



Civil Resolution Tribunal

Date Issued: July 23, 2018

File: SC-2018-001747

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EASYFINANCIAL SERVICES INC. v. Murray*, 2018 BCCRT 358

B E T W E E N :

EASYFINANCIAL SERVICES INC.

APPLICANT

A N D :

Jacqueline Murray

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 \$2,246.99.

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 \$2,246.99 for an unpaid debt, plus 46.96% contractual interest?

EVIDENCE & ANALYSIS

Non-compliance

9. My July 12, 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 her Dispute Response on March 29, 2018. On April 4, 2018, the case manager sent the respondent a 'welcome to facilitation' email, which said the parties were required to comply with the case manager's directions and deadlines. The case manager attempted to facilitate a debt payment plan, and on May 7, 2018 the respondent emailed that she had a brain injury and understood that her insurer would make payments on her behalf.
12. After May 7, the case manager made the following attempts to contact the respondent, with no response:
 - a. *June 4, 2018 email:* The respondent was asked to confirm by June 6 that the debt payments would be made by her insurer.
 - b. *June 21, 2018 email:* The case manager sent an email entitled "Warning". She summarized her previous correspondence and the respondent's failure

to respond. She said the respondent must contact her by June 25, or the matter might be referred to a Tribunal Member, who might decide the dispute without the respondent's participation.

13. 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?

14. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why she failed to communicate with the tribunal as required. While the respondent emailed in May 2018 that she had a brain injury, she was able to communicate by email at that time. 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 she must actively participate in the dispute resolution process and respond to the case manager's emails. Given that the respondent responded to the case manager's initial emails, I find it is more likely than not that the respondent knew about the case manager's subsequent contact attempts and failed 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 named parties.
17. Second, the non-compliance here occurred early in the facilitation process. The respondent has provided no evidence or submissions, and no settlement or resolution was achieved.
18. 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.
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 her 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.

Debt Claim

22. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
23. The applicant's claim is for an unpaid debt. It says the respondent signed a personal loan agreement to borrow \$2,100, and failed to repay the outstanding balance of \$1,897.88 plus \$349.11 in contractually-agreed loan insurance and fees. The applicant claims a total of \$2,246.99 for the debt, plus 46.96% contractual interest from December 8, 2017.
24. In her Dispute Response, the respondent did not dispute the amount of the debt, the insurance and fees, or the interest rate. Rather, she said she did not handle the matter well due to cognitive impairment and treatment following the brain injury in November 2017. She said when she told the applicant about her injury, it sent her a big package of papers to send to her doctors and employer, and she could not handle doing that at the time.
25. While the respondent's injury is unfortunate, it does not reduce her liability for the debt. She said that insurance coverage on the loan would cover the debt, but she has not provided evidence or payments to support that assertion. In any event, that would appear to be a matter between the respondent and her insurer, and it would not change the respondent's obligation to the applicant.
26. 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.
27. Based on the assumption of liability against the respondent due to her failure to comply with the tribunal's directions, and the fact that she admits to the debt and the interest rate, I find that the respondent must pay the applicant \$2,246.99 for the loan and for related fees. I find the respondent must also pay contractual

interest at 46.96% on the outstanding loan balance of \$1,897.88, from December 8, 2017. This equals \$554.28.

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 and dispute-related expenses. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees.
29. The applicant claims \$84.00 spent to serve the Dispute Notice to the respondent, and provided a receipt to support that amount. I find that amount is reasonable in the circumstances, and order that the respondent must pay it.
30. It appears from her Dispute Response form that the respondent did not complete the necessary paperwork to activate her loan insurance following her injury. She may wish to contact the insurer to find out if she can still do so.

ORDERS

31. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$3,010.27, broken down as:
 - a. \$2,246.99 for the debt,
 - b. \$554.28 in contractual interest, and
 - c. \$209 in tribunal fees and dispute-related expenses.
32. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.
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, Tribunal Member