



Civil Resolution Tribunal

Date Issued: December 31, 2018

File: SC-2018-001052

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Contact Resource Services Inc. v. Hansen*, 2018 BCCRT 926

B E T W E E N :

Contact Resource Services Inc.

APPLICANT

A N D :

Claire Hansen

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 Claire Hansen, due to her non-compliance with the tribunal's directions as required, as discussed below.

2. The applicant Contact Resource Services Inc. says the respondent Claire Hansen owes it \$4,833.92.
3. The respondent submitted a Dispute Response on April 17, 2018 in which she does not dispute the amount owing but says she has been on disability for six years.
4. The applicant is represented by its employee Angelika Sawicka. While she participated, the respondent 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 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. 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

8. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation, given her non-compliance.
9. The second issue is to what extent I should order the respondent to pay the applicant the claimed \$4,833.92.

EVIDENCE AND ANALYSIS

Non-compliance

10. My August 31, 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.
11. 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.
12. The respondent does not use a telephone due to her disability. The facilitator communicated with her by email, as follows:

- a. **July 18, 2018** – The facilitator requested that the respondent complete some financial forms by July 31, 2018. The respondent did not do so.
 - b. **August 2, 2018** – The facilitator emailed the respondent requesting the financial forms be completed by August 3, 2018. The email warned that if the respondent did not reply, the dispute would be referred to a tribunal member who would decide it without her further participation. The respondent did not reply.
 - c. **August 8, 2018** – The facilitator emailed the respondent directing her to complete the financial forms or confirm that she would not do so, so that the matter could proceed to adjudication, by August 10, 2018. The email warned that if she failed to comply with directions, the dispute would be decided without her further participation. The respondent did not reply.
 - d. **August 15, 2018** – The facilitator wrote a final warning email to the respondent, directing a response by August 17, 2018, failing which the dispute would be referred to a tribunal member for a decision without her further participation. The respondent did not reply.
13. 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?

14. The respondent provided no explanation about why she failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact her. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. The respondent expressly chose email as her preferred method of communication. I find it is more likely than not that the respondent was aware of the attempts to contact her and chose not to respond.

15. 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.
16. First, this claim does not affect persons other than the parties involved in this dispute.
17. Second, the non-compliance here occurred at the outset of the facilitation process. No substantive discussions between the parties occurred. The respondent effectively abandoned the process after providing a 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.
18. 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 her non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy. That would be unfair.
19. 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.

20. 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

21. I have decided to hear the dispute without the respondent's further participation. I turn to the merits of the dispute.
22. 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.
23. Having said that, I reviewed the April 17, 2018 Dispute Response, because it was filed prior to the respondent's non-compliance. In it, the respondent does not raise any defence to the claim that she owes the applicant \$4,833.92.
24. The respondent had an account with HSBC which had a balance owing of \$4,833.92 as of September 22, 2012. The original creditor, HSBC, assigned the liability and interest to the applicant on June 21, 2016.
25. I note that there is a potential limitation period issue in this case, as the original debt dates back to 2012. However, under the *Limitation Act*, the limitation period for a debt claim arising before June 1, 2013 would be six years. The Dispute Notice was issued February 13, 2018.

26. The respondent did not mention the limitation period in her Dispute Response.
27. Given the respondent's non-compliance, I draw an adverse inference against her.
28. Because the respondent did not repay the debt, I order her to pay the \$4,933.92 owing to the applicant.
29. 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

30. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$5,245.40, broken down as follows:
 - a. \$4,833.92 in debt owing,
 - b. \$286.48 in pre-judgment interest under the *Court Order Interest Act*, from September 22, 2012 to the date of this decision, and
 - c. \$125 in tribunal fees.
31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.
33. 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