



Civil Resolution Tribunal

Date Issued: November 16, 2018

File: SC-2017-003993

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Craig v. Gallo et al*, 2018 BCCRT 741

B E T W E E N :

Christopher Craig

APPLICANT

A N D :

Christopher Gallo
Dumpstars Disposal Ltd.
Lee Gallo (Doing Business As Bin around the block)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal) about the applicant's non-compliance. Only the evidence and submissions relevant to this issue are referenced below.
2. The applicant Christopher Craig claims the respondents failed to pay him \$4,250 for general labour services he provided between May and September 2016, which he describes as including driving, deliveries, repairs, yard maintenance and purchasing.
3. Only the respondent Christopher Gallo filed a Dispute Response. I will refer to him by his full name to avoid confusion with Lee Gallo. In it, he says Mr. Craig was working for the respondent Dumpstars Disposal Ltd. (Dumpstars) at the time, not for Christopher Gallo. Christopher Gallo says he was an employee of Dumpstars, but not a director or a shareholder. As a result, Christopher Gallo says he is not personally responsible for the claimed amount.
4. The other named respondents were not served with the Notice of Claim.
5. The parties are each self-represented.
6. 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 applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits for responding, or an order of the tribunal made during the case management phase. For example, section 32 allows the case manager to require the parties to direct the parties to provide information regarding the issues in dispute, the position of the parties in relation to those issues and the resolution being requested.
7. As well, 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 also require that certain fees be paid before the related step in the tribunal's process will be completed.

8. After giving notice to the 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, or
 - c. refuse to resolve a claim or the dispute brought by the non-compliant party.
9. In this dispute, the applicant is the non-compliant party.
10. The facilitator has 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.
11. 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 to a dispute that will likely continue after the dispute resolution process has ended.
12. For the reasons which follow, I dismiss the applicant's claims.

ISSUES

13. The issue is whether, given the applicant's non-compliance and failure to pay a required fee, I should dismiss the applicant's claims, hear the applicant's claims, or refuse to resolve the claims.

BACKGROUND AND EVIDENCE

14. 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 re-filed with the tribunal, another tribunal or a court at a later date. Claims or disputes that the tribunal refuses to resolve may be re-filed with leave of the tribunal, subject to any applicable limitation period.
15. The claim is for a simple debt the applicant says was owing for services he provided.
16. In his October 31, 2017 Dispute Response, Christopher Gallo denied responsibility for the claim. He did not file a counterclaim.
17. None of the other named respondents were served with the Notice of Claim.
18. This matter was not yet in the facilitation phase when Mr. Craig stopped participating.
19. On September 5, 2018, the case manager emailed Mr. Craig asking him to provide an update on the status of providing notice to the respondents by September 12, 2018. Mr. Craig did not respond.
20. On September 13, 2018, the case manager emailed Mr. Craig again, asking him to respond by September 17, 2018, and warning him that if he failed to reply the matter might be referred to a tribunal member who could dismiss his claim without his further participation. Mr. Craig did not respond.
21. On September 18, 2018, the case manager contacted Mr. Craig by email and phone. The case manager requested a response by September 20, 2018. Mr. Craig did not respond.
22. On September 21, 2018 the case manager sent Mr. Craig a final email warning that, if he did not respond the same day, the dispute would be referred to a tribunal

member for a decision, that could include dismissing his claims without his further participation.

23. On October 25, 2018, I issued a summary decision finding Mr. Craig non-compliant.
24. Had this dispute proceeded to adjudication, a Tribunal Decision Fee (TDF) of \$50.00 would have been payable by the applicant. Because he stopped participating in the process, Mr. Craig never paid the TDF.
25. When Mr. Craig was found non-compliant, Christopher Gallo was given an opportunity to pay the TDF. He declined to do so.
26. Under 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.

ANALYSIS

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

27. For the following reasons, I dismiss the applicant's claims.
28. 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.

29. Looking at the case manager's evidence about attempting to contact Mr. Craig, I find they made reasonable attempts to contact the applicant. The case manager warned the applicant, on more than one occasion, that if he failed to respond this dispute would be referred for a decision that could include dismissing his claims. The non-compliance made it impossible to finalize the pleadings and parties to the dispute, effectively preventing facilitation or adjudication from proceeding.
30. 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.
31. Further, this claim only affects the parties involved in this dispute. I note that the only respondent to have notice of the dispute filed a response denying liability.
32. The non-compliance here occurred prior to the tribunal hearing process. The applicant has effectively abandoned the process after filing the Notice of Claim.
33. Given that no counterclaim was filed, I see no prejudice to the respondent caused by dismissing the applicant's dispute.
34. 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. 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 Christopher Gallo.
35. 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.

36. In weighing all of the factors, I find the applicant's claim should be dismissed.
37. 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, and 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.

DECISION AND ORDERS

38. I order that the applicant's claims, and therefore this dispute, are dismissed.
39. Under tribunal rule 131 the tribunal can make orders regarding 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.

Julie K. Gibson, Tribunal Member