



Civil Resolution Tribunal

Date Issued: January 11, 2019

File: SC-2018-003982

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EOS Canada Inc. v. Chand*, 2019 BCCRT 49

Default decision – non-compliance

B E T W E E N :

EOS Canada Inc.

APPLICANT

A N D :

Rudra Chand

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, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.
2. This dispute is about an unpaid credit card debt of \$1,465.32 owing to the applicant.
3. The respondent submitted a Dispute Response saying only that she had financial difficulties.
4. EOS Canada Inc. is represented by Ana Andrade. While Rudra Chand participated, she was self-represented.
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. The facilitator has referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
7. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought section 118 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.

8. 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.
9. For the reasons that follow, I have allowed the applicant's claim.

ISSUES

10. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation, given her non-compliance.
11. The second issue is to what extent I should order the respondent to pay the applicant the claimed debt of \$1,465.32.

EVIDENCE AND ANALYSIS

Non-compliance

12. My October 25, 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 case manager. The details supporting that decision are set out below.
13. 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 attempts by the case manager to contact her with a request for a reply.

14. The respondent filed its Dispute Response on August 7, 2018, which included her email address to be used for this dispute. The case manager then made the following attempts at contact:
- a. **September 14, 2018** – The case manager emailed the respondent, asking for a reply to an agreement proposed by the applicant, by September 17, 2018. The respondent did not reply.
 - b. **October 9, 2018** – The case manager emailed the respondent requesting a reply, by October 11, 2018, providing her availability for a telephone conference with the applicant. The respondent did not reply.
 - c. **October 12, 2018** – The case manager emailed the respondent again asking for three times she would be available for a telephone conference with the applicant. The email requested a reply by October 15, 2018, and warned that if the respondent did not reply, the dispute would be referred to a tribunal member for a decision without her further participation.
 - d. **October 17, 2018** – The case manager spoke to the respondent by phone, providing a verbal warning that if she did not respond to the email requesting her availability, she risked being found non-compliant. The respondent said she would email the case manager, but then failed to do so. The case manager sent an email to the respondent the same day, requesting a reply by October 18, 2018, with three telephone conference times. The email included a final warning that, if the respondent did not reply, the dispute would be referred to a tribunal member who would decide it without the respondent's further participation.
15. The case manager then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

Should the tribunal hear the applicant's dispute without the respondent's participation?

16. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why she failed to communicate with the tribunal as required. I find the case manager made a reasonable number of attempts to contact the respondent. The respondent was informed in writing at the beginning the facilitation process that she must actively participate in the dispute resolution process and respond to the case manager's emails. Given that the respondent provided her contact information on the August 7, 2018 Dispute Response and given that the case manager spoke to her by telephone, I find that the respondent knew about the case manager's contact attempts and failed to respond with the required information.
17. 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.
18. First, this dispute does not affect persons other than the named parties.
19. Second, the non-compliance here occurred prior to the parties exchanging evidence and submissions. The respondent abandoned the process without explanation.

20. Third, given the case manager'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.
21. 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, which would be unfair.
22. 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.
23. 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

24. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
25. 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.

26. Having said that, I reviewed the Dispute Response, because it was filed prior to the respondent's non-compliance. In it, the respondent raises no defence, and effectively admits the claim by saying she is in financial difficulty.
27. I draw an adverse inference against the respondent and accept the applicant's evidence that it purchased the rights to her credit card debt from Canadian Tire Bank in late 2017. I find that the balance owing by the respondent is \$1,465.32.
28. No limitation period issue was raised. Based on the April 21, 2017 date on which the respondent defaulted on her credit card payments, which I accept, a limitation period argument would likely not succeed.
29. I find that the respondent owes the claimed \$1,465.32 to the applicant.

ORDERS

30. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$1,628.09, broken down as follows:
- a. \$1,465.32 for the debt owing,
 - b. \$27.27 in pre-judgment interest under the *Court Order Interest Act*, from the April 21, 2017 date of default to the date of this decision, and
 - c. \$135.50 for \$125 in tribunal fees and \$10.50 for dispute-related expenses.
31. The applicant is entitled to post-judgment interest, as applicable.
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. 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