



# Civil Resolution Tribunal

Date Issued: November 5, 2018

File: SC-2018-005732

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EASYFINANCIAL SERVICES INC. v. Gill*, 2018 BCCRT 691

**B E T W E E N :**

**EASYFINANCIAL SERVICES INC.**

**APPLICANT**

**A N D :**

**Gurvinder Gill**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

### **INTRODUCTION**

- 1) This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, Gurvinder Gill, due to his non-compliance with the tribunal's mandatory directions, as discussed below.

- 2) The applicant, EASYFINANCIAL SERVICES INC., says the respondent failed to pay back the balance of a loan. It seeks an order for payment of \$2,744.98 for the loan, plus contractual interest of 46.96% per year. The applicant also seeks payment of \$66.90 for loan insurance, \$100 for NSF cheque fees, and \$24.63 for “service product charges”.
- 3) The respondent filed a Dispute Response Form, which indicated agreement with the applicant’s claim. He said he could not pay because he lost his job.
- 4) The applicant is represented by Warrant Macintyre, an employee. 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 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 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 \$2,744.98 for an outstanding loan, plus contractual interest of 46.96% per year?
  - 3) Is the applicant entitled to \$66.90 for loan insurance, \$100 for NSF cheque fees, and \$24.63 for "service product charges"?

## **EVIDENCE AND ANALYSIS**

### ***Non-Compliance***

- 10) My October 15, 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 a Dispute Response on August 17, 2018. The TF then made the following attempts to contact the respondent:

- a. *September 6, 2018 email:* The TF explained the facilitation process, and said the respondent must reply to confirm his participation in a facilitation teleconference by September 10. No reply.
- b. *September 10, 2018 voicemail:* The TF left a message for the respondent to call. No reply.
- c. *September 11, 2018 email:* The TF reminded the respondent of the prior email and voicemail. The TF said that if the respondent did not participate, the tribunal might decide the claims without his input. The TF instructed the respondent to reply by September 14.

The respondent replied by email on September 17. He said he was willing to pay \$500 per month towards the debt.

- d. *September 17, 2018 email:* The TF summarized the respondent's settlement proposal, and asked the respondent to confirm the summary by September 20. No reply.
- e. *September 19, 2018 email:* The TF said he wanted to have a phone conversation with the respondent on September 21 at 9:00 am. He asked the respondent to reply by September 20 to confirm his availability for the call. No reply.
- f. *September 24, 2018 email:* The TF instructed the respondent to reply by September 27. No reply.
- g. *October 9, 2018 email:* In an email titled, "FINAL WARNING", the TF provided a summary of the prior communications, and instructed the respondent to reply by October 12. The email 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. The respondent has 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 respondent replied to the TF's September 11, 2018 email, I find it is more likely than not that the respondent knew about the TF's other 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 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. In his Dispute Response Form, the respondent admitted to the debt claimed by the applicant.

- 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.
- 22) The applicant claims \$2,744.98, plus 46.96% contractual interest from June 29, 2018. This totals \$3,200.56.

- 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) Based on this adverse inference, plus the agreement to all of the claims set out in the respondent's Dispute Response Form, I allow the applicant's claims. I find the respondent must pay the applicant \$3,200.56 for the outstanding loan and interest.
- 25) For the same reason, I find that the applicant is also entitled to its claims of \$66.90 for loan insurance, \$100 for NSF cheque fees, and \$24.63 for "service product charges". This equals \$191.53. The applicant is also entitled to pre-judgment interest on the \$191.53, from June 29, 2018, under the *Court Order Interest Act* (COIA).
- 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 \$175 in tribunal fees.
- 27) The applicant also claims \$84 for the cost of a process server used to provide the Dispute Notice to the respondent. The applicant provided a receipt to support this amount, so I order reimbursement of \$84.

## **ORDERS**

- 28) I order that within 30 days of this decision, the respondent pay the applicant a total of \$3,652.06, broken down as:
- a) \$2,744.98 for the loan,
  - b) \$455.58 in contractual interest,

- c) \$191.53 for NSF fees, loan insurance, and service charges,
- d) \$0.97 in prejudgment interest under the COIA, and
- e) \$259 in tribunal fees and dispute-related expenses.

29) The applicant is also entitled to post-judgment interest under the COIA.

30) 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.

31) 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.

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Kate Campbell, Tribunal Member