



Civil Resolution Tribunal

Date Issued: December 19, 2017

File: SC-2017-004405

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kamloops 2011 Equities Ltd. DBA Speedy Cash v. Raworth*, 2017 BCCRT 145

B E T W E E N :

Kamloops 2011 Equities Ltd. DBA Speedy Cash

APPLICANT

A N D :

Brian Raworth

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION AND JURISDICTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with

the tribunal's directions as required, as discussed below. The parties are each self-represented.

2. The applicant lender, Kamloops 2011 Equities Ltd. DBA Speedy Cash (Speedy Cash) claims repayment of a June 12, 2017 debt, totaling \$535.23 plus ongoing contractual interest. While on September 1, 2017 the respondent Brian Raworth provided a Dispute Response to the tribunal, he has since failed to participate in the tribunal proceeding as required.
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. 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.

5. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
6. For the reasons that follow, I have allowed the applicant's claims.

ISSUES

7. Is the applicant lender entitled to reimbursement of the applicant's debt and interest, as claimed?

EVIDENCE & ANALYSIS

Non-compliance

8. Through the tribunal facilitator, I previously told the parties of my December 13, 2017 summary decision to hear the dispute without the respondent's participation, due to his non-compliance. The details supporting that decision are set out below.
9. The respondent 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 multiple attempts by the facilitator to contact its representative with a request for a reply. As noted, the respondent filed his Response on September 1, 2017, in which he expressly agreed that the applicant's claim description was accurate and agreed to repayment as claimed.
10. The facilitator has advised me that she made the following attempts at contact with the respondent, with no response:
 - a. *November 7 to 29, 2017:* The facilitator attempted to contact the respondent by email on 4 separate occasions between November 7 and 24, 2017. She also attempted contact by telephone on November 16, 17 and 24, 2017. For both the email and telephone attempts, the facilitator used the contact information the respondent provided in his Dispute Response.

- b. *November 29, 2017*: In a November 29, 2017 email to the respondent, the facilitator noted her prior unsuccessful efforts to contact the respondent and warned him that under section 36 of the Act, if he failed to reply she would refer the matter to a tribunal member for the respondent's non-compliance. The facilitator warned the respondent that the tribunal member may hear the dispute without his participation.
11. The facilitator referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute in the absence of participation from the respondent.
12. Should the tribunal hear the applicants' dispute?
13. As noted, the respondent filed a response but provided no explanation about why it suddenly 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 they must actively participate in the dispute resolution process. Given the respondent provided his contact information in September 2017, only a little over 2 months before the facilitator's first attempt at contact, I find it is more likely than not that the respondent was aware of the facilitator's attempts to contact him.
14. 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.
15. First, there is no evidence before me that this claim affects persons other than the parties involved in this dispute.
 16. Second, the non-compliance here occurred at the outset of the facilitation process and no substantive discussions between the parties occurred. The respondent has effectively abandoned the process after providing a response. Third, given the facilitator's 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.
 17. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation, particularly given the respondent in his Dispute Response agreed the applicant was entitled to the repayment claimed. 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 without a remedy and that would be unfair to it.
 18. 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 facilitation resources on this dispute, such as by making further attempts to seek participation from the respondent.
 19. In weighing all of the factors, I find the applicant's claims should be heard. In deciding to hear the applicants' dispute I have put significant weight on the following factors:
 - a. the extent of the non-compliance is significant;
 - b. the applicants are not prejudiced if such an order is made; and
 - c. the need to conserve the tribunal's resources.

Assessment of damages

20. Having decided to hear the dispute without the respondent's participation, I turn then to the merits of the dispute. Where a 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 or organization refuses to participate, then it is generally 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.
21. Here, the respondent has in his filed Dispute Response agreed to the debt as claimed, and thus I find it unnecessary to set out the arrangements in any detail. The total claimed in the Dispute Notice was \$535.23, which included \$18.15 in interest at a 30% annual rate. The applicant is also entitled to 30% annual interest in the amount of \$39.47 on the outstanding principal of \$406.95, from the August 24, 2017 Dispute Notice date to the date of this decision and order. Therefore, I order the respondent to pay the applicant a total of \$574.70.
22. In keeping with the Act and the tribunal's rules, I further order the respondent to reimburse the applicant \$125 in tribunal fees.

ORDERS

23. Within 30 days of this decision, I order the respondent to pay applicant a total of \$699.70, comprised of:
 - a. \$574.70 for repayment of the outstanding debt including 30% annual interest to the date of this order, and
 - b. \$125 in tribunal fees.
24. The applicant is entitled to post-judgment interest at the agreed contractual 30% annual rate of interest.

25. 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.
26. 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.

Shelley Lopez, Vice Chair