



# Civil Resolution Tribunal

Date Issued: March 21, 2018

File: SC-2017-004908

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sidhu v. Battu et al*, 2018 BCCRT 86

B E T W E E N :

Sukhvir Sidhu

**APPLICANT**

A N D :

Gagan Battu and Balvir Dhatt

**RESPONDENTS**

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## REASONS FOR DECISION

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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 Gagan Battu, due to Mr. Battu's non-compliance with the tribunal's directions as required, as discussed below.

2. The respondent Mr. Dhatt never filed a Dispute Response. If he had been properly served with the Dispute Notice, he would be in default. However, I find the respondent Balvir Dhatt was not served with the Dispute Notice. I say this because Mr. Battu signed for both his and Mr. Dhatt's registered mail deliveries of the Dispute Notice and because there is some evidence that Mr. Dhatt was out of the country at the material time. In these circumstances, I refuse to resolve this dispute as against Mr. Dhatt. Therefore, the orders in this decision are only made against Mr. Battu.
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 as against Mr. Battu.

## **ISSUES**

7. Is the applicant entitled to the claimed damages for incomplete cabinetry work?

## **EVIDENCE & ANALYSIS**

### **Non-compliance**

8. While on October 6, 2017 Gagan Battu provided a Dispute Response to the tribunal, he has since failed to participate in the tribunal proceeding as required.
9. Through the tribunal facilitator, I previously told the parties of my February 15, 2018 summary decision to hear the dispute without Mr. Battu's participation, due to his non-compliance. The details supporting that decision are set out below.
10. The respondent, Mr. Battu, 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 him.
11. The facilitator has advised me that he made the following attempts at contact with Mr. Battu, with no response:
  - a. *December 11, 2017*: the case manager scheduled a settlement teleconference for January 23, 2017 at 2:00 p.m. This email included a warning that the teleconference was mandatory and if a respondent failed to participate, under section 36 of the Act the case manager would refer the non-compliance to a tribunal member, without further notice.

- b. *January 23, 2017*: The applicant attended the scheduled teleconference, but Mr. Battu did not. The case manager and the applicant waited on the call until 3:15 p.m., and then the case manager called Mr. Battu. Mr. Battu told the case manager that he wondered if the December 11<sup>th</sup> email had gone to his “junk” email folder. The case manager confirmed Mr. Battu’s correct email address and advised that he would email him a proposed new date for a teleconference.
  - c. *January 23, 2018*: the case manager emailed the applicant and the respondent, rescheduling the teleconference for February 13, 2018 at 3:00 p.m. The case manager encouraged the respondent to read over his December 11, 2017 email noting it referenced the consequences if a party is non-compliant.
  - d. *February 13, 2018*: the case manager and the applicant remained on the teleconference from 3:00 to 3:15 p.m., and Mr. Battu did not attend. The respondent has not contacted the tribunal since.
12. The facilitator referred Mr. Battu’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 his participation.
13. Should the tribunal hear the applicant’s dispute? As noted, Mr. Battu filed a Dispute Response and was aware the case manager was going to send an email with a new teleconference date, but has provided no explanation about why he suddenly stopped communicating with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact Mr. Battu. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process, and that includes monitoring their email. In the above circumstances, I find it is more likely than not that Mr. Battu 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. As noted above, I have refused to resolve the applicant's dispute as against Mr. Dhatt, given I have found Mr. Dhatt was in fact not served with the Dispute Notice.
16. Second, the non-compliance here occurred at the outset of the facilitation process and no substantive discussions between the parties occurred. Mr. Battu has effectively abandoned the process after providing a response. Third, given the facilitator's attempts at contact and Mr. Battu's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
17. Third, I see no prejudice to the applicant in hearing the dispute without Mr. Battu's participation. The prejudice to Mr. Battu 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 and that would be unfair to him.
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 Mr. Battu.

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. The applicant hired the respondents Mr. Battu and Mr. Dhatt to do some carpentry work in his home. The applicant says the respondents failed to fulfill the terms of the parties' November 10, 2016 agreement, and in particular failed to complete cabinetry work in a number of rooms. The applicant says that on February 2, 2017 he paid the respondents the last \$7,000 installment required under the contract. However, because the respondents failed to complete the work, the applicant had to hire another company. The applicant claims payment of the \$1,600 that he had to pay that other company in May 2017 to complete the work.
21. The only evidence before me from Mr. Battu is his filed October 6, 2017 Dispute Response. In it, Mr. Battu made a broad denial of the applicant's claims, stating the work was completed to industry standards. Mr. Battu also stated in the Dispute Response that he and Mr. Dhatt were not proper parties to the proceeding, because he says the work at issue was done by Classic Custom Kitchen Ltd. The applicant says the respondents are co-owners of the cabinetry business.
22. Having decided to hear the dispute without Mr. Battu'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.

23. In these circumstances, I find Mr. Battu is liable for the damages claimed.
24. I find the only remaining issue is the determination of the value of the claim. I find the claimed \$1,600 is appropriate, given the invoices before me for the installation of cabinet doors and handles.
25. In summary, I find the respondent Mr. Battu is liable to pay the applicant the \$1,600 claimed, and I so order. Nothing in this decision precludes the applicant from pursuing his claim against Mr. Dhatt, to the extent that he is unable to recover from Mr. Battu.
26. In keeping with the Act and the tribunal's rules, I further order Mr. Battu to reimburse the applicant \$150 in tribunal fees and \$21 in dispute-related expenses (registered mail charges), along with pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,600, calculated from May 30, 2017.

## **ORDERS**

27. I refuse to resolve the applicant Sukhvir Sidhu's dispute as against the respondent Balvir Dhatt, because I have found Mr. Dhatt was not served with the tribunal's Dispute Notice.
28. Within 30 days of this decision, I order the respondent Gagan Battu to pay the applicant Sukhvir Sidhu a total of \$1,781.76, comprised of:
  - a. \$1,600 for reimbursement of the applicant's costs to complete the cabinetry work,

- b. \$10.76 in pre-judgment interest under the COIA, and
  - c. \$150 for tribunal fees and \$21 in dispute-related expenses.
29. The applicant is entitled to post-judgment interest, as applicable.
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.

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Shelley Lopez, Vice Chair