



# Civil Resolution Tribunal

Date Issued: March 28, 2018

File: SC-2017-005657

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sun v. Chawla*, 2018 BCCRT 98

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

Kameron John Sun

**APPLICANT**

**A N D :**

Tej Preet Singh Chawla

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This is a summary decision of the Civil Resolution Tribunal (tribunal) about the applicant's non-compliance. Only the evidence and submissions relevant to this issue are referenced below.

2. Both parties are 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. Section 4 of the Act requires that a request for tribunal resolution must be made with payment of any applicable fees for the tribunal hearing phase. The tribunal's rules also require that certain fees be paid before the related step in the tribunal's process will be completed.
4. After giving notice to the non-compliant party, a 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. dismiss a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim or the dispute brought by the non-compliant party.
5. In this dispute, the applicant is the non-compliant party.
6. The facilitator has referred the applicant's non-compliance to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
7. 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 relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. For the reasons which follow, I dismiss the applicant's claims.

## **ISSUES**

9. The issue is whether, given the applicant's refusal to pay a required fee, I should dismiss the applicant's claims, hear the applicant's claims, or refuse to resolve the claims.

## **BACKGROUND AND EVIDENCE**

10. The key difference between a dismissal order and a refusal to resolve under section 36 of the Act is that, subject to cancellation or notice of objection requests, dismissed disputes may not be re-filed with the tribunal, another tribunal or a court at a later date. Claims or disputes that the tribunal refuses to resolve may be re-filed with leave of the tribunal, subject to any applicable limitation period.
11. The October 10, 2017 Dispute Notice shows that the applicant made one claim, seeking a \$450 refund for an unlocked iPhone 6 he purchased from the respondent. The applicant said the respondent told him the phone was in working order, but when he tried to use it, the phone did not work. He says his cellular carrier told him it was "blacklisted", meaning it could not be activated. His only other claim is for tribunal fees or expenses.
12. In his Response Notice, the respondent writes that he sold the applicant an iPhone 6 Plus (not an iPhone 6) that was working well, and functioning on the same network the applicant said he would use. The applicant inspected the phone before buying it. The respondent says he is not responsible whatever happened to the phone after the purchase. The respondent did not file a counterclaim.
13. This matter proceeded through facilitation. It was then referred for adjudication. The applicant first failed to respond to the facilitator, and later communicated that he was not prepared to pay the required Tribunal Decision Fee (TDF) of \$50.00.
14. Under Rules 11 and 12, unless a fee waiver is obtained, the TDF must be paid before a claim can proceed to the tribunal hearing phase. In the tribunal hearing

phase, the parties would have prepared evidence and submissions to be provided to a tribunal member to make a binding decision on the merits of the claim.

15. On January 12, 2018, the facilitator emailed the parties indicating that the TDF would need to be paid in order for a tribunal member to make a binding decision in this dispute. The facilitator warned that if the fee went unpaid, the matter would be referred to a tribunal member who may decide to dismiss the claims.
16. On January 23, 2018, both parties were contacted by a case manager, through the dispute resolution system, with a reminder that the TDF would need to be paid. On March 13, 2018, the case manager emailed the applicant to see if he was sure he did not want to pay the TDF. The applicant responded, for the first time since the January 12 email from the original facilitator, saying he would not pay the TDF.

## **ANALYSIS**

### **Should the applicant's claim be dismissed or should the tribunal refuse to resolve the claims?**

17. For the following reasons, I dismiss the applicant's claims.
18. 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 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.

19. Taking the facilitator and the case manager's evidence about contacting the parties together, I find they made reasonable attempts to contact the applicant. The facilitator's January 12 email warned that, without payment of the TDF, this matter would be referred for a decision that could include dismissing the applicant's claims.
20. I place particular weight on the applicant's March 13 email response, because he wrote it after being warned about the consequences of not paying the TDF. He wrote that he would not pay the TDF. I find that he understood the consequences of failing to pay the TDF and knowingly refused to pay, thereby failing to comply with section 4 of the Act.
21. I find that holding a hearing would not be an appropriate process to resolve this dispute. Though not binding on me, I agree with the tribunal's conclusion in *Grand-Clement v. The Owners, Strata Plan*, KAS 2467, 2017 BCCRT 45 that it would be problematic to force an unwilling applicant to pursue a dispute. To do so would go against the tribunal's mandate and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.
22. Further, this claim only affects the parties involved in this dispute.
23. The non-compliance here occurred prior to the tribunal hearing process. The applicant has effectively abandoned the process.
24. Given that no counterclaim was filed, I see no prejudice to the respondent caused by dismissing the applicant's dispute.
25. On the other hand, if I refuse to resolve the claim, there would be no finality as it would be open to the applicant to make a further request for tribunal resolution, subject to any limitation period. If I chose to refuse to resolve this claim, there would be no consequence to the applicant for non-compliance, which would be unfair to the respondent.

26. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is impaired if one party does not want to participate. I find that it would be wasteful for the tribunal to continue applying resources where the applicant does not want to enter the tribunal hearing phase.
27. In weighing all of the factors, I find the applicant's claim should be dismissed.
28. In deciding to dismiss the claim rather than refuse to resolve it, thereby issuing a final order to resolve the dispute, I have put significant weight on these factors:
  - a. the non-compliance is significant, in that the TDF is a required payment, under the Act and rules, to move to the tribunal hearing phase;
  - b. the applicant understood the consequence of failing to pay the TDF, and decided he did not want to pay;
  - c. the respondent is not prejudiced by the dismissal; and
  - d. the tribunal's resources should be conserved.

## **DECISION AND ORDERS**

29. I order that the applicant's claims, and therefore this dispute, are dismissed.
30. Under tribunal rule 131 the tribunal can make orders regarding payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The respondent did not pay fees or claim expenses in this dispute. Therefore, I make no order as to the payment of tribunal fees or expenses.

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Julie K. Gibson, Tribunal Member