



Civil Resolution Tribunal

Date Issued: March 23, 2018

File: SC-2017-005754-A1

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prospera Credit Union v. Bellerive*, 2018 BCCRT 85

B E T W E E N :

Prospera Credit Union

APPLICANT

A N D :

Darrell Roland Bellerive

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION AND JURISDICTION

1. This decision has been amended to correct the spelling of the respondent's name.

2. 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.
3. The parties are each self-represented.
4. 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.
5. 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.
6. 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.

7. For the reasons that follow, I have allowed the applicant's claim.

ISSUES

8. 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.
9. The second issue is to what extent I should order the respondent to pay the applicant the claimed amount of \$4,196.47.

EVIDENCE & ANALYSIS

Non-compliance

10. My March 14, 2018 summary decision to hear the dispute without the respondent's participation due to 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.
11. 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.
12. In particular, the respondent filed his Dispute Response on October 18, 2017. The facilitator made the following attempts at contact, with no response:
 - a. *January 16, 2018:* The respondent was directed to respond within 48 hours to the case manager's 'welcome to facilitation' email, but he did not reply.
 - b. *January 31, 2018:* The case manager emailed the respondent reminding him of a facilitation conference call scheduled for February 1, 2018. She asked the respondent to confirm receipt of the email, but he did not.

- c. *February 1, 2018*: The case manager emailed the respondent two more times reminding him about the conference call later that day. The respondent did not respond. The case manager also tried to telephone the respondent three times, but the number was not in service.
 - d. *February 1, 2018*: The respondent did not attend the scheduled conference call.
 - e. *February 23, 2018*: The case manager emailed the respondent stating that if he did not respond by February 26, he might give up the right to further participation. The respondent did not respond.
 - f. *February 27, 2018*: The case manager sent the respondent a final warning email, stating that if he failed to reply the tribunal might decide the dispute without his participation.
13. 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 without the respondent's participation.

Should the tribunal hear the applicant's dispute?

14. As referenced above, the respondent filed a Dispute Response, in which he agreed to the applicant's claims. The respondent has provided no explanation about why failed to communicate with the tribunal as required after filing his Dispute Response. 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, and that includes providing current contact information. 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 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 does not want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as 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.

\$4,196.47 Debt

22. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
23. Where a respondent has 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 other party'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 and the respondent's liability is assumed.
24. This is a straightforward debt claim, for a total of \$4,321.47, with \$4,196.47 as the debt 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 \$4,321.47.
25. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,496.33, from July 1, 2017.

ORDERS

26. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$4,347.18, broken down as:

- a. \$4,196.47 as repayment of the debt,
 - b. \$25.71 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
27. The applicant is also entitled to post-judgment interest under the COIA.
28. 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.
29. 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