



Civil Resolution Tribunal

Date Issued: November 5, 2018

File: SC-2018-000289

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Realserve Financial Inc. v. Carleton*, 2018 BCCRT 686

B E T W E E N :

Realserve Financial Inc.

APPLICANT

A N D :

Peter Carleton

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, Peter Carleton, due to his non-compliance with the tribunal's mandatory directions, as discussed below.

- 2) The applicant, Realserve Financial Inc., says the respondent failed to pay back a loan issued on August 9, 2013. It seeks an order for payment of \$1,580 for the loan, plus 27.4% annual contractual interest.
- 3) The respondent filed a Dispute Response Form, which indicated agreement with the applicant's claim, including the amount of the loan.
- 4) The applicant is represented by an employee, Nancy Olson. The respondent, while he participated, was self-represented.

JURISDICTION AND PROCEDURE

- 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 tribunal's formal written reasons. 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 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 \$1,580 for the outstanding loan, plus 27.4% contractual interest?

EVIDENCE AND ANALYSIS

Non-Compliance

- 10) My October 1, 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.
- 11) 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 contact attempts by the TF.
- 12) The respondent filed its Dispute Response Form on April 28, 2018. The TF made the following attempts to contact the respondent, with no response:
 - a. *July 4, 2018 email:* The TF instructed the respondent to reply by July 15.

- b. *July 18, 2018 email:* The TF sent a reminder email, and told the respondent to reply by July 22.
- c. *August 10, 2018 email:* The TF instructed the respondent to reply by August 17. She said that if the respondent did not reply, the dispute might be decided using only the information already provided.
- d. *August 23, 2018 email:* The TF instructed the respondent to reply by August 27. She said that if the respondent did not respond, he could lose the opportunity to participate, and the adjudicator might draw conclusions from his failure to provide evidence or submissions.
- e. *August 30, 2018 telephone call:* TF called the respondent, who said he would provide his response to the dispute by September 4, 2018.
- f. *September 10, 2018 email:* In an email titled, "FINAL WARNING", the TF provided a summary of the prior communications, and instructed the respondent to reply by September 13. The TF said the respondent was required to comply with the tribunal's instructions, and said that if the respondent did not reply, the dispute could be decided without his further participation, under section 36 of the Act.

Should the tribunal hear the applicant's dispute without the respondent's participation?

13) As referenced above, the respondent filed a Dispute Response Form. The respondent provided no explanation about why he 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 he must actively participate in the dispute resolution process and respond to the tribunal's emails. Given that the TF spoke to the respondent on August 30 and he said he would reply by September 4, I find it is more likely than not that the respondent knew about the TF's contact attempts and failed to respond.

- 14) 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.
- 15) First, this dispute does not affect persons other than the named parties.
- 16) Second, the respondent provided no evidence or submissions, and effectively abandoned the process after providing a response. Also, the only information in the Dispute Response Form was agreement with the applicant's claim.
- 17) 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.
- 18) Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent from 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, which would be unfair to it.
- 19) 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.

20) 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

21) Having decided to hear the dispute without the respondent's participation, I will now address the merits of the dispute. The applicant claims \$1,580 for an unpaid loan, plus 27.4% contractual interest from September 13, 2013.

Limitation Period

22) I note that there is a possible limitation period issue in this dispute. The *Limitation Act* applies to disputes before the tribunal, and sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. Section 6 of the *Limitation Act* says the basic limitation period is two years, and that a claim may not be commenced more than two years after the day on which it is discovered.

23) Where a respondent filed a Dispute 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) The burden of proving a defence, such as the expiry of the applicable limitation period, falls to the party relying on that defence. In this dispute, the respondent did not raise the limitation period issue, and did not provide any evidence or

submissions about what limitation period applies, or when the claim was discovered or reasonably ought to have been discovered. For this reason, and due to the adverse inference against the respondent due to his non-compliance with the tribunal's directions, I find that the applicant's claim is not barred by the *Limitation Act*.

- 25) Based on this adverse inference, plus the agreement to the applicant's claim set out in the respondent's Dispute Response Form, I allow the applicant's claim for the outstanding debt of \$1,580, plus 27.4% contractual interest from September 15, 2013. I find the respondent must pay the applicant \$1,580 for the outstanding loan, plus \$2,226.28 in interest.
- 26) 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 successful in this dispute, I find it is entitled to reimbursement of \$125 paid in tribunal fees.

ORDERS

- 27) I order that within 30 days of this decision, the respondent pay the applicant a total of \$3,931.28, broken down as:
 - a) \$1,580 for the loan,
 - b) \$2,226.28 in contractual interest, and
 - c) \$125 in tribunal fees.
- 28) The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.
- 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.

Kate Campbell, Tribunal Member