



Civil Resolution Tribunal

Date Issued: December 13, 2018

File: SC-2018-000039

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kamloops 2011 Equities Ltd. DBA Speedy Cash v. Brooks*,
2018 BCCRT 845

B E T W E E N :

Kamloops Equities Ltd. DBA Speedy Cash

APPLICANT

A N D :

Trent Brooks

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 participation of the respondent Trent Brooks, due to his non-compliance with the tribunal's directions as required, discussed below.

2. The applicant, Kamloops Equities Ltd. DBA Speedy Cash, claims the respondent owes \$582.85 under a loan agreement.
3. The applicant is represented by an employee, Chelsea Tighe. The respondent is self-represented.

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 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

- a. order a party to do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation given his non-compliance.
8. The second issue is to what extent I should order the respondent to pay the applicant the claimed \$582.85.

EVIDENCE AND ANALYSIS

Non-compliance

9. My September 13, 2018 summary decision to hear the dispute without the respondent's participation, given his non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
10. The respondent is the non-compliant party in this dispute. He 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 him with a request for a reply.
11. The Amended Dispute Notice was issued on January 4, 2018. The respondent filed a Dispute Response on March 18, 2018. The facilitator then made the following attempts at contact:
 - a. **July 16, 2018** – The facilitator emailed the respondent requesting a response by July 17, 2018. The facilitator noted that the respondent had failed to respond to a settlement offer by the required deadline of July 13, 2018. The

- email warned that, if he failed to respond, the dispute may be referred to a tribunal member to decide without his further participation. The respondent did not reply.
- b. **July 20, 2018** – The facilitator emailed and phoned the respondent but could not reach him. The respondent did not reply to the email or return the phone call.
 - c. **August 15, 2018** – The facilitator emailed and phoned the respondent. His voice mail box was full. The email asked that he respond by August 17, 2018, and warned that if he failed to do so, this dispute would be referred to a tribunal member who would decide it without his further participation.
 - d. **August 30, 2018** – The facilitator emailed the respondent and advised him that the email was a final warning, and that if he failed to reply by August 31, 2018, this dispute would be referred to a tribunal member to decide without his further participation. The respondent did not reply.
12. 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 without his further participation.

Should the tribunal hear the applicant's dispute?

13. The respondent provided no explanation about why he failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact him. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find it is more likely than not that the respondent was aware of the attempts to contact him and chose not 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 claim does not affect persons other than the parties involved in this dispute.
16. Second, the respondent has effectively abandoned the process shortly after providing a Dispute Response. 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.
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 his non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy. That would be unfair.
18. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is impaired if one party fails to participate. I find that it would be wasteful for the tribunal to continue applying resources to this dispute, such as by making further attempts to seek the respondent's participation.
19. In weighing 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 Dispute and Damages

- 20. I have decided to hear the dispute without the respondent's participation. I turn to the merits of the dispute.
- 21. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against him. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicants' 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.
- 22. This is simple debt matter. I reviewed the Dispute Response filed on March 18, 2018, because it pre-dates the respondent's non-compliance. In it, the respondent admits the claim against him.
- 23. I find that the applicant loaned money to the respondent under a written agreement. The principal amount loaned was \$420.00. As well, the respondent agreed to pay a loan fee of \$71.40, a loan protection fee of \$21.62, a dishonored payment fee of \$20.00 and contractual interest at an annual rate of 30% on any unpaid principal.
- 24. The contractual interest for the period between when the loan was due and the date of issuance of the Dispute Notice is \$49.83.
- 25. On January 23, 2018, the respondent paid the applicant \$330.
- 26. On August 10, 2018, the applicant indicated that \$252.85 remained owing by the respondent.

27. Because the respondent failed to repay the loan and other fees as agreed, I order him to pay the \$252.85 which is the amount claimed by the applicant, less the payment made in January 2018.
28. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$10.50 for registered mail expenses incurred in sending the Dispute Notice.

ORDERS

29. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$413.72, broken down as follows:
 - a. \$252.85 for the loan, agreed fees, and contractual interest to the date of the Dispute Notice,
 - b. \$25.37 in pre-judgment interest at the 30% annual contractual rate, calculated from the date of the Dispute Notice to the date of this decision,
 - c. \$125 in tribunal fees, and
 - d. \$10.50 in dispute-related expenses.
30. The applicant is entitled to post-judgment interest, as applicable.
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.

Julie K. Gibson, Tribunal Member