal's assistance in resolving his claim.
22. In 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.

23. 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. the respondent is not prejudiced if such an order is made; and
  - c. the need to conserve the tribunal's resources.

### **DECISION AND ORDERS**

24. I order that the applicant's claim, and therefore this dispute, is dismissed.
25. 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. Therefore, I make no order as to the payment of tribunal fees or expenses.

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Shelley Lopez, Vice Chair