



Civil Resolution Tribunal

Date Issued: June 13, 2018

File: SC-2017-006100

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BBA Accounting Group Inc. v. Geeky Marketing and Design Inc.*,
2018 BCCRT 254

B E T W E E N :

BBA Accounting Group Inc.

APPLICANT

A N D :

Geeky Marketing and Design Inc.

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.
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 \$3,150 for professional accounting services, plus interest.

EVIDENCE & ANALYSIS

Non-compliance

9. My June 11, 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 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 him with a request for a reply.
11. The respondent filed its Dispute Response on November 10, 2017. The case manager subsequently made the following attempts to contact the respondent, with no response:
 - a. March 15, 2018 – email to both parties requesting evidence by March 30, 2018.
 - b. April 12, 2018 – email reminder to provide evidence, confirm that no evidence was being provided, or request additional time. The email indicated a response deadline of April 13, 2018.
 - c. April 17, 2018 – email asking the respondent confirm that he would not be providing evidence to refute the claims against him.
 - d. May 8, 2018 – email request for a response to the applicant's submissions, with a due date of May 18, 2018.

- e. May 22, 2018 – reminder email asking for a response, with a due date of May 24, 2018.
 - f. May 28, 2018 – voicemail left asking the respondent to contact the tribunal by May 30, 2018.
 - g. June 4, 2018 – final warning sent by email. The email summarized the previous correspondence, and said that the respondent was required to comply with the tribunal's instructions. The email said that if the respondent did not reply by June 6, 2018, the dispute might be decided without the respondent's participation.
12. The case manager then 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 without the respondent's participation?

13. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why it failed to communicate with the tribunal as required. I find the case manager 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. Given that the respondent provided its contact information in November 2017, only 4 months before the facilitator's first attempt at contact, I find it is more likely than not that the respondent knew about the case manager's contact attempts.
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 early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent has effectively abandoned the process after providing a response.
 17. Third, given the case manager's 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. Third, given the case manager'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.
 19. 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 without a remedy, which would be unfair to it.
 20. 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.

21. 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.

Accounting Services

22. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
23. 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.
24. The applicant has provided a copy of a March 7, 2017 invoice addressed to the respondent, showing a total of \$3,150 including GST. The invoice itemizes various accounting services, including compiling financial statements, preparing income tax returns, preparing and filing income tax slips, bookkeeping, setting up a GST account, assisting with a corporate reorganization, and meeting with the principal of the respondent company.
25. The respondent's Dispute Response form indicates agreement with the applicant's claim. The respondent did not provide any evidence to contradict the applicant's claim. Also, the applicant provided a copy of email correspondence from the respondent confirming the debt. The applicant emailed the respondent trying to collect on the March 2017 invoice, and the respondent replied on June 15, 2017

apologizing for the late payment, and promising to send 6 cheques to cover the cost. Similarly, the respondent emailed the applicant on August 8, 2017 promising to mail 2 cheques to pay the balance owed. The respondent wrote, “You have been very helpful and I appreciate all the help.”

26. Based on the invoice and emails provided in evidence, I find that the respondent must pay the applicant \$3,150 for accounting services.
27. I find the respondent is also required to pay contractual interest. The invoice states that invoices are due and payable upon receipt, and a service charge of 19.56% per year will be added to any invoice not paid within 30 days of billing.
28. Based on this evidence, I find that the respondent must pay 19.56% interest on the invoice balance, from April 7, 2017 to the date of this decision. This equals \$729.
29. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$175 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
30. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act* (COIA), as set out below in my order.

ORDERS

31. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$4,054, broken down as:
 - a. \$3,150 for accounting services,
 - b. \$729 in contractual interest, and
 - c. \$175 in tribunal fees.

32. The applicant is also entitled to post-judgment interest under the COIA.
33. 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.
34. 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