



Civil Resolution Tribunal

Date Issued: April 11, 2018

File: SC-2017-005982

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *This Side Up Welding Services Ltd. v. Sasha Developments Ltd.*,
2018 BCCRT 127

B E T W E E N :

This Side Up Welding Services Ltd.

APPLICANT

A N D :

Sasha Developments 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 required, as discussed below. The applicant's dispute is that the respondent has failed to pay for welding repairs on a logging truck.

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 126, 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 whether the respondent must pay the applicant \$2,274.42 for welding services.

EVIDENCE & ANALYSIS

Non-compliance

9. My April 6, 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 case manager. 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 case manager to contact its representative with a request for a reply.
11. The respondent filed its Dispute Response on November 20, 2017. The case manager subsequently made the following attempts to contact the respondent, with no response:
 - a. *January 23, 2018:* The case manager emailed the owner of the respondent business asking him to confirm participation in a teleconference mediation session on February 13, 2018. The respondent did not respond to the email, and never confirmed participation in the February 13, 2018 teleconference.
 - b. *January 24, 2018:* The case manager emailed the respondent and asked him to respond to the tribunal by January 31, 2018. He did not reply, and did not respond to voice messages from the case manager.

- c. *February 27, 2018*: The case manager spoke to the respondent on the telephone, and he agreed to participate in a teleconference mediation on that day.
 - d. The respondent did participate in the February 27, 2018 teleconference, but he failed to respond to subsequent emails from the case manager on February 27, February 28, March 7, March 7, March 12, and March 14, 2018. On those dates, the case manager emailed the respondent, and instructed him to respond to her emails to her emails. The respondent did not reply.
 - e. March 9, March 14, and March 16: The case manager telephoned the respondent, but he did not answer and did not reply to voice messages.
 - f. *March 22, 2018*: The case manager emailed the respondent stating that the parties were expected to comply with her directions and deadlines. The case manager outlined the respondent's failure to respond to email and voice messages, and said the email was a written warning. She said he was required to reply to her email by March 26, 2018. The respondent did not reply.
 - g. *March 27, 2018*: The case manager sent the respondent a final warning email, stating that if he failed to reply by March 29, 2018, the tribunal might decide the dispute without his participation.
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 without the respondent's participation.

Should the tribunal hear the applicant's dispute?

13. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the respondent following the February 27, 2018 teleconference. Parties are told at the

beginning of a tribunal proceeding that they must actively participate in the dispute resolution process.

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, this claim does not affect persons other than the parties involved in this dispute.
16. The non-compliance here occurred both before and after the mediation teleconference on February 27, 2018. The respondent was non-compliant before the teleconference, and effectively abandoned the process after the teleconference.
17. Third, given the facilitator's repeated 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. 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.

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 refuses 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.
20. 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.

\$2,274.42 for Welding Services

21. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
22. 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.
23. This is a straightforward debt claim, for a total of \$2,399.42, with \$2,274.42 as the debt and \$125 in tribunal fees. While the respondent filed a Dispute Response, he did not provide any response to the applicant's assertion that he owes \$2,274.42 for welding repairs on his logging truck. Bearing this in mind, along with the adverse inference against the respondent due to non-compliance in the tribunal proceedings, I order the respondent to pay the applicant \$2,399.42.

24. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$2,274.42, from June 20, 2016.

ORDERS

25. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$2,431.16, broken down as:

- a. \$2,274.42 as payment for welding services,
- b. \$31.74 in pre-judgment interest under the COIA, and
- c. \$125 in tribunal fees.

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

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.

Kate Campbell, Tribunal Member