



Civil Resolution Tribunal

Date Issued: August 3, 2018

File: SC-2017-007484

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boundary Tattoo v. Allison*, 2018 BCCRT 419

BETWEEN:

Boundary Tattoo

APPLICANT

AND:

Micheal Allison

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 respondent's participation, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below. The applicant's claim is that the respondent failed pay for tattooing services and a hunting knife.

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 dispute, without the respondent's further participation given the respondent's non-compliance.
8. The second issue is to what extent, if any, I should order the respondent to pay the applicant the claimed amount of \$960 for the tattoo services and the hunting knife, plus tribunal fees of \$125.00.

EVIDENCE & ANALYSIS

Non-compliance

9. My May 1, 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. 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 facilitator to contact him with a request for a reply.
11. In particular, the applicant's Dispute Notice was issued on December 20, 2017. The respondent submitted his Dispute Response on February 15, 2018, agreeing that he received about 8 hours of tattoo work from the applicant, but saying that it was in trade for a shot gun, starter pistol and ammunition he already provided.
12. Thereafter, the facilitator made the following attempts at contact, with no response:
 - a. *March 27, 2018* - The facilitator emailed the respondent requesting a response by March 30. None was received.

- b. *March 29, 2018* - The facilitator attempted to reach the respondent by telephone but there was no answer and nowhere to leave a message. The facilitator then emailed the respondent to advise that his voice mail was not receiving messages.
 - c. *April 3, 2018* - The facilitator called the respondent again and there was no answer and nowhere to leave a message. The facilitator then emailed the respondent, including a warning that this matter could be referred to a tribunal member for a decision without his further participation, if he did not respond.
 - d. *April 20, 2018* - The facilitator sent another warning email, again noting that this dispute could be referred to a tribunal member for a decision without his further participation if he did not respond by April 24, 2018. 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 the respondent.
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. I find it is more likely than not that the respondent was aware of the facilitator's contact attempts but 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 claim does not affect persons other than the parties involved in this dispute.
17. Second, the non-compliance here occurred during the facilitation process. The respondent has effectively abandoned the process after providing a response. Third, given the facilitator'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.
18. 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. That would be unfair.
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 the respondent's participation.
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 Damages

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 has since 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 respondent 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 provide any response to the dispute and is in default.
22. This is a straightforward claim for non-payment for 8 hours of tattooing services at \$100.00/hour and a hunting knife valued at \$160.00. The applicant says those services and the hunting knife were provided, but that the respondent never paid for them.
23. Text messages filed by the applicant demonstrate that the respondent received 8 hours of tattooing service and a knife which I accept was valued at \$160.00. The respondent acknowledged the 8 hours spent on the tattoo, but wrote that he thought he should only have to pay for 5 hours because he had given the applicant some other item of value. This was inconsistent with his position in his Response Notice, that he did not owe any payment for the tattooing. There was no evidence before me warranting a reduction in the payment due for the tattooing.
24. Assuming the applicant's position is correct, I award the claimed \$960.00. As well, the applicant is entitled to \$125 in tribunal fees.
25. I order the respondent to pay the applicant \$1,085.00 plus applicable pre-judgment interest under the *Court Order Interest Act (COIA)*.

ORDERS

26. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,092.85, comprised of:
- a. \$960.00 for the unpaid tattoo services and a hunting knife,
 - b. \$7.85 in pre-judgment interest at COIA rate from November 1, 2017 (the date the applicant became aware of this claim) to the date of this decision, and
 - c. \$125.00 in tribunal fees.
27. The applicant is also entitled to post-judgment interest.
28. 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.
29. 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