



Civil Resolution Tribunal

Date Issued: July 17, 2018

File: SC-2018-002025

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Contact Resource Services Inc. v. Wilson*, 2018 BCCRT 334

B E T W E E N :

Contact Resource Services Inc.

APPLICANT

A N D :

Bob Wilson

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 issues in this dispute are:
 - a. Should I hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance?

- b. Is the respondent required to pay the applicant \$4,171.94 for marine batteries and installation, plus interest?

EVIDENCE & ANALYSIS

Non-compliance

8. My June 18, 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.
9. 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.
10. The respondent filed his Dispute Response on May 18, 2018. The case manager made the following attempts at contact:
 - a. *June 1, 2018 email:* The respondent was directed to respond within 48 hours to the case manager's 'welcome to facilitation' email, but he did not reply. The email said the parties must follow her directions and respond to all email requests within 48 hours. The respondent did not respond.
 - b. *June 1, 2018 second email:* The case manager proposed a facilitation conference call on June 8, 2018. The respondent did not respond.
 - c. *June 6, 2018:* The case manager asked the respondent to confirm his attendance at the June 8, 2018 conference call.
 - d. *June 7, 2018:* The case manager sent an email entitled "FINAL WARNING", stating that the respondent must confirm his participation in a rescheduled conference call on June 13, 2018.

- e. After the case manager sent the June 7 email, the respondent replied to the June 6 email asking if he should call in for the teleconference on June 8. The case manager replied that the call had been rescheduled to June 13 because the applicant had already been told that the call would not proceed on June 8 because the respondent had not responded in a timely way to confirm his attendance on June 8.
 - f. *June 9, 2018 email:* The case manager instructed the respondent to call in for the conference call on June 13. The respondent did not confirm that date, and did not call in to the conference call, despite being warned that he failed to confirm via email, the dispute might be decided without his participation.
11. 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?

12. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why he failed to communicate with the tribunal as required. I find the case manager made a reasonable number of attempts to contact the respondent. The respondent was informed in writing at the beginning the facilitation process that he must actively participate in the dispute resolution process and respond to the case manager's emails. Given that the respondent provided his contact information on May 18, 2018, less 2 weeks before the case manager's contact attempts, and given that he responded to at least one of her emails, I find it is more likely than not that the respondent knew about the case manager's subsequent contact attempts and the rescheduled facilitation conference call and failed to respond or participate.
13. 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.
14. First, this dispute does not affect persons other than the named parties.
 15. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing a response.
 16. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning 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 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.
 18. 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.

19. 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.

Debt Claim

20. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
21. The applicant's claim is for an unpaid debt. It says the applicant had an account with HSBC bank, which was charged off due to delinquency on March 28, 2012. It says the principal owed was \$4,391.61, and HSBC assigned that liability and interest to the applicant on January 14, 2015.
22. In his Dispute Response, the respondent did not dispute the amount of the debt claimed by the applicant, nor their entitlement to payment. Rather, he admitted the debt, but said he could not afford to pay and would like to pay a lesser amount.
23. As the respondent has offered no defense to the applicant's debt claim, I find that he must pay the claimed \$4,391.61. The applicant did not claim contractual interest, so is entitled to interest under the *Court Order Interest Act* (COIA). I find that interest is payable from March 28, 2012, which is the date the debt was discovered.
24. I note that there is a potential limitation period issue in this case, as the original debt dates back to March 28, 2012. However, under the *Limitation Act*, the limitation period for a debt claim arising before June 1, 2013 would be 6 years. The Dispute Notice was issued on March 21, 2018, which is within 6 years.

25. The respondent did not mention the limitation period in his Dispute Response. Also, 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.
26. Based on this assumption of liability against the respondent due to his failure to comply with the tribunal's directions, and the fact that he did not raise a limitation period defense in his Dispute Response, I find that the respondent is liable for the \$4,391.61 debt.
27. 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.
28. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)*, as set out below in my order.

ORDERS

29. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$4,818.62, broken down as:
 - a. \$4,391.61 for the debt,
 - b. \$252.01 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
30. The applicant is also entitled to post-judgment interest under the COIA.

31. 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.

32. 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