



Civil Resolution Tribunal

Date Issued: August 15, 2018

File: SC-2017-003404

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *LIM v. Sharons Credit Union*, 2018 BCCRT 455

BETWEEN:

HUNG SEB LIM

APPLICANT

AND:

Sharons Credit Union

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION AND JURISDICTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) dismissing the applicant's claim for failure to pay a required fee and other non-compliance with the tribunal's directions. Only the evidence and submissions relevant to this issue are referenced 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.
4. Section 4 of the Act requires that a request for tribunal resolution must be made with payment of any applicable fees for the tribunal hearing phase. The tribunal's rules 11 and 12 also require that certain fees be paid before the related step in the tribunal's process will be completed.
5. After giving notice to a non-compliant party, a 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. dismiss a claim in the dispute made by the non-compliant party (section 36(3)(b) of the Act), or
 - c. refuse to resolve a claim or the dispute brought by the non-compliant party.
6. The applicant did not pay the required \$50.00 tribunal decision fee (TDF), nor obtain a fee waiver, and stopped responding to the case manager.
7. The case manager referred the applicant's non-compliance to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it. On April 12, 2018, I issued a summary decision to decide the dispute without the applicant's participation, given his non-compliance. That summary decision was previously communicated to the parties, through the tribunal facilitator. The details supporting that decision are set out below.
8. 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 relationships between parties that will likely continue after the dispute resolution process has ended.

9. For the reasons which follow, I dismiss the applicant's claim.

ISSUES

10. The issue is whether, given the applicant's refusal to pay the TDF and failure to respond to the case manager, I should dismiss the applicant's claims, hear the applicant's claims, or refuse to resolve them.

BACKGROUND AND EVIDENCE

11. The key difference between a dismissal order and a refusal to resolve under section 36 of the Act is that, subject to cancellation or notice of objection requests, dismissed disputes may not be later re-filed with the tribunal, another tribunal or a court. Claims or disputes that the tribunal refuses to resolve may be re-filed with leave of the tribunal or in court, subject to any applicable limitation period.
12. In the September 22, 2017 Dispute Notice the applicant HUNG SEB LIM wrote that on March 9, 2016 he deposited \$20,000 in a safety deposit box at the respondent Sharons Credit Union. The applicant stated that when he returned on December 22, 2016, \$5,000 was missing from the safety deposit box. His only claim is for the \$5,000.
13. In its October 3, 2017 Dispute Response, the respondent denies that \$5,000 went missing. It explains that the respondent's staff do not know the contents of the safety deposit box because that information is confidential. The respondent points out that the applicant was in possession of both keys to the safety deposit box, meaning staff could not access the box contents. The respondent also notes that the applicant approached it alleging that \$2,000 was missing, but has claimed for \$5,000. The respondent denies taking any money from the applicant and asks that I dismiss the dispute.

14. The dispute proceeded to facilitation. The applicant became non-compliant. Details of the applicant's non-compliance are as follows:
- a. *January 11, 2018* – The case manager left a voice message for the applicant requesting a callback. The applicant did not respond.
 - b. *January 12, 2017* – The case manager left a voice message for the applicant providing information about the upcoming facilitation telephone conference, and requested a callback. The applicant did not respond.
 - c. *January 15, 2018* – The case manager left a voice message for the applicant providing notification of the telephone facilitation date of January 18 at 9am, and requested a callback. The applicant did not respond.
 - d. *January 17, 2018* - The case manager left a voice message for the applicant and reminded him of the facilitation meeting. The applicant did not respond.
 - e. *January 17, 2018* - The case manager called the applicant's helper that was noted as helping the applicant at start of the tribunal process. The helper informed the case manager that he was no longer helping the applicant and could not be of assistance.
 - f. *January 18, 2018* – Initially, the applicant did not attend the facilitation telephone meeting, and so the case manager called his phone number. The applicant answered the phone call and was able to call into facilitation telephone conference. However, the parties did not reach a resolution.
 - g. *January 22, 2018* – The case manager received a one-page letter from the applicant and some documents verifying that it had been translated. The letter reiterates his claim. The letter was accompanied by a receipt or itinerary for bus travel.
 - h. *January 30, 2018* - The case manager notified the applicant of the decision to end facilitation. The notice provided detail on how the applicant could contact the tribunal and make payment to the tribunal of the fee required for

adjudication, and requested a response by February 15, 2018. It indicated, “If the CRT does not receive a request for a tribunal decision and the applicable fee or completed waiver form before the deadline, the CRT may dismiss the dispute or refuse to resolve it.”

- i. *February 27, 2018* – The case manager mailed a letter to the applicant indicating a final warning to comply with the case manager’s instruction. The letter provided instruction on how the applicant could move his case forward by making payment, or requesting a fee waiver, and provided the case manager’s phone number. The applicant was provided until March 15, 2018, to follow the direction of the case manager and/or contact the case manager by phone. No response was received from the applicant. The letter was tracked by Canada Post and shown as received March 5, 2018.
 - j. *April 3, 2018* - The case manager left a voice message with the applicant asking him to call back to the case manager before April 4th at 12 noon. The case manager provided his phone number and indicated to the applicant that the call was a follow up to the letter, and that the tribunal had not received his response. The message gave the applicant a final opportunity to contact the case manager regarding the claim, otherwise it may be dismissed. No response or callback was received from the applicant.
15. I find that the case manager made reasonable efforts to contact the applicant and have him pay the required TDF or apply for a fee waiver. The applicant did not do so.
 16. While English appears to be a second language for the applicant, he was able to communicate by telephone with the case manager, and to participate in a facilitation telephone conference. On September 22, 2017, the tribunal wrote to the applicant to let him know that, if he was uncomfortable proceeding in English, telephone translation services were available. The letter included a number he could phone if he wished to access these services.

17. The applicant's Dispute Notice was completed in functional English. He also understood that he could have a helper, as he availed himself of one for part of the tribunal process. I therefore find that any language barrier does not mitigate the effect of his non-compliance with the tribunal's directions.
18. Under tribunal rules 11 and 12, unless a fee waiver is obtained, the TDF must be paid before a claim can proceed to the tribunal hearing phase. In the tribunal hearing phase, the parties would have prepared evidence and submissions to be provided to a tribunal member to make a binding decision on the merits of the claim. The respondent could have paid the TDF, but as it chose not to do so (as is its right), I must then decide whether the tribunal should dismiss or refuse to resolve the applicant's claim for failure to pay the TDF.

ANALYSIS

Should the applicant's claim be dismissed or should the tribunal refuse to resolve the claims?

19. For the following reasons, I dismiss the applicant's claims.
20. 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 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.

21. I find the facilitator made reasonable attempts to contact the applicant. The applicant was warned that, without payment of the TDF, this dispute would be referred to a tribunal member who would decide the dispute without the applicant's further participation, and that the decision could include dismissing the applicant's claims. The applicant did not pay the TDF, nor did it contact the tribunal in response.
22. I find that holding a hearing would not be an appropriate process to resolve this dispute. Though not binding on me, I agree with the tribunal's conclusion in *Grand-Clement v. The Owners, Strata Plan*, KAS 2467, 2017 BCCRT 45 that it would be problematic to force an unwilling applicant to pursue a dispute. To do so would go against the tribunal's mandate and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.
23. Further, this claim only affects the parties involved in this dispute.
24. The non-compliance here occurred prior to the tribunal hearing process. The applicant effectively abandoned the process. Nonpayment of a required fee and a sudden long non-response from an applicant is significant non-compliance.
25. Given that no counterclaim was filed, I see no prejudice to the respondent caused by dismissing the applicant's dispute.
26. On the other hand, if I refuse to resolve the claim, there would be no finality as it would be open to the applicant to make a further request for tribunal resolution, subject to any limitation period. As well, on the pleadings, the claim does not appear to have a reasonable chance of success. If I chose to refuse to resolve this claim, there would be no consequence to the applicant for non-compliance, which would be unfair to the respondent.
27. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is impaired if one party does not want to participate. I find that it would be wasteful

for the tribunal to continue applying resources where the applicant does not want to enter the tribunal hearing phase.

28. In weighing all of the factors, I find the applicant's claim should be dismissed.
29. In deciding to dismiss the claim rather than refuse to resolve it, thereby issuing a final order to resolve the dispute, I have put significant weight on these factors:
 - a. the non-compliance is significant, in that the TDF is a required payment, under the Act and rules, to move to the tribunal hearing phase;
 - b. the respondent is not prejudiced by the dismissal; and
 - c. the tribunal's resources should be conserved.
30. Under tribunal rule 131 the tribunal can make orders about payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The respondent did not pay fees or claim expenses in this dispute. Therefore, I make no order as to the payment of tribunal fees or expenses.

DECISION AND ORDER

31. I order that the applicant's claim, and therefore his dispute, is dismissed.

Julie K. Gibson, Tribunal Member