



Civil Resolution Tribunal

Date Issued: October 26, 2018

File: SC-2018-003379

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cash Stop Loans Inc. v. Collins*, 2018 BCCRT 658

B E T W E E N :

Cash Stop Loans Inc.

APPLICANT

A N D :

Tara Jean Collins

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

- 1) This final decision of the Civil Resolution Tribunal (tribunal) has been made without the respondent Tara Jean Collins' participation, due to her non-compliance with the tribunal's directions as required, as discussed below.

- 2) The applicant Cash Stop Loans Inc.'s claim is that the respondent failed to repay \$700.00, plus fees and interest, that she borrowed from it on January 5, 2018.
- 3) The applicant appears through Ms. Ashley Rae. The respondent is self-represented.

JURISDICTION

- 4) Rule 6 of the tribunal's rules provides that parties must make themselves available to participate in the dispute resolution process, including following the directions provided by tribunal members and facilitators (case managers).
- 5) 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.
- 6) 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.

- 7) 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.
- 8) For the reasons that follow, I have allowed the applicant's claim.

ISSUES

- 9) The first issue is whether I should proceed to hear the applicant's dispute, without the respondent's further participation given its non-compliance.
- 10) The second issue is to what extent, if any, I should order the respondent to pay the claimed \$700.00, plus contractual interest at 30% per annum, and loan related fees.

EVIDENCE & ANALYSIS

Non-compliance

- 11) My August 31, 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.
- 12) 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 her with a request for a reply.
- 13) The applicant's Dispute Notice was issued on May 15, 2018.
- 14) The respondent submitted a Dispute Response on June 4, 2018.
- 15) During facilitation, the respondent failed to respond to the facilitator's emails asking for a response to a proposed offer to resolve the matter. On each of July 9,

10, 23, 25 and 30th, deadlines were given for the respondent's reply. The respondent did not reply nor meet any of the deadlines.

- 16) The case manager emailed the respondent on August 8, 2018 and warned that she must respond by 4 p.m. on August 8, 2018 or this dispute would be referred for a decision on the merits without her further participation. On August 17, 2018 the case manager called the respondent and left a message that if she failed to respond by noon that day, the dispute would be referred to tribunal member for a decision without her further participation. She did not respond.
- 17) 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.
- 18) 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.
- 19) First, this claim does not affect anyone other than the parties involved in this dispute.
- 20) Second, the respondent has effectively abandoned the process. 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.

- 21) 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. That would be unfair.
- 22) 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.
- 23) 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

- 24) 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, 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.

- 25) This is a simple matter in which the respondent admits the debt. The respondent filed a Dispute Response on June 4, 2018 in which she agreed that she owes the applicant \$819.00 and a \$20.00 pre-authorized payment fee. She did not dispute the contractual interest as described by the applicant.
- 26) I find that the respondent must repay the loan with interest.

ORDERS

- 27) Within 10 days of this decision, I order the respondent to pay the applicant a total of \$1,123.31, comprised of:
- (a) \$700.00 principal,
 - (b) \$139.00 in fees as part of the loan agreement,
 - (c) \$64.96 pre-judgment interest at the 30% contractual rate from the date of agreed repayment to the date of the Dispute Notice;
 - (d) \$94.35 in pre-judgment interest at the contractual rate from the May 15, 2018 date of the Dispute Notice to the date of this decision, and
 - (e) \$125.00 in tribunal fees.
- 28) The applicant is also entitled to post-judgment interest.
- 29) 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.

30) 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