



Civil Resolution Tribunal

Date Issued: October 23, 2018

File: SC-2018-003065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Island Solar Films Ltd. v. Salvation Botanicals Ltd.*, 2018 BCCRT 642

B E T W E E N :

Island Solar Films Ltd.

APPLICANT

A N D :

Salvation Botanicals Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

- 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 applicant, Island Solar Films Ltd., says the respondent, Salvation Botanicals Ltd., owes \$2,045.29 for work performed. The applicant says their employee installed solar window films on the respondent's premises around March 15, 2018, and the respondent has failed to pay the outstanding invoice.
- 3) The applicant is represented by an employee or principal, Donald Coldwell. The respondent is represented by its Chief Executive Officer, Clifford Wiltshire.

JURISDICTION AND PROCEDURE

- 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 Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property 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 claims.

ISSUES

- 8) The issues in this dispute are:
 - 1) Should I hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance?
 - 2) Is the applicant entitled to payment of \$2,045.29 for solar film installation?

EVIDENCE AND ANALYSIS

Non-Compliance

- 9) My August 21, 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 tribunal facilitator (TF). 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 TF to contact its representative, Mr. Wiltshire, with a request for a reply.
- 11) The respondent filed a Dispute Response on July 18, 2018. The TF made the following attempts to contact the respondent:
 - a. *August 1, 2018 email:* introductory email explaining the facilitation process, and asking the respondent to confirm participation in a teleconference on August 10. The respondent was instructed to reply by August 3.

- b. *August 3, 2018 email:* reminder about the previous email, asking for a response by August 7.
- c. *August 7, 2018 voicemail:* The TF left a message with the respondent's employee asking for a response that day.
- d. *August 8, 2018 voicemail:* The TF again left a message with the respondent's employee asking for a response by the end of the day.
- e. *August 8, 2018 email:* The TF summarized her previous contact attempts, and said that if the respondent did not respond to the tribunal within the specified deadlines, the dispute might proceed without its participation. The TF instructed the respondent to respond by August 9.

Mr. Wiltshire, the respondent's representative, replied by email on August 8. He said he was sorry he did not respond to the previous emails, and he said he would attend the August 10 teleconference.

- f. *August 10, 2018 emails:* The TF reminded Mr. Wiltshire during and after the scheduled teleconference that he had failed to call in. The TF instructed the respondent to reply by August 14 so she could schedule a telephone conversation with him.
- g. *August 14, 2018 email:* The TF re-forwarded her previous email, and *instructed* the respondent to respond by August 16.
- h. *August 16, 2018 email:* In an email titled, "Final Warning", the TF *summarized* the respondent's non-compliance, and said that if the respondent did not reply by August 20, the dispute might be referred for adjudication 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 it failed to communicate with the tribunal as required. I find the tribunal staff made a reasonable number of attempts to contact the respondent. The respondent was informed in writing at the beginning the facilitation process that it must actively participate in the dispute resolution process and respond to the tribunal's emails. Given that Mr. Wiltshire replied to the TF's August 8 email and apologized for not responding to her previous emails, I find it is more likely than not that the respondent knew about the TF's contact attempts and failed to respond.
- 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 TF'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 its 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.

\$2,045.29 for Solar Films

- 20) Having decided to hear the dispute without the respondent's participation, I will now address the merits of the dispute.
- 21) The applicant claims \$2,045.29 for the installation of solar window films in the respondent's premises.

- 22) In the Dispute Response, the respondent admitted that the applicant installed the solar films on March 23, 2018. The respondent submitted as follows in the Dispute Response:
- There was no agreement between the parties about the installation of solar films. The applicant installed the window films without the consent of Mr. Wiltshire or the administrative department.
 - Garnet MacQueen, who is identified in the Dispute Notice as the respondent's representative, was not authorized to enter into an agreement on behalf of the respondent. Mr. MacQueen's only job was maintenance and repairs.
 - Mr. MacQueen's employment with the respondent ended on June 11, 2018, and the respondent is not liable for misrepresentation by a former employee.
 - On the day the solar films were installed Mr. Wiltshire told the applicant's installer that the installation was unauthorized, the product did not meet the respondent's specifications. Mr. Wiltshire requested immediate removal of the films. The installer refused, but said he would come back and remove them on another day.
- 23) 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 person or organization refuses to participate, it is generally assumed that the applicant'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, so the respondent's liability is assumed.
- 24) Based on this adverse inference, I find the applicant is entitled to \$2,045.29 for the installation of solar films. In addition to the adverse inference against the respondent, I note that the respondent admits the applicant did the work.

- 25) While some of the submissions set out in the Dispute Response may have merit, the respondent effectively waived its right to pursue those defenses through its non-compliance with the tribunal's directions.
- 26) For these reasons, I find that the applicant is entitled to \$2,045.29 for solar film installation. The applicant is also entitled to pre-judgment interest on this amount, from March 24, 2018, pursuant to the *Court Order Interest Act* (COIA).
- 27) Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was substantially successful in this dispute, I find it is entitled to reimbursement of \$125 in tribunal fees.
- 28) The applicant also claims \$739.31 in legal fees. Tribunal rule 132 says that except in extraordinary cases, the tribunal will not order payment legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I see no reason to depart from this general rule in this case, and therefore I do not order reimbursement of legal fees.

ORDERS

- 29) I order that within 30 days of this decision, the respondent pay the applicant a total of \$2,186.06, broken down as:
 - a) \$2,045.29 for solar film installation,
 - b) \$15.77 in pre-judgment interest under the COIA, and
 - c) \$125 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, Tribunal Member