



Civil Resolution Tribunal

Date Issued: June 4, 2018

File: SC-2017-005194

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Money Money Payday Loans Ltd v. Morin*, 2018 BCCRT 215

B E T W E E N :

MONEY MONEY PAYDAY LOANS LTD

APPLICANT

A N D :

RYAN MORIN

RESPONDENT

REASONS FOR DECISION

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's dispute is that the respondent failed to repay a loan as required by the parties' agreement.

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 claims.

ISSUES

7. The first issue in this dispute is whether I should proceed to hear the applicant's dispute, without the respondent's further participation given the respondent's non-compliance.
8. The second issue is to what extent I should order the respondent to pay the applicant the claimed amount of \$616.74.

EVIDENCE & ANALYSIS

Non-compliance

9. My March 20, 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. Sections 32 of the Act say that, at any time during the case management phase of a dispute, a case manager may direct the parties to provide information regarding the issues in dispute, the positions of the parties and the resolution being sought. Section 25 of the Act gives the case manager the authority to require the parties to participate in facilitated settlement. Tribunal rule 6 requires all parties to make themselves available to participate in the dispute resolution process and to follow the directions of tribunal members and facilitators.
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 6, and 94 to 96, despite multiple attempts by the facilitator to contact him with a request for a reply.
12. In particular, the Dispute Notice was issued on September 25, 2017. The respondent submitted his Dispute Response on November 30, 2017. The parties were engaged in facilitation when the respondent stopped responding. The

facilitator made the following attempts at contact, by telephone and email, with no response:

- a. *February 20, 21, 26, 27, 2017*: The facilitator attempted to reach the respondent at his provided phone number. There was no answer.
 - b. *March 7, 2018*: The facilitator emailed the respondent indicating that his response was required by March 9, 2018 about an issue in facilitation. The respondent did not respond.
 - c. *March 13, 2018*: The facilitator emailed the respondent indicating that a response was required by March 15, 2018, failing which the dispute would be referred to a tribunal member for a decision without his participation and without further notice to him. The respondent did not reply.
13. 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.

Should the tribunal hear the applicant's dispute?

14. As noted, the respondent filed a response agreeing to the applicant's claim, 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 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 dispute does not affect persons other than the parties.
17. Second, the non-compliance here occurred during the facilitation process, prior to this dispute entering the tribunal decision process. The respondent has effectively abandoned the process mid-facilitation. 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.
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 its 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 it.
19. 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.

20. 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 Remedies

21. 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 nothing more, as is the case here, an adverse inference may be drawn against that respondent. This means that if the person 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 respond to the dispute and is in default.
22. This is a straightforward debt claim, for a total of \$616.74, with \$500 as the debt, \$85.00 in borrowing fees, a \$20 NSF fee and contractual interest of \$11.74, up to the date of the dispute notice. The loan agreement contains a contractual interest clause at the rate of 30% per year. As well, the applicant requests \$125 in tribunal fees.
23. Bearing in mind the adverse inference against the respondent coupled with his Dispute Response that does not deny the debt, I order the respondent to pay the applicant \$616.74, plus 30% annual contractual interest from the date of the dispute notice to the date of this decision.

ORDERS

24. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$845.30, comprised of:

- a. \$605.00 as reimbursement of the debt,
 - b. \$115.30 in pre-judgment interest at the 30% contractual rate, and
 - c. \$125 in tribunal fees.
25. The applicant is also entitled to post-judgment interest.
26. 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.
27. 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.

Julie K. Gibson, Tribunal Member