



Civil Resolution Tribunal

Date Issued: December 27, 2018

File: SC-2017-006578

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Williams v. Koster*, 2018 BCCRT 903

B E T W E E N :

Michael Williams

APPLICANT

A N D :

Terese Koster

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 further participation of the respondent Terese Koster due to her non-compliance.

2. The applicant, Michael Williams, says the respondent borrowed \$879.46 and did not pay him back.
3. In her Dispute Response, the respondent says the money was a gift, not a loan. In later communication with the tribunal, the respondent says she owes the money to the applicant.
4. The parties are each 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 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through [written submissions, telephone etc.], because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. 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

9. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation given her non-compliance.
10. The second issue is to what extent I should order the respondent to pay the applicant the claimed amount.

EVIDENCE AND ANALYSIS

Non-compliance

11. My May 22, 2018 summary decision to hear the dispute without the respondent's participation, given her 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. She 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 Dispute Notice was issued on November 29, 2017. The respondent filed a Dispute Response on February 9, 2018. At the outset of facilitation process the respondent refused to participate in the tribunal process as required. The facilitator made the following attempts at contact:

a. **March 27, 2018** – The facilitator emailed the parties their attendance at a teleconference on May 17, 2018 at 3:00 p.m. The email warned that if either party failed to participate, the dispute would be referred to a tribunal member for a decision, without the non-compliant party's further participation. The respondent replied, refusing to attend the teleconference. She wrote that the applicant had "won". The respondent wrote that she would include the money owed to the applicant in her debt consolidation.

b. **March 27, 2018** – The facilitator emailed the respondent indicating she was still required to attend the teleconference on May 17, 2018 at 3:00 p.m.

c. **May 17, 2018** – The respondent did not attend the teleconference. While the applicant was waiting on the conference line, the facilitator called the respondent at the phone number she had provided. During that call, she refused to participate in the teleconference and said that she had no intention of fighting the applicant's claim, and that she was refusing to participate in the process. The facilitator warned her that, given her refusal to participate, a tribunal member would decide the dispute without her further participation.

14. 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 her further participation.

Should the tribunal hear the applicant's dispute?

15. I find the facilitator made a reasonable number of attempts to contact the respondent. The respondent expressly refused to participate in the facilitation

process. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find that the respondent was aware of the consequences and chose not to participate further.

16. 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.
17. First, this claim does not affect persons other than the parties involved in this dispute.
18. Second, the non-compliance here occurred before evidence and submissions were filed. Third, given the respondent's decision to stop participating despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
19. Fourth, I see no prejudice to the applicants 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 its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy. That would be unfair.
20. 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.

21. In weighing the factors, I find the applicant's claims should be heard. In deciding to hear the applicants' 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

22. I have decided to hear the dispute without the respondent's further participation. I turn to the merits of the dispute.
23. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against her. This means that if the respondent refuses to participate, 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.
24. Having said that, I reviewed the Dispute Response and the emails from the respondent, because these were filed prior to the respondent's non-compliance.
25. This is a simple debt claim. The applicant says that on June 3, 2017, the respondent borrowed \$879.46 from him, for car repairs. The respondent did not repay it. Based on the respondent's own evidence, she owes the applicant this money.
26. I therefore find that the respondent borrowed and failed to repay the \$879.46.
27. I order that the respondent pay the applicant \$879.46, within 10 days of this decision.

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.

ORDERS

29. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$1,019.56, broken down as follows:

- a. \$879.46 in money owing,
- b. \$15.10 in pre-judgment interest under the *Court Order Interest Act*, calculated from June 3, 2017, which I find is the date it was borrowed, to the date of this decision, and
- c. \$125 in tribunal fees.

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