



Civil Resolution Tribunal

Date Issued: July 18, 2018

File: SC-2018-002121

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EASYFINANCIAL SERVICES INC. v. Csurdi*, 2018 BCCRT 347

B E T W E E N :

EASYFINANCIAL SERVICES INC.

APPLICANT

A N D :

Jeremy Csurdi

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. This dispute is about the applicant's claim for an unpaid debt of \$3,158.72.

3. The parties are each self-represented.
4. 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.
5. 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.
6. 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.
7. For the reasons that follow, I have allowed the applicant's claim.

ISSUES

8. 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 \$3,158.72 plus contractual interest for an unpaid debt?

EVIDENCE & ANALYSIS

Non-compliance

9. My May 22, 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 his Dispute Response on April 12, 2018. The case manager made the following attempts to contact the respondent, with no responses:
 - a. *May 1, 2018 email:* The respondent was directed to respond by May 3 to the case manager's 'welcome to facilitation' email.
 - b. *May 10, 2018 email:* The respondent was directed to respond by May 14, and was given a warning about the consequences of non-compliance.
 - c. *May 14, 2018 email and telephone call:* The respondent was directed to respond by May 15, and was given a second warning about the consequences of non-compliance.
 - d. *May 18, 2018:* The case manager sent an email entitled "Final Warning non-compliance". She summarized her previous correspondence and the

respondent's failure to respond. She said the respondent must contact her by May 22, or the matter might be referred to a Tribunal Member, who might decide the dispute 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 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 April 12, 2018, less 3 weeks before the case manager's contact attempts, I find it is more likely than not that the respondent knew about the case manager's subsequent contact attempts and failed 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 dispute does not affect persons other than the named parties.
16. Second, the non-compliance here occurred at the beginning of the facilitation process, and the respondent has provided no evidence or submissions. The respondent 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 written warning 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.

Debt Claim

21. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
22. The applicant's claim is for an unpaid debt. It says the respondent signed a personal loan agreement to borrow \$5,055.33, and failed to repay the outstanding balance of \$3,158.72. The applicant claims that amount, plus 46.6% contractual interest.
23. In his Dispute Response, the respondent did not dispute the amount of the debt claimed by the applicant. He admitted the debt, but said he could not afford to pay. The respondent did not dispute the 46.6% interest rate. Rather, he said the respondent ought to have participated in the debt consolidation program he entered, and he should not have to pay interest after it refused to do so.
24. 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.
25. The respondent did not provide any evidence to establish that the applicant was legally required to participate in his debt consolidation arrangement, or that the debt consolidation ended the applicant's contractual right to interest. I therefore find that the debt consolidation did not reduce his obligation to pay his debt to the applicant or the contractual interest.
26. Based on the assumption of liability against the respondent due to his failure to comply with the tribunal's directions, and the fact that he admitted the debt and did not dispute the interest rate, I find that the respondent must pay the applicant \$3,158.72 plus contractual interest at 46.6%.

27. The applicant's Dispute Notice says the applicant became aware of the claim on February 19, 2018, and does not specify another date for the debt. Thus, I find that the respondent must pay 46.6% interest on \$3,158.72 from February 19, 2018 to the date of this decision. This equals \$600.88.
28. 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.
29. The applicant claims \$100 plus GST for time spent dealing with the dispute. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. I therefore do not order these expenses. Also, GST would not apply to such charges, as they are not a purchased good or service.

ORDERS

30. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$3,934.60, broken down as:
 - a. \$3,158.72 for the debt,
 - b. \$600.88 in contractual interest, and
 - c. \$175 in tribunal fees.
31. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.
32. 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.

33. 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