



Civil Resolution Tribunal

Date Issued: March 6, 2018

File: SC-2017-004657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pirani v. Rove Concepts Ltd.*, 2018 BCCRT 66

B E T W E E N :

Fariyal Pirani

APPLICANT

A N D :

Rove Concepts Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

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 discussed below. The parties are each self-represented.

2. This dispute is about a queen-sized bed the applicant Fariyal Pirani bought from the respondent Rove Concepts Ltd. (Rove). The applicant says that on delivery, the wood stain finish on the bed frame was uneven and unsatisfactory.
3. The applicant wants a refund for the bed and half the shipping costs, totaling \$1,772.15. The applicant also wants storage fees of \$50 per month until the respondent picks up the unusable bed, and an order that the respondent pick up the bed at its cost.
4. While on September 27, 2017 Rove provided a Dispute Response to the tribunal, it has since failed to participate in the tribunal proceeding as required.
5. 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.
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. 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.
8. For the reasons that follow, I have allowed the applicant's claims.

ISSUES

9. Is the applicant entitled to the claimed damages for the bed?

EVIDENCE & ANALYSIS

Non-compliance

10. Through the tribunal facilitator, tribunal Vice Chair Shelly Lopez communicated a February 7, 2017 summary decision to the parties that the dispute would proceed without the respondent's participation, due to his non-compliance. The details supporting that decision are set out below.
11. The respondent was non-compliant in this dispute as he 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.
12. The facilitator documented the following attempts at contact with the respondent, with no response:
 - a. The respondent Rove did not attend the scheduled telephone conference call with the assigned case manager, so the file was moved to the adjudication phase, which includes the collection of evidence.

- b. *December 13, 2017*: the case manager instructed Mr. Arthur Lee, the contact person for Rove, to provide his evidence to the tribunal by December 20, 2017. The instructions included warnings: a) a non-compliant party may lose the opportunity to provide submissions, documents or evidence to a tribunal member, and b) that a tribunal member may draw conclusions from a party's failure to provide submissions, documents, or information.
- c. *December 21, 2017*: the case manager advised Mr. Lee that Rove's evidence remained outstanding and instructed him to provide it immediately to avoid being in non-compliance. In response, later that day Mr. Lee made a proposal to resolve the dispute, to which the case manager replied a few minutes later:

I will give the applicant until noon tomorrow to advise if they accept your offer; if not you are to provide your evidence as instructed without further delay. For the record, I do not grant extensions when a party is in non-compliance.

- d. *January 17, 2018*: the case manager gave Rove a final written warning to provide its evidence or confirm its agreement to settle the matter according to the applicant's counter-proposal, to avoid a published binding decision. The case manager noted that failure to comply with the direction could result in a tribunal member hearing the dispute without Rove's further participation.
13. The facilitator referred the respondent's non-compliance with the tribunal's rules to Vice Chair Lopez for a decision as to whether the dispute should proceed without the respondent's participation.

Should the tribunal hear the applicants' dispute?

14. 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 case manager 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 that Mr. Lee emailed the case manager about a potential settlement offer in December 2017, I find it is more likely than not that the respondent was aware of the case manager's contact attempts.

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. First, there is no evidence before me that this claim affects persons other than the parties involved in this dispute.
17. Second, 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.
18. Third, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent 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 him.
19. 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 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.

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

Assessment of damages

21. Having decided to hear the dispute without the respondent's participation, I turn then to the merits of the dispute.
22. 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 means that if the person or organization refuses to participate, it is generally assumed that the applicant's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default, so the respondent's liability is assumed
23. Here, the respondent's Dispute Response says wood grains vary naturally and the delivered bed was esthetically equal to those shown online. The respondent also said the applicant failed to respond to their May 4, 2017 email setting out the procedure for returning the bed.
24. The May 4, 2017 email, which was provided by the applicant, says the return would be treated as "buyer remorse", so the applicant was required to pack the bed in its original packaging, take it to their warehouse in Richmond within 30

days, and obtain a return report from the warehouse staff. The email also said the shipping costs would not be refunded. The applicant's husband wrote a May 5, 2017 letter to Rove stating that they were in breach of contract for failing to deliver the goods as bargained for. He wrote that they paid for "white glove delivery", which meant the delivery crew took away the original packaging after setting up the bed. The applicant's husband demanded that Rove pick up the bed and refund the purchase price and delivery fee.

25. The video evidence provided by the applicant shows some colour variation in the wood finish on the right side of the bed frame. Since the respondent has not participated in the proceeding, I make an adverse inference, and find that the bed's finish was not in the condition agreed to when the applicant purchased it. I also find it was not possible for the applicant to return the bed in its original packaging, as specified by the respondent, since the packaging was removed by the delivery crew.
26. For these reasons, I find the applicant is entitled to reimbursement for the purchase price of the bed and the delivery fee. I also find that the respondent must pick up the bed at its own expense. I find the applicant is not entitled to storage fees, as there is no evidence to support that she incurred any financial cost for such storage.
27. In accordance with the Act and the tribunal's rules, as the applicant was successful I find she is entitled to reimbursement of \$125 in tribunal fees, as well as \$10.50 for dispute-related expenses.

ORDERS

28. I order that the following occur within 30 days of this decision:
 - a) The respondent must pick up the bed at the applicant's home at a mutually agreed time, at the respondent's cost. If the respondent does not pick up the bed at that time, the applicant may dispose of it as she chooses.

- b) The respondent must pay applicant a total of \$1,915.30, comprised of:
 - i. \$1,772.15 as reimbursement of the bed and the delivery fee,
 - ii. \$7.74 in pre-judgment interest under the *Court Order Interest Act* (COIA),
 - iii. \$125 in tribunal fees, and
 - iv. \$10.50 in dispute-related expenses.

- 29. The applicant is also entitled to post-judgment interest under the COIA.

- 30. 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.

- 31. 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.

Kate Campbell, Tribunal Member