



# Civil Resolution Tribunal

Date Issued: March 14, 2018

File: SC-2017-007001

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cash Stop Loans Inc. v. Bedard*, 2018 BCCRT 80

**B E T W E E N :**

Cash Stop Loans Inc.

**APPLICANT**

**A N D :**

Richard Jacques Omer Bedard

**RESPONDENT**

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## **REASONS FOR DECISION**

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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 required, as discussed below. The applicant's dispute is

that the respondent has failed to repay a loan as required by the parties' agreement.

2. The parties are each 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. 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 claim.

## ISSUES

7. The first issue in this dispute is whether I should proceed to hear the applicant's claim, without the respondent's further participation given the respondent's non-compliance.
8. The second issue is to what extent I should order the respondent to pay the applicant the claimed amount of \$722.

## EVIDENCE & ANALYSIS

### Non-compliance

9. My March 13, 2018 summary decision to hear the dispute without the respondent's participation, given the respondent's non-compliance was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
10. 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.
11. In particular, the applicants filed their Dispute Notice on November 29, 2017. The respondent filed his Response on December 22, 2017. The facilitator made the following attempts at contact, with no response:
  - a. *February 22, 2018*: Email sent to the respondent asking him to provide information. The respondent did not respond, although the email gave a deadline of 4:00 pm on February 26, 2018.
  - b. *February 27, 2018*: The facilitator emailed the respondent asked him to respond by 4:00 pm on March 1, 2018. He did not respond.

- c. *March 2, 2018*: The facilitator tried to telephone the respondent and left a voicemail message asking him to respond by telephone or email by 4:00 pm on March 12, 2018. He did not respond.
  - d. *March 8, 2018*: The facilitator sent the respondent an email indicating that this was a final warning, and asking for a response by March 12, 2018. The respondent did not respond.
12. The facilitator referred the matter of 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.

*Should the tribunal hear the applicant's dispute?*

13. The respondent filed a Dispute Response agreeing to the applicant's claims. He has provided no explanation about why he suddenly stopped communicating with the tribunal as required. I find that 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, and that includes providing current contact information.
14. The facilitator's February 27, 2018 and March 8, 2018 emails were sent to the email address the respondent used to initially contact the tribunal, as well as to the email address for the respondent provided by the applicant. Based on this evidence, and the number of contact attempts, I find it is more likely than not that the respondent was aware of the 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. First, this claim does not affect persons other than the parties involved in this dispute.
17. 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.
18. Third, given the facilitator's repeated attempts at contact and the respondent's total failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
19. Fourth, I see no prejudice to the applicant 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 his non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to it.
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 refuses to participate. I find that it would be wasteful for the tribunal to apply further resources to this dispute by making further attempts to seek participation from the respondent.
21. In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's 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; and
- c. the need to conserve the tribunal's resources.

#### *\$722 Debt*

- 22. Having decided to hear the dispute without the respondent's participation, I turn then to the merits of the dispute.
- 23. 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.
- 24. This is a straightforward debt claim, for a total of \$722, plus contractual interest at 30% per annum, from March 17, 2017. The applicant also claims \$10.50 in dispute-related expenses, and \$125 in tribunal fees. Bearing in mind the adverse inference against the respondent coupled with his acknowledgement of the debt, I order the respondent to pay the applicant \$722 plus interest, as well as the claimed expenses and fees.

#### **ORDERS**

- 25. I order that within 30 days of this decision, the respondent to pay the applicant a total of \$1,072.91, comprised of:
  - a. \$722 as repayment of the debt,
  - b. \$215.41 in contractual interest,
  - c. \$10.50 in dispute-related expenses, and

d. \$125 in tribunal fees.

26. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.
27. 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.
28. 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.

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Kate Campbell, Tribunal Member