



Civil Resolution Tribunal

Date Issued: November 16, 2017

File: SC-2017-002685

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lostale v. Shepherd*, 2017 BCCRT 116

B E T W E E N :

Janet Lostale

APPLICANT

A N D :

Jordan Shepherd

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

R. Hoops Harrison

INTRODUCTION

1. The respondent, Jordan Shepherd, gave the applicant, Janet Lostale, two cheques issued from a third party corporate account. However, the cheques ‘bounced’

when the respondent attempted to cash them. The applicant claims for the cheque amounts, a total of \$3,063.00.

2. The respondent failed to comply with the tribunal's facilitation process and this file was referred to me for decision as to whether I should hear the dispute. I decided I should do so, given the respondent's failure to comply. This decision contains my reasons for that decision along with my final decision on the dispute itself.
3. Both parties are self represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (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.
5. 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 with further submissions or proceedings because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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).

7. 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

8. The first issue is whether I should hear the applicant's claim, without the respondent's further participation given the respondent's non-compliance.
9. The second and substantive issue is whether the respondent owes the applicant for the \$3,063.00 claimed.

EVIDENCE AND ANALYSIS

Issue #1 - Non-compliance

9. This matter was moved into facilitation on July 10, 2017.
10. The case manager attended to schedule teleconference mediations on numerous occasions:
 - (a) **2:00pm, September 7, 2017:** a few minutes prior to the 2:00pm, September 7, 2017 mediation, the Respondent emailed and said he could not make the mediation but could attend after 5:00pm.
 - (b) **5:30pm, September 7, 2017:** while both parties were emailed notice of the new time, the Respondent did not attend the mediation. The Case Manager called the Respondent. The Respondent indicated that he was still working but could attend 12:00pm, September 8, 2017.
 - (c) **12:00pm, September 8, 2017:** the Respondent did not attend this mediation and was unreachable by email or phone on September 8, 2017.

- (d) **September 13, 2017:** the Case Manager provided a final warning to the Respondent that if he failed to respond on or before September 14, 2017 that the matter may go to adjudication without his participation.
- (e) **September 15, 2017:** having heard no reply from the Respondent, the Case Manager ended facilitation and sent the matter to adjudication.
11. As noted, the respondent did file a response but has provided no explanation at all as to why he stopped communicating with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the respondent. Parties are told at the beginning of a tribunal proceeding that active participation is required. Given the communications outlined above, I find it is more likely than not that the respondent was aware of the facilitator's attempts to contact them and chose not to respond.
12. 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.
13. First, this claim does not affect persons other than the parties involved in this dispute.

14. Second, the non-compliance here occurred at the outset of the facilitation process and no substantive discussions between the parties occurred, other than the respondent's acknowledgement of the debt. The respondent has effectively abandoned the process after providing a response. Third, given the facilitator's repeated attempts at contact and the respondent's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
15. Fourth, I see no prejudice to the parties in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left entirely without a remedy and that would be unfair to her.
16. 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, such as by making further attempts to seek participation from the respondent.
17. In weighing all of the factors, I find the applicants' claims should be heard. In deciding to hear the applicants' dispute, thereby issuing a final order to resolve it, I have put significant weight on the following factors:
 - (a) the extent of the non-compliance is significant;
 - (b) the applicant is not prejudiced if such an order is made; and
 - (c) the need to conserve the tribunal's resources.

Issue #2 - Debt

18. Where the respondent filed a response but has since failed to comply with the tribunal's directions as required, as is the case here, an adverse inference may be

drawn against that respondent. This simply means that if the person refuses to participate, then it is reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response at all to the dispute and is in default. In the case before me, the respondent has expressly acknowledged the debt in his Response filed with the tribunal on July 7, 2017.

19. The failure of the Respondent to attend the mediation sessions is unfortunate given that the benefits of such facilitation include accommodations such as payment plans.
20. Nevertheless, the Respondent does not dispute the debt claimed and in fact agrees with it. I note that the Applicant may be entitled to, but is waiving, her claim to reimbursement for bank costs and Tribunal fees.
21. I find the respondent must pay the applicant \$3,063.00, the amount claimed.

ORDERS

22. I order the Respondent to immediately pay the sum of \$3063.00 to the applicant, plus any applicable post-judgment interest under the *Court Order Enforcement Act*.
23. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
24. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed,

a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

R. Hoops Harrison, Tribunal Member

25.