



# Civil Resolution Tribunal

Date Issued: May 10, 2018

File: SC-2017-002909

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. QMI MANUFACTURING INC.*, 2018 BCCRT 178

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

Paul Smith

**APPLICANT**

**A N D :**

QMI MANUFACTURING INC.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **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 lawyer says the respondent failed to pay for legal services.

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 its non-compliance.
8. The second issue is to whether I should order the respondent to pay the applicant the claimed amount of \$1,581.70 for legal services rendered.

## EVIDENCE & ANALYSIS

### Non-compliance

9. My May 9, 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 applicant's Dispute Notice was issued on June 28, 2017. The respondent submitted its Response on July 24, 2017. The facilitator made the following attempts at contact, with no response:
  - a. *November 2, 2017*: The facilitator sent the parties an email requesting evidence. The respondent did not reply or submit any evidence.
  - b. *February 13, 2018*: The facilitator phoned the respondent but there was no answer. The facilitator left a voice mail requesting a call back. The respondent did not call back.
  - c. *February 13, 2018*: The facilitator emailed the respondent asking for evidence to be submitted by February 16, 2018. The email contained a

warning that if the respondent did not follow the instructions, this dispute would be referred to a tribunal member for a final decision, without further participation of the respondent.

- d. *April 18, 2018*: The facilitator emailed the respondent with a final warning, asking for a response by April 20, 2018. The email said that if the respondent did not reply, the dispute would be referred to a tribunal member for final decision, without the respondent's further participation. The respondent did not reply.
12. The facilitator referred 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.
  13. As noted, the respondent filed a Dispute Response, but has provided no explanation about why it suddenly stopped communicating with the tribunal as required. 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 submitting evidence by the deadline. I find it is more likely than not that the respondent was aware of the facilitator's contact attempts but chose not to respond.
  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. Second, the non-compliance here occurred at near the beginning of the facilitation process. The respondent has effectively abandoned the process after providing a response. 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.
17. 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 its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left entirely without a remedy and that would be unfair.
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 resources on this dispute, such as by making further attempts to seek participation from the respondent.
19. In weighing all of the factors, I find the applicant's claims 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 if such an order is made; and
  - c. the need to conserve the tribunal's resources.

### **Merits of the Claim and Damages**

20. Having decided to hear the dispute without the respondent's participation, I turn 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 means that if the respondent 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 to the dispute and is in default.

21. The applicant says it provided legal services to the respondent. The applicant provided evidence that it assisted the respondent with matters concerning filing a patent. In its Response, the respondent wrote that it "assumed the charges were incorrectly billed" but also that it had not received enough details about the charges. Given the applicant's evidence, and the inconsistent position taken by the respondent, I find that legal services were provided in the amount claimed and were billed correctly.
22. Although the respondent had previously paid invoices to the applicant, since 2016 the amount of \$1,581.70 remained outstanding.
23. The applicant claims \$1,581.70 as the debt and \$125 in tribunal fees.
24. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,581.70, from June 28, 2017.
25. Bearing in mind the adverse inference against the respondent, I order the respondent to pay the applicant \$1,706.70 plus pre-judgment interest of \$12.35.

## **ORDERS**

26. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,719.05, comprised of:
  - a. \$1,581.70 in payment for legal services provided,
  - b. \$12.35 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.

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Julie K. Gibson, Tribunal Member